
R. J. H.

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Commentary

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figure was one effective test for cases which the Canadian Supreme Court should hear.

It is submitted this subsection ought to be deleted. Section 38(8) affords ample protection to litigants who, in the opinion of the highest court of their province, have a point of law which should be adjudicated by the court of final appeal for our country. At the same time it would eliminate this type of case and free our judges to consider thornier points of law more deeply and expeditiously.

With regard to the main issue of the case—the balance of probabilities has been entrenched in the Common law for years as the test to be applied in civil matters, although our Canadian Supreme Court did not finally settle it authoritatively until Hanes v. Wawanesa Mutual Insurance Co. which is discussed elsewhere in this review.

The decision was a proper one and indeed could not have been otherwise. The law is in a satisfactory state and it was left undisturbed by this case. T.A.S.

I. INTERPRETATION


In 1897 an agreement was entered into between the C.P.R. and the Crown by which a subsidy was granted to the C.P.R. in return for an agreement to charge reduced rates for certain “grains” on the C.P.R. lines. Certain specified grains were listed but no reference was made to rapeseed. The question on appeal was whether rapeseed is a “grain” within the meaning of the Crow’s Nest Pass Act 1897 and therefore entitled to a reduced rate.

Martland J. delivering the judgment of the court agreed with the Board in dismissing the appeal and holding that “grain” did not include rapeseed. He distinguished the case of British Coal Corp. v. The King [1935] A.C. 500 which held that “in interpreting a constituent or organic statute, ... that construction most beneficial to the widest possible amplitude of its powers must be adopted.” That case did not apply here because the purpose of the Act was to give effect to an agreement between two parties who only contemplated the effecting of a reduction in rates then applicable or what both parties, at that time, regarded as being grain. The rule followed in this case was stated in Sharpe v. Wakefield [1889] 22 Cl. B.D. 239 at 242 by Lord Esher who said “... the words of a statute must be construed as they would have been the day after the statute was passed, unless some

subsequent statute has declared that some other construction is to be adopted or has altered the previous statute.”

It was found here as a question of fact that rapeseed would not have been considered a grain in 1897 in Canada. Whether it is a “grain” today is another matter.

This was largely an academic question because the statute has been revised since the commencement of this action and rapeseed is specifically listed as a grain to receive rail reductions under the Act. R.J.H.

J. PAPER


In Foot v. Rawlings the court considered a case the facts of which promised a discussion of the whole doctrine of consideration.

There, six promissory notes were sued upon. Four of these had been made in 1952 and were payable on demand with interest at 8%. The fifth made in 1956 was payable on May 1, 1957. The sixth was payable on December 10, 1958, with interest at 6%.

In a written agreement dated July 7, 1958, the plaintiff, payee of the six notes, agreed to accept the sum of $300 per month provided it was paid on the 16th of every month until the debt secured by the first five notes was paid. Interest was reduced to 5%. The parties agreed orally that payment of the sixth note should be postponed until the terms of this agreement had been carried out.

According to the terms of the written agreement the defendant was to give the plaintiff a series of six post-dated cheques from time to time, each series to cover a period of six months. Should any of the cheques be turned down by the bank the interest on the unpaid indebtedness was to revert to 8% and the monthly payments would revert to $400 per month.

The cheques for the period from July to December 1960 were dated on the 18th instead of the 16th, apparently through inadvertence. The plaintiff acknowledged receipt of these cheques and later cashed five of them. The trial judge held that there had been a default under the written agreement and directed that the plaintiff recover the full amount of principal and interest outstanding on the six promissory notes.

The Court of Appeal for British Columbia dismissed an appeal from this judgment. A majority of that court held that there was no consideration for the agreement to forbear and alternatively, if there was consideration, the defendant would be limited to a cross-action for breach of the agreement. Davey, J.A. dissenting, said that the

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