

WILLIAM BROMBY DAVIDSON.....SUPPLIANT ;

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

1897  
Nov. 29.*Petition of Right—Damages from public work—Liability of Crown—Assessment of damages once for all—50-51 Vict. c. 16, s. 16 (b).*

The Dominion Government constructed a collecting drain along a portion of the Lachine Canal. This drain discharged its contents into a stream and syphon-culvert near the suppliant's farm. Owing to the incapacity of the culvert to carry off the large quantity of water emptied into it by the collecting drain at certain times, the suppliant's farm was flooded and the crops thereby injured. The flooding was not regular and inevitable, but depended upon certain natural conditions which might or might not occur in any given time.

*Held*, that the Crown was liable in damages ; that the case was one which the court had jurisdiction under clause (b) of section 16 of *The Exchequer Court Act*, and that in assessing the damages in such a case the proper mode was to assess them once for all.

**PETITION OF RIGHT** for damages arising from the construction of a public work.

June 6th, 1896.

The case was referred to the Registrar of the court for the purposes of enquiry and report.

The following extracts from the Registrar's report contains a sufficient statement of the facts of the case :

“ The Petition of Right herein is brought to recover  
 “ damages occasioned by the flooding of some farming  
 “ land lying along the Lachine Canal, a public work of  
 “ the Dominion of Canada, constructed many years ago,  
 “ but in connection with which some new works were  
 “ done in the years 1878 and 1879 in the enlargement  
 “ of the said canal. Through this new work, accord-  
 “ ing to some witnesses, for want of proper puddle-  
 “ bank, the leakage increased to such an extent that the  
 “ Government decided to construct, running parallel

1897  
 ~~~~~  
 DAVIDSON  
 v.  
 THE  
 QUEEN.  
 ~~~~~  
 Statement  
 of Facts.  
 ~~~~~

“ and alongside of the canal for a long distance, with  
 “ the view of getting rid of this leakage, a collecting  
 “ drain. The drain, however, does not only carry the  
 “ leakage water from the canal, but carries also in ad-  
 “ dition the surface water of the town of Lachine,  
 “ adding thus a considerable volume of water to what  
 “ formerly flowed opposite the suppliant’s property.  
 “ The collecting drain discharges into the new course  
 “ of the little river St. Pierre, running opposite the sup-  
 “ pliant’s property, and the water flowing from the  
 “ said collecting drain passes, opposite the suppliant’s  
 “ farm, into the river St. Pierre leading to a syphon-  
 “ culvert underneath the canal. It is the concensus  
 “ of opinion of the witnesses speaking on this subject  
 “ that the culvert is not sufficient for the quantity of  
 “ water flowing into it.

\* \* \* \* \*

“ It is also in evidence that the river St. Pierre is  
 “ obstructed, and has not been yearly cleaned opposite  
 “ the suppliant’s property.

“ In view of the new work done upon the Lachine  
 “ Canal in 1879 and since, and the above-mentioned  
 “ circumstances, I find the suppliant entitled to recover.

\* \* \* \* \*

“ There was great stress laid by suppliant’s counsel  
 “ upon the fact that a sum of \$2,500 was at the time  
 “ voted by Parliament to pay suppliant ; and he con-  
 “ tended that on account of this vote by parliament  
 “ the Crown was liable. But it seems well established  
 “ that the mere fact that Parliament votes certain  
 “ monies in connection with any claim or otherwise  
 “ does not create any liability ; this vote only places  
 “ such moneys at the disposal of the Crown to satisfy a  
 “ liability, if any exist. I would cite in support of this  
 “ view the following cases : *The Jacques Cartier Bank*  
 “ v. *The Queen* (1) ; *The Queen v. Lavery* (2).

(1) 25 Can. S. C. R. 84.

(2) Q. O. R. ; 5 Q. B. 310.

“ Then, there is this further question to be decided: At the opening it appeared to me that this was a case in which the damages should be assessed once for all. The suppliant’s senior counsel contended that as the damages were contingent and ‘spasmodic,’ to use a word on record, it was impossible to assess them once for all, but only when they actually occurred. He accordingly conducted his case on this view of the law and adduced no evidence on that point. Were I now to decide that the damages, under the present circumstances, were to be assessed once for all, I would require evidence to be taken in that behalf as there is no evidence at all under which I could make a finding in that direction. In this connection it might be said that were I to allow damages for all time to come, such assessment might be made for damages which might not actually arise; and yet it is quite possible that they may. On the other hand would not the cause of the damage be removed if the Crown were to build a large culvert in the place of the present syphon-culvert and deepen and clean the little River St. Pierre?

“ Under the circumstances I find it advisable, following the provisions of Rule 191 (1), to reserve to the court the decision of the question as to whether such damages are to be assessed once for all. Were I, indeed, to decide that the damages were to be assessed once for all, I would require to have a considerable amount of evidence adduced, involving great expense; and therefore, I think it proper and expedient to have the question decided by the court before proceeding further with it.”

\* \* \* \* \*

November 29th, 1897.

The case now came before the JUDGE OF THE EXCHEQUER COURT on motions, on behalf of each

(1) P. 280 Audette’s Practice.

1897  
 ~~~~~  
 DAVIDSON  
 v.  
 THE  
 QUEEN.  
 ~~~~~  
 Statement  
 of Facts.  
 ~~~~~

1897  
 ~~~~~  
 DAVIDSON  
 v.  
 THE  
 QUEEN.  
 ~~~~~  
 Reasons  
 for  
 Judgment.  
 ~~~~~

party, by way of appeal from, and to confirm, the Registrar's report.

*J. U. Emard* for the suppliant ;

*J. S. Hall* Q.C. for the respondent.

THE JUDGE OF THE EXCHEQUER COURT now (November 29th, 1897), delivered judgment.

I think the learned Referee, the Registrar of this court, was right in his expression of opinion not acted upon that this was a case in which the damages should be assessed once for all. As I understand the facts, it is a case in which the court has jurisdiction under clause (b) of the 16th section of *The Exchequer Court Act*, and not under clause (c) of that section. In such a case the proper mode of proceeding is, without doubt, to assess the damages occasioned by the construction of the public work once for all. If the Crown should, under the authority given by the Act 52 Victoria, Chap. 38, sec. 3, cause the injury to be removed wholly or in part by any alteration in, or addition to, the public work mentioned in the report, or should give an undertaking to make the same, such alteration or addition should, of course, be taken into account in assessing the damages so far as they are likely to occur in the future.

In this view of the case the question of prescription which was argued upon the motion by way of appeal against the Registrar's report does not arise, and it is unnecessary to express any opinion in respect of such question.

The matter will be referred back to the Registrar for the taking of further evidence and for a report.

*Order for reference accordingly.*

Solicitor for suppliant: *J. U. Emard.*

Solicitor for respondent: *John S. Hall.*