

CASES

DETERMINED IN THE

EXCHEQUER COURT OF CANADA.

A. E. D. MCKAY'S SONS AND OTHERS.....SUPPLIANTS;

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

1896

June 15.

ST. LAWRENCE SUGAR REFINING }
COMPANY (LTD.)..... } SUPPLIANTS;

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

*Liability of Crown—Government canal—Accident to vessel using same—
Negligence of Crown servant—Petition of right.*

Under the provisions of *The Exchequer Court Act*, sec. 16 (c), the Crown is liable in damages for an accident to a steamer and cargo while in a Government canal, where such accident results from the negligence of the persons in charge of the said canal.

THESE were claims arising out of an accident to the steamer "Acadia" while carrying freight through the Morrisburg Canal. The steamer, while navigating the waters of the said canal struck upon a boulder or stone lying upon the bottom of the canal and was injured so that she sprang a leak and her cargo was damaged. The companies holding insurance upon the ship and cargo paid the claims arising upon their policies by reason of such accident, and became subrogated to the

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policy-holders in respect of their right of action against the Crown for negligence in allowing the said boulder or stone to be in the canal.

The case turned in law on the provisions of clause (c.) of section 16 of *The Exchequer Court Act* which gives the court exclusive original jurisdiction in respect of "every claim against the Crown arising out of any death or injury to person or to property on any public work, resulting from the negligence of any officer or servant of the Crown, while acting within the scope of his duties or employment."

The cases were tried at Montreal on the 18th, 20th and 21st March, 1896.

B. B. Osler, Q.C., for the suppliants ;

W. D. Hogg, Q.C., for the Crown.

THE JUDGE OF THE EXCHEQUER COURT now (June 15th, 1896) delivered judgment.

There will be judgment for the suppliants with costs.

There will also be a reference to the Registrar to assess the damages in accordance with the agreement at the trial.

I shall not hand any written reasons to the Registrar, but I may say that the judgment proceeds upon this: that there is no doubt that the steamer was injured by running on a rock or boulder in the canal. I think that this boulder, while not in the centre line of the channel, was well within the part of the canal where vessels might reasonably go, and that it could not have been there unless through some carelessness or negligence of the officers and servants of the Crown. Either the superintendent of the canal or the resident engineer was at fault in not giving proper instructions to their men with respect to the means to be

taken to keep the channel clear, or the men themselves failed to carry out their instructions. In either case the injury would be the result of the negligence of the officers or servants of the Crown. (1) while acting within the scope of their duties or employment, for which the Crown would be liable under the provisions of subsection (c) of section 16 of 50-51 Vict. c. 16.

Judgment accordingly.

Solicitors for the suppliants: *McCarthy, Oster,
Hoskin & Creelman.*

Solicitors for the respondent: *O'Connor & Hogg.*

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(1) REPORTER'S NOTE.—For other cases of negligence decided under this section, see *City of Quebec v. The Queen*, 2 Ex. C. R. 252; *Brady v. The Queen*, Ibid. 273; *Gilchrist v. The Queen*, Ibid. 300; *Martin v. The Queen*, Ibid. 328; *Martial v. The Queen*, 3 Ex. C. R. 118; *Dubé v. The Queen*, Ibid. 147; *Leprohon v. The Queen*, 4 Ex. C. R. 100; *Filion v. The Queen*, Ibid. 134.