1898
Jan. 17.

THE ALLIANCE ASSURANCE COMPANY .... } SUPPLIANTS.

AND

HER MAJESTY THE QUEEN..........RESPONDENT.

Negligence of Crown's Servant—The Exchequer Court Act, sec. 16 (*d*)—*Accident occurring on a public work.*

A suppliant seeking relief under clause (*c*) of section 16 of *The Exchequer Court Act* must establish that the injury complained of resulted from something negligently done or negligently omitted to be done on a public work by an officer or servant of the Crown while acting within the scope of his duties or employment.

Quære, whether the words "on any public work" as used in clause (*d*) of section 16 of *The Exchequer Court Act* may be taken to indicate the place where the act or omission that occasioned the injury occurred, and not in every case the place where the injury was actually sustained? *The City of Quebec* v. *The Queen* (24 Can. S. C. R. 420), referred to.

PETITION OF RIGHT for damages against the Crown for the negligence of its servants.

The suppliants alleged that they were insurers of buildings and property at Levis, P.Q., which had been destroyed by fire occasioned by the carelessness of the engineer of a train on the Intercolonial Railway. The evidence showed that the Halifax express of the Intercolonial Railway was the only train that passed the buildings in question on the day of their destruction by fire (Sunday) but it was not sufficiently established that the fire originated on the railway track or was communicated from the locomotive of the express when passing.

A. Ferguson Q.C. for the suppliants. The suppliants had a right of action prior to the passing of *The Exchequer Court Act*, 50-51 Vict., c. 16 under the

1898

THE ALLIANCE ASSURANCE COMPANY v. THE QUEEN.

Argument of Counsel.

provisions of sections seven, eight and ten of R.S.C. c. 40. It could have been referred to and dealt with by the Official Arbitrators had their jurisdiction remained. *The Exchequer Court Act*, section fifty-eight, confers all the jurisdiction of the Arbitrators upon the court.

It is not necessary, under section 16, sub-sec. (*a*) of 50-51 Vict. c. 16, that the damage complained of should occur *on* a public work. It is sufficient if the *negligence* causing the damage occurs *on* the public work; otherwise you could never recover for the destruction of immoveable property. That is clearly the view of the judges of the Supreme Court in the *City of Quebec* v. *The Queen* (1).

The only reasonable theory of the accident is that it arose from the negligence of the servants of the Crown. *McGibbon* v. *Northern Railway Co.* (2); *American & Eng. Ency. of Law* (3); *Piggott* v. *Eastern Counties Railway Co.* (4).

G. G. Stuart Q.C. followed: The Crown is liable under the law of the Province of Quebec upon the general principle that where damage is done by anyone to another he must make good the loss. *Grand Trunk Railway Co.* v. *Meegan* (5); *Leonard* v. *Canadian Pacific Railway Co.* (6); *Jodoin* v. *La Compagnie du Chemin de fer du Sud-Est* (7).

W. Cook, Q.C. for the respondent: If negligence cannot be proved against a railway company, when attributing to them an accident from fire, you cannot succeed. In France their liability is determined by special legislation in no way similar to ours; and therefore the French authorities are no assistance here.

(1) 24 Can. S. C. R. 420.
(2) 14 Ont. A. R. 91.
(3) Vol. 8, p. 7.
(4) 4 Dor. Q. B. R. 228.
(5) 15 Q. L. R. 93.
(6) 3 C. B. 229.
(7) M. L. R. 1 S. C. 316; Sirey: Recuiel Generale (1889) 2nd part, p. 187.

1898
THE ALLIANCE ASSURANCE COMPANY v. THE QUEEN.
Argument of Counsel.

Negligence must not only be proved here, but it must be proved to have been negligence of a servant of the Crown while acting within the scope of his duty or employment. The Crown cannot be adjudged in default by mere inferences of fact. Besides this the engineer has sworn that his ash-pan was in good condition, and not likely to drop live coals. Furthermore, engines of the Quebec Central Railway pass over the same tracks at this point. Under such circumstances the Crown cannot be held liable.

The accident or fire did not occur or happen *on* a public work, and therefore under the words of the statute (50-51 Vict. c. 16, sec. 16 (*c*)) the Crown is not liable.

Mr. Ferguson replied.

THE JUDGE OF THE EXCHEQUER COURT, now (January 17th, 1898) delivered judgment.

The suppliants must, to succeed, bring their case within clause (c) of the 16th section of *The Exchequer Court Act*, under which the court has jurisdiction, among other things, to hear and determine every claim against the Crown arising out of any injury 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. It is clear that the injury complained of in this case did not occur on a public work, and if the jurisdiction of this court is limited to cases in which the injury actually occurs upon the public work, as two of the learned judges of the Supreme Court held in *The City of Quebec* v. *The Queen* (1), the suppliants must fail on that ground. If, however, a construction of the clause less literal is permissible, and the word "on" may be taken to indicate the place where the act or omission that occasion-

(1) 24 Can. S. C. R. 420.

ed the injury occurred, and not in every case the place where the injury is actually sustained, I still think the judgment should be entered for the respondent. In that view of the law the suppliants must establish that the injury complained of resulted from something negligently done on a public work or negligently omitted to be done on a public work, by an officer or servant of the Crown while acting within the scope of his duties or employment, and that, I think, has not been established in this case. It is not at all certain under the evidence submitted that the fire that caused the damage was communicated from the engine of the Halifax express train, as the suppliants sought to prove. There is not that degree of probability about the matter to justify a finding on that issue of fact in the suppliants' favour; and as to the question of negligence of the officers or servants of the Crown by which the injury might have been occasioned, no case has in my opinion been made out.

On the issues of fact on which the case comes to be disposed of I find for the respondent, for whom there will be judgment, with costs.

Judgment accordingly

Solicitor for the suppliants: *N. N. Ollivier.*

Solicitor for the respondent: *W. Cook.*