

IN THE MATTER of the Petition of Right of

THE ALASKA FEATHER AND } SUPPLIANT;
DOWN COMPANY, LIMITED..... }

1907
June 24.

AND

HIS MAJESTY THE KING..... RESPONDENT.

Public work—Siphon-culvert—Flooding of premises.

In this case the suppliant charged in its petition that its stock in trade had been damaged by the flooding of its premises near the River St. Pierre, in the City of St. Henri, district of Montreal, caused by an alleged defective siphon-culvert constructed by the Dominion Government to carry the waters of the river under the Lachine Canal. The facts showed that the siphon-culvert was not defective in its construction, and that there was no negligence on the part of the officers or servants of the Crowns with respect to it within the meaning of sec. 16 (c) of *The Exchequer Court Act*; while on the other hand the evidence established that the lands adjacent to the suppliant's premises were of a porous character, and that the basement of its buildings had been connected by a drain with the River St. Pierre, which permitted the water to back up and flood the suppliant's premises when the river rose to a certain height.

Held, that the allegations in the petition were not supported by the evidence, and that the petition must be dismissed with costs.

PETITION OF RIGHT for damages arising out of alleged negligence in the construction of a public work.

The facts of the case are stated in the reasons for judgment.

February 1st, 1907.

The case was now heard.

A. W. P. Buchanan, for suppliants;

C. Le Beuf, for respondent.

THE JUDGE OF THE EXCHEQUER COURT now (June 24th, 1907,) delivered judgment.

The suppliant company is the owner of lands and premises situated at the corner of St. Elizabeth and St. Ambrose streets, in the City of St. Henri in the district of Montreal, where it carries on its business. In the early days of April, 1904, the company had in stock, and stored in the basements of the buildings occupied by it, a considerable quantity of feathers, flock, cotton, cotton waste and other materials. The premises are near the River St. Pierre, the waters of which are at a point lower down the river carried under the Lachine Canal by a siphon-culvert. The lands adjacent to the company's premises are of a porous character, and the basement of its buildings has been connected by a drain with the River St. Pierre so that whenever the water of the river rises to a sufficient height the basement is liable to be flooded. Such a flooding took place the 2nd day of April, 1904; causing a great deal of damage to the stock of goods that the company then had stored in such basement and to certain floors that the company had put down. It alleges that this flooding was caused by the negligence of the Crown's servants while acting within the scope of their duties or employment in respect of this siphon-culvert, and it seeks to recover from the Crown the damages that it thereby sustained. First, it is alleged in the suppliants' petition that the construction of the siphon-culvert is defective and not suited to the requirements of the river. But that allegation is not sustained by the evidence. On the contrary there is, I think, no reasonable ground of complaint with respect to the construction of this culvert or with the work that the Crown has done in deepening and straightening the River St. Pierre.

But notwithstanding that the fact is as stated, the river is liable to overflow its banks and to flood the suppliant's basement whenever any one of the following things happen :—

1907
 THE ALASKA
 FEATHER AND
 DOWN Co.
 v.
 THE KING.
 Reasons for
 Judgment.

1907
 THE ALASKA
 FEATHER AND
 DOWN CO.
 v.
 THE KING.
 Reasons for
 Judgment.

1 Whenever the River St. Lawrence into which the River St. Pierre discharges its waters, rises, as it may do, to a height sufficient to back up and stop the flow of the waters of the River St. Pierre. That, as will be seen by reference to Mr. Henry Hadley's evidence, actually occurred on the 10th of April, 1904, about a week after the flooding complained of. On that occasion the suppliant's basement was also flooded. It is contended for the Crown that the flooding that happened on the 2nd of April was due to the same cause. But I am not able on the evidence as a whole to find that to be the actual fact in this case.

2. Whenever the waters of the River St. Pierre are locally obstructed near its mouth by ice or otherwise so that they rise considerably higher than the waters of the River St. Lawrence. It is possible that such an event may have happened on the 2nd of April, 1904. There is some evidence that would appear to support such a conclusion ; but I do not find that to be the actual cause of the flooding of the 2nd of April, 1904. It may have been, but that is not certain.

3. Whenever there is an extraordinary thaw with heavy rains and a freshet that suddenly brings down more water than either the siphon-culvert or the prism of the river could for a short time take care of. I think something of that kind happened on the 2nd of April, 1904. Here is what Mr. Henry Hadley, who for a number of years has kept the levels of the River St. Lawrence at the Verdun pump-house, at the mouth of the River St. Pierre, and about three-eighths of a mile from the outlet of the River St. Pierre, says as to that :—

“Q Can you explain, Mr. Hadley, how it is that on the 2nd of April you have not got the measurements for that day?—A. During a heavy thaw we had to pump out the drainage water, and while the pump is working I cannot take the gauges.

By the Court:—Do you mean to say there was a heavy thaw?—A. Yes, we pumped forty-seven hours without stopping between the 1st and 3rd.

Q. How long?—A. Forty-seven hours to keep the water out of Verdun.

By the Court:—Q. That was on account of the heavy thaw?—A. Yes.

By the Court:—The snow was melting and coming down on you, was that it?—A. Yes.

By the Court:—You were pumping to get rid of the surplus and drainage water that was coming from the melting snow and ice?—A. Yes, the area enclosed by the tail-race bank. The aqueduct and Verdun dyke is low, and the drainage and snow melting has to be pumped out when the river is at a higher level than the water is inside. It is all enclosed by dykes.

By the Court:—But at this time the water in the river went higher than the ordinary level of Verdun?—A. Yes; if we had allowed the water to escape by gravitation, the sluices in Verdun would have been flooded.

By the Court:—You had to pump the water over the dykes in order to keep Verdun from being flooded by the thaw!—A. Yes.

By the Court:—The river was not coming back on you but it was so high it could not get away?—A. Yes.

BY RESPONDENT'S COUNSEL:—

Q. The River St. Lawrence came back into the St. Pierre river without coming back to your place? A. Yes.

By the Court:—Do the dykes that protect Verdun go along the river and up the River St. Pierre as well?—A. Yes, the tailrace bank is the bank of the river St. Pierre and protects us.

BY RESPONDENT'S COUNSEL:—

Q. If I understand you well there might be a blockade at the mouth of the River St. Pierre and the water of the

1907

THE ALASKA
FEATHER AND
DOWN CO.v.
THE KING,Reasons for
Judgment.

1907
 THE ALASKA
 FEATHER AND
 DOWN CO.

v.
 THE KING.

Reasons for
 Judgment.

St. Lawrence might come back into the St. Pierre River to a certain extent without interfering at all with Verdun, unless it does to a large extent?—A. Unless it came high enough to come over the dykes.”

4. Whenever the siphon-culvert through neglect to keep it clean becomes choked so that it cannot discharge the water that comes to it under normal conditions. The suppliant company alleges that this is what happened on the 2nd of April, 1904. And the burden of making out that fact is on the company. That burden has been in the present case, in my opinion been discharged. I find this issue for the respondent.

In this connection I ought, I think, to add that if I had been of a different opinion as to what the finding should be on this, the principal issue, in the case there would have been another difficulty in the way of the suppliant company. I concede its right, if it chose so to do, to store such goods as feathers, flock and cotton in a basement such as the one mentioned was, but in such a case it was bound, I think, to keep a look out in times of thaw and freshet to see when the waters of the St. Pierre River were rising to a height that exposed its goods to the danger of being flooded, in order that they might be removed in time from the danger that threatened. Any ordinary care and prudence exercised by the company's servants on the occasion mentioned in the direction indicated would have put them on their guard and the stock could without difficulty have been removed to a place of safety, so that even if the Crown's servants had been negligent in not keeping the siphon-culvert clean and free, the company's servants exercising ordinary and reasonable care could easily have avoided the results of such negligence. And this, they were, I think, bound to do. But as I have stated the issue ought in my view of the evidence to be found for the respondent and it is not necessary further to consider this aspect of the case.

There will be judgment for the respondent and a declaration that the suppliant company is not entitled to any portion of the relief sought by its petition. The costs will as usual follow the event.

1907

THE ALASKA
FEATHER AND
DOWN CO.

v.

THE KING.

Judgment accordingly.

**Reasons for
Judgment.**

Solicitors for applicant: *White & Buchanan.*

Solicitor for respondent: *C. Le Beuf.*