

JOSEPH LAROSE (SUPPLIANT).....APPELLANT ;

1901

AND

\*March 6.

\*Mar 22. HIS MAJESTY THE KING.....RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

*Negligence—Militia class firing—Government rifle range—Officers and servants of the Crown—Injury to the person—50 & 51 V. c. 16, s. 16 c. (D.)—R. S. C. c. 41, ss. 10, 69.*

A rifle range under the control of the Department of Militia and Defence is not a "public work" within the meaning of the Exchequer Court Act, 50 & 51 Vict. ch. 16, sec. 16 (c).

The words "any officer or servant of the Crown" in the section referred to, do not include officers and men of the Militia.

Girouard J. dissented.

APPEAL from the judgment of the Exchequer Court of Canada (1) dismissing the suppliant's petition of right with costs. A statement of the case will be found in the judgment of the court delivered by His Lordship Mr. Justice Taschereau.

*Charbonneau K.C.* for the appellant The fact of the government having rented the property in question for the public service and the use of the Department of Militia and Defence constitutes it public property and a public work, without any necessity that it should be so declared by order of the Governor-General-in-Council, and the limits of the range and control of the department extend as far as projectiles fired upon the rifle ranges may reach, whether or not their flight may continue beyond the lands leased for range purposes. The clauses of the Militia Act taken with section 16 (c) of the Exchequer Court Act and the general interpretation Act clearly give the suppliant a

\*PRESENT :—Taschereau, Gwynne Sedgewick, King and Girouard JJ.

right to recover against the Crown for the injury sustained.

*Fitzpatrick K.C.*, Solicitor-General of Canada, and *Newcombe K.C.*, Deputy of the Minister of Justice, for the Crown. Independently of the statute the Crown is not liable; *City of Quebec v. The Queen* (1) at page 423. There is no charge of negligence save that the authorities in charge of the ranges "savaient que l'exercice du tir à cet endroit, surtout avec les balles et fusils employés dans les dernières années étaient dangereux pour les voisins." The rifle range is not a public work within the meaning of sec. 16 (c) of the Exchequer Court Act, and, even assuming it to be so, the injury did not take place upon it, but in a field more than a mile and a half distant. The expression "any officer or servant of the Crown" in the section mentioned, does not include officers or men of the militia, which might (see R. S. C. ch 41, sec. 10) include all male inhabitants of Canada capable of bearing arms. There is no allegation or proof that militia regulations in respect to rifle practice have not been carried out, but on the contrary the ranges are shewn to be as safe as they could reasonably be made. It has not been shewn by whom the shot was fired that did the injury, and it is clear that if fired by any person not "on duty," there can be no liability. The Militia Act, R. S. C., ch. 41, sec. 69, does not make any provision for compensation for injury to the person. We refer to *The Queen v. McLeod* (2); *The Queen v. Filion* (3); *Black v. The Queen* (4), Sourdats "Responsabilité," par. 87.

The judgment of the Court (Girouard J. dissenting) was delivered by :

TASCHEREAU J.—On the 25th of September, 1897, the suppliant while working in his field upwards of a

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

(2) 8 Can. S. C. R. 1.

(3) 24 Can. S. C. R. 482.

(4) 29 Can. S. C. R. 693.

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mile behind the targets of the Côte St. Luc rifle range, near Montreal, at a time when rifle practice was going on there, was wounded by a bullet presumably coming from the range. The property occupied by this range had been leased by the Government from one Descaries, on the 7th of June, 1888, under authority of an order of His Excellency-in-Council, of 12th January, 1888.

The suppliant brought this action in the Exchequer Court by petition of right against the Crown, claiming \$10,000 for personal damages, alleging that the bullet which wounded him had been fired by one of the militiamen of Her Majesty who was practicing shooting at the place, and that

les autorités dépendant du département de la milice qui ont le contrôle de ce champ de tir, savaient que l'exercice du tir à cet endroit, surtout avec les balles et les fusils employés dans les dernières années, étaient dangereux pour les voisins.

No other act of negligence or ground of action is charged in the petition of right.

The judge of the Exchequer Court dismissed the action upon the ground that the rifle range was not a public work within the meaning of that term as used in the Exchequer Court Act, 50 & 51 Vict. c. 16, sec. 19, clause c. The appellant has failed in his endeavour to prove that he is aggrieved by that decision. The reasoning of the learned judge of the Exchequer Court upon this point seems to me unassailable, and I concur fully with all that he has said upon it without repeating it.

The section in question reads as follows:

The Exchequer Court shall also have exclusive original jurisdiction to hear and determine the following matters:

(c) Every claim against the Crown arising out of any death or injury to the 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.

I would say, apart from the reason that this rifle range was not a public work in the sense of the Act, that there is no evidence here that the suppliant's wounding resulted from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment, or that he suffered any injury on any public work. Moreover, it is not proved who fired the shot that wounded the suppliant. It may have been fired by one of the amateurs, or volunteers not on duty, who were there practising on that day with the men having what is called in the case, government practice.

Then I do not see that the words "any officer or servant of the Crown" can be held to include the officers or men of the militia. It must not be lost sight of that the suppliant to succeed must come within the strict words of the statute. It is in evidence that the regulations of the Governor-in-Council, as to this range were all followed, and the

autorités dépendant du département de la milice qui ont contrôle de ce champ de tir,

have not been proved to have been guilty of any negligence.

The appeal is dismissed with costs

*Appeal dismissed with costs.*

Solicitors for the appellant: *Charbonneau & Pelletier*

Solicitor for the respondent: *E. L. Newcombe.*

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