Supreme Court of Canada

Letourneux *v.* The King (1903) 33 SCR 335

Date: 1903-05-05

Charles H. Letourneux, (Suppliant)

Appellant

And

His Majesty, The King, (Respondent)

Respondent

1903: Feb. 27; 1903: May 5.

Present:—Sir Elzéar Taschereau C. J. and Sedgewick, Girouard, Davies and Armour JJ.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Public work—Negligence of Grown officials—Right of action—Liability of the Crown—50 & 51 V., c. 16, ss. 16 23, 58—Jurisdiction of the Exchequer Court—Prescription—Art. 2261 C. C.

Lands in the vicinity of the Lachine Canal were injuriously affected through flooding caused by the negligence of the Crown officials in failing to keep a siphon-tunnel clear and in proper order to carry off the waters of a stream which had been diverted and carried under the canal and also by part of the lands being spoiled by dumping excavations upon it.

*Held,* reversing the judgment appealed from (7 Ex. C. R. 1), Davies J. dissenting, that the owner had a right of action and was entitled to recover damages for the injuries sustained and that the Exchequer Court of Canada had exclusive original jurisdiction in the matter under the provisions of the 16th, 23rd and 58th sections of the Exchequer Court Act. *The Queen* v. *Filion* (24 Can, s. C. r. 482) approved; *The City of Quebec* v. *The Queen* (24 Can. S. C. R. 430) referred to.

The prescription established by art. 2261 of the Civil Code of Lower Canada applies to the damages claimed by appellant in his Petition of Right.

Appeal from the judgment of the Exchequer Court of Canada[[1]](#footnote-2), dismissing "the suppliant's Petition of Right with costs.

By his Petition of Right the Suppliant complained, among other things, that his lands had been injuriously affected on account of the Government of Canada

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assuming control and diverting the course of the River St. Pierre for public uses for the benefit of and in connection with the Lachine Canal and constructing drains in the vicinity; that a portion of his property had been taken and spoiled by throwing back upon it a quantity of earth from the excavations made, and that it had been rendered useless through flooding caused by the neglect of the officers of the Crown to clear and maintain in good order a siphon-tunnel intended to carry off the subsidiary drainage and the waters of the River St. Pierre which had been diverted from their natural channel and made to pass, by this tunnel, underneath the Lachine Canal.

The judgment of the Court dismissed the Petition of Right with costs and the suppliant appealed to the Supreme Court of Canada.

*Maréchal K. C* and *Belcourt K. C.* for the appellant, cited *Davidson* v. *The Queen[[2]](#footnote-3)*; *The City of Quebec* v. *The Queen[[3]](#footnote-4)*; *The Queen* v. *Filion[[4]](#footnote-5)*; *The Queen* v. *McLeod[[5]](#footnote-6)*; 17 Am. & Eng. Encyc. of Law (1892) ed.) p. 183, and arts. 501, 1057 C. C.

*Newcombe K. C.* and *Hutchinson K. C.* for the respondent. Under art. 2261 C. C., damages such as claimed are prescribed by two years. Consequently, appellant's claim must, in any event, be restricted to damages suffered for the two years immediately preceding the date of his Petition of Eight. Prescription is not pleaded, but it was not necessary that it should be pleaded; art. 2188 C. C.; *Dorions. Crowley,[[6]](#footnote-7)*; *Kerr* v. *The Atlantic and Northwest Railway Co.[[7]](#footnote-8)*; No damages are proved to have been suffered during this period. The appellant acquired this property in 1891 and 1892. There has been no construction of any public works

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in the vicinity since those dates, except the completion of the collecting drains, and the deepening and straightening of the river, which have much improved the appellant's property.

Under sec. 16, of 50 & 51 Vict., ch. 16, the appellant cannot possibly have any right of action; *The City of Quebec* v. *The Queen[[8]](#footnote-9)*.

As to the claim of $544. as the value of land taken for works done on the River St. Pierre, the respondent quotes the reasons of the learned Judge of the Exchequer Court, at page 8 of the Exchequer Court Reports, vol. vii., and the cases there cited.

The judgment of the court was delivered by:

THE CHIEF JUSTICE.—The statute of 1867[[9]](#footnote-10) by sec. 31 provides for the appointment of official arbitrators

who shall arbitrate on, appraise, determine and award the sums which shall be paid to any person for land or property taken for any public work, or for loss or damage caused by such taking[[10]](#footnote-11).

Under secs. 34, 35, 37, claims for *property* taken, or for damage to *property* arising from the construction may be referred to official arbitrators[[11]](#footnote-12).

The statute 33 Vict. c. 23 [sec. 1] (1870) "An Act to extend the powers of the official arbitrators," authorises the reference to official arbitrators, (besides claims for damages to property, or for property taken,) of claims

arising out of any death, or any injury to person or property on any public work—provided [sec. 2] that nothing herein contained *shall be construed as making it imperative* on the Government to entertain any claim under this Act, but that Head of the Department shall refer to arbitrators such claims only as he may be instructed so to refer by the Governor-in-Council.

The statute 44 Vict. c. 25, sec. 27 (1881), (Railway Act) extends the previous right of reference to official arbitrators to claims as to damages to property, etc.,

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by any Dominion railway[[12]](#footnote-13); and, by subsec. 3 of sec 27, to claims for any death or injury to person or property on any such railway,

but the *arbitrators' duty in such case shall be confined* to reporting bis or their findings upon the questions of fact, and upon the amount of damages, if any, sustained, and the principles upon which such amount has been computed[[13]](#footnote-14).

Now come in chronological order the cases of *The Queen* v. *McFarlane[[14]](#footnote-15)*; and of *McLeod* v. *The Queen[[15]](#footnote-16)*, 1882-1883, which determine that no statute up to 1883 altered the rule that the Crown was not liable in tort or damages for negligence of its officers.

Next comes in 1886, the Revised Statute, ch. 40, which embodies the above statutory provisions as to official arbitrators.

Then comes in 1887 The Exchequer Court Act, 50 51 Vict., ch. 16, s. 58, which repeals ch. 40 of the Revised Statutes, and enacts that for the purposes of any reference as authorised by the said Act for claims against the Crown, the Exchequer Court shall replace the official arbitrators. By sec. 23, it is enacted that "any" *claim against* the Crown may be prosecuted by Petition of Right, and secs, 15 and 16 give exclusive original jurisdiction thereon to the Exchequer Court. So that this action lies in law. Such is the jurisprudence of this court as finally settled by *The Queen* v. *Filion[[16]](#footnote-17)*.

We are of opinion in this case, however, that the only damages that the appellant can in law recover against the Crown under subsec. 3 of sec. 16 of the Exchequer Court Act, are those that he suffered within the two years preceding his action by the negligence of

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the officers of the Crown in not keeping the siphon-culvert clear and in proper order.

We do not see anything in *The City of Quebec* v *The Queen[[17]](#footnote-18)*, that militates against his right to recover these damages. There is no question of jurisdiction in the case. If the appellant had a right of action, the Exchequer Court had exclusive original jurisdiction over it. And upon the authority of *The Queen* v. *Filion,[[18]](#footnote-19)* under secs. 16, 23 and 58 of the Exchequer Court Act this right of action cannot be controverted. He should also get compensation for that part of his land that was taken, for which he claims $544. He may not be entitled to more than half that sum, perhaps, but we have nothing to do with assessing the damages either upon this head or upon the first one.

The appeal is allowed with costs and the case referred to the Exchequer Court to assess, 1st the damages that the appellant has suffered during the two years preceding his action by the negligence of the officers of the Crown in not keeping the siphon-culvert clear and in proper order; 2nd the damages suffered by the appellant by throwing back upon his land part of the bank dug up in widening the River St. Pierre, unless the appellant agrees, within three months from this date, to accept in full compensation the sum of seven hundred dollars with interest from the date of the Petition of Right, in which case, upon his filing his consent to that effect, judgment will then be entered against the respondent for that amount with interest as aforesaid and costs in the Exchequer Court, less the costs of the trial incurred in respect of the claims of the appellant which are not hereby allowed.

DAVIES J. (dissenting).—On the authority of *The City of Quebec* v *The Queen* (1), and *The Queen* v *Filion*(2)

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I am of opinion that this appeal must be dismissed for the reasons given by the learned judge of the Exchequer Court. I do not, however, wish to commit myself to the proposition laid down by him that if there had been jurisdiction totry the action, actionable negligence had been proved. The damming of the siphon drain appears to have been caused by an extraordinary flood which the authorities had no reason to anticipate, and for the results of which they would not be responsible.

Appeal allowed with costs.

Solicitors for the appellant: L. T. Maréchal.

Solicitor for the respondent: E. L. Newcombe.

1. 7 Ex. C. r. 1. [↑](#footnote-ref-2)
2. 6 Ex. C. R. 51. [↑](#footnote-ref-3)
3. 24 Can. S. C. R. 420. [↑](#footnote-ref-4)
4. 24 Can. S. C. R. 482. [↑](#footnote-ref-5)
5. 8 Can. S. C. R. 1. [↑](#footnote-ref-6)
6. Cass. Dig. (2 ed.) 709. [↑](#footnote-ref-7)
7. 25 Can. S. C R. 197. [↑](#footnote-ref-8)
8. 24 Can. S. C. R. 420. [↑](#footnote-ref-9)
9. 31 Vict. ch. 12. [↑](#footnote-ref-10)
10. Secs. 2, 5, ch. 40 R. S. C. [↑](#footnote-ref-11)
11. Secs. 6 to 32, ch. 40 R. S. C. [↑](#footnote-ref-12)
12. Sec. 6 ch. 40 R. S. C. [↑](#footnote-ref-13)
13. Sec. 11 ch. 40 P. S. C. now replaced by sec. 54, Ex. Ct. Act, 50 & 51 Vict.ch. 16. [↑](#footnote-ref-14)
14. 7 Can. S. C. R. 216. [↑](#footnote-ref-15)
15. 8 Can. S.C.R. 1. [↑](#footnote-ref-16)
16. 24 Can. S. C. R. 482. [↑](#footnote-ref-17)
17. 24 Can. S. C. R. 420. [↑](#footnote-ref-18)
18. Can. S.C.R. 482. [↑](#footnote-ref-19)