1934
*Nov. 20, 21.
1935
*May 13.

HIS MAJESTY THE KING (RESPONDENT) ..... APPELLANT;

AND

ALBERT DUBOIS AND ANTOINETTE DUBOIS (SUPPLIANTS) ..... RESPONDENTS.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Crown—Liability of, for negligence of its servant "while acting within the scope of his duties or employment upon any public work" (Exchequer Court Act, R.S.C. 1927, c. 34, s. 19 (c))—"Public work"—Alleged negligence of occupants of motor car used in detection and elimination of radio inductive interference.

A motor car owned by the Government of Canada, used by the Radio Branch of the Department of Marine in the detection and elimination of radio inductive interference, and specially equipped for that purpose, was, in such use, while returning to headquarters, stopped by its occupants (the driver and a radio electrician) on the highway, and was struck by another car, with fatal result to a passenger in the latter. Damages were claimed from the Crown on the ground that the collision and fatality were due to the negligence of the occupants of the Government car. The case was heard on certain questions of law.

* PRESENT:—Duff C.J. and Rinfret, Cannon, Crocket and Hughes JJ.

(1) [1933] S.C.R. 509 at 514.

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Held: The Government car was not a "public work," nor were its occupants acting within the scope of their duties or employment "upon any public work," at the time in question, within the meaning of s. 19 (*c*) of the *Exchequer Court Act* (R.S.C. 1927, c. 34). (Judgment of Maclean J., President of the Exchequer Court of Canada, [1934] Ex. C.R. 195, reversed).

Having regard to the history of the legislation and the judicial decisions upon it (reviewed at length in the judgment), the phrase "public work" in s. 19 (*c*) means a physical thing having a defined area and an ascertained locality, and does not comprehend public service or employment, as such; nor does it include vehicles or vessels. This construction is further supported by the language of the French version of the section.

Semble, where there is a "public work" in the sense above indicated, and an injury is caused through the negligence of a servant of the Crown in the execution of his duties or employment in the construction, repair, care, maintenance, or working of such public work, such an injury may come within the scope of s. 19 (*c*), though the servant's negligent act was not committed on the public work in the physical sense.

APPEAL by the Crown from the judgment of Maclean J., President of the Exchequer Court of Canada (1), deciding certain questions of law in favour of the suppliants.

The suppliants, by petition of right, claimed against the Crown the sum of $5,000 by reason of the death of their son, Albert Dubois Jr., due, it was alleged, to the negligence of certain servants of the Crown. The following facts of the case are taken from the reasons for judgment of the President of the Exchequer Court:

"There is in the Department of Marine at Ottawa, what is known as the Radio Branch, and one important work carried on by this Branch, from coast to coast in Canada, is the detection and elimination of radio inductive interference. The extent of this particular work may be gathered from the Introduction to a Bulletin issued by that Branch in 1932, entitled "Radio Inductive Interference," and from which it appears that over thirty thousand sources of radio interference have been investigated. The varied and important activities of the Radio Branch may be gathered from its Annual Reports, and the Radiotelegraph Act, Chap. 195, R.S.C., 1927.

"In the investigation of radio inductive interference specially equipped motor cars owned by the Government of Canada are employed by the Radio Branch. In October, 1931, such a car, allocated for such work in the district

(1) [1934] Ex. C.R. 195.

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surrounding Ottawa, was being used on a regular inspection tour for the detection of radio inductive interference, one Pollard being the radio electrician and investigator, and one Langlois the driver, both being regularly employed by the Radio Branch of the Department of Marine; Pollard and Langlois were on this occasion returning to their headquarters at Ottawa, from Fitzroy Harbour, when, towards the close of the afternoon, darkness, rain and fog rendered driving conditions so bad that they were obliged, while nearing the village of Britannia, to stop the car on one side of the travelled road in order to wipe the windshield. An oncoming car, in which Dubois the deceased was a passenger, collided with the Government car with fatal results to Dubois. The suppliants allege that the collision and fatality were due to the negligence of Pollard and Langlois."

The case was set down for hearing on the following questions of law raised by the pleadings, namely: (1) whether the said Government owned motor car, equipped and used as aforesaid and in occupation and control of the persons mentioned on the occasion in question, was at the time of the collision in question a "public work" within the meaning of s. 19 (*c*) of the *Exchequer Court Act,* R.S.C. 1927, c. 34; and (2) whether Pollard and Langlois were, at the time of the collision in question, officers or servants of the Crown acting within the scope of their duties or employment upon a public work, within the meaning of said s. 19 (*c*).

It was adjudged in the Exchequer Court that the motor car was at the time in question a public work within the meaning of s. 19 (*c*) of the *Exchequer Court Act;* and that the said Pollard and Langlois were at the time in question officers or servants of the Crown acting within the scope of their duties or employment upon a public work within the meaning of said s. 19 (*c*); and that the Exchequer Court had jurisdiction to entertain the petition of right.

The Crown appealed.

F. P. Varcoe K.C. for the appellant.

C. Morse K.C. and *E. G. Gowling* for the respondent.

The judgment of Duff C.J. and Cannon, Crocket and Hughes JJ. was delivered by

DUFF C.J.—This appeal involves the construction of section 19 of the *Exchequer Court Act* (R.S.C. 1927, ch. 34). The enactment now before us, and the parent enactment which it reproduces in amended form, have been the sub-

ject of a considerable number of decisions in the Exchequer Court and in this Court.

It will appear as we proceed that the most effectual way of ascertaining the import of the language we have to construe is to note the course of legislation upon the subject matter of the enactment from 1870 onward, and to examine with some care the course of judicial decision upon that legislation.

One general observation will not, I think, be superfluous. The judicial function in considering and applying statutes is one of interpretation and interpretation alone. The duty of the court in every case is loyally to endeavour to ascertain the intention of the legislature; and to ascertain that intention by reading and interpreting the language which the legislature itself has selected for the purpose of expressing it.

In this process of interpretation the individual views of the judge as to the subject matter of the legislation are, of course, quite irrelevant. To start with presumptions as to policy is, as Lord Haldane said in *Vacher & Sons Ltd.* v. *London Society of Compositors* (1), to enter upon a labyrinth for the exploration of which the judge is provided with no clue.

We have before us an enactment which presents certain peculiarities. There is a remedy given against the Crown in a limited class of torts; and the reasons which actuated the legislature in prescribing the limitations cannot be stated with any kind of certainty. That is no ground for ignoring the limitations, or for ascribing a non-natural meaning to the words in which they are stated in order to minimize the effect of those words. A particular enactment of the legislature is sometimes, as everybody knows, the result of compromise—a result which it would often be difficult to explain by reference to any broadly conceived principle of legislative action.

It is the duty of the courts to give effect to the language employed, having due regard to the judicial construction which it has received. The parent enactment of section 19 (*c*) of the *Exchequer Court Act,* R.S.C. (1927), cap. 34 (the section we have to construe and apply), was section 16 (*c*) of the statute of 1887 (50-51 Vict., ch. 16)

(1) [1913] A.C. 107, at 113.

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(by which statute the Exchequer Court, in its present constitution, came into being); and section 19 (*c*), in the English version, received its present form by an amendment brought into force by section 2 of ch. 23 of the Statutes of 1917. The French version of section 19 (*c*) (in the R.S.C. 1927, cap. 34) was not mentioned in argument. That version, as will very clearly appear at a later stage, is most illuminating upon the question of construction. In the meantime, I shall, in my references to the statute of 1887, and the amendment of 1917, confine myself to the English version. Section 16 of the statute of 1887, which became section 20 in the Revised Statutes of 1906, was as follows:

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

(*a*) Every claim against the Crown for property taken for any public purpose;

(*b*) Every claim against the Crown for damage to property, injuriously affected by the construction of any public work;

(*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;

(*d*) Every claim against the Crown arising under any law of Canada or any regulation made by the Governor in Council.

The amendment of 1917 was in these words:

2. Paragraph (*c*) of section twenty of the said *Exchequer Court Act* is repealed and the following is substituted therefor:

"(*c*) Every claim against the Crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment upon any public work."

An important change was effected in the law in the amendment of 1917; by the simple process of taking the phrase "on any public work" from its place following "property," and with the substitution of the preposition "upon" for the preposition "on," attaching it to the end of the paragraph, immediately after the word "employment." The phrase "public work" remained unchanged, a phrase which also appears, as will be noticed, in paragraph (*b*). It was early held (*The City of Quebec* v. *The Queen* (1)) that while in form section 16 (*c*) (of the Statutes of 1887) only conferred jurisdiction, it gave,

(1) (1892) 3 Ex.C.R. 164 and (1894) 24 Can. S.C.R. 420.

nevertheless, by necessary implication, a substantive right of action to the subject.

It will be convenient, first of all, to consider section 16 (*c*) in its original form, and the decisions upon it prior to the amendment of 1917. The actual decisions of this court upon the enactment establish three propositions: first, that the phrase "on a public work" served the office of fixing the locality within which the death or injury must occur in order to bring the enactment into operation; second, that the phrase "public work" denoted, not a service or services, but a physical thing; third, that such physical thing must have a fixed situs and a defined area.

The determination of the present appeal largely turns upon the meaning to be ascribed to the phrase "public work" in the existing statute, that is to say, in the form the statute, in its English version, assumed in consequence of the amendment of 1917.

The jurisdiction created by section 16 (*c*) of the legislation of 1887 was a jurisdiction transferred from the Official Arbitrators to the Exchequer Court (*Graham* v. *The King* (1); *Armstrong* v. *The King* (2)). The jurisdiction of the Official Arbitrators in relation to this particular subject had originally been constituted by section 1 of chapter 23 of the Statutes of 1870; which provided that where there was a supposed claim upon the Government of Canada

> arising out of any death, or any injury to person or property on any railway, canal, or public work under the control and management of the Government of Canada

the claim might, by the head of the department concerned therewith, be referred to Official Arbitrators who should have power to hear and make an award upon such claim.

In the Revised Statute of 1886, the Act relating to Official Arbitrators reproduced this provision in slightly altered form (ch. 40, sec. 6), the words there being:

> claim * * * arising out of any death, or any injury to person or property on any public work;

"public work" being thus defined by section 1, "unless the context otherwise requires,"

> (*c*) The expression "public work" or "public works" means and includes the dams, hydraulic works, hydraulic privileges, harbours, wharves, piers and works for improving the navigation of any water—

(1) (1902) 8 Ex.C.R. 331, at 335. (2) (1907) 11 Ex.C.R. 119, at 122, 123.

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lighthouses and beacons—the slides, dams, piers, booms and other works for facilitating the transmission of timber—the roads and bridges, the public buildings, the telegraph lines, Government railways, canals, locks, fortifications and other works of defence, and all other property which now belong to Canada, and also the works and properties acquired, constructed, extended, enlarged, repaired or improved at the expense of Canada, or for the acquisition, construction, repairing, extending, enlarging or improving of which any public money is voted and appropriated by Parliament, and every work required for any such purpose; but not any work for which money is appropriated as a subsidy only.

Section 6 also gave jurisdiction to the Official Arbitrators, on reference by a Minister in respect of other matters:

* * * any claim for property taken, or for alleged direct or consequential damage to property, arising from or connected with the construction, repair, maintenance or working of any public work, or arising out of anything done by the Government of Canada.

Section 16 of the Exchequer Court Act of 1887, which, by section 58, repealed the *Official Arbitrators Act* (R.S.C. 1886, c. 40), gave to the newly created Exchequer Court jurisdiction in a modified form in respect of these matters. It is not without relevancy to note that claims for

alleged direct or consequential damage to property, arising from or connected with the construction, repair, maintenance or working of any public work.

(in the *Official Arbitrators Act*) become claims

for damage to property, injuriously affected by the construction of any public work

in section 16 (*b*) of the Statute of 1887.

The decisions in this Court and in the Exchequer Court upon claims under section 16 (*b*) have proceeded upon the view that the words of that paragraph must be construed by reference to the decisions of the English courts in respect of the subject of "injurious affection" (*MacArthur* v. *The King* (1); *The King* v. *MacArthur* (2)). There can, I think, be no doubt that "public work" in that paragraph is to be construed by reference to the interpretation clause in the *Official Arbitrators Act* (R.S.C. 1886, c. 40) and to the interpretation clause in the *Expropriation Act* (R.S.C. 1886, c. 39) which correspond *ipsissimis verbis*. In that definition, it will be observed that the phrase "all other property which now belong to Canada" is, if read alone, very comprehensive; but, as Burbridge J. held in *Larose* v. *The Queen* (3), that expression in the *Expropriation Act*, where, as I have already said, the definition precisely con-

(1) (1903) 8 Ex.C.R. 245, at 257. (2) (1904) 34 Can. S.C.R. 570.
(3) (1900) 6 Ex.C.R. 425.

forms to that in the *Official Arbitrators Act,* must be read in connection with the words preceding it, and not in the broadest possible sense.

I entertain no doubt that "public work," as employed in section 6 of the *Official Arbitrators Act,* and in the contemporaneous *Expropriation Act,* did not embrace any subject not falling within the definition quoted. Moreover, I have no doubt that when the jurisdiction conferred by that section was transferred, with the modifications noticed above, to the Exchequer Court by the Statute of 1887, the phrase "public work," as employed in paragraphs (*b*) and (*c*) of section 16 of that statute, must be read and construed by reference to that definition. So read and construed, the term "public work" cannot be given the sense the respondent seeks to ascribe to it: of public service, employment or duty; nor can it fairly be read as comprehending such things as vehicles and vessels. This, we shall see, is the effect of the decisions of this court respecting the construction of these paragraphs.

I now proceed to consider the decisions. In *The City of Quebec* v. *The Queen* (1), Mr. Justice Gwynne thus states his views as to the effect of section 16 (*c*) of the Statute of 1887:

> The object, intent and effect of the above enactment was, as it appears to me, to confer upon the Exchequer Court, in all cases of claim against the government, either for the death of any person, or for injury to the person or property of any person committed to their charge upon any railway or other public work of the Dominion under the management and control of the government, arising from the negligence of the servants of the government, acting within the scope of their duties or employment upon such public work, the like jurisdiction as in like cases is exercised by the ordinary courts over public companies and individuals.

In *the Queen* v. *Filion* (2) Mr. Justice Sedgewick expressly adopted the view thus expressed. These words of Mr. Justice Gwynne, adopted by Mr. Justice Sedgewick, give no countenance to the suggestion that the phrase "public work" in the enactments under consideration should be construed in the sense of public employment or service.

Since I came to this court in 1906 there have been a good many appeals involving the construction of this en-

(1) (1894) 24 Can. S.C.R. 420 at 449-450.

(2) (1895) 24 Can. S.C.R. 482.

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actment. The first of these was in *Paul* v. *The King* (1), which was decided in the year 1906. The construction there laid down by Davies J., as the basis of his judgment (at p. 132), was expressed in these words:

> I think a careful and reasonable construction of the clause 16 (*c*) must lead to the conclusion that the public works mentioned in it and "on" which the injuries complained of must happen are public works of some definite area, as distinct from those operations undertaken by the Government for the improvement of navigation or analagous purposes; not confined to any definite area or physical work or structure.

This, be it observed, was no mere dictum. It was concurred in by Mr. Justice Maclennan and myself and was deliberately adopted as the ratio of the decision by the majority of the court.

This decision in *Paul* v. *The King* in 1906 (1), is conclusive upon the point that "public work" in the statute of 1887 did not bear the sense of public employment, public service, public labour, public business. The suppliant's steamship *Préfontaine* had been damaged in a collision with a loaded scow fastened to the side of the steam tug *Champlain,* which the latter was towing from the dredge *Lady Minto,* working in one of the channels of the St. Lawrence river. The dredge, the steam tug and the scow were all the property of the Government, and the claim was based upon section 16 (*c*). It was held that, assuming the collision was due to the negligence of those in charge of the tug *Champlain,* there was no remedy because the injury was not "on a public work." Now, the officers in charge of the tug were, admittedly, engaged on a public service, in a public employment. Construing "public work" in the sense contended for on behalf of the present respondent (as comprehending public service or employment), and assuming negligence, the statutory conditions were plainly satisfied. As I have already pointed out, the judgment of the court expressly rejected that construction; and I am now pointing out that the decision necessarily involved the rejection of it.

Moreover, it was held by Mr. Justice Burbridge in the Exchequer Court (2) that neither the tug nor the scow was a "public work" within the meaning of the statute. His view, to which I shall have to advert later, was that the phrase "on a public work" in the statute was sufficiently

(1) (1906) 38 Can. S.C.R. 126. (2) (1904) 9 Ex.C.R. 245, at 270.

comprehensive to include the case of an injury occasioned by something done on the public work; although the injury itself did not occur there. The negligence of the officers navigating the tug was not, in his view, within that description, that is to say, was not something done on a "public work," because the tug was not, at all events when separated from the dredge, a "public work."

In the Supreme Court of Canada, the majority maintained the view that neither the dredge, nor the tug, nor the scow, was a "public work." It may be observed at this point that in *Montgomery* v. *The King* (1) this was applied by Cassels J., who held that a dredge belonging to the Dominion Government was not a "public work" within the contemplation of section 16 (*c*).

Before passing from this decision, it is, perhaps, well to emphasize the principle of the decision, stated in the quotation from the reasons of Mr. Justice Davies, which were expressly adopted as the reasons of the majority of the court. "Public work" is there defined in such a way as to exclude from its ambit public employment or public service, as such, and this, as I have said, was necessary to the decision; and, further, the decision is explicitly rested upon the proposition that "public work," within the meaning of the statute, means a physical thing having a definite area.

Paul v. *The King* (2) has been consistently followed; there is no decision of this court which is, in the slightest degree, at variance with it.

The next appeal in which the point arose was in *The King* v. *Lefrançois* (3), and I there endeavoured to sum up the tenour of the previous decisions in their application to the case under consideration in these words:

> Having regard to the previous decisions of this court, the phrase "on a public work" in section 20, subsection (*c*), of "The Exchequer Court Act" must, I think, be read as descriptive of the locality in which the death or injury giving rise to the claim in question occurs. The effect of these decisions seems to be that no such claim is within the enactment unless "the death or injury" of which it is the subject happened at a place which is within the area of something which falls within the description "public work." (*Paul* v. *The King* (4) and the cases there cited).

(1) (1915) 15 Ex. C.R. 374.
(2) (1906) 38 Can. S.C.R. 126.
(3) (1908) 40 Can. S.C.R. 431.
(4) 38 Can. S.C.R. 126.

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I pause here to observe that the phrase "happened at a place which is within the area of something which falls within the description 'public work'," could hardly be read as contemplating a vehicle or a public service.

The section came before this court again in *Chamberlin* v. *The King* (1). The Chief Justice, Mr. Justice Girouard and Mr. Justice Idington adopted the phraseology of *Lefrançois'* case (2) in the passage cited. The Chief Justice used these words (p. 351):

> In a long series of decisions this court has held that the phrase "on a public work" in sec. 20, subsec. (*c*), of the "Exchequer Court Act," must be read, to borrow the language of Mr. Justice Duff in *The King* v. *Lefrançois* (3), at p. 436, "as descriptive of the locality in which the death or injury giving rise to the claim in question occurs," and that to succeed the suppliant must come within the strict words of the statute. (Taschereau J. in *Larose* v. *The King* (4). See also *Paul* v. *The King* (5), and cases there cited).

Mr. Justice Davies says (p. 353):

> We are all of the opinion that the point has already been expressly determined by this court, particularly in the case of *Paul* v. *The King* (5). In that case the majority of the court held after the fullest consideration that clause (*c*) of the 16th section of the "Exchequer Court Act," which alone could be invoked as conferring jurisdiction, only did so in the case of claims
>
> "arising out of any death or injury to the person or 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."
>
> Claims for injuries not within these words of the section and occurring, not on, but away from, a public work, although arising out of operations wheresoever carried on, were held not to be within the jurisdiction conferred by the section.

Mr. Justice Davies added,

> With the policy of Parliament we have nothing to do. Our duty is simply to construe the language used, and if that construction does not fully carry out the intention of Parliament, and if a wider and broader jurisdiction is desired to be given the Exchequer Court, the Act can easily be amended.

Mr. Justice Anglin and myself agreed with the views expressed by the Chief Justice, as well as with those expressed by Mr. Justice Davies.

The next case to which I shall refer is *Olmstead* v. *The King* (6), in which a claim was made for the flooding of lands in consequence of the negligent operation of a dam on the Rideau Canal. At pp. 456-7 of the report Mr. Justice Anglin said:

(1) (1909) 42 Can. S.C.R. 350.
(2) (1908) 40 Can. S.C.R. 431.
(3) 40 Can. S.C.R. 431.
(4) (1901) 31 Can. S.C.R. 206.
(5) (1906) 38 Can. S.C.R. 126.
(6) (1916) 53 Can. S.C.R. 450.

The plaintiff's claim, however, is for damages for injuries sustained through the negligence of a Crown servant in carrying on a public work. The injury of which he complains did not happen on the public work. Section 20 (c) of the "Exchequer Court Act," therefore, does not confer jurisdiction on the Exchequer Court. *Chamberlin* v. *The King* (1); *Paul* v. *The King* (2). Since these cases were decided *Letourneux* v. *The King* (3) cannot be followed in such a case as this. In that case the full limitative effect of the words "on any public work" in sub-sec. (c) of sec. 20 would appear not to have been sufficiently considered. The suppliant points to no other provision giving him a right of action against the Crown.

Before passing on to the next case, it is well to observe, perhaps, that *Letourneux* v. *The King* (3)) (decided in 1903 before *Paul* v. *The King* (4)), mentioned in the judgment of Mr. Justice Anglin, is very imperfectly reported. Only two judgments are in evidence. There was there no question as to the meaning of the phrase "public work." The injury complained of was, in part, the result of the negligence of employees of the Crown in failing to keep a siphon culvert clear and in proper order to carry off the waters of a stream which had been diverted and carried under the Lachine Canal. In part it appears to be a claim under paragraph (*b*) of section 16, for injurious affection. It is impossible now to ascertain what were the grounds on which the majority of the court proceeded.

In *Piggot* v. *The King* (5), Mr. Justice Cassels, President of the Exchequer Court, (at pp. 489-492) cited verbatim and applied the judgments of the Chief Justice and of Davies J. in *Chamberlin* v. *The King* (6), including the passages I have already cited from the latter. I quote what he said, verbatim, because his reasons were explicitly approved by one of the members of this Court:

Section 20, subsection (*c*) of the *Exchequer Court Act* (R.S.C. 1906, c. 140) reads as follows:

"The Exchequer Court shall have exclusive original jurisdiction to hear and determine: (*c*) Every claim against the Crown arising out of any death or injury to the person or to property on any public work."

In the case of *Chamberlin* v. *The King* (6), the Chief Justice of the Supreme Court says at p. 353:

"In a long series of decisions this Court has held that the phrase 'on a public work' in section 20, subsection (*c*) of the *Exchequer Court Act* must be read, to borrow the language of Mr. Justice Duff, in *The King* v. *Lefrançois* (7), 'as descriptive of the locality in which the death or injury (that is injury to property) giving rise to the claim in ques-

(1) (1909) 42 Can. S.C.R. 350.
(2) (1906) 38 Can. S.C.R. 126.
(3) (1903) 33 Can. S.C.R. 335.
(4) (1906) 38 Can. S.C.R. 126.
(5) (1915) 19 Ex. C.R. 485.
(6) (1909) 42 Can. S.C.R. 350.
(7) (1908) 40 Can. S.C.R. 431.

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tion occurs,' and that to succeed the suppliant must come within the strict words of the statute. In this case the property destroyed by fire, previous to and at the time of its destruction, was upon the land of the suppliant, some distance from the right of way of the Intercolonial Railway and was not property on a public work. As to the objection that this question was not raised in the Court below, I refer to *McKelvey* v. *LeRoi Mining Company* (1). If questions of law raised here for the first time appear upon the record we cannot refuse to decide them where no evidence could have been brought to affect them had they been taken at the trial. The point was taken by the pleadings if not urged at the argument below."

Sir Louis Davies says:

"This was an action brought in the Exchequer Court on a claim for damages arising out of the destruction of the property of the suppliants claimed to have been caused by sparks from the smoke stack of an Intercolonial Railway engine.

"The property destroyed was previous to and at the time of its destruction upon the land of the suppliant some distance from the right of way of the railway and was not property on a public work.

"The learned Judge, Mr. Justice Cassels, who delivered the judgment of the Court of Exchequer, had not heard the witnesses, who had given their testimony before the late Judge Burbidge.

"The suppliants were desirous to avoid the expense of a rehearing and with the assent of the respondent the case was fully argued before Mr. Justice Cassels on the evidence taken before Mr. Justice Burbidge.

"The learned Judge found as a fair conclusion to be drawn from the evidence that the fire originated from a spark or sparks emitted from the engine, but he was unable to find that it was caused through any defect in the engine for the existence of which and the failure to remedy which the Crown could be held liable for the losses claimed. On this appeal the jurisdiction of the Court of Exchequer over the claim in question was challenged and denied by Mr. Chrysler, his contention being that such jurisdiction was limited to claims against the Crown arising out of injuries to the person or property on a public work, and did not extend to injuries happening away from a public work, although caused by the operations of the Crown's officers or servants. The cases in which the question has already come before this Court for consideration were all referred to.

"We are all of the opinion that the point has already been expressly determined by this Court, particularly in the case of *Paul* v. *The King* (2). In that case the majority of the Court held after the fullest consideration that clause (*c*) of the 16th section—(that is the same as this is)—of the *Exchequer Court Act*, which alone could be invoked as conferring jurisdiction, only did so in the case of claims arising out of any death or injury to the person or 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, claims for injuries not within these words of the section and occurring not on, but away from, a public work, although arising out of operations wheresoever carried on, were held not to be within the jurisdiction conferred by the section.

"With the policy of Parliament we have nothing to do. Our duty is simply to construe the language used, and if that construction does

(1) (1902) 32 Can. S.C.R. 664. (2) (1906) 38 Can. S.C.R. 126.

not fully carry out the intention of Parliament, and if a wider and broader jurisdiction is desired to be given the Exchequer Court, the Act can easily be amended.

"Under these circumstances we must, without expressing any opinion upon the conclusions of fact reached by the learned judge, dismiss this appeal with costs.

At this point, it is convenient to observe that, in the Supreme Court of Canada (1), in giving judgment in the appeal from Cassels J., this language is expressly adopted by Anglin J. in these words:

I respectfully concur in the reasons assigned by the learned judge of the Exchequer Court for dismissing this action.

Again, in this court (1), Mr. Justice Idington, at p. 630, used these words:

The words therein, "on any public work," rendered it impossible, in the case of *Chamberlin* v. *The King* (2), for us to interfere, solely because the injury, if any, was done to property a long distance from the place where the public work existed from which it was said the cause of the destruction of suppliant's property originated.

Here, once more, the phrase "place where the public work existed" is not a phrase that would be used in relation to a public service, or employment, or to a vehicle.

In *La Compagnie Generale D' Entreprises Publiques* v. *The King* (3), a derrick scow which was used for the purpose of making repairs to a wharf, that was, admittedly, a public work, was made fast to the face of the wharf. The scow was crushed and sunk owing to the negligence of the officers working a Government ferry. The view of Idington J., and apparently of the Chief Justice, was that the locality of the scow was "on a public work." Anglin J. expressed the opinion that "public work" in section 16 (*c*) might be read as meaning "any operations undertaken by or on behalf of the Government in constructing, repairing or maintaining public property." Such a view could not be reconciled with the decisions, already mentioned, which were binding on the court, and was not accepted by any other judge. The decision is of no assistance, and I mention it only because the observation of Anglin J. was relied upon. To that observation I shall revert later.

Before coming to the amendment of 1917, it is important, I think, to refer to some dicta by Mr. Justice Burbridge and some decisions of this court upon a question which arose at an early stage, that is to say, whether, if the in-

(1) (1916) 53 Can. S.C.R. 626. (2) (1909) 42 Can. S.C.R. 350.
(3) (1917) 57 Can. S.C.R. 527.

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jury in respect of which the claim was made was caused by something done on a public work, the claimant was entitled to the benefit of the statute, although the injury did not actually occur on the public work. Mr. Justice Burbidge expressed the view that in such a case the statute would apply (*The City of Quebec* v. *The Queen* (1); in *Price* v. *The King* (2); in *Paul* v. *The King* (3)). This view was negatived in this court in a number of decisions.

Two of these decisions, *Chamberlin* v. *The King* in 1909 (4), and *Piggott* v. *The King* in 1916 (5), were rather striking. In the first case, the statute was held not to apply where the injury was caused by the escape of sparks from a locomotive engine, negligently constructed or maintained, on the Intercolonial Railway. The second case concerned injury to the property of the suppliant resulting from blasting operations carried on by the Crown in clearing the site of a public work. It must have been a little difficult to understand why the Crown should be responsible for the negligence of its train hands in failing to ring a bell, on approaching a highway, and not responsible for damages caused by the escape of sparks due to the employment of inadequate appliances for the prevention of such escape; and, perhaps, more difficult to understand why, where the safety of people was endangered by the negligent manner in which blasting operations were conducted, one person, who happened to be on a public work, should be entitled to recover damages for injuries due to such negligence, while another person, who was in the vicinity, but not on the public work, should have no remedy. I have no doubt that these decisions explain the introduction of the amendment of 1917,

It should, perhaps, be observed that in many cases in the Exchequer Court the ratio of *Paul* v. *The King* (6), as expresed in the passage from the judgment of Davies J., above quoted, has been applied. Among them may be mentioned *Piggot* v. *The King* (7), *supra,* decided in 1915; *Theberge* v. *The King* (8), decided in 1916; *Coleman* v.

(1) (1891) 2 Ex.C.R. 252 at 260 and 270; (1892) 3 Ex.C.R. 164, at 178.
(2) (1906) 10 Ex.C.R. 105, at 137.
(3) (1904) 9 Ex. C.R. 245, at 270.
(4) 42 Can. S.C.R. 350.
(5) 53 Can. S.C.R. 626.
(6) (1906) 38 Can. S.C.R. 126.
(7) 19 Ex.C.R. 485.
(8) 17 Ex.C.R. 381.

The King (1), decided in 1918; and *Desmarais* v. *The King* (2), decided in 1918.

We now come to the effect of the statute of 1917. In substance, it is contended on behalf of the respondents, first, that the automobile by which the deceased Albert Dubois, Jr., was killed was a "public work" within the meaning of section 19 (*c*) of the *Exchequer Court Act* (R.S.C. 1927, ch. 34); and, second, if the automobile itself was not a "public work," then the driver of the automobile, whose negligence unfortunately resulted in the death of the suppliants' son, was engaged in a public service, the nature of which it is not necessary to enter upon; and, consequently, was within the meaning of the statute "acting within the scope of his duties or employment" upon a "public work" when guilty of that negligence.

The amendment with which we have to deal was an amendment introduced into the *Exchequer Court Act,* an amendment effected, as already observed, by a change in the order of the words in one paragraph of section 16 of that Act. The term "public work" was already there in paragraph (*b*). It was already there and remained there in the amended paragraph (*c*). The scope of the phrase in section 16, as ascertained by reference to the legislation in which those provisions took their origin and the definitions in that legislation, and as determined by the decisions of this court, was plainly settled. No expansion of the meaning of the term "public work," so determined, was necessary to give full effect to the amendment. There is nothing in the amendment requiring any alteration in the sense of the term as settled. The amendment, so to speak, was an amendment within the framework of the existing statute; which framework is not altered by it. "Public work" still, in paragraph (*c*), as well as in paragraph (*b*), designates a physical thing, and not a public service. Indeed, I find it impossible to suppose that anybody drafting an amendment to paragraph (*c*), by which he proposed to make the Crown liable for the death or injury resulting from the negligence of any officer or servant of the Crown acting within the scope of his duty or employment in the public service, would have retained the phrase "public work." Either the term public service,

(1) 18 Ex.C.R. 263. (2) 18 Ex.C.R. 289.

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or public employment, or public labour, or public business, or public duty, would have been made use of, or the phrase "upon any public work" would have been dispensed with altogether; because it is quite clear that the contention that "public work", in the amended statute, is equivalent to public service leads to the conclusion that the phrase "upon any public work" is merely redundant, if not tautological.

Moreover, if you substitute "public service" for "public work," or "public employment" or "public labour" for "public work," you establish a liability on the part of the Crown generally for the negligence of its servants. It is not a liability for every tort, but it is a liability embracing the vast majority of torts committed by public employees. Maritime torts committed by His Majesty's vessels, for example, would, speaking generally, fall within it. Such a construction, in a word, adopts the doctrine of *respondeat superior* generally throughout the whole field of negligence.

I have nothing to say upon the point whether such an amendment of the law would be desirable. I am not concerned with that. That is for the legislature, not for me. But it would effect a great enlargement of the field of responsibility of the Crown for tort, and the courts can only accept a proposed construction of a statutory enactment accomplishing such a result, where the language is reasonably clear. To me it is not at all doubtful that the language of the statute of 1917 would have been very different if such had been the object of it.

There have been some decisions of this court since the enactment of the amendment of 1917. The first to which I must refer is *Wolfe* v. *The King* (1). The precise question before the court in that case was whether or not the Crown was responsible, under the amendment of 1917, for damages caused by a fire which originated in the basement and first floor of a building leased by the Government of Canada under a lease terminable on fourteen days' notice, as a recruiting station, in 1916-17. In the Exchequer Court it was held that the portion of the building occupied by the Government was not a public work within the meaning of paragraph (*c*). The Chief Justice adopted that view (2). Mr. Justice Anglin held that the term "public

(1) (1921) 63 Can. S.C.R. 141. (2) (1921) 63 Can. S.C.R. 141, at 144.

work" in subsection (*c*) must be largely governed by the construction given to it in subsection (*b*), and that "public work" in subsection (*b*) comprehends only "physical works which are the subject of construction." Nevertheless, he adhered to the opinion, already referred to, which he had expressed in *La Compagnie Generale D'Entreprises Publiques* v. *The King* (1), as to the effect of paragraph (*c*), prior to the amendment of 1917.

It may be noted here that Anglin J. did not suggest and, as I think, plainly enough, did not hold the view, that "public work" under the amended statute had any broader signification than it had prior to this amendment.

It ought, perhaps, to be noticed here that Mr. Justice Anglin, apparently, in his judgment in *La Compagnie Generale D'Entreprises Publiques* v. *The King* (1), where he was dealing with the construction of the phrase "public work" as found in the parent enactment, that is to say, prior to the amendment of 1917, seems to have overlooked the circumstance that the rule of construction deducible from the reasons of Davies J. in *Paul* v. *The King* (2), as applied to the facts of that case, was more than an expression of that learned judge's individual opinion. It was, as we have seen, the basis of the decision of the majority of the court. The ratio of that decision, which was that "public work" ought not to be construed in such a way as to include within its scope public services, as such, but only physical things having a defined area and an ascertained locality, was, of course, binding upon him as well as upon all the members of the court.

Mr. Justice Mignault thought (p. 154) that "public work" in paragraph (*c*) should receive, if possible, the same construction as in paragraph (*b*); that the public work contemplated by paragraph (*b*) is a public work coming within the definition of "public work" and "public works" in the *Expropriation Act*; and that "it would, at all events, be impossible to give a wider meaning to these words" (any public work) "in subsection (*c*) than in subsection (*b*)." He held that the property in question occupied by the Crown was not a public work within the meaning of paragraph (*c*).

(1) (1917) 57 Can. S.C.R. 527. (2) (1906) 38 Can. S.C.R. 126.

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It must be observed that here Mr. Justice Mignault gives no countenance to a construction of the phrase "public work" under the amended Act which would ascribe to it a broader scope than that which had been attributed to it by the decisions of this court prior to the amendment. Indeed, he expressly holds that its scope is limited by the definition in the *Expropriation Act*; that such scope cannot be broader than that of the same words in paragraph (*b*), where they admittedly include only physical things, not services, and could, of course, not be applied to such a thing as a vessel or vehicle.

I should, perhaps, call attention to an error in the headnote in *Wolfe* v. *The King* (1). That note ascribes to Mr. Justice Mignault, as well as to Mr. Justice Anglin, the view that "public work," in section 20 (*c*) of the Act of 1917, "includes any operation undertaken by or on behalf of the Crown in constructing, repairing or maintaining public property." It is implied in what I have just said, and a perusal of the judgment of Mr. Justice Mignault establishes it, that Mr. Justice Mignault did not give his adherence to that view, but, on the contrary, was of the opinion that by reason of the context, "public work" in paragraph (*c*) must be read as limited by the definition of "public work" in the *Expropriation Act* and, consequently, as excluding public services, as such.

The next case is *The King* v. *Schrobounst* (2). Before proceeding with the discussion of that case, it is convenient to give what I believe to be the proper construction of the statute as amended. My own view, as already intimated, is that the principal object of the amendment of 1917 was to bring within the scope of the statute those cases such as *Piggott* v. *The King* (3) and *Chamberlin* v. *The King* (4), in which an injury not occurring on a public work was caused by the negligence of some servant of the Crown upon a public work; injuries, for example, caused by the escape of sparks from a carelessly constructed locomotive engine, by blasting operations carelessly conducted, and cases in which, through the negligent working of a canal, lands at some distance from the canal are flooded.

(1) (1921) 63 Can. S.C.R. 141.
(2) [1925] Can. S.C.R. 458.
(3) (1916) 53 Can. S.C.R. 626.
(4) (1909) 42 Can. S.C.R. 350.

My view has always been that where you have a public work, in the sense indicated in the course of the preceding discussion, and an injury is caused through the negligence of some servant of the Crown in the execution of his duties or employment in the construction, the repair, the care, the maintenance, the working of such public work, you are not deforming the language of the section, as amended in 1917, by holding that such an injury comes within the scope of the statute; that is to say, that it is an injury due to the negligence of an employee of the Crown while acting in the scope of his duties or employment "upon a public work." I have always thought, moreover, that the principle ought not to be applied in a niggardly way and that it ought to extend to the negligent acts of public servants necessarily or reasonably incidental to the construction, repair, maintenance, care, working of public works.

My reason for this view I can state in a sentence or two. The purpose of the legislation having been, as I have said, to correct the "stupid" inequalities, to use the phrase of Mr. Justice Idington, arising in the application of the statute as it stood before 1917, it seemed to me that that purpose would be largely frustrated if you read the word "upon," which had been substituted for the word "on," strictly as a preposition of place. In a very large number of cases the officer of the Crown responsible for the injury would be a person whose duties were not carried out on the public work in the physical sense. These considerations have seemd to me to be sufficient to justify the construction I have indicated.

Coming now to *Schrobounst's* case (1). In that case we had to consider a claim arising from the injury to a suppliant who had been run down by a motor vehicle driven by a servant of the Crown who was engaged in transporting to Thorold workmen employed on the Welland Canal there. The question at issue arose on demurrer, and I thought it involved no undue distortion of the language of the statute, as amended, to hold that an allegation that the driver was employed upon the Welland Canal was not, in the circumstances, a demurrable allegation. Further investigation of the circumstances might have disclosed that the employees who were being carried entered upon their duties

(1) [1925] Can. S.C.R. 458.

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in entering the motor vehicle. It is possible that *Schrobounst's* case (1) has carried the construction of section 19 (*c*) to the furthest permissible limit, but the principle on which it is based is clearly capable, in my opinion, of justification upon the grounds I have indicated.

The next decision was that in *The King* v. *Mason* (2). There, Government employees were engaged in dredging a part of a harbour adjoining a public pier for the purpose of effecting an excavation by which the harbour would be deepened and the navigation of it facilitated. They were engaged, in other words, in effecting a navigation improvement. The plans in evidence show that the excavation was to be of defined area and dimensions. It was, therefore, a public work within the meaning of the definition of "public work" contained in the *Expropriation Act* and in the *Official Arbitrators Act*. The injury was caused, it was held, by the negligent navigation of a tug which was towing away a scow laden with material taken up by the dredge. The operation in which the officer in charge of the tug was engaged was an operation necessarily incidental to the deepening of the harbour, to the creation, that is to say, of the harbour improvement. He was, therefore, on the principle indicated, employed upon the harbour improvement.

It is important, in applying legislation of this character, to be on one's guard against a very natural tendency. For the reasons I have given, the conclusion is inescapable that the purpose of the statute is not to establish the doctrine *respondeat superior* as affecting the Crown throughout the whole field of negligence. The area of responsibility, even in respect of negligence, is restricted. In *Schrobounst's* case (1) this court thought it was not infringing upon this restriction in holding that the facts of that case brought it within the statute. There is a natural tendency to take the latest case as a new starting point and to apply the statute to all cases which seem to fall within any of its apparent logical implications. But one thing is indisputable. If the supposed logical implication carries you beyond the area delimitated by the language of the statute, then you cannot give effect to it without transcending your function as a judge. You are

(1) [1925] Can. S.C.R. 458. (2) [1933] Can. S.C.R. 332.

constituting yourself a legislator; and you cannot, for the purpose of this case, having regard to the history of the legislation and the decisions upon it, which are binding on this court, hold that "public work," in this enactment, includes matters which are not physical things, but public service or public employment as such.

What I have said in relation to public service and public employment applies, in large degree, *mutatis mutandis*, to such things as vessels and vehicles.

The decisions of this court upon the statute as it stood prior to the amendment of 1917 (section 16 (*c*) of the statute of 1887) exclude, as appears above, the possibility of reading the words "public work," in the last mentioned statute, as including within their scope vehicles or vessels. Mr. Justice Burbidge, it is true, while rejecting the suggestion that vehicles or vessels generally fall within the scope of the phrase, did suggest, in *Paul* v. *The King* (1), that a dredge engaged in deepening one of the channels of the St. Lawrence river might be a public work or "on a public work"; but this suggestion was, as we have seen, definitely rejected by the Supreme Court of Canada on appeal from Mr. Justice Burbidge in that case (2); and, as already pointed out, vehicles and vessels are not within the definition in the *Official Arbitrators Act* or the *Expropriation Act*. Of course, if a construction had been adopted by which "public work," in the phrase "on a public work" in the statute of 1887, was held to signify public service or public employment, then the statute might have been applied to injuries caused by the negligence of a servant of the Crown driving a vehicle within the scope of his duties as such. But this view of the statute was rejected and the phrase "on a public work" was read as indicative of the locality in which the injury must occur in order to bring the case within the statute; and necessarily, as already explained, in view of the fact that the jurisdiction under the Act of 1887 was a jurisdiction transferred from the *Official Arbitrators Act* where the language, so far as pertinent to the present point, was identical with that employed in the statute of 1887; and in view of the definition of "public work" in the *Official Arbitrators Act*, and the scope and signification which, by force of that

(1) (1904) 9 Ex. C.R. 245. (2) (1906) 38 Can. S.C.R. 126

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definition, had become attached to the words "public work."

Having regard to all this, I find it very difficult to convince myself that anybody intending to subject the Crown to liability for negligence of its servants engaged in driving vehicles belonging to the Crown, or in navigating a vessel belonging to the Crown, could employ the procedure followed in effecting the amendment of 1917. If such had been the purpose of that amendment a different procedure would most assuredly have been resorted to.

I should add that if "public work" embraces employment and service as well as physical things, then the reference in *Schrobounst's* case (1) to the "public work" at Thorold was entirely superfluous; because the driver of the motor vehicle was admittedly, "acting within the scope of his duties or employment" upon a public service—that of driving the vehicle. On the construction now contended for, that, in itself, was sufficient to establish liability.

I have not thought it necessary to discuss the wealth of material put before us by Mr. Morse in his most able and interesting argument: because decisions in other jurisdictions upon other statutes, not in *pari materia,* interesting as they may be, cannot safely be relied upon as a guide, especially when, in the decisions of this Court, and in the history of the legislation under review, we have a very sufficient lexicon for the purpose in hand.

I now turn to the consideration of a point not mentioned on the argument which has been brought before us as the result of the research of our brother Cannon.

The respondents' claim rests upon section 19 of the *Exchequer Court Act* (R.S.C. 1927, ch. 34). In the French version the enactment upon which the respondents rely reads as follows:

19. La cour de l'Echiquier a aussi juridiction exclusive en première instance pour entendre et juger les matières suivantes:

* * *

(c) Toute réclamation contre la Couronne provenant de la mort de quelqu'un ou de blessures à la personne ou de dommages à la propriété, résultant de la négligence de tout employé ou serviteur de la Couronne pendant qu'il agissait dans l'exercice de ses fonctions ou de son emploi dans tout chantier public;

* * *

(1) [1925] Can. S.C.R. 458.

Before calling attention to the effect of this language, it is right to mention, first of all, that the statutes of the Parliament of Canada in their French version pass through the two Houses of Parliament and receive the assent of His Majesty at the same time and according to the same procedure as those statutes in their English version. The enactment quoted is an enactment of the Parliament of Canada just as the enactments of the same section, expressed in English, are.

The first section of the Act respecting the Revised Statutes of Canada, assented to on the 19th of July, 1924, is in these words:

1. So soon as the said Commissioners or a majority of them shall report in writing the completion of the said consolidation, including therein such Acts or parts of Acts passed during the present session and subsequent thereto as the Governor General upon the said report may deem advisable so to be included, the Governor General may cause a printed Roll thereof, attested under his signature and that of the Clerk of the Parliaments to be deposited in the office of such Clerk; and such Roll shall be held to be the original of the said statutes so revised, classified and consolidated.

Sections 4, 5 and 8 are as follows: ,

4. The Governor in Council, after such deposit of the said last mentioned Roll, may, by proclamation, declare the day on, from and after which the same shall come into force and have effect as law, by the designation of "The Revised Statutes of Canada, 192..."

5. On, from and after such day, the said Roll shall accordingly come into force and effect as and by the designation of "The Revised Statutes of Canada, 192...," to all intents, as if the same were expressly embodied in and enacted by this Act, to come into force and have effect, on from and after such day.

2. On, from and after such day, all the enactments in the several Acts and parts of Acts in Schedule A above mentioned shall stand and be repealed to the extent mentioned in the third column of the said Schedule A.

* * *

8. The said Revised Statutes shall not be held to operate as new laws, but shall be construed and have effect as a consolidation and as declaratory of the law as contained in the said Acts and parts of Acts so repealed, and for which the said Revised Statutes are substituted.

2. If upon any point the provisions of the said Revised Statutes are not in effect the same as those of the repealed Acts and parts of Acts for which they are substituted, then as respects all transactions, matters and things subsequent to the time when the said Revised Statutes take effect, the provisions contained in them shall prevail; but, as respects all transactions, matters and things anterior to the said time, the provisions of the said repealed Acts and parts of Acts shall prevail.

The proclamation contemplated by this Act was made on the 22nd of December, 1927.

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It is quite clear that, as regards the alleged negligence, in respect of which the respondents' claim arises, which occurred after the Revised Statutes received the force of law, the respondents' remedy, if any, must be derived from the Revised Statutes. It seems equally clear that, in construing section 19 of the *Exchequer Court Act*, the statute in its French version cannot be ignored.

The phrase "pendant qu'il agissait dans l'exercice de ses fonctions ou de son emploi dans tout chantier public" is plainly inconsistent with any construction of the phrase "public work" which has the effect of extending its meaning in such a way as to include public services. The rule for the construction of the parent enactment (50-51 Vict., c. 16, s. 16 (*c*)), laid down in *Paul* v. *The King* (1), that the phrase "public work" includes physical things of defined area and ascertained locality and does not include public services, is plainly sanctioned and adopted by these words as the rule applicable to the construction of section 19 in the Revised Statutes of 1927.

"Chantier," in this connection, implies defined area and locality and is incapable of application in such a way as to include public services, as such. We are indebted to our brother Cannon for the following note upon the subject which puts this point beyond dispute:

Littré, "Dictionnaire de la langue française," *verbo* "chantier" nous dit que d'après le sens donné soit par le bas latin, soit par le français, le chantier est une place, un espace vide où l'on entasse du bois, où l'on radoube un vaisseau, où l'on travaille quoi que ce soit.

Larousse du XXème siècle le définit: Atelier à l'air libre, clôturé ou non, où l'on travaille des matériaux de construction (bois, pierre, fer, etc.).

Harzfeld, Darmesteter & Thomas, "Dictionnaire de la langue française"; Lieu où l'on dépose des matériaux pour les travailler.

Lafaye, "Dictionnaire des synonymes de la langue française," sous la rubrique: "boutique, magasin, atelier, chantier, le définit: Tout lieu consacré à une industrie. Ces auteurs nous disent: Dans le chantier, comme dans la boutique, on fait deux choses, on tient des objets et on travaille. Mais le chantier, du latin *canterius*, chevron, étançon, se distingue par la matière des objets. Ce qu'on y tient en dépôt ou en vente, c'est exclusivement du bois, bois de chauffage, de charpente, de charronnage, de construction, et quelquefois des pierres à bâtir; d'autre part, le bois et la pierre sont les seules matières employées dans les travaux du chantier tous ou la plupart relatifs à l'industrie du bâtiment, et qui comprennent principalement ceux des charpentiers, des scieurs de long, des constructeurs de navires et des tailleurs de pierre.

Lebrun & Toisoul, "Dictionnaire Etymologique de la langue française:

Chantier: Atelier à l'air libre, clôturé ou couvert, où l'on travaille le bois, la pierre.

(1) (1906) 38 Can. S.C.R. 126.

Sachet, "Accidents du travail, 1er vol. p. 85, n° 82, nous dit:

"Le chantier est, en principe, à l'industrie du bâtiment et de la construction ce que l'usine, la manufacture ou la fabrique sont à l'industrie de la production: pris dans son acception première il signifie l'emplacement où des ouvriers sont occupés à travailler le bois, la pierre, la terre et les différents matériaux destinés à l'édification de bâtiments ou à la construction de routes, chemins, chaussées, travaux d'art, etc. Mais peu à peu le sens de cette expression s'est élargie et a fini par englober, du moins dans le langage courant, tous les lieux de travail un peu vastes, ainsi que les dépôts de marchandises des négociants en gros, quelle que soit la nature des travaux qui y sont exécutés."

La Revue Trimestrielle de Droit Civil, 1902, 1er vol., étudiant la loi sur la responsabilité des accidents du travail, donne, à la page 456, les indications suivantes:

"37. Chantiers—Dans quel sens le législateur de 1898 a-t-il entendu employer le mot "chantier"?

Pour M. Cabouat c'est un terme vague sans acception précise. Pour M. Loubat c'est un 'lieu en plein air où on dispose les objets pour les travailler' (Loubat, op. cit., p. 91, n° 100). Avec M. Sachet au contraire nous nous trouvons en présence d'une définition précise et restrictive: 'C'est un emplacement où des ouvriers sont occupés à travailler le bois, la pierre, la terre et les différents matériaux destinés à l'édification de bâtiments ou à la construction de routes' (Sachet, op. cit., p. 84, n° 10).

Cette définition est rejetée par la Cour de Caen, qui décide que 'l'expression chantier de l'article 1er de la loi de 1898 implique le groupement, dans un emplacement déterminé, d'un certain nombre d'ouvriers employés à la préparation des matériaux destinés à des constructions *ou à des travaux quelconques*' (C. Caen, 30 janv. 1901, *Rec. Arr. Caen,* 1901, p. 5).

The statute, in the French version, plainly does not envisage a vessel, as such, although it does envisage a shipyard. Nor does it contemplate an automobile as such, although it may very well be held to contemplate an automobile factory.

The statute, in the French version, must, of course, be read with the statute in the English version. I am not suggesting that, read in that way, the proper construction and application of the statute is inconsistent with the construction and application of it in the actual decision in *Schrobounst's* case (1) or in *Mason's* case (2), *supra;* but, the phraseology of the French version markedly emphasizes what I have already indicated, that is to say, the impropriety of making these two decisions a new point of departure for the development of a principle of liability which the statute plainly does not sanction.

The appeal should be allowed and the petition dismissed. We assume the Crown will not ask for costs.

(1) [1925] Can. S.C.R. 458. (2) [1933] Can. S.C.R. 332.

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RINFRET J.—The appeal should be allowed and the petition dismissed. In my opinion this is not a case for costs.

Appeal allowed.

Solicitor for the appellant: *W. Stuart Edwards.*

Solicitor for the respondents: *Paul Labelle.*