

1925  
\*June 11.  
\*June 12.

HIS MAJESTY THE KING (RESPOND-  
ENT) . . . . . } APPELLANT;  
  
AND  
  
STEVE SCHROBOUNST AND DOM-  
INICA SCHROBOUNST (SUPPLI-  
ANTS) . . . . . } RESPONDENTS.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA  
*Crown—Negligence—Public work—Employment—Exchequer Court Act s.  
20 (c)—R.S.C. [1906] c. 140; 7-8 Geo. V, c. 23, s. 2—Statute—Con-  
struction.*

By sec. 20 (c) of the Exchequer Court Act as amended in 1917 the Exchequer Court can hear and determine.

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

As this section now stands (since the amendment of 1917) it is no longer necessary, in order to create liability, that the person or property injured should be upon the public work at the time; the words "upon any public work" qualify the employment, not the physical presence of the negligent officer or servant thereon and the driver of a motor truck (employed by a government department) carrying government employees to a public work is so employed.

APPEAL from the judgments of the Exchequer Court of Canada in favour of the respondents.

The only question raised on the appeal is that of the construction of sec. 20 (c) of The Exchequer Court Act quoted in the above head-note.

*O. M. Biggar K.C.* and *Varcoe* for the appellant. The amendment to sec. 20 (c) does not materially affect the construction formerly placed upon it in such cases as *Piggott v. The King* (1). The word "upon" still has a geographical significance. See *Lowth v. Ibbotson* (2); *Back v. Kerr* (3).

*Marquis K.C.* and *Louis Coté* for the respondents.

The judgment of the court was delivered by

MIGNAULT J.—This is an appeal from the judgment of the learned President of the Exchequer Court dismissing a demurrer which the Crown pleaded to the petition of right of the suppliants.

PRESENT:—Anglin C.J.C. and Duff, Mignault and Rinfret JJ. and Magee J. *ad hoc*.

(1) 53 Can. S.C.R. 626.

(2) [1899] 1 Q.B. 1003.

(3) [1906] A.C. 325.

In substance, the suppliants alleged that, on or about the 15th day of January, 1924, owing to the negligence of a servant of the Crown, to wit the driver of a motor truck, the property of the Crown and which was used at the time of the accident in transporting workmen in the employment of the Department of Railways and Canals to the public work carried on at Thorold, Ontario, the suppliant Dominica Schrobounst was struck and seriously injured by the said motor truck.

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The demurrer of the Crown set forth that the petition of right did not allege or disclose any facts giving rise to any obligation or liability on the part of His Majesty to pay to the suppliants the damages claimed.

The question turns on the proper construction of subsection (c) of section 20 of the Exchequer Court Act, as amended in 1917. This subsection reads as follows:

The Exchequer Court shall 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 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.

We are of the opinion that the words "upon any public work" in subsection (c) qualify not necessarily the presence but the employment, of the negligent servant or officer of the Crown. The driver of the motor truck was employed upon the public work in question; and this is sufficient to give the suppliants the right of action they assert.

If it had been intended to restrict the application of the subsection to the case in which the person causing the injury was at the time physically present "upon any public work" these latter words would more properly have been inserted immediately after the word "while," where their significance would have been unmistakable. The construction placed on the words "on any public work" in *Piggott's Case* (1) and other cases decided on the subsection as it stood prior to 1917, proceeded upon and was necessitated by their collocation with the words "person or property."

The appeal should be dismissed with costs.

*Appeal dismissed with costs.*

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

Solicitors for the respondents: *Marquis & Peplar.*

(1) *Piggott v. The King*, 53 Can. S.C.R. 626.