

THE LAKE CHAMPLAIN AND ST. }
 LAWRENCE SHIP CANAL COM- } APPELLANTS;
 PANY (SUPPLIANTS)..... }

1916

*Nov. 2.
*Dec. 30.

AND

HIS MAJESTY THE KING (RE- }
 SPONDENT)..... }

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

*Public work—Incorporation of company—Construction of canal—
 Governor-in-Council—Approval of plans—Discretion—Refusal to
 Approve—Right of action.*

The statute 61 Vict. ch. 107 (D.) incorporated a company for the purpose of constructing and operating a canal between the St. Lawrence and Richelieu Rivers. Section 22 provided that before the work of constructing the canal was begun, the plans, etc., were to be approved by the Governor-in-Council.

Held, affirming the judgment appealed from (16 Ex. C.R. 125), Fitzpatrick C.J. and Brodeur J. dissenting, that the refusal of the Governor in Council to approve plans submitted did not give the company a claim for damages which could be enforced against the Crown.

Per Duff J. that the refusal to consider the plans did not give birth to a claim for which a petition of right lies.

Held, *per* Fitzpatrick C.J. and Anglin and Brodeur JJ. that the Governor in Council had no discretionary power to refuse approval of the plans on the ground that the undertaking authorized by Parliament was opposed to public policy.

APPEAL from a judgment of the Exchequer Court of Canada(1), dismissing the suppliant's petition of right,

By the petition of right the appellant company claimed damages for failure of the enterprise authorized by the Act of Parliament, 61 Vict., ch. 107.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff, Anglin and Brodeur JJ.

1916
 LAKE
 CHAMPLAIN
 AND
 ST.
 LAWRENCE
 SHIP CANAL
 CO.
 v.
 THE KING.

owing to the refusal or omission of the Governor in Council to approve the plans submitted. The only question dealt with by the Exchequer Court was whether or not such refusal entitled the company to claim damages and, holding that it did not, the court dismissed the petition. The suppliants appealed to the Supreme Court of Canada from that judgment.

Brosseau K.C. and *R. V. Sinclair K.C.* for the appellants.

Newcombe K.C., Deputy Minister of Justice, for the respondent.

THE CHIEF JUSTICE (dissenting).—From the reasons for judgment of Mr. Justice Cassels it appears that counsel for the suppliant and for the Crown came to an understanding that “the question of law” should be first argued. If there was any written consent to this course it is not in the record and I suppose the learned judge was therefore right in saying that the question was as to whether or not on the allegations in the petition the suppliant was entitled to succeed. It is a demurrer to the Petition of Right.

Now I entertain no doubt that the statute 61 Vict., ch. 107, made a good and valid grant to the suppliant of the rights in respect of which the claim is advanced. The condition that the approval of the plans by the Governor in Council should be obtained before the works were commenced was a purely administrative matter. By this I mean that there was committed to the Governor in Council no power to consider the policy or advisability of the grant, that being a question which Parliament had undertaken to decide for itself. Parliament did not, as it often does, authorize the Governor in Council to take such

action as he might think fit, leaving it to him to consider the matter and decide whether to make the grant or not. He has therefore no power to nullify the grant or in effect repeal the statute by an arbitrary refusal to exercise the power of approving the plans which for the proper carrying out of the works Parliament in the public interest has vested in him. It is said in the statement of defence that His Majesty did not refuse to approve the plans

1916
LAKE
CHAMPLAIN
AND
ST.
LAWRENCE
SHIP CANAL
CO.
v.
THE KING.
The Chief
Justice.

and if His Majesty did refuse such approval, the refusal proceeded upon high political grounds of public policy which were committed to the consideration of the responsible advisers of His Majesty.

I do not think the statute committed anything of the sort to His Majesty's advisers.

I cannot doubt that the grant made by the statute is in the nature of a contract and it is one of the highest order, His Majesty, in the words of the statute, granting by and with the advice and consent of the Senate and House of Commons.

The provision for approval of the plans is a common one in such cases; it has reference only to the way in which the rights granted are exercised; the works proposed to be carried out must be reasonably suitable and proper and not opposed to public interests.

It is scarcely necessary to refer to cases in which such a provision as this is to be found. The approval is sometimes confided to the Governor in Council and at others to the heads of government departments especially concerned or others. The general railway Act is an instance. By sections 157-159 the company have first to submit to the Minister of Railways and Canals a map and information as therein mentioned for his approval, and after that has been obtained to deposit with the Board of Railway Commissioners

1916
 LAKE
 CHAMPLAIN
 AND
 ST.
 LAWRENCE
 SHIP CANAL
 Co.
 v.
 THE KING.
 The Chief
 Justice.

a plan, profile and book of reference for their sanction; in section 168 there is the like provision that the company shall not commence the construction of the railway until such sanction has been obtained as in the statute with which we are here concerned.

The Minister of Railways or the Board may be of opinion that the railway is not wanted, is even objectionable, it may parallel another railway so as to render it impossible for either to be successfully operated, but they cannot by refusing their approval of the plans prevent the construction of the railway which Parliament has authorized.

We may usefully compare the provision in this case with sec. 7 of the Navigable Waters Protection Act, R.S.C., 1906, ch. 115, which provides that

the local authority, company or person proposing to construct any work in navigable waters, for which no sufficient sanction otherwise exists, may deposit the plans thereof * * * and may apply to the Governor in Council for approval thereof.

Under this section the Governor in Council might be in a different position with regard to giving or withholding his approval of the plans according as he might think the proposed work desirable or not.

Counsel for the respondent has urged that the Crown is not mentioned in the statute and therefore by section 16 of the "Interpretation Act" is not bound. I do not think this section of the "Interpretation Act" has any application in such case; the section deals solely with the *rights* of His Majesty which, it provides, shall not be affected by any Act unless it is expressly stated therein that His Majesty shall be bound thereby. In the respondent's factum the Governor in Council is spoken of as the responsible adviser of His Majesty's Government for the Dominion of Canada, but I think this is rather absurd. The Gover-

nor in Council is the Governor-General acting with the advice of the Privy Council for Canada. This is the only Government of Canada I know of and it would therefore seem that the Governor in Council must be his own responsible adviser, I do not know who else he can be said to advise. I certainly think that the Governor in Council must here be considered as meaning the same thing as the Crown. The Governor-General carries on the Government of Canada on behalf of and in the name of the Sovereign (the "Interpretation Act," sec. 34, paragraphs (6) and (7)). If this were an English statute, we should have a grant by the King in Parliament subject to the approval of the plans by the King in Council.

Then I think that the King in Parliament having made this contract was bound to carry it out and to act with reference to the condition in accordance with the purpose thereof which certainly was not to destroy the grant; the advisers of the Governor in Council should rather in good faith have facilitated than opposed the undertaking.

This court could not undertake to review any decision at which the Governor in Council in the exercise of his discretion might arrive or weigh the reasons for the same. It is, however, another thing, that he should neglect or refuse to exercise the power of control reserved to him.

In the statement of defence the Attorney-General has pleaded a number of inconsistent defences as of course he was entitled to do, but in the 9th paragraph he alleges that

The suppliant did not submit to the Governor in Council for approval any plans, locations, dimensions or necessary particulars of the canals and works described or authorized to be constructed by the said statute, ch. 107 of 1898, nor were any such plans, locations, dimen-

1916
LAKE
CHAMPLAIN
AND
ST.
LAWRENCE
SHIP CANAL
Co.
v.
THE KING.
—
The Chief
Justice.
—

1916
 LAKE
 CHAMPLAIN
 AND
 ST.
 LAWRENCE
 SHIP CANAL
 CO.
 v.
 THE KING.
 ———
 The Chief
 Justice.
 ———

sions or particulars submitted for the approval of the Governor in Council.

Now this, assuming the facts alleged in the petition, is quite incompatible with there having been any exercise by the Governor in Council of the discretionary power reserved to him by Parliament.

For the purposes of the present proceedings, however, we can only look for the facts to the allegations in the Petition of Right and it is in the 14th paragraph alleged that the Crown without any reason has refused approval. It may be as the judge of the Exchequer Court says that this may mean without any reasons furnished to the suppliant, but I do not think this makes any difference. It may be that any defect in or objection to the plans could easily have been remedied or overcome and the suppliants were certainly entitled to have an opportunity of making such alterations.

If it was not to the mode of carrying out the works but to the undertaking being proceeded with at all, that there was objection, that, as I have said, was not a matter within the power of the Governor in Council at all.

The judge of the Exchequer Court says:—

The Crown certainly would not be liable for the tort or wrong of the Governor in Council. It is too clear for argument that the Crown is not liable for damages in tort.

Whilst there is no question that in England the Crown is not liable, I am not sure that the doctrine is applicable so strictly in this country. We have the authority of the Judicial Committee in the case of *Farnell v. Bowman*(1), for saying that if the maxim "The King can do no wrong" were always applied to colonial

(1) 12 App. Cas. 643.

governments, it would work much greater hardship than it does in England. It was said in the judgment:—

Justice requires that the subject should have relief against the Colonial Governments for torts as well as in cases of breach of contract or the detention of property wrongfully seized into the hands of the Crown.

In such a case as the present I think the courts may well be disposed to lean in favour of affording relief to the suppliant.

That the claim is a meritorious one, seems clear. It would surely be an injustice if the suppliants after incurring large expenditures on the faith of a Parliamentary grant were to be deprived of all their rights not through any defect in their plans but because the Government did not approve of the undertaking and dissenting from the decision of Parliament could by withholding approval of the plans prevent altogether the carrying out of the works.

If necessary I should be prepared to hold that the suppliant is entitled to claim under sec. 20, paragraph (d), of the Exchequer Court Act which gives to the court jurisdiction over

every claim against the Crown arising under any law of Canada or any regulation made by the Governor in Council.

I am of opinion that the allegations in the petition disclose a good ground of action and the appeal should be allowed.

INDINGTON J.—The appellant was incorporated by Parliament but so far from giving its creature any right to complain it only gave a right to prosecute its proposed undertaking as the Governor in Council might, as a matter of public policy, see fit to approve

1916
LAKE
CHAMPLAIN
AND
ST.
LAWRENCE
SHIP CANAL
CO.
v.
THE KING.
The Chief
Justice.

1916
 LAKE
 CHAMPLAIN
 AND
 ST.
 LAWRENCE
 SHIP CANAL
 Co.
 v.
 THE KING.
 Idington J.

of either as to location or dimensions or plans of construction.

Section 22 of the "Incorporation Act," which is clear and explicit in these regards, is as follows:—

Before the company shall break ground or commence the construction of any of the canals or works hereby authorized, the plans, locations, dimensions, and all necessary particulars of such canals and works shall be submitted to and approved by the Governor in Council.

It seems idle to contend that such a conditional proposal as Parliament has sanctioned thereby constitutes a contract. And it seems equally absurd to contend that the Governor in Council entrusted by Parliament with such a duty can be said to have committed a tort of any kind, much less a tort for or in respect of which a petition of right would lie, in discharging the duty thus assigned by withholding the approval sought by appellant.

The case thus presented falls very far short of coming within the scope of any of the decisions relied upon by appellant or the principles upon which any of them proceeded.

The appeal should be dismissed with costs.

DUFF J.—The suppliant company was incorporated in 1898 (61 Vict. ch. 107) with authority to construct a ship canal between the St. Lawrence and the Richelieu Rivers and by section 22 of its special Act it was enacted:—

Before the company shall break ground or commence the construction of any of the canals or works hereby authorized, the plans, locations, dimensions and all necessary particulars of all such canals and works shall be submitted to and approved by the Governor in Council.

The relevant allegations of the petition are those numbered 10 to 14 inclusively; they are as follows:—

10. That on or about the 30th of May, 1911, the plans, locations, dimensions and all necessary particulars of such canals and works were

submitted to be approved by the Governor in Council, and duplicates of the same were deposited with the Department of Railways and Canals and the Department of Public Works in Ottawa.

11. That since the 30th of May, 1911, your suppliant has repeatedly requested the approval of the plans by the Governor in Council.

12. That all informations requested by the Department of Railways and Canals and the Department of Public Works in Ottawa have been duly furnished.

13. That in granting a charter to your suppliant for the construction of said canal, the Crown took the engagement and obligation to approve the plans made in conformity with the charter.

14. That the plans, locations, dimension and all necessary particulars for such canals and works were made in conformity with the requirements of the Secretary of War of the United States, and, notwithstanding the repeated and incessant request of your suppliant for approval, the Crown without any reason has refused to do so.

By the statement of the defence in paragraph 12 an objection was taken that the alleged refusal of the Governor in Council to approve the suppliant's plans

does not constitute a cause of action for which a petition of right will lie against His Majesty.

The point of law raised by this objection was argued on the first day of the trial and being decided adversely to the suppliant by the learned judge of the Exchequer Court, no evidence was given.

The allegations of the petition are ambiguous; and strictly, in accordance with the settled rule for the construction of pleadings, they should be construed against the suppliant. The suppliant's case must be taken on the pleadings so construed to rest upon an allegation that the Governor in Council has refused to approve plans submitted which ought to have been approved because they were sufficient and satisfactory. It requires no argument to shew that such an allegation if well founded would afford no ground of action against either His Majesty or the Governor in Council; it could not be argued that a decision of the Governor in Council not to approve plans submitted under section 22 is open to review in the courts.

1916
LAKE
CHAMPLAIN
AND
ST.
LAWRENCE
SHIP CANAL
Co.
v.
THE KING.
Duff J.
—

1916
 LAKE
 CHAMPLAIN
 AND
 ST.
 LAWRENCE
 SHIP CANAL
 CO.
 v.
 THE KING.
 Duff J.

The decision in the Privy Council in *McLean v. The King*, 10th July, 1908, is a sufficient authority for holding that the question of the sufficiency of the allegations in a petition of right to disclose a cause of action, ought not to be disposed of as a preliminary question of law on a narrowly technical construction of a badly framed pleading but that for the purpose of such a question the suppliant should be held to be entitled to prove any cause of action disclosed upon any reasonable construction of the pleading. This appeal ought, I think, to be decided on the assumption that the pleading contains an allegation that the suppliant duly submitted its plans for the approval of the Governor in Council, but that the Governor in Council refused and refuses to exercise its authority under section 22 to consider such plans. The question to be determined therefore is whether such an allegation is sufficient to support the suppliant's claim by petition of right against His Majesty.

The question of substance argued before us was whether it can be affirmed that the enactment under consideration gives rise to a duty to the suppliant which (in the language of Cockburn C.J. in *The Queen v. The Lords Commissioners of the Treasury*(1):—

has to be performed by the Crown;

but assuming such a duty to be created the first point which naturally occurs to one is, does a petition of right lie against His Majesty for the recovery of unliquidated damages arising from the non-performance of that duty? I do not intend to decide the point because I do not understand the objection to be taken by counsel for the Crown who with fairness and can-

(1) L.R. 7 Q.B. 388.

dour, when the difficulty was mentioned, referred to section 20, sub-section (d), of the "Exchequer Court Act;" I do not think it is within the province of the court to insist in such proceedings upon technical objections which counsel representing the Crown does not (and quite properly) consider it to be his duty to raise. (*Dyson v. Attorney-General*(1)).

Does section 22 then give rise to a duty that has to be performed by the Crown,

which is a duty to the suppliant of such a nature as to be capable of vindication in His Majesty's courts? The suppliant's argument might in outline be stated in this way. The special Act is a contract between Parliament (the King in Parliament) and the promoters; section 22 imposes a condition with which the appellant is bound to comply in order to avail itself effectively of the rights assured to it by this legislative contract and the performance of that condition (getting its plans approved by the Governor in Council) being impossible without concurrent action by the Crown represented by the Governor in Council in considering the plans submitted for approval, the obligation is, on a familiar principle (*Mackay v. Dick*(2), at page 263, undertaken by the Crown to do that which is necessary to be done in order to enable the suppliant to fulfil the condition upon which its rights depend.

It should be observed that His Majesty is not mentioned *eo nomine* in the 22nd section, the provision upon which this argument rests; and it is sometimes not easy to ascertain where powers are by statute vested in a minister of the Crown whether the depository of the powers is thereby constituted the

1916
LAKE
CHAMPLAIN
AND
ST.
LAWRENCE
SHIP CANAL
CO.
v.
THE KING.
Duff J.

(1) [1911] 1 K.B. 410.

(2) 6 App. Cas. 251.

1916
 LAKE
 CHAMPLAIN
 AND
 ST.
 LAWRENCE
 SHIP CANAL
 Co.
 v.
 THE KING.
 Duff J.

“agent” of the Legislature (see the argument of Sir George Jessel, L.R. 7 Q.B. at page 389) to exercise those powers, an instance of that being *Re Massey Manufacturing Co.*(1); see also *Irwin v. Gray*(2) and *Fulton v. Norton*(3); or whether the powers are vested in the Crown to be exercised through the instrumentality of the minister, in other words, whether or not the Legislature has named the donee of the power in his capacity of servant of the Crown. (See an interesting discussion in Maitland’s Constitutional History, page 415 *et seq.* and Lowell Government of England vol. 1 pages 48 and 49.) So here there might no doubt be room for an entertaining argument upon the point whether the authority to examine and approve under section 22 is an authority vested in His Majesty to be exercised by the Governor in Council, or an authority vested in the Governor in Council as “agent” of Parliament. The reasons which have led me to a conclusion adverse to the appellant’s contention would apply with equal force in either view; and I shall assume in favour of the appellant that the authority given by section 22 is given to His Majesty, the Governor-General being the representative of His Majesty for exercising the powers conferred on the advice of His Majesty’s Privy Council for Canada.

Now I am far from saying (where a contract between the Crown and a subject conditionally confers upon the subject rights which become absolute only upon the performance of some act on the part of the Crown) that the principle of *MacKay v. Dick*(4) and *Pordage v. Cole*(5), may not in a proper case come into

(1) 13 Ont. App. R. 446.

(3) [1908] A.C. 451.

(2) 3 F. & F. 635.

(4) 6 App. Cas. 251.

(5) 1 Wms. Saun. 548.

play; but in considering whether an implied obligation is laid upon the Crown under a written contract the constitutional relation between the Crown and Parliament and the exigencies of the public service may be the determining elements of the controversy (see *Churchward v. The Queen*(1), at pages 199 and 200). Although it is a common practice for some purposes to read the provisions of Acts of Parliament such as that before us as if they were stipulations in a contract between the promoters on the one hand and Parliament as representing the public and particular individuals who may be affected, on the other hand, it is necessary sometimes, nevertheless, for the sake of accuracy to insist upon the fact that such statutes are not contracts. As Lord Watson said in *Davis v. Taff Vale Rly. Co.*(2), at page 552,

1916
LAKE
CHAMPLAIN
AND
ST.
LAWRENCE
SHIP CANAL
Co.
v.
THE KING.
Duff J.

Such statutes differ from private stipulations in this essential respect that they derive their existence and their force not from agreement of the parties, but from the will of the Legislature.

Though speaking broadly the promoters may be deemed to undertake in effect that "they shall do and submit to whatever the Legislature empowers and compels them to do;" Lord Eldon in *Blakemore v. Glamorganshire Canal Navigation*(3), at page 162; still

though commonly so spoken of Railway Acts are not contracts and ought not to be construed as such.

(Court of Exchequer Chamber, *York and North Midland Railway Co. v. The Queen*(4), at page 864); Parke and Creswell JJ. were members of the court of nine who delivered the judgment in which this sentence occurs. The statute before us confers, conditionally of course,

(1) L.R. 1 Q.B. 173.

(2) [1895] A.C. 542.

(3) 1 My. & K. 154.

(4) 1 E. & B. 858.

1916
 LAKE
 CHAMPLAIN
 AND
 ST.
 LAWRENCE
 SHIP CANAL
 CO.
 v.
 THE KING.
 ———
 Duff J.
 ———

upon the suppliant company wide powers which in their exercise must necessarily in some instances affect the rights of all His Majesty's subjects, and in others the rights of particular individuals. The statute imposes upon the promoters no obligation to go on with the undertaking and no contract on their part to exercise the powers which are given to them in words that are permissive only, ought to be implied. *York and North Midland Railway Co. v. The Queen*(1). I think there is no authority which goes the length of requiring me to hold and I know of no principle that would justify me in holding in these circumstances that section 22 ought to be given exactly the same construction and effect as if it were a term of a contract between the Crown and the promoters.

Regarding then the relevant provisions of the statute as legislative enactments simply from the point of view of the Crown, is there anything in section 22 when read either alone or with the other provisions of the statute, that has the effect of creating a juridical obligation which inheres in the suppliant and the incidence of which rests upon either His Majesty or the Governor in Council? Section 22, as I have already said, involves no doubt a grant of power to examine and either to approve or to reject; but is a duty to the suppliant to exercise the power also created cognizable by His Majesty's courts? In *Julius v. Bishop of Oxford*(2), there was much discussion by the great lawyers who decided the appeal upon the subject of the indicia which may be considered to point to the conclusion that a grant of authority by the Legislature is coupled with a duty to exercise that authority. We need not, for the purposes of this appeal, follow

(1) 1 E. & B. 858.

(2) 5 App. Cas. 214.

the discussion closely. At page 235 Lord Selborne observes with regard to the question before the House—whether there was an enforceable duty to exercise a power admittedly conferred—that

in general, it is to be solved from the context, from the particular provisions, or from the general scope and objects, of the enactment conferring the power.

And he adds:—

The present question is, whether it can be shewn, from any particular words or provisions of the “*Church Discipline Act*,” or from the general scope and objects of that statute

that such a duty had in fact been created. The observations of Lord Cairns at pages 225 and 227, and of Lord Penzance at pages 229, 230, 231 and 232, shew that the question of duty or no duty was considered to be governed and determined by the answer to the question thus put by Lord Selborne. So the question to be answered on this appeal is whether from the language, scope and objects of this enactment an intention to create a duty in the sense above indicated can properly be inferred.

It may be noted that legislation investing the Governor in Council with special powers ought to be considered with reference to the well-known practice in this country, that is to say, that the council by whose advice in the passing of orders in council the Governor-General acts invariably, is composed exclusively of members of the Government for the time being, the Governor in Council being therefore *de facto* the responsible executive.

My conclusion is, that the body in whom the power is reposed being the executive directly responsible to Parliament, and there being such remedy for grievances of persons alleging non-execution of powers by the executive as the existence of this responsibility

1916
LAKE
CHAMPLAIN
AND
ST.
LAWRENCE
SHIP CANAL
Co.
v.
THE KING.
Duff J.

1916
 LAKE
 CHAMPLAIN
 AND
 ST.
 LAWRENCE
 SHIP CANAL
 CO.
 v.
 THE KING.
 Duff J.

entails, one cannot from the fact itself of the power being given legitimately infer that a legal obligation is imposed on the Governor in Council (either as representing His Majesty or otherwise) in favour of the persons interested in having the powers exercised. I am unable to convince myself, apart altogether from anything to be found in the "Interpretation Act," that such an inference could be said to be necessary, and it appears to me that such an obligation ought not to be held to be imposed upon either His Majesty or the Governor in Council unless either one finds express words creating it, or the intention to do so is necessarily implied in the provisions of the enactment to be construed.

The appeal should be dismissed with costs.

ANGLIN J.—The facts of this case and the grounds of the suppliant's claim sufficiently appear in the judgment of the learned judge of the Exchequer Court. With him I am unable to find in the appellant company's "Act of Incorporation" (61 Vict., ch. 107) a contract by the Crown, for breach of which it would be liable in damages, that the Governor in Council would approve of plans of its projected works prepared in conformity with the powers conferred on it. The company's privilege or franchise is granted subject to the condition that before exercising its power it shall obtain the approval of the plans for its works by the Governor in Council. With that condition it has been unable to comply—by reason, as it alleges, of the refusal of the Governor in Council to approve plans submitted by it. It complains that the powers conferred by its "charter" have consequently lapsed entailing a loss of five million dollars, which it seeks to recover from the Crown by a Petition of Right.

If there was such a refusal of approval, according to the statement of defence of the Attorney-General, it was based not upon a consideration of the plans disclosing that the projected works were not within the authorization of the statute or that the method of construction proposed was either defective or otherwise objectionable, but

upon high political grounds of public policy which were committed to the consideration of the responsible advisers of His Majesty.

The Attorney-General submits that the Exchequer Court

has no jurisdiction to adjudicate upon the quality of the decision of the Governor in Council in the execution of a statutory power conferred in the public interest.

If the statement that any refusal of approval of plans that there may have been proceeded upon high political grounds of public policy means that in so refusing approval the Governor in Council assumed to exercise a discretionary power to determine that it was not in the public interest that the appellants' undertaking, authorized by Parliament, should be proceeded with, I can only say that I have failed to find in the statute anything which confers such a discretion upon the Governor in Council or which warrants withholding on such a ground approval of plans duly submitted. Section 22, invoked by the respondent, in my opinion, does not bear the construction which counsel representing the Attorney-General sought to give to it. The company's right to exercise certain special powers conferred on it, such as improving, widening, deepening and straightening the Richeliéu River and the Chambly Canal (sec. 20), and the taking of the Chambly Canal, or any lock, dam, slide, boom, bridge or other works, the property of the Government of Canada (sec. 22), is expressly made

1916
LAKE
CHAMPLAIN
AND
ST.
LAWRENCE
SHIP CANAL
CO.
v.
THE KING.
Anglin J.

1916
 LAKE
 CHAMPLAIN
 AND
 ST.
 LAWRENCE
 SHIP CANAL
 Co.
 v.
 THE KING.
 Anglin J.

subject to the consent of the Governor in Council, and, in the case of an appropriation of any such public works, to terms to be agreed upon between the company and the Government. It is alleged in paragraph 16 of the statement of defence that the company's plans as submitted involved the exercise of these special powers. But this is denied in the suppliant's reply and in dealing with the question of law now before us the truth of that denial must be assumed. If it were not abundantly clear from the terms in which sec. 22 itself is couched, as I think it is, that it was not meant thereby to vest in the Governor in Council a discretionary power entirely to prevent the prosecution of the suppliant's undertaking by refusing on grounds of public policy to approve of plans duly submitted by them, which had been prepared in conformity with the statute and in compliance with all proper requirements, any possible doubt on that point would be removed by a comparison of those terms with the explicit provision made by Parliament in sections 20 and 21 in regard to matters as to which it was intended that the Governor in Council should exercise such control over the exercise of the company's powers.

But assuming that by sec. 22 Parliament meant to impose on the Governor in Council the duty of approving plans submitted to it for works authorized by the statute, prepared in conformity with any pertinent regulations or requirements of the Department of Railways and Canals or of the Governor in Council and such that any public interest in regard to the location of the works and the mode of their construction would be fully protected, it does not at all follow that it was intended that, upon failure to discharge that duty, the Governor in Council should be amenable to process in the Exchequer Court, still less that the Crown

should be answerable to the company in damages. Assuming both the duty and its breach, the Governor in Council is, in my opinion, answerable therefor only to Parliament, which can afford an adequate and effective remedy to the suppliants should "the high grounds of public policy" upon which the Governor in Council may have proceeded not commend themselves to it and should it find that its will has been thwarted by the refusal or failure to approve of the suppliants' plans. It seems to me to be contrary to our conception of responsible government that the action of the executive department in such a matter as this should be subject directly or indirectly to the control of the courts.

BRODEUR J. (dissenting).—I am of opinion that this appeal should be allowed for the reasons given by the Chief Justice.

Appeal dismissed with costs.

Solicitors for the appellants: *Brosseau & Brosseau.*
Solicitor for the respondent: *E. L. Newcombe.*

1916
LAKE
CHAMPLAIN
AND
ST.
LAWRENCE
SHIP CANAL
Co.
v.
THE KING.
Anglin J.