1906

*Dec. 1.
*Dec. 11.

WILLIAM PAUL, THE YOUNGER (SUPPLIANT) ..... } APPELLANT;

AND

HIS MAJESTY THE KING ..... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA.

Negligence—Navigation of inland waters—Collision—Government ships and vessels—"Public work"—"The Exchequer Court Act," s. 16—Construction of statute—Right of action.

His Majesty's steam-tug "Champlain," while navigating the River St. Lawrence, at some distance from a place where dredging was being carried on by the Government of Canada, and engaged in towing an empty mud-scow, owned by the Government, from the dumping ground back to the place where the dredging was being done, came in collision with the suppliant's steam barge, which was also navigating the river, and the barge sustained injuries.

Held, affirming the judgment of the Exchequer Court of Canada, that there could be no recovery against the Crown for damages suffered in consequence of negligence of its officers or servants, as the injury had not been sustained on a public work within the meaning of the sixteenth section of the "Exchequer Court Act." *Chambers* v. *Whitehaven Harbour Commissioners* ([1899] 2 Q.B. 132); *Hall* v. *Snowden, Hubbard & Co.* ([1899] 2 Q.B. 136), *Lowth* v. *Ibbotson* ([1899] 1 Q.B. 1003), *Farnell* v. *Bowman* (12 App. Cas. 643) and *The Attorney General of the Straits Settlement* (13 App. Cas. 192), referred to.

APPEAL from the judgment of the Exchequer Court of Canada, dismissing the appellant's petition of right with costs.

The claim was for damages to the suppliant's steam-barge "Préfontaine" through coming in collision with His Majesty's steam-tug "Champlain" in the Contrecœur Channel, on the River St. Lawrence,

*PRESENT:—Girouard, Davies, Idington, Maclennan and Duff JJ.

a short distance below the Harbour of Montreal, about half past eight o'clock in the evening of the 6th October, 1902. The night was clear, with a light south wind, regulation lights were shewn by both vessels, those of the tug indicating that she had a tow.

The suppliant charged that the injuries sustained by the "Préfontaine" were wholly caused by the negligence of the officers and crew of the steam-tug, then employees of the Crown acting within the scope of their employment, on, in and about a public work of the Dominion of Canada. At the time of the collision the "Champlain" was engaged in towing mud-scows laden with material which was brought up from the bottom of the channel in the course of dredging works being then carried on there by His Majesty's steam-dredge "Lady Minto." The method of the operations was for the tug to tow the loaded scows from the dredging ground to the dumping grounds, some distance away, on the other side of the channel, and then to tow the empty scows back to the dredge. It was while so engaged in towing an empty scow back from the dumping grounds, but still at a considerable distance from the place where the work of dredging was being carried on, that the vessels came in collision in the channel.

The defence blamed the suppliant, his officers and servants, for causing the collision by neglect to observe proper precautions in navigating the channel and also denied liability on the part of the Crown on the ground that the injury complained of did not arise upon a public work within the meaning of section 16 of "The Exchequer Court Act."

The petition was dismissed by the judgment appealed from on the ground that, under any circum-

1906

PAUL
v.
THE KING.

stances, no relief could be granted as the collision which occasioned the injuries had not occurred upon a public work within the meaning of the section above mentioned.

The questions raised on the appeal are stated in the judgments now reported.

Mignault K.C. and *Martineau K.C.*, for the appellant, cited *The City of Quebec* v. *The Queen*(1), at page 450; *Filion* v. *The Queen*(2); *Letourneux* v. *The King*(3); *Ryder* v. *The King*(4), at pages 464-467.

Newcombe K.C., Deputy Minister of Justice, and *J. L. Decarie K.C.*, for the respondent, cited *The Hamburg American Packet Co.* v. *The King*(5); *Chambers* v. *The Whitehaven Harbour Commissioners* (6); *Fenn* v. *Miller*(7); *Back* v. *Dick, Kerr & Co.*(8); *The "Mentor"*(9); *The "Lord Hobart"*(10); *The "Athol"*(11); *The "Volcano"*(12); *The "Birkenhead"* (13); *The "Swallow"*(14); *The "Inflexible"*(15); *The "Siren"*(16); *The "Fidelity"*(17); *Filion* v. *The Queen*(2); *City of Quebec* v. *The Queen*(1).

GIROUARD J.—I quite agree that a navigable river, although under the control of the Dominion Government, is not a public work within the meaning of the

(1) 24 Can. S.C.R. 420.
(2) 24 Can. S.C.R. 482.
(3) 33 Can. S.C.R. 335.
(4) 36 Can. S.C.R. 462.
(5) 33 Can. S.C.R. 252.
(6) (1899) 2 Q.B. 132.
(7) (1900) 1 Q.B. 788.
(8) (1906) A.C. 325.
(9) 1 Rob. 179.
(10) 2 Dod. 100.
(11) 1 Wm. Rob. 374.
(12) 2 Wm. Rob. 337.
(13) 3 Wm. Rob. 75.
(14) 1 Swab. 30.
(15) 1 Swab. 32.
(16) 7 Wall, 152.
(17) 16 Blatch. 569.

1906

PAUL v. THE KING.

Girouard J.

"Exchequer Court Act." But to hold that a government dredge, operating on a navigable river, is not such a public work is more than I can understand. Likewise, I would feel inclined so to look upon the tug and scows used to carry away, within close proximity, the material excavated by the dredge, and, were it not for the English decisions quoted by Mr. Newcombe K.C., for the respondent, especially as to the meaning of similar clauses in the Imperial "Workmen's Compensation Act," 1897, and the "Public Works Act," and referred to by my brother Idington, I would probably so hold. In face of all these decisions, one by the House of Lords, I do not, however, see how I can dissent.

DAVIES J.—In my opinion this appeal must be dismissed on the ground stated by the Exchequer Court that the case does not come within the provisions of clause (*c*) of the 16th section of the "Exchequer Court Act" under which section alone could relief be given.

Before dealing with this point, however, I wish to say that the merits of the case have been argued at length before us, and that I desire to guard against any inference whatever being raised from our silence as to the disposition of the case we would have made upon these merits had it been competent for us to enter into them. When I speak of the merits I desire to be understood as including the amount of damages reported by the Registrar as well as the question of negligence.

The construction placed upon this section of the "Exchequer Court Act" by the Exchequer Court and this court has been that it created a liability as well

1906

PAUL
v.
THE KING.

Davies J.

as gave jurisdiction. *The City of Quebec* v. *The Queen*(1); *The Queen* v. *Filion*(2).

In the case of *Larose* v. *The King*(3) this court held that a rifle range under the control of the Department of Militia and Defence was not a public work within the meaning of section 16 (*c*). That section reads as follows:

> The Exchequer Court shall also have exclusive original jurisdiction to hear and determine the following matters:
>
> (*c*) Every claim against the Crown arising out of any death or injury to the person or to property on any public work resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment.

In the case at bar the claim was for injuries to the suppliant's steamer "Préfontaine" arising out of a collision which occurred between her and the King's tug "Champlain" in the channel of the River St. Lawrence.

The steam-dredge "Lady Minto," also owned by the Crown, was at the time working in the Contrecœur Channel of the St. Lawrence River.

The tug "Champlain" was employed in towing the scows loaded with the mud dredged by the "Lady Minto" from the bottom of the channel to a convenient dumping ground. It was while so engaged and with one of the scows attached to her, but at a considerable distance from the dredge, that the tug was either run into by the suppliant's steamer or ran into her. The question as to whose negligence caused the accident is entirely apart from the one I am considering, of the construction of the clause.

In delivering the judgment of the court in *Larose* v. *The King*(3), Taschereau J., afterwards Chief Justice, said:

(1) 24 Can. S.C.R. 420. (2) 24 Can. S.C.R. 483.
(3) 31 Can. S.C.R. 206.

1906

PAUL
v.
THE KING.

Davies J.

It must not be lost sight of that the suppliant to succeed must come within the strict words of the statute.

The injury complained of must have arisen "on a public work," and must have resulted from the negligence of the Crown's officer or servant when acting within the scope of his employment.

This collision which caused the injury here complained of occurred between two steamers on the waters of the St. Lawrence River.

This court has already held in the case of *The Hamburg American Packet Co.* v. *The King*(1), confirming the judgment of the Court of Exchequer, that the channel of the St. Lawrence River after it had been deepened by the Department of Public Works did not, in consequence of such improvement, become a public work within the meaning of the section under consideration. An appeal taken from this judgment to the Privy Council was afterwards abandoned. This judgment is, of course, binding upon us and somewhat narrows the point now before us.

To hold the Crown liable in this case of collision for injuries to the suppliant's steamer arising out of the collision we would be obliged to construe the words of the section so as to embrace injuries caused by the negligence of the Crown's officials not as limited by the statute "on any public work," but in the carrying on of any operations for the improvement of the navigation of public harbours or rivers. In other words, we would be obliged to hold that all operations for the dredging of these harbours or rivers or the improvement of navigation, and all analogous operations carried on by the Government were either in themselves public works, which needs, I think, only

(1) 33 Can. S.C.R. 252.

1906

PAUL
v.
THE KING.

Davies J.

to be stated to refute the argument, or to hold that the instruments by or through which the operations were carried on were such public works.

If we were to uphold the latter contention I would find great difficulty in acceding to the distinction drawn by Burbidge J. between the dredge which dug up the mud while so engaged and the tug which carried it to the dumping ground while so engaged. Both dredge and tug are alike engaged in one operation, one in excavating the material and the other in carrying it away.

But, even if we could find reasons to justify such a distinction, which I frankly say I cannot, how could we hold in the face of the decided cases referred to above that the injuries to the "Préfontaine" were *on* a public work when they were admittedly sustained through a collision while she was steaming on the public waters of a public river.

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 analogous purposes; not confined to any definite area of physical work or structure.

The cases decided as to the meaning of section 7, sub-section 1 of "The Workmen's Compensation Act, 1897," in which the words used are "on, in or about," are instructive on the point before us. See *Chambers* v. *Whitehaven Harbour Commissioners*(1), and the cases there cited and relied upon, and *Hall* v. *Snowdon, Hubbard & Co.*(2).

(1) [1899] 2 Q.B. 132.

(2) [1899] 2 Q.B. 136.

For these reasons I would dismiss the appeal with costs.

IDINGTON J.—This appellant claims that his vessel, the "Préfontaine," was damaged by a collision with the vessel "Champlain," owned by the respondent.

He says this collision took place in the St. Lawrence and was entirely the result of the negligence of those servants of the respondent in charge of the "Champlain."

The "Champlain" was engaged at the time as tender to a dredge engaged in deepening or widening the channel of the St. Lawrence.

The "Champlain's" work as such tender was towing barges or scows, filled with material raised by the dredge, to dump it on the other side of the channel, or at all events some distance from the spot where the dredge operated.

The question is raised whether or not appellant can have, in the Exchequer Court, assuming all that he claims to be true, a remedy for the wrong he has suffered.

His claim was rested in the argument upon section 16, sub-sections (*c*) and (*d*) of the "Exchequer Court Act."

This sub-section (*c*) has been held not only to furnish a jurisdiction, but to create thereby a liability not otherwise existing for the wrongs done by servants of the Crown in such cases as the sub-section (*c*) covers.

If the claim can only be rested on these words used in sub-section (*c*), I am clear that it must fail. I cannot see how the words therein "*on* any public work" can alone be held to give relief in light of the interpretation put by the Court of Appeal in England

1906

PAUL
v.
THE KING.

Idington J.

upon even wider terms in the cognate legislation there embodied in the "Workmen's Compensation Act, 1897," See the cases of *Lowth* v. *Ibbotson*(1); *Chambers* v. *Whitehaven Harbour Commissioners*(2).

This latter case, in its facts, is very like that now in hand. There was a dredge working in a harbour and the material was being carried to sea to be dumped therein, by what were called "hoppers," a mile or so distant from the dredge. One of the men who worked on the dredge, but took his time to work on a hopper thus conveying the material to sea, was knocked overboard and drowned. Assuming negligence, it was held that though the spot where the dredge operated and the operating dredge might be "engineering work" within the meaning of the Act, yet the Act which gave a remedy for cases arising "on, in or about" a number of specified works of which an "engineering work" was one, was held not to extend to this case.

It was held that these much wider words were pointed to a definite locality. I fear the words in question here must be held also to point to locality unless we read them in connection with the rest of the section, in a way I am about to advert to.

We were referred to the interpretation given the words "public works" in the "Public Works Act." If the meaning given there could be used here then the appellant's right, if otherwise entitled to succeed, would be clear.

The only way in which that can be done is to put upon section 16 a much wider and more comprehensive construction than this court has ever yet seen its way to do, though invited on several occasions to try to do so.

(1) (1899) 1 Q.B. 1003. (2) (1899) 2 Q.B. 132.

1906

PAUL v. THE KING.

Idington J.

In *Ryder* v. *The King*(1), at p. 466 *et seq.*, I reviewed the authorities and dicta appearing in them.

I still think, as then, that the policy of Parliament, as shewn in this section 16 (as a group or as independent sub-sections) of the "Exchequer Court Act," was to put the relation between the Crown and its subjects and all issues springing therefrom, in regard to the several matters dealt with by such legislation, upon the same footing as between subject and subject.

No doubt, though the general trend of opinion, in and of this court, in this regard has been against such a wide, and as I conceive beneficial, interpretation of this section, yet it has never been in terms formally declared against.

However, even if such interpretation were ever open, it seems hopeless now to expect this court, after such a mass of opinion looking the other way, and in *Ryder* v. *The King*(1), coming to conclusions inconsistent with anything but a narrow or restricted construction, to put any such wide construction as would save this case for appellant. What force or effect now remains in this result for sub-section(*d*) I am at a loss to understand.

The language of the Acts respectively in question in the cases of *Farnell* v. *Bowman*(2), and *The Attorney-General of the Straits Settlement* v. *Wemyss*(3), was more apt than that in section 16 to execute what I have suggested was the purpose of Parliament in its enactment.

And in saying all this I am not by any means blind to the obvious difficulties. The section and its whole frame seem as if constructed as a puzzle.

(1) 36 Can. S.C.R. 462. (2) 12 App. Cas. 643.
(3) 13 App. Cas. 195.

1906

PAUL
v.
THE KING.

Idington J.

It certainly seems at this time of day unsatisfactory to find that one of the vessels, the property of which is in the Crown, engaged in the business of the Crown, can destroy through grossest negligence the property of a subject and he have no remedy at law unless against the possibly penniless man who has been thus negligent.

I am not implying that such gross negligence existed here, as I have not examined the evidence, but do imply that no matter how gross it may have been, if at all, there is in the result no proper remedy.

I think, therefore, the appeal should be dismissed with costs.

MACLENNAN and DUFF JJ. concurred in the reasons stated by Davies J.

Appeal dismissed with costs.

Solicitors for the appellant: *Godin & Brassard.*
Solicitor for the respondent: *E. L. Newcombe.*