

REPORTS AND NOTES OF CASES.

Dominion of Canada

EXCHEQUER COURT.

QUEBEC ADMIRALTY DISTRICT.

Burbidge, J.] GAGNON v. THE KING. [May 25, 1904.

Public work—Injury to property—Barge wintering in Lachine Canal—Lowering level of water—Omission to notify owner—Negligence—50-51 Vict. c. 16, s. 16 (c).

In the autumn of 1900 the suppliant placed his barge for winter quarters at a place in the Lachine Canal which he had before used for a similar purpose. The practice is now changed, but up to and including the year 1900 it was sufficient for any owner of a barge, without asking leave or notifying anyone on behalf of the Crown, to leave his barge in the canal, and, during the winter some officer of the Canals Department would take the name of the barge, measure it, make up an account, based on the tonnage, for such use of the canal, and in the spring collect the amount thereof from the owner of the barge before she was permitted to leave the canal, the whole in conformity with the provisions of Art. 32 of the Tariff of Tolls framed by that department and issued in the year 1895. Some time after the suppliant had so placed his barge in the canal, Mr. Marceau, the Superintending Engineer, for the Province of Quebec, of the Canals Department, wrote officially to Mr. O'Brien, the Superintendent of the Lachine Canal, directing him to have the water lowered on certain dates during the winter to facilitate certain work then being done by the Grand Trunk Railway Company on their swing bridge at St. Henri. Mr. Marceau also gave a verbal order to Mr. O'Brien to comply with the usual practice of notifying the owners of barges wintering in the canal before lowering the water on any occasion. In pursuance of such verbal order Mr. O'Brien directed one of the employees of the canal to notify the barge owners whenever the level of the water was to be lowered. This employee failed to notify the suppliant before the water was lowered a certain date, and his barge was so injured by the lowering of the level of the water that she became a total loss.

Held, confirming the report of the Registrar, that as the canal was a public work a case of negligence was established for which