

The suppliants charged in their petition that this accident was caused by the execution of works by the Crown which had the effect of breaking the flank side of the cliff, the daily firing of guns from the Citadel, and the fact that no precautions were taken by the Crown to prevent the occurrence of such an accident. The Crown demurred to the petition on the ground, inter alia, that no action will lie to enforce a claim founded on the negligence, carelessness or misconduct of the Crown or its servants or officers.

Held:—There being no allegation in the petition that the property mentioned was a work of defence or other public work, or part of a public work, and it not appearing therein that any officer or servant of the Crown had any duty or employment in connection with the property mentioned, or that the acts complained of were committed by such officers while acting within the scope of their duties or employment, no case was shown by the suppliants in respect of which the Court had jurisdiction under the Exchequer Court Act, 50-51 Vic. c. 16, s. 16 (c.)

2. Sec. 16 (c) of the said Act, is substantially a re-enactment of R. S. C., c. 40, s. 11, and under its provisions the Crown is liable in damages for any death or injury to property on any public work, when such death or injury arises either from the misfeasance or non-feasance of any servant or officer of the Crown while acting within the scope of his duties or employment.

3. The Crown's immunity from liability for personal negligence is in no way altered by section 16 (c) of the said Act.

Demurrer allowed with costs, and leave granted to suppliants to amend petition of right.

Hogg, Q.C., in support of demurrer.

Belcourt, contra.

OTTAWA, JAN. 19, 1891.

Before BURBIDGE, J.

BERTRAND V. THE QUEEN.

Damages to property from Government railway—The Government Railways Act, 1881, s. 27—Claimant's acquiescence in construction of culverts, effect of—Negligence of Crown's servants—Estoppel.

The suppliant sought to recover damages for the flooding of a portion of his farm at Isle Verte, P.Q., resulting from the construction of certain works connected with the Intercolonial Railway. The Crown produced a release under the hand of the suppliant, given subsequent to the time of the expropriation of a portion of his farm for the right of way of a section of the Intercolonial Railway, whereby he accepted a certain sum "in full compensation and final settlement for deprivation of water, fence rails taken, damage by water and all damages past, present and prospective arising out of the construction of the Intercolonial Railway," and released the Crown "from all claims and demands whatever in connection therewith." It was also proved that although the works which caused the injury were executed subsequent to the date of this release, they were undertaken at the request of the suppliant and for his benefit, and not for the benefit of the railway, and that with respect to part of them, he was present when it was being constructed and actively interfered in such construction.

Held:—1. That he was not entitled to compensation.

2. The Crown is not under an obligation to maintain drains or back-ditches constructed under 52 Vict. c. 13, s. 4.

Pouliot for claimants.

Hogg Q.C., for the Crown.

SUPERIOR COURT—MONTREAL.*

Plaidoyers contradictoires—Négation et compensation—Dette claire et liquide—Dommages.

Jugé:—1o. Que l'on ne peut dans un même plaidoyer nier d'abord la dette, puis alléguer que dans tous les cas elle est compensée par un compte à compte, ces allégations étant contradictoires.

2o. Qu'à une action sur compte pour vente et livraison de certaines marchandises, on ne peut opposer en compensation des dommages soufferts par suite de la livraison de marchandises de qualité inférieure, mais en vertu d'un autre contrat que celui sur lequel est basé l'action; dans ce cas il faut procéder par demande incidente.—*Lafrenière v. McBean*, Taschereau, J., 16 déc. 1890.

* To appear in Montreal Law Reports, 7 S. C.