

certain date he was driving slowly along a road in the Rocky Mountain Park, N.W.T., when his buggy came in contact with a wire stretched across the road, whereby the suppliant was thrown from his buggy to the ground and sustained severe bodily injury. He further alleged that the Rocky Mountain Park was a public work of Canada, under the control of the Minister of the Interior and the Governor-in-Council, who had appointed one S. superintendent thereof; that S. had notice of the obstruction to traffic caused by the wire and had negligently failed to remove it, contrary to his duty in that behalf; and that the Crown was liable in damages for the injuries so received by him. The Crown demurred to the petition on the ground that the claim and cause of action were founded in tort, and could not be maintained or enforced.

Held, that the petition disclosed a claim against the Crown arising out of an injury to the person on a public work resulting from the negligence of an officer or servant of the Crown while acting within the scope of his duties and employment, and therefore came within the meaning of 50-51 Vict., c. 16, s. 16 (c), which provides a remedy in such cases.

City of Quebec v. The Queen, ante, referred to. Demurrer overruled with costs.

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

Chrysler, Q.C., and *Lewis*, contra.

CITY OF QUEBEC v. THE QUEEN.

Petition of right—Demurrer—Injury to property resulting from negligence of Crown's servants on public work—Crown's liability therefor—50-51 Vict., c. 16, s. 16 (c)—Interpretation.

Demurrer to a petition of right.

1. The grounds upon which the petition was founded are as follows: On the 19th of September, 1889, a large portion of rock fell from a part of the cliff alleged to be the property of the Crown, under the citadel at Quebec, blocking up a public thoroughfare in that city, known as Champlain street, to such an extent that communication was rendered impossible between the two ends thereof.

2. 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 Vict., c. 16, s. 16 (c).

3. Section 16 (c) of the said Act is substantially a re-enactment of R.S.C., c. 40, s. 11, and under it 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.

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

SUPREME COURT OF JUDICATURE FOR ONTARIO.

COURT OF APPEAL.

From 1st Div. Ct., Wentworth.] [Dec. 31.

SAWYER v. THOMAS.

Bills of exchange and promissory notes—Cheque—Presentment—Notice of dishonor—Debtor and creditor—Payment.

Where a creditor accepts from his debtor the cheque of a third person, he must, without undue delay, present that cheque for payment, and if it is dishonored notify the defendant of the fact and claim recourse against him on the original