

EXCHEQUER COURT OF CANADA.*

OTTAWA, Jan. 19, 1891.

Before BURBIDGE, J.

BRADY v. THE QUEEN.

Petition of Right—Demurrer—Personal injuries received on public work—Negligence of Crown's servants—Liability of Crown therefor.

Demurrer to petition of right.

The suppliant alleged in his petition that on a 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 Vic. c. 16, s. 16 (c) which provides a remedy in such cases.—*City of Quebec v. The Queen* (infra) referred to.

Demurrer over-ruled with costs.

Hogg, Q.C., in support of demurrer.*Chrysler, Q.C.*, and *Lewis*, contra.

OTTAWA, Jan. 19, 1891.

Before BURBIDGE, J.

THE QUEEN v. THOMAS.

Cancellation of a land patent—33 Vic. c. 3, s. 32, s-s. 4, and 38 Vic. c. 52, s. 1—Impro-

*Early notes of cases to appear in Vol. 2, Exchequer Court Reports.

vidence in granting patent—Indian gratuity, effect of half-breed sharing in.

T., a half-breed, was on the 15th July, 1870, in actual peaceable possession of a lot of land in the province of Manitoba, previously purchased by him and of which he had been for some years in undisturbed occupancy. On the 3rd of August, 1871, he shared in the gratuity given to certain Chippewa and Swampy Cree Indians under a treaty then concluded with them, and in the years 1871, 1872, 1873 and 1874 he participated in the annuities payable thereunder. But before taking any moneys under the treaty he enquired of the Commissioner who acted for Her Majesty in its negotiation, whether by accepting such money he would prejudice his rights to his private property, and was informed that he would not; and when in 1874 he learned for the first time that by reason of his sharing in such annuities he was liable to be accounted an Indian, and to lose his rights as a half-breed, he returned the money paid to him in that year. Subsequently his status as a half-breed was recognized by the issue to him in 1876 of half-breed scrip.

Held:—That under the Manitoba Act and amendments (33 Vic. c. 3, s. 32, s-s. 4, and 38 Vic. c. 52, s. 1) he was entitled to letters patent for the lot mentioned.

Aikins, Q.C., and *Culver, Q.C.*, for Crown.*Howell, Q.C.*, and *Cumberland* for Defendant.

OTTAWA, January 19, 1891.

Before BURBIDGE, J.

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 Vic. c. 16, s. 16 (c)—Interpretation.

Demurrer to a petition of right.

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.