

Burbidge, J.] JOHNSTON v. THE KING. [Dec. 7, 1903
Contract—Bailment—Hire of horses for construction of public work—Loss of horses—Negligence—Liability—Demise of Crown—50 & 51 Vict. c. 16, sec. 16 (c).

When the suppliant's goods were in the possession of an officer or servant of the Crown under a contract of hiring made by him for the Crown, the obligation for the hirer in such a case is to take reasonable care of the goods according to the circumstances, and the hirer is liable for ordinary neglect. Where there is a breach of the hirer's obligation in such a case the Crown is liable under the contract of its officer or servant.

The suppliant entered into a contract with the Crown, through an officer of the Department of Public Works, to supply certain pack-horses, with aparejos and saddles, for the purpose of construction of the Atlin-Quesnelle Telegraph line, at the sum of \$2.00 per horse for each day the animals were so employed. It was not practicable, as the suppliant knew, at the time of making the contract, to carry food for the horses along the line of construction, and it was necessary to turn the horses out to graze for food. As the season advanced and the character of the country in which the line was being constructed changed, the grazing failed, with the result that the horses died or were killed to prevent them from starving to death. It appeared that the aparejos and saddles were not returned to the suppliant. There was a time during construction when the horses could have been taken back alive, and no prudent owner of horses would have continued them on the work beyond that time. The officer of the Crown in charge of the work, however, deemed that the interests of the construction were sufficiently urgent to justify him in sacrificing the horses to the work.

Held. 1. Having regard to the circumstances, the hirer had acted imprudently in continuing the horses on the work after the grazing failed, and the Crown was liable therefor.

2. Wherever there is a breach of a contract binding on the Crown a petition will lie for damages notwithstanding that the breach was occasioned by the wrongful acts of the Crown's officer or servant. *Windsor & Annapolis R.W. Co. v. The Queen*, 11 A.C. 607 referred to.

3. The Crown is liable in respect of an obligation arising upon a contract implied by the law. *The Queen v. Henderson*, 28 S.C.R. 425 referred to.

4. An action arising out of a contract for the hire of horses to be used in the construction of a public work of Canada lies against the executive authority of the Dominion, and is not affected or defeated by the demise of the Crown.

Semble. The loss sustained by the suppliant in this case was an "injury to property on a public work" within the meaning of clause C of s. 16 of Exchequer Court Act.

A. E. McPhillips, K.C., for suppliant. *Howay* for respondent.