

LAVOIE v. THE QUEEN.

Liability of Crown as common carrier—Negligence—Regulations for carriage of freight—Notice by publication in Canada Gazette—The Government Railways Act, 1881—The Exchequer Court Act (50 & 51 Vict., c. 16, s. 16)—Construction.

(1) Apart from statute, the Crown is not liable for the loss or injury to goods or animals carried by a Government railway occasioned by the negligence of the persons in charge of the train by which such goods or animals are shipped. By virtue of the several Acts of the Parliament of Canada relating to Government railways and other public works, the Crown is in such a case liable, and a petition of right will lie under the Act 50 & 51 Vict., c. 16, for the recovery of damages resulting from such loss or injury.

The Queen v. McLeod (8 S.C.R. 1) and *The Queen McFarlane* (7 S.C.R. 216) distinguished.

(2) The publication in the *Canada Gazette*, in accordance with the provisions of the statute under which they are made, of regulations for the carriage of freight on a Government railway is notice to all persons having occasion to ship goods or animals by such railway.

(3) One of the general conditions in the regulations applicable to the carriage of live stock by the Intercolonial Railway is that "all live stock conveyed over the railway are to be loaded and discharged by the owner or his agents, and he undertakes all risk of loss, injury, damage, and other contingencies in loading, unloading, transportation, conveyance, and otherwise, no matter how caused."

By the 50th section of the Act (R.S.C., c. 38) under which the regulations were made, it is provided that Her Majesty shall not be relieved from liability by any notice, condition, or declaration in the event of any damage arising from the negligence, omission, or default of any officer, employee, or servant of the Crown.

Held, that the regulations must be read as part of the Act (R.S.C., c. 38, s. 44), and that the condition did not relieve from liability where the loss or injury was occasioned by the negligence of the Crown's servants.

(4) The owner of a horse shipped in a box-car, the doors of which can only be fastened from the outside, and who is inside of the car

with the horse, has a right to expect that the conductor of the train will see that the door of the car is closed and properly fastened before the train is started.

Belcourt and Choquette for suppliant.

Hogg, Q.C., for Crown.

MURPHY v. THE QUEEN.

Sale of ordnance lands in Quebec—Cancellation—23 Vict. (P.C.), c. 2, s. 20.

In the year 1876 the suppliant purchased a number of lots at an auction sale of ordnance lands in the city of Quebec. He paid certain instalments and interest thereon, amounting in all to the sum of \$2,447.92. Being unable to complete the payments for which he was liable, he applied to the Crown in 1885 to appropriate the money paid by him to the purchase of three particular lots—Nos. 19, 38, and 39. This the Crown consented to do, and upon an adjustment of the account there was found to be a sum of \$73.92 due to the suppliant, which by mutual arrangement was appropriated to the purchase of another lot (No. 100), leaving a balance due to the Crown of \$126.08. When, however, the suppliant came to pay this balance and get his patents for the four lots, he was informed that lot 19 would probably be required for certain military purposes. He then tendered the balance due to the proper officer of the Crown in that behalf, but it was declined. Patents for lots 38, 39, and 100 were subsequently issued to the suppliant, and nothing further was done until 1886, when the Crown resumed possession of lot 19, which was followed up by an attempted cancellation of the sale of the lot under 23 Vict. (P.C.), c. 2, on the ground that as the balance due on the purchase had not been paid, the terms and conditions of sale had not been complied with.

Held, that the sale was not duly cancelled, that the suppliant had forfeited none of his rights under the sale, and was entitled to damages equal to the value of the lot at the time the Crown resumed possession thereof.

Quære: Has the Deputy Minister of the Interior the right to exercise the powers of cancellation vested in the Commissioner of Crown Lands by the 20th section of the Act of the old Province of Canada, 23 Vict., c. 2?

Code and Stafford for suppliant.

Hogg, Q.C., for Crown.