

OTTAWA, NOV. 4, 1892.

Coram BURBIDGE, J.

CORPORATION OF THE CITY OF QUEBEC, Suppliants; and  
THE QUEEN, Respondent.*Injury to Property on a Public Work—Negligence of Crown's Officer or Servant—50-51 Vic., c. 16, s. 16 (c)—Liability—Remedy.*

The Crown is liable for an injury to property on a public work, occasioned by the negligence of its officer or servant acting within the scope of his duty. That liability is recognized in *The Exchequer Court Act*, sec. 16 (c), but has its origin in the earlier statute, 33 Vic., c. 23.

2. Prior to 1887, when *The Exchequer Court Act* was passed, a petition of right would not lie for damages or loss resulting from such an injury, the subject's remedy being limited to a submission of his claim to the official arbitrators, with, in certain cases after 1879, an appeal to the Exchequer Court and thence to the Supreme Court of Canada.

3. No officer of the Crown has any duty to repair or add to a public work at his own expense, or unless the Crown has placed at his disposal money or credit with instructions to execute the same. He must exercise reasonable care to know of the condition in which the public work under his charge is, and he must report any defect or danger that he discovers. It does not follow from the fact that a public officer does not discover a defect in, or a danger that threatens, a public work under his charge, that he is negligent. To make the Crown liable in such a case it must be shown that he knew of the defect or danger and failed to report it, or that he was negligent in being and remaining in ignorance thereof.

*The Sanitary Commissioners of Gibraltar v. Orfila*, 15 App., Cas. 400, referred to.

The injury complained of by the suppliant was caused by the falling of a part of the rock or cliff below the King's Bastion, at the citadel in Quebec in the year 1889. The falling of the rock was caused or hastened by the discharge, into a crevice of the rock, of water from a defective drain, constructed and allowed to become choked up while the citadel and works of defence were under the control of the Imperial authorities, and before they became the property of the Government of Canada. The existence of this drain and of the defect was not known to any officer of