

and the judgments in the Courts below be set aside, and the verdict and judgment be entered for the appellants for \$735 with costs in the said Courts, to be paid by the respondents to the appellants.

The respondents must pay the costs of the appeal.

Appeal allowed.

DOMINION OF CANADA.

SUPREME COURT.

OCTOBER 20TH, 1909.

CHAMBERLIN v. THE KING.

Government Railway—Negligence—Sparks from Engine—Fire—Meaning of Phrase “On a Public Work” in sub-sec. (c) of R. S. C. ch. 140.

An appeal from the Exchequer Court of Canada. Case below is reported in 5 E. L. R. 441.

Curry, K.C., and Mott, K.C., for appellant.

Chrysler, K.C., and McAlpine, K.C., for respondent.

THE CHIEF JUSTICE:—In a long series of decisions this Court has held that the phrase “on a public work” in sec. 20, sub-sec. (c), of the Exchequer Court Act, must be read, to borrow the language of Mr. Justice Duff in *The King v. Lafrancois*, 40 S. C. R., p. 436, “as descriptive of the locality in which the death or injury giving rise to the claim in question occurs” and that to succeed the supliant must come within the strict words of the statute. See per Taschereau, J., in *Larose v. The King*, 31 S. C. R. 206. See also *Paul v. The King*, 38 S. C. R., p. 126, and cases there cited.

In this case the property destroyed by fire, previous to and at the time of its destruction, was upon the land of the suppliant, some distance from the right of way of the Intercolonial Railway and was not property on a public work. As to the objection that this question was not raised in the Court below, I refer to *McKelvy v. Le Roi Mining Co.*, 32 S. C. R., p. 664. If questions of law raised here for the first time appear upon the record we cannot refuse to decide them