

In 1877 the Dominion Government became possessed of the property in the city of Quebec on which the citadel is situated. Many years before that a drain had been constructed through this property by the Imperial authorities, the existence of which was not known to the officers of the Dominion Government, and it was not discovered at an examination of the premises in 1880 by the city engineer of Quebec and others. Before 1877 this drain had become choked up, and the water escaping gradually loosened the earth until, in 1889, a large portion of rock fell from the cliff into a street of the city below, causing great damage, for which compensation was claimed from the Government.

Held, per TASCHEREAU, GWYNNE, and KING, JJ., affirming the decision of the Exchequer Court, that as the injury to the property of the city did not occur upon a public work subsection (c) of the above Act did not make the Crown liable, and, moreover, there was no evidence that the injury was caused by the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment.

Held, per STRONG, C.J., and FOURNIER, J., that while subsection (c) of the Act did not apply to the case, the city was entitled to relief under subsection (d); that the words "any claim against the Crown" in that subsection, without the additional words, would include a claim for a tort; that the added words, "arising under any law of Canada," do not necessarily mean any prior existing law or statute law of the Dominion, but might be interpreted as meaning the general law of any province of Canada; that this case should be decided according to the law of Quebec regulating the rights and duties of proprietors of land situated on different levels; and that under such law, the Crown, as proprietor of land on the higher level, was bound to keep the drain thereon in good repair, and was not relieved from liability for damage caused by neglect to do so by the ignorance of its officers of the existence of the drain; and that independently of the statute the Crown was liable for breach of its duty as owner of the superior heritage.

Appeal dismissed with costs.

Pelletier, Q.C., and Quinn, Q.C., for the appellant.

Hogg, Q.C., for the respondent.

Ontario.]

[May 6.]

TOWN OF TRENTON v. DYER AND OTHERS.

Statute—Directory or imperative requirement—Municipal corporation—Collection of taxes—Delivery of roll to collector—55 Vict., c. 48 (O.).

By s. 119 of the Ontario Assessment Act (55 Vict., c. 48) provision is made for the preparation in every year by the clerk of each municipality of a "collector's roll" containing a statement of all assessments to be made for municipal purposes in the year, and s. 120 provides for a similar roll with respect to taxes payable to the Treasurer of the Province. At the end of s. 120 is the following: "The clerk shall deliver the roll, certified under his hand, to the collector on or before the first day of October." . . .

Held, affirming the decision of the Court of Appeal (21 A. R. 379), that the provision as to delivery of the roll to the collector was imperative, and