STEVE SCHROBOUNST ET AL.....SUPPLIANTS; 1924 Dec. 22.

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Constitutional Law—Exchequer Court—Jurisdiction—"On a public work" —7-8 Geo. V, c. 23, section 2.*

The suppliants were in a vehicle, standing at the curb, on a public street of the city of St. Catharines, when they were run into and injured by a motor truck, the property of the Crown, alleged to be due to the negligence of the driver thereof, a servant of the Crown, employed in transporting other employees of the Crown to a public work at Thorold. The Crown pleaded that the present action did not come within the meaning of subsection (*c*) of section 20 of the Exchequer Court Act, as amended by 7-8 Geo. V, c. 23, and that the court was without jurisdiction.

*Held,* that the defence in law was unfounded, and that the court had jurisdiction, under said section 20 s.s. (*c*) to hear and entertain the present action.

2. That the words "employment upon any public work" in subsection (*c*) of section 20 are merely descriptive of the work or employment, and not intended to mean that the work or employment must be performed on any defined or specific locus whereon a public work is being maintained or constructed, or that the negligence complained of must occur thereon.

HEARING upon questions of law raised by the defense herein.

Ottawa, December 10, 1924.

Action now heard on the questions of law before the Honourable Mr. Justice Maclean.

*Louis Côté* for suppliants.

*L. P. Varcoe* for respondent.

MACLEAN J. now, this 22nd day of December, 1924, delivered judgment (1).

This is an action for damages, alleged to have been sustained by the suppliants on a public street in St. Catharines, Ont., owing to the negligence of a truck driver, a servant of the respondent, in the employ of the Department of Railways and Canals.

The present proceedings in the action is to determine the points of law raised by the Attorney General in his defence, and as provided for by Exchequer Court Rule 126.

Sec. 20 (*c*) of the Exchequer Court Act, Chap. 140, R.S.C. 1906, provided as follows:

(1) NOTE: This judgment was affirmed by the Supreme Court of Canada on the 12th June, 1925.

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20. The Exchequer Court shall also have exclusive original jurisdiction to hear and determine the following matters:—

(c) Every claim against the Crown arising out of any death or injury to the person or to property on any public work, resulting from the negligence of any officer or servant of the Crown, while acting within the scope of his duties or employment.

Subsection (c) of section 20, as quoted above, was amended by chap. 23, sec. 2, 1917, by striking out the said subsection (c) and substituting therefor the following:

(c) Every claim against the Crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment upon any public work.

The real issue before me for determination is whether under sec. 2, chap. 23, 1917, amending the Exchequer Court Act, the Crown is in law liable for damages for injury to person or property resulting from the negligence of its officer or servant, while acting within the scope of his duties or employment, on any public work, and where the negligence causing the injury arose or was committed elsewhere than upon the public work, as for example upon a public street as is alleged in this action, though the duties at the time being performed related to the public work.

In a series of cases, among them *Piggott* v. *The King* (1), the Supreme Court of Canada held, in actions founded upon sec. 20 (c), chap. 140, R.S.C. 1906,—the Exchequer Court Act—that no action was maintainable where the death or injury to the person or property occurred outside the bounds of a public work, notwithstanding the same was due to the negligence of a servant or employee, acting within the scope of his duties while on a public work. The statute however is now quite different, and the question now is if the amended or substituted sec. 20 (c), already referred to, so extends the jurisdiction as to bring within it a claim for damages arising in the circumstances I have already stated.

The original section apparently limited the jurisdiction, to claims where the death or injury caused by negligence occurred on any public work, and as I have said, the courts have so held. The purpose of the amended section was obviously intended to widen the jurisdiction, so as to include claims for damages where the death or injury to person or property occurred off or away from a public work.

(1) [1916] 53 Can. S.C.R. 626.

That obviously was the spirit and purpose of the amending legislation. It was suggested by counsel appearing before me that the amendment was intended to apply to cases where the servant or employee, committed or performed some act of negligence while physically upon a public work, but which negligent act resulted in injury to a person or property off the public work, and that the amended section covers only such cases. I should find it extremely difficult to conclude that Parliament intended, when enacting the amended clause, to legislate so narrowly and precisely, as to cover only the very limited class of cases where an officer or servant of the Crown could, while on a public work negligently cause injury to a person or property without the public work. Conceivably the facts disclosed in *Piggott* v. *The King, ubi supra,* may truly indicate the origin of the amending legislation, but to say that it was in the mind of Parliament to cover only such a condition of facts is quite another thing, and I think without warrant in view of the language of the amended section.

Apparently, under the old section a servant or employee might be outside any public work and by some means or circumstances quite imaginable, inflict an injury upon a person or property, on or within a public work, and thus render the Crown liable. It seems therefore improbable that the amended clause was intended to cut down the Crown's liability for the negligence of its servants or employees, to cases only where the officer or servant was physically on the public work, whereas up to the time of the amendment it would not seem that the statute required that the servant or employee should be physically on the public work himself, when the negligent act complained of occurred. There is nothing to indicate that this was the policy of the legislation. Still this is its effect if the respondent's contention is correct. The requirement necessary under the old section to furnish a ground of action, was that the person or property injured should be on the public work. For example, a carter, being a servant or employee, upon a public street or road unloading material upon a public work might in some way or other negligently injure a person or property on a public work. In that case

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under the original sec. 20 (*c*) it would seem the court had jurisdiction and an action for damages was maintainable. If the contention of the Crown made in these proceedings is sound, then in such a state of facts no action would lie under the new section 20 (*c*).

I think that the amended section was intended not to cut down in any sense the Crown's liability, but rather to enlarge it. Section 20 (*c*) 1917 was I think intended merely to remove the qualification that liability did not arise where the person or property injured was not on the public work, only that and nothing more. If it was meant to require that the offending servant or employee must also be on the public work, then the liability of the Crown in tort was cut down by the amended section, which I do not think was intended. I do not think the present section is at all open to the construction that the officer or servant must be actually on the public work. I think it only means that generally he must be employed on a public work and that his duties must generally relate to employment on a public work, and that there is jurisdiction if the injury to person or property is negligently caused by the officer or servant while acting within the scope of his duties or employment on a public work, and regardless of whether the negligence causing the injury was committed on the public work or not. The latter words of the amended section were not in my opinion intended to operate as a geographical or territorial qualification as to jurisdiction or liability, but rather as descriptive of the services, duties or employment. I cannot construe the concluding words of the section to mean that the negligence causing the injury must occur on a public work, but it is sufficient to constitute liability if the negligence occurred while the servant or employee was acting within the scope of his duties or employment in connection with a public work, wherever that might be.

It is obvious that in many cases, the greater portion of the duties of a servant of the Crown employed on a public work, would necessitate his being off the public work the major portion of his time, and conceivably his whole time. For instance, take the case of a driver, employed on a public work, say the construction of a government building, and engaged in carrying stone to this public work.

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from a quarry located on another and distant property, carried on also as a part of the same public work, and never in fact driving his team or truck upon the public work, the same being unloaded on the public works by derricks or some other means from the truck while on the public street. In such circumstances surely it could not be contended successfully that this servant was not employed upon a public work, or was not acting within the scope of his duties in such employment. I cannot conceive of any reason for not holding that in such work or employment, the servant was not acting within the scope of his duties or employment upon a public work. "Public work" under sections 3 (*c*) and 35 of the Public Works Act, ch. 39 R.S.C. 1906, means I think any "work or property" under the control of a Minister of the Crown or a Department of Government. I know of no other statutory definition applicable to this case, and even if this definition did not exist I could not employ better language too define a "public work." I cannot perceive of anything in this definition to support the respondent's contention. The "work" wherever performed is still "work" and under the control of a representative of the Crown.

I am of the opinion therefore that the words "employment upon any public work" is merely descriptive of the work or employment, and was not intended to mean that the work or employment must be performed on any defined or specific locus whereon a public work is being maintained, constructed, controlled or managed or that the negligence complained of must occur thereon. I cannot therefore uphold the points of law raised on behalf of the respondent.

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*Judgment accordingly.*