

1936
Sept. 21.
1937
July 20.

BETWEEN :

LINDA JOKELA SUPPLIANT;

AND

HIS MAJESTY THE KING RESPONDENT.

*Crown—Petition of right—Public work—Bridge—Injury to person—Main-
tenance—Exchequer Court Act, R.S.C. 1927, c. 34, s. 19 (c).*

Suppliant suffered personal injuries and loss by breaking through a plank on the sidewalk of a roadway leading to and from the north end of Chaudiere bridge, an interprovincial bridge crossing the Ottawa river, and connecting the city of Ottawa, Ontario, and the city of Hull, Quebec.

By her petition of right suppliant charged "that the injuries and loss so caused to the suppliant are a direct result of the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment upon a public work. The said negligence consists particularly of failure to maintain or keep in proper repair the plank sidewalk aforesaid."

Held: That liability of the Crown for damages for any death, or injury to the person or to property, is qualified and limited by the Exchequer Court Act and cannot be enlarged except by express words or necessary implication, and liability for injury resulting from nonfeasance is excluded. *McHugh v. The Queen* (1900) 6 Ex. C.R. 374, followed.

PETITION OF RIGHT by the suppliant claiming damages for an injury to the person alleged to have been caused by the negligence of an officer or servant of the Crown on a public work.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

Charles H. Blair for the suppliant.

Francois Caron for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, now (July 20, 1937) delivered the following judgment:

The suppliant brings her petition of right to recover damages for bodily injuries and loss occasioned by an accident that happened to her by breaking through a plank on the sidewalk of a roadway leading to and from the north end of the Union Bridge, popularly known as the Chaudiere Bridge, an interprovincial bridge crossing the Ottawa river, and connecting the city of Ottawa, in the province of

Ontario, and the city of Hull, in the province of Quebec. The action is rested on sec. 19 (c) of the *Exchequer Court Act*, R.S.C., 1927, c. 34, which reads:

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 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 language of this section is practically the same as when first enacted by chap. 16, s. 16 (c) of the Statutes of Canada, 1887. The wrong alleged against the Crown by the petitioner is:

That the injuries and loss so caused to the suppliant are a direct result of the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment upon a public work. The said negligence consists particularly of failure to maintain or keep in proper repair the plank sidewalk aforesaid

I might at once state, in case this petition should go to appeal, that if I were finding negligence and liability on the part of the Crown, I would award the suppliant the full amount of damages claimed, \$1,000.

The facts may be briefly stated. The Chaudiere bridge, a steel structure, was built many years ago by the Government of Canada, and by it since maintained. After crossing the bridge from the Ontario side there immediately follow several large rock ledges or islands, between which flow minor streams of the Ottawa river, and this formation continues to the shore line of the river on the Quebec side, which is virtually Main street, in the city of Hull. When the Chaudiere bridge was constructed these rock ledges or islands were elevated or lowered, as the case might be, to the level or grade of the bridge, and over and across the same was constructed a roadway or approach to the bridge, called a "causeway" by one witness, and in a judgment rendered in the Superior Court of Quebec, to be later mentioned, called a "stone bridge"; I shall throughout employ the term "roadway." It is this roadway that constitutes the approach to the Chaudiere bridge from the Hull side of the Ottawa river. On one side of the roadway is a wooden sidewalk built for pedestrians, and upon this sidewalk the suppliant was walking towards Hull, in September, 1935, when a plank in the sidewalk gave way beneath her, throwing her to the sidewalk and causing the injury and damages complained of. This roadway, includ-

1937

JOKELA

v.

THE KING.

Maclean J.

1937
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 JOKELA
 v.
 THE KING.

 Maclean J.

ing the sidewalk, was, I understand, originally constructed by the Crown, and by it maintained until January, 1934, when instructions were issued by the Chief Engineer of the Dominion Department of Public Works, to his District Engineer, with the authority no doubt of the Minister of Public Works, that thenceforth no work was to be done by the Department of Public Works, towards the maintenance and repair of this roadway and none has since been done, and no money has since been voted by Parliament for that purpose, and the city of Hull was in due course advised of this decision. It is hardly in controversy that the sidewalk, at the time material here, was in a dangerous condition and in urgent need of repairs, and that the accident to the suppliant was attributable to this fact. In point of fact this condition of the sidewalk was reported more than once to the Department of Public Works by some of its engineers.

It would appear to be the contention of the city of Hull that while the roadway is within the bounds of the corporation, yet the obligation to maintain the same rests upon the Crown; and the corporation has never expended thereon any moneys for maintenance or repairs, and has always refused to acknowledge any liability to do so. A few years ago, jointly with other public authorities it contributed towards the cost of resurfacing the travelled portion of the roadway, but, in circumstances which would hardly constitute an acknowledgment of liability for the maintenance of the roadway. Mr. St. Laurent, District Engineer of the Department of Public Works, stated in evidence that the Department of Public Works still exercised supervision over the substructure of the roadway but not the surface. I understood this to be taken as meaning that the Crown acknowledged liability for the maintenance and repair of the substructure of the roadway, but that only. I am not sure whether Mr. St. Laurent would be competent, or was authorized, to make such an admission, nor do I propose to enter into a discussion of the legal implications of such an admission, even if made with authority. I was referred to an action between *The Ottawa and Hull Power and Manufacturing Company v. The Ottawa Electric Railway Co.*, heard in the Superior Court of the Province of Quebec, in 1905, in which action the Dominion Minister

of Justice intervened with the plea that the roadway in question here was the property of the Crown in the right of the Dominion, and that plea was sustained by the court. In my view of this case, it does not become necessary to decide who is responsible for the maintenance of the roadway, or its surface, but if that decision has sometime to be made and with some confidence, it would presently appear to me to be necessary to have a more complete presentation of the facts than was made in this case, and it seems to me there should be available further facts pertinent to that dispute. Manifestly the controversy concerning the maintenance of this roadway should be definitely and finally determined in some way because the roadway is an extremely busy one and should be kept constantly in a safe condition for those using it, either by the Government of Canada, the Government of the Province of Quebec, or the city of Hull.

It will be observed that under s. 19(c) of the *Exchequer Court Act* the liability of the Crown for damages for any death or injury to the person or to property is qualified and limited. The death or injury must happen on or in connection with a public work, and must result from the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment, and the Crown's liability cannot be enlarged except by express words or necessary implication. That provision would seem to exclude the case in which the injury resulted from nonfeasance. The petition of right in this case states that the alleged negligence "consists particularly of failure to maintain or keep in repair the plank sidewalk aforesaid," and all the suppliant's evidence was directed to establish the fact that the injury resulted from nonfeasance. The Crown is charged with not doing what was necessary to be done in order to prevent the roadway from becoming dangerous. As was said by Burbidge J. in the case of *The City of Quebec v. The Queen* (1) what is alleged against the Crown is literally a charge of personal negligence which cannot be imputed to the Crown, and for which, if it occurred, the law affords no remedy, for the doctrine of the Crown's immunity from liability for personal negligence is in no way altered by s. 19(c) of the *Exchequer Court Act*.

1937
 JOKELA
 v.
 THE KING.
 Maclean J.

(1) (1891) 2 Ex. C.R. 252.

1937
JOKELA
v.
THE KING.
Maclean J.

In the case of *McHugh v. The Queen* (1), it was held that there was nothing in the *Public Works Act* (R.S.C., 1886, c. 36' in relation to the maintenance and repair, by the Minister of Public Works, of bridges belonging to the Dominion Government, which makes him "an officer or servant of the Crown" for whose negligence the Crown would be liable under ss. (c) of s. 16 of the *Exchequer Court Act*, now s. 19. In that case the suppliant's petition was brought to recover damages for personal injuries that he suffered by falling from his horse while crossing a bridge belonging to the Dominion Government, and which bridge was alleged to be out of repair; the learned trial judge found it unnecessary to determine any of the issues of fact. In rendering judgment Burbidge J. said:

There is no evidence that the injury resulted from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment, so as to bring the case within clause (c) of the 16th section of *The Exchequer Court Act*. It was contended for the suppliant that the Minister of Public Works is an "officer or servant of the Crown" within the meaning of that provision; and that under *The Public Works Act* it was his duty to keep this bridge in repair; and that for his negligence in that respect the Crown is liable. It was not suggested, of course, that the Minister was under any duty himself from time to time to inspect the bridge and to see that it was repaired, if repairs were needed; but that he should have taken care that there was some one charged with that duty. It is not for me, I think, to express any opinion as to whether the Minister ought or ought not under the circumstances existing in this case to have appointed, or to have recommended the appointment of, an overseer or caretaker for this bridge. That was, it seems to me, a matter within his own discretion which is not to be reviewed in this court, and for the proper exercise of which he is answerable to Parliament alone. There is no duty on the Crown, or any Minister of the Crown, to keep a public work, such as this bridge was, in repair, for the failure of which a petition of right will lie against the Crown at the suit of one injured by reason of non-repair. In such a case the suppliant cannot recover against the Crown unless the case falls within the terms of the provision of *The Exchequer Court Act* to which reference has been made. This case is not, I think, within the statute.

I see no reason for departing from the conclusion reached by Burbidge J. in that case, and which seems to me to be entirely applicable here; and I know of no later authority which might throw doubt upon the conclusion there reached. The petition is therefore dismissed with costs but which I hope the Crown will not exact.

Judgment accordingly.