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Jan. 8,
Feb. 10

Feb. 20

BETWEEN:

MICHAEL MAGDA .....SUPPLIANT;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

*Crown—Petition of Right—Claim for damages for unlawful imprisonment, unlawful internment and other unlawful acts—Question of law under Rule 149 of General Rules and Orders—The Exchequer Court Act, R.S.C. 1927, c. 34, s. 19(c)—Quebec Civil Code, Article 1053—Order in Council P.C. 4751 of Sept. 12, 1940, s. 4—Petition of right does not lie against Crown in right of Canada for unlawful imprisonment or internment or other unlawful act not amounting to negligence—Essentials of actionable negligence—"Faute" wider in scope than "negligence".*

The suppliant, a native and national of Roumania, who had come to Halifax on December 11, 1940, as a member of the crew of a neutral ship which had been seized by British warships, alleged that he had been unlawfully imprisoned and interned from December 14, 1940 to April 17, 1947, and had suffered from other wrongful acts during that period and claimed substantial damages from the Crown. Under rule 149 of the General Rules and Orders it was ordered that the question of law whether a petition of right lay against the Crown even if the allegations should be established should be heard and disposed of before the trial.

*Held:* That under the present state of the law a petition of right does not lie against the Crown in right of Canada for unlawful imprisonment or unlawful internment or any wrongful act that was not an act of negligence.

2. That to come within the ambit of actionable negligence within the meaning of section 19(c) of the Exchequer Court Act there must be circumstances giving rise to a duty to take care owing to the suppliant, failure to attain the standard of care prescribed by law for the fulfilment of that duty and actual damage suffered by the suppliant, and that the necessary allegations to warrant a claim for such actionable negligence do not appear in the suppliant's petition.

3. That the term "faute" in Article 1053 of the Civil Code of Quebec is much wider in its scope than the term "negligence" in section 19(c) of the Exchequer Court Act.

4. That while negligence is an independent tort in the common law provinces of Canada, that concept is unknown to the Civil Law of Quebec where "négligence" is, so to speak, only a segment of "faute", and not an independent delict.

QUESTION OF LAW whether petition of right lies against Crown in right of Canada for damages for alleged wrongful acts.

The question of law was heard by the President of the Court at Ottawa.

*G. A. Roy* for suppliant.

*W. R. Jackett Q.C.* and *J. Desrochers* for respondent.

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

THE PRESIDENT now (February 20, 1953), delivered the following judgment:

In these proceedings the Court is required to hear and dispose of a question of law before the trial, pursuant to an order made under Rule 149 of the General Rules and Orders of this Court on the application of the respondent and with the consent of the suppliant. The question of law to be determined is stated as follows:

> Assuming the allegations of fact contained in the Petition of Right to be true, does a petition of right lie against the Respondent for any of the relief sought by the suppliant in the said Petition?

In his petition of right the suppliant, now a resident of Montreal who alleges that he is a native of Roumania and a Roumanian national, claims the sum of $157,150 from the Crown as damages for his alleged unlawful imprisonment and internment from December 14, 1940, to April 17, 1947, under the circumstances related in the petition, and for other alleged wrongful acts during that period. The suppliant relates in detail his version of the facts on which he bases his claim. I shall first summarize his account of the events leading up to his imprisonment in Halifax in Nova Scotia on December 14, 1940. On or about October 10, 1940, at Lisbon in Portugal he signed on as an assistant mechanic on the S.S. *Thijisville*, a Portuguese ship, with over 60 other neutral seamen on the understanding that she would sail only between neutral countries. On October 14, 1941, when the ship was out to sea, she was taken under escort by two British warships and a Captain B. H. Powell of the British merchant marine, who had secretly come on board at Lisbon, took command of her. On October 15, 1940, the ship still under escort by the two warships, arrived at Gibraltar. There the suppliant and about 67 seamen of neutral countries asked to see Captain Powell and requested their immediate repatriation to Lisbon or another port of a neutral country, but he told them that the ship was now under British Admiralty orders and under his command and that they would have to comply with his orders. After this interview the seamen, including the suppliant, were taken ashore under military escort to a prison in Gibraltar where they remained until October 31, 1940. They were

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then brought back on board under military escort and the ship left for Kingston in Jamaica where she arrived on November 15, 1940. There a similar course was followed. The seamen were taken ashore under military escort to a prison where they remained until December 3, 1940, when they were taken back on board under military escort and the ship left for Halifax in Nova Scotia where she arrived on December 11, 1940. There the neutral seamen, including the suppliant, went in a group before Captain Powell and renewed their request for liberation and repatriation. He promised to go to the Canadian Immigration authorities and discuss their repatriation and keep them in touch with the result of his overtures. The seamen were then allowed to go ashore and spent several hours in Halifax. On December 13, 1940, Captain Powell summoned them and told them that all the neutral seamen who had embarked at Lisbon were to go to the Canadian Immigration Office at Halifax at 9 a.m. on December 14, 1940, to be discharged and receive their pay. When they went there the Canadian Immigration authorities immediately placed them under military guard and proceeded to interrogate them. Certain documents belonging to the suppliant, including his passport, his international sailing card, his military booklet, his maritime discharge certificates and other personal papers, proving his nationality and neutrality, were taken from him and confiscated by the Canadian Immigration authorities and never returned to him although he claimed them on several occasions. After their interrogation the seamen, including the suppliant, were taken under military escort to the Rockhead prison in Halifax where the suppliant remained unlawfully imprisoned until February 2, 1942.

The suppliant could have obtained his freedom from this imprisonment if he had been willing to serve on a British or allied ship. He relates the various proposals made to him. A few days after the imprisonment the neutral seamen, including the suppliant, had a visit from Captain Powell, accompanied by the first mate and the chief engineer of the S.S. *Thijisville,* who proposed that they should continue and return to their service on board the ship leaving for England under the orders of the British Admiralty and that if they would accept this proposal they

would be liberated, but they refused. About three weeks afterwards, they received another visit from Captain Powell who again offered them their liberty if they would serve as seamen on ships of the British merchant marine and told them that their personal effects and baggage had reached the prison and that their pay had been deposited at the Matthewson Agency in Halifax, but they refused to take employment on ships of the British or other belligerent merchant marines. Regularly, during the whole of the unlawful imprisonment, captains of the British or other belligerent merchant marines, accompanied by the Governor of the prison or one of his officers, came to the cells of the neutral seamen, including the suppliant, and offered them employment on board their ship. Those who accepted these offers were immediately escorted on board the ships on which they had accepted employment but the suppliant always refused employment on any belligerent ships whether British or not. On one occasion when he had already spent several months in unlawful imprisonment the captain of a neutral ship, a Spanish ship, came to recruit seamen at the prison and asked him to serve on his ship. He immediately accepted but the Governor of the prison intervened and objected, saying "these men are reserved to the British marine". The suppliant explained that in refusing to serve on a belligerent ship he was merely availing himself of his rights. He did not act through enmity against the allied cause but only because his country Roumania was exposed by reason of her geographical situation to being forced to take part in the hostilities and range herself on the side of the enemies of the allies and in the eyes of his country he would have become a traitor. He did not want this. His acceptance would also have brought reprisals against his family in Roumania and meant certain death to him in the event of his capture.

The suppliant makes several complaints against his treatment while in the Rockhead prison. On several occasions he asked the Governor of the prison for permission to write to the Roumanian Consulate at Montreal for counsel and aid in pressing his rights but this was refused during the first three months of his unlawful imprisonment on the pretext that the Roumanian Consulate could not

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help him and that he would be liberated only if he agreed to take employment on a British or other belligerent nation ship bound for England.

The suppliant's other complaints are mainly of physical ill-treatment. About February, 1941, the prison authorities tried to subject him unlawfully to hard labour and on each occasion when he refused to perform it he was unlawfully put into solitary confinement. During 1941 he spent a total of almost six months in such solitary confinement on bread and water and without a mattress. Another complaint was that after the repeated refusals of the neutral seamen, including the suppliant, to serve on belligerent merchant marine ships the prison authorities at Halifax cut their rations so that they were unlawfully reduced. The suppliant says that in spite of his very strong constitution his general health was seriously affected by reason of his unlawful and inhumane treatment and that he began to suffer cramps in his back and continuous swelling of his feet to such an extent that the last times that he left solitary confinement the prison guards had to carry him to his cell.

A further complaint is that it was not until three months after the beginning of his unlawful imprisonment that he received any writing paper and envelopes. He then wrote and addressed several letters to the Consul General of Roumania in Montreal but he received no reply until about February 2, 1942, when he heard from the Consul General of Sweden, who was then in charge of Roumanian affairs in Canada, telling him that his case had been submitted to the Department of External Affairs at Ottawa. Later, he received a second letter from the Consul General of Sweden which cited two paragraphs of a letter from the Department of External Affairs of Canada which explained that the suppliant had been sentenced in December 1940, under Order in Council P.C. 4751, dated September 12, 1940, to imprisonment until he agreed to sail from Canada or could be deported, that he had constantly refused to serve on a ship leaving Canada, saying that he preferred to be interned rather than serve the allied cause, that he had been sentenced to hard labour in July, 1941, for refusing to serve on board his ship, that the medical officer in the Halifax prison had certified in August, 1941, that he was incapable of heavy work, that in October, 1941, he was

interrogated under Order in Council P.C. 2385, dated April 4, 1941, and that the Investigation Committee had recommended that he be detained until he could be interned.

The suppliant also alleges that during his unlawful imprisonment at Halifax he received treatment that was inhumane and worse than that accorded to enemies.

The suppliant then relates the story of his various internments. On or about February 2, 1942, he was brought under escort from the Halifax prison to the Canadian Immigration Hall at Halifax where he was unlawfully imprisoned until March 2, 1942. While he was held there by the Canadian Immigration authorities he was interrogated by a Canadian Immigration Board of Enquiry and the officers of this board renewed the offers of liberation if he would accept service on ships of the British or other belligerent merchant marines but he refused for the reasons already indicated. On March 2, 1942, escorted by two officers of the Royal Canadian Mounted Police, he was taken by train from Halifax to Fredericton and there brought to the Fredericton internment camp where he remained unlawfully interned until August 30, 1945. On that date he was taken under escort to internment camp No. 23 at Monteith where he arrived on September 2, 1945, and remained unlawfully interned until July 6, 1946. On that date he was taken to internment camp No. 32 at Hull (the common jail) where he was unlawfully interned and imprisoned until January 20, 1947.

The suppliant alleges that during his unlawful internment in the Fredericton, Monteith and Hull camps he was treated more harshly than the other internees, as if he were a traitor, that he was not allowed to write to his family through the Red Cross, that he did not receive the medical care accorded to interned enemies and that, finally, in the Hull internment camp, the Hull common jail, almost two years after the cessation of hostilities with Roumania, he was put in a cell.

On September 26, 1946, the suppliant became seriously ill and was taken to the R.C.A.F. hospital at Rockcliffe where he remained until October 28, 1946, when he was taken back to the jail at Hull where he remained unlawfully imprisoned until January 29, 1947. On that date he was taken under escort to Montreal and handed over to the

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Canadian Immigration authorities at 1162 St. Antoine Street where he was unlawfully imprisoned under guard until April 17, 1947, when he was finally liberated.

The suppliant also complains that prior to February, 1941, he had not been advised that any administrative or judicial decision had been made against him and that he had never appeared before a board of enquiry or had an opportunity to make any defence to any charge, complaint or proceeding against him.

The suppliant then claims that his physical and mental health has been seriously affected during his imprisonment and internment and will be permanently impaired and that he has not been able to engage in his normal occupation since his liberation and that he will not be able to do so in the future.

The suppliant claims damages amounting to $157,150 made up as follows, namely, $85,000 for loss of liberty, injuries to the person and physical and mental suffering as the result of his imprisonment, $10,000 for moral suffering during his imprisonment, $30,600 for monetary loss during his imprisonment, $6,550 for monetary loss since his liberation because of his imprisonment and $25,000 for monetary loss in the future because of his physical and mental weakness as a result of his imprisonment and internment.

The suppliant filed his petition of right with the Under Secretary of State on August 15, 1947. In due course a fiat was issued and the petition was filed in this Court on November 24, 1947. In this the suppliant claimed $40,325 damages. No further step was taken by the suppliant until about the beginning of April, 1952, when a copy of the petition was served on an officer of the Department of Justice. On September 22, 1952, the solicitors for the suppliant filed an amended petition of right claiming $142,150 as damages. On November 6, 1952, the Deputy Attorney General filed a statement of defence on behalf of Her Majesty. Then on November 18, 1952, counsel for the respondent moved with the consent of counsel for the suppliant for an order that the points of law raised by the pleadings be set down for hearing before this Court and be disposed of before the trial herein and that a date be fixed for the hearing of the argument on the said points

of law and an order was made accordingly, the question of law being stated as already set forth. On the opening of the argument on the question of law counsel for the suppliant moved for leave to amend the petition of right still further and leave to do so was granted.

The allegations made by the suppliant are disputed. In the statement of defence filed on behalf of Her Majesty the Deputy Attorney General alleges that he does not admit them. He also pleads that the suppliant was detained pursuant to an order made on or about December 20, 1940, under Order in Council P.C. 4751, dated September 12, 1940, made by the Governor in Council under the War Measures Act and, later, that he was detained pursuant to an order made by the Minister of Justice on or about February 19, 1942, under regulation 21 of the Defence of Canada Regulations, made by the Governor in Council under the War Measures Act and, still later, that on or about June 27, 1945, he was ordered to be deported and was thereupon detained under the Immigration Act. The Deputy Attorney General also submits that the petition of right does not allege facts giving rise to any liability for which Her Majesty is bound or may be adjudged to respond or claim relief for which a petition of right will lie.

It is, therefore, not to be assumed, except for the purpose of the question of law, that the allegations in the petition of right are true or that the suppliant was unlawfully imprisoned or interned or that the acts of which he complains were wrongful. All these matters are put in issue by the pleadings. But these issues are not before the Court in these proceedings. It is not now called upon to decide whether the suppliant's imprisonment and internment were unlawful as the suppliant alleges or lawful as is contended on behalf of Her Majesty. Nor is any decision presently sought on the legality or otherwise of the other acts of which the suppliant complains, if they were committed.

The only matter that is before the Court is the bare question of law, namely, whether the suppliant has any legal claim against the Crown even if he should be able to prove that the allegations in his petition of right are true and establish that he was unlawfully imprisoned and interned and that the acts of which he complains were

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wrongful. The answer to this question must, in the present state of the law, be in the negative. Consequently, I must hold that even if the allegations in the petition of right are true and even if the suppliant was unlawfully imprisoned and unlawfully interned and even if the acts of which he complains were wrongful he is not entitled to any relief as against the Crown and his claim for damages must be wholly denied. The reason for this is that in the present state of the law no petition of right lies against the Crown in right of Canada for any tort, or "faute", to use the language of Article 1053 of the Civil Code of Quebec, committed by an officer or servant of the Crown while acting within the scope of his duty or employment except for such tort or segment of "faute" as will give rise to a claim expressly permitted by statute, as under section 19(*c*) of the Exchequer Court Act, R.S.C. 1927, chap. 34, and that the allegations in this petition are not allegations of acts of negligence within the meaning of that section.

I had occasion to deal with this question recently in the case of *Palmer* v. *The King* (1). There I held that the law on this subject was as I have stated it. I also pointed out that it had been the subject of adverse comment by students of the law including such an eminent English legal historian as Professor W. S. Holdsworth who considered that an obvious failure of justice had arisen from the rule that the modern doctrine of the employer's liability for the torts of his servants was not applicable to the Crown and that the rule was due to failure on the part of the judges who formulated it to understand the true basis of the employer's liability, namely, that it rested on grounds of public policy rather than on the grounds commonly assigned, as set out in the *Palmer* case (*supra*), at page 367. But while this is so, and I agree with the criticism made by Professor Holdsworth, the fact remains that the law is settled and only Parliament can change it. A measure of reform that will remove this defect in the law is before the present session of Parliament but it cannot affect the present case.

(1) [1951] Ex. C.R. 348 at 364.

There would be no need for any further discussion in this case were it not for the pleading in paragraph 74 of the finally amended petition, which reads as follows:

74. L'incarcération et l'internement du réquerant, tels que décrits ci-dessus, sont dûs à la faute et/ou la négligence d'employés, de fonctionnaires, d'officiers et/ou de serviteurs de la Couronne, pendant qu'ils étaient dans l'exercise de leurs fonctions ou de leur emploi.

I assume that the purpose of this pleading is to bring the suppliant's claim within the ambit of section 19(c) of the Exchequer Court Act, which reads as follows:

19. 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;

Obviously, the pleading does not come within the words of this section. There is no allegation in the paragraph or elsewhere in the petition that the suppliant's injury to the person was the result of any negligence on the part of any officer or servant of the Crown. On the contrary, it is claimed that it was the result of his imprisonment. What is alleged is that the imprisonment and the internment were due to "the fault and/or negligence of employees, officials, officers and/or servants of the Crown."

But the objection goes deeper. To engage the responsibility of the Crown to a suppliant under section 19(c) it must be shown that an officer or servant of the Crown, while acting within the scope of his duties or employment, was guilty of such negligence as to make himself personally liable to the suppliant, for the Crown's liability under section 19(c), if the term liability is a precise one to apply to the Crown, is only a vicarious one. Consequently, the suppliant must allege facts from which negligence on the part of an officer or servant of the Crown may be found, that is to say, facts showing that the officer or servant of the Crown owed a legal duty, whether imposed by statute or arising otherwise, to the suppliant to take care to avoid injury to him, that there was a breach of such duty while the officer or servant was acting within the scope of his duties or employment and that injury to the suppliant

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resulted therefrom: *vide Lochgelly Iron and Coal Co.* v. *McMullan* (1); *Hay* or *Bourhill* v. *Young* (2); *The King* v. *Anthony* (3).

It is now settled that negligence is a specific and independent tort: *vide Grant* v. *Australian Knitting Mills* (4); *Lochgelly Iron and Coal Co.* v. *McMullan* (5). But it is of comparatively recent origin, dating back only to about 1825, when it emerged out of the action on the case into its separate existence as a tort by itself: *Vide* Prosser on Torts, at page 171. And it cannot yet be said that its limits have been fixed with precision. It is still a "complex concept of duty, breach and damage", as Lord Wright put it in the *Lochgelly Iron and Coal Co.* case (*supra*), at page 25. With this in mind, I proceed to a statement of the essential elements of actionable negligence as they have thus far been determined. In the *Lochgelly Iron and Coal Co.* case (*supra*), at page 18, Lord MacMillan defined the essentials of negligence as follows:

> Here then are the essential elements of a case of negligence. Where two persons stand in such a relation to each other that the law imposes on one of these persons a duty to take precautions for the safety of the other person, then, if the person on whom that duty is imposed fails to take the proper precautions and the other person is in consequence injured, a clear case of negligence arises.

A brief definition to the same effect is suggested by Charlesworth on the Law of Negligence, 2nd Edition, at page 10:

> Negligence is a tort, which is a breach of a duty to take care imposed by common or statute law, resulting in damage to the complainant.

While this definition is useful it requires amplification for it is necessary to know when the duty arises and what care is required. So far, the Courts have not been in full agreement on the principle to be applied in determining when the circumstances are such as to give rise to the duty to take care. There have been several attempts to state the proper principle but I shall refer only to the statement made by Lord Atkin in *Donoghue* v. *Stevenson* (6) where he said:

> You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour. Who, then in law, is my neighbour? The answer seems to be—persons who

(1) [1934] A.C. 1.
(2) [1943] A.C. 92.
(3) [1946] S.C.R. 569.
(4) [1936] A.C. 85 at 103.
(5) [1934] A.C. 1 at 23.
(6) [1932] A.C. 562 at 580.

are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.

This statement has been the subject of much discussion and some criticism by text book writers: *vide* Pollock on Torts, 15th Edition, at page 326; Salmon on the Law of Torts, 10th Edition, at page 433; Prosser on Torts, at page 181; and Charlesworth on the Law of Negligence, 2nd Edition, at page 12. There have also been many references to it in the Courts. But, while it has been criticized as being too wide and an over-simplification of a difficult problem, it can safely be said that it is generally accepted. It is one of the classical statements of this century.

When it has been shown that a duty to take care arises it is necessary to consider the standard of care to be applied. This is a question of law. Ordinarily, the standard is that of a reasonable man, that is to say, reasonable care under the surrounding circumstances. But there are cases in which a statute not only imposes a duty of care but also prescribes the standard of care to be used. Breach of such duty through failure to do what the statute prescribes, regardless of whether there was reasonable care in the ordinary sense, is called statutory negligence. The leading case on this is the *Lochgelly Iron and Coal Co.* case (*supra*). There, at page 23, Lord Wright said that the breach of the statutory duty has been correctly described as statutory negligence but, strictly speaking, it would be more appropriate to describe it merely as a breach of statutory duty.

Without elaborating the matter further I adopt the statement in Charlesworth, at page 20, that actionable negligence consists of the following elements, namely, circumstances giving rise to a duty to take care owing to the complainant, failure to attain the standard of care prescribed by the law for the fulfilment of that duty and actual damage suffered by the complainant.

Thus in a claim under section 19(*c*) of the Exchequer Court Act it is necessary to allege the facts from which actionable negligence within the meaning described may properly be found.

In the suppliant's petition of right the necessary allegations to warrant a claim for such actionable negligence do not appear.

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Counsel for the suppliant argued that the imprisonment of the suppliant was an act of negligence. He submitted that there was a duty on the part of the Canadian Immigration authorities not to imprison the suppliant, a neutral seaman, unlawfully, that when they imprisoned him they committed a breach of this duty and thus were guilty of negligence. A similar argument was made in respect of the other acts of which the suppliant complains. This submission is untenable. Its acceptance would mean either that every tort or wrongful act, being a breach of a legal duty, would be negligence or, alternatively, that the word negligence in section 19(*c*) of the Exchequer Court Act should be read as if it meant tort, or "faute" in the French version.

Indeed, as I listened to counsel's argument it seemed to me that he assumed that the word "negligence" in section 19(*c*) of the Exchequer Court Act meant the same thing as the word "faute" in section 1053 of the Civil Code of Quebec. The words are not synonymous. Section 1053 of the Civil Code reads as follows:

1053. Toute personne capable de discerner le bien du mal, est responsable du dommage causé par sa faute à autrui, soit par son fait, soit par imprudence, négligence ou inhabilité.

And in the English version:

1053. Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

It is clear that the term "faute" in section 1053 is much wider in its scope than the term "negligence" in section 19(*c*) of the Exchequer Court Act. Moreover, while negligence is an independent tort in the Common Law provinces of Canada that concept is unknown to the civil law of Quebec where "négligence" is, so to speak, only a segment of "faute", and not an independent delict. The difference in concepts may have had something to do with counsel's submission. Whether that is so or not, the fact remains that even to the extent that the suppliant's cause of action, if any, arose in Quebec the Crown in right of Canada is responsible only for that segment of "faute" on the part of its officer or servant while acting within the scope of his duties or employment that amounts to negligence. For all other segments or forms of "faute" the responsibility of the Crown cannot be engaged.

Thus it is plain that the allegations of unlawful imprisonment and internment in the suppliant's petition cannot be regarded as allegations of acts from which actionable negligence within the meaning of section 19(*c*) of the Exchequer Court Act may properly be found. They are put forward as allegations of intentional acts, and not as breaches of a duty to take care, and the pleading in paragraph 74 of the petition that the imprisonment and internment were due to "fault and/or negligence" is argument rather than an allegation of circumstances giving rise to a duty to take care, breach of such duty and resulting damage.

Counsel for the suppliant realized this on the resumption of the argument after his request for an adjournment and put forward a different submission. He referred to Order in Council P.C. 4751, dated September 12, 1940, which authorized the detention of alien seamen when unwilling to serve on a ship sailing from Canada. It was under this Order in Council that an order of detention was made against the suppliant resulting in his imprisonment in Halifax. Section 4 of this Order in Council provided as follows:

> (4) The order for detention shall be issued by an Immigration Board of Inquiry or officer acting as such, appointed or authorized as the case may be, by the Minister under the authority of the Immigration Act, after an inquiry and the provisions of the said Act respecting Appointment, Powers and Procedure of Boards of Inquiry shall apply *mutatis mutandis* to such inquiry.

It was alleged in the petition that the order for detention was made without an enquiry first having been held. On this allegation counsel submitted that section 4 of the Order in Council was tantamount to a statutory imposition of a duty to take care enacted for the benefit of alien seamen, of whom the suppliant was one, and that the detention of the plaintiff without first having an inquiry was a breach of the statutory duty and amounted to statutory negligence. I do not agree. The simple answer to the argument is that the requirement of an order of inquiry was a statutory condition precedent to a valid detention. If, therefore, the order of detention was made without a preliminary enquiry, as alleged, it was not made under the authority of the Order in Council and was unlawful. If so, it was a wrongful act, but plainly not an act of negligence.

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Nor can the other acts of which the suppliant complains be considered as acts of negligence. They are not alleged as such. Several of them are clearly acts of disciplinary action and the others are related thereto. As such their commission had nothing to do with failure to carry out a duty of care for the safety of the suppliant.

Thus the alleged unlawful imprisonment and detention and the other alleged wrongful acts of which the suppliant complains are all acts that fall outside the ambit of negligence within the meaning of section 19(*c*) of the Exchequer Court Act. Consequently, a petition of right does not lie against the Crown in right of Canada for damages for any of them. This means that the question of law now before the Court must be answered in the negative. That being so, there is no object in proceeding to a trial of the facts for even if they were all proved the suppliant would not be entitled to any relief.

This disposes of the whole petition. There will, therefore, be judgment that the suppliant is not entitled to any of the relief sought by him in his petition of right and that the respondent is entitled to costs.

*Judgment accordingly.*