

IN THE MATTER OF THE PETITION RIGHT OF 1900  
 JOSEPH LAROSE ..... SUPPLIANT; June 11.

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

*The Exchequer Court Act, sec. 16 sub-sec. (c)—Rifle range—"Public work"  
 —Injury to person.*

The suppliant was wounded by a bullet fired, during target practice, from the rifle range at Côte St. Luc, in the District of Montreal. He filed a petition of right claiming damages for the injury he thereby sustained.

*Held*, that the rifle range was not a "public work" within the meaning of clause (c) of sec. 16 of *The Exchequer Court Act* (50-51 Vict. c. 16), and that the Crown was not liable. *City of Quebec v. The Queen* (24 S. C. R. 448) referred to.

**PETITION OF RIGHT** to recover damages arising out of an accident to the person on a Rifle Range belonging to the Dominion Government. The facts are stated in the reasons for judgment.

May 6th, 1900.

The case was tried at Montreal.

*N. Charbonneau* for the suppliant: The officers or servants of the Crown knew that the range was in a dangerous condition, and it was negligence for them to allow further shooting on it until it was made safe. The range is a public work, and the officers in charge of it have been guilty of negligence. The Crown is, therefore, liable.

*E. L. Newcombe, Q.C.* for the respondent; The case does not fall within the provisions of section 16 of *The Exchequer Court Act*, for two reasons: First, the accident complained of did not happen on the rifle

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range ; secondly, the *locus in quo* was in no sense a public work. The statute does not give a claim for injuries sustained "on the property of the Crown," but *on a public work*.

*A. Globensky* followed for the respondent : In order to support the petition three things must have occurred : (1) An injury on a public work. (2) Negligence causing the same by an officer or servant of the Crown. (3) The negligence having happened while the officer or servant was acting within the scope of his duties or employment.

*N. Charbonneau* replied.

THE JUDGE OF THE EXCHEQUER COURT now (June 11th, 1900) delivered judgment :

The suppliant was wounded by a bullet fired during target practice, from the rifle range at Côte St. Luc, in the District of Montreal. For the personal injuries thereby occasioned he brings his petition.

It is necessary always in cases of this kind to have in mind in the first place that the suppliant has no remedy by action unless his case falls within the terms of some Act of Parliament. The Crown is not liable for the wrong done unless expressly made so by statute. In this case the suppliant is without remedy unless it falls within clause (*d*) of the 16th section of *The Exchequer Court Act*, which gives the court jurisdiction in respect of every claim against the Crown arising under any law of Canada ; or within clause (*c*) of that section which gives the court jurisdiction to hear and determine any claim arising, among other things, out of injury to the person 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.

*The Militia Act* (R. S. C. c. 41 secs. 69-71) contains certain special provisions with respect to rifle ranges. By the 69th section it is provided, among other things, that at, or as near as possible to the head quarters, of every regimental division there may be provided a rifle range; that Her Majesty may order the appropriation of such land as is necessary for the same at a proper valuation; may stop, at such time as is necessary during the target practice of the Active Militia, the traffic on any roads, not being mail roads, that cross the line of fire; and may make such other regulations for conducting target practice and for the safety of the public, as are necessary. And the section concludes with a provision that the owners of private property shall be compensated for any damages that accrues to their respective properties from the use of any such rifle range. It will be observed that in this case compensation is limited to damages accruing to property, and does not extend to personal injuries.

It is argued, however, that this rifle range is a public work, and that the necessary facts being established the suppliant is entitled to succeed. As to that, the 7th section of the Act referred to provides that the Governor in Council may declare any work, for or connected with the defence of Canada, a public work within the meaning of *The Public Works Act*; and that all powers conferred by *The Expropriation Act* and the *Act respecting the Official Arbitrators* shall thereupon, with regard to such work, be conferred upon the Minister of Militia and Defence; and that all the powers conferred upon the official arbitrators, or any of them, by the Act lastly cited, shall then extend and apply to such work and to lands and property required for the same. The powers conferred on the official arbitrators are now exercisable by this court (*The Exchequer Court Act*, s. 58). By the second

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section of *The Expropriation Act*, clause (d), it is provided that the expression "public work", as used in that Act, includes, among other things, fortifications and other works of defence, and all other property belonging to Canada acquired and maintained at the expense of Canada.

Now it is clear, of course, that the rifle range is not a fortification. Neither can it be said to be a work of defence. Whether or not it could be said to be "a work for or connected with the defence of Canada," and so within the provision of *The Militia Act* (R. S. C. c. 41 s. 7) whereby the Governor in Council might declare it to be a public work may, perhaps, admit of some debate. If it were necessary for me to determine the question I would answer it in the affirmative. But there is no evidence of any such order in council having been made in respect of the rifle range at Côte St. Luc and it is not necessary now to express any opinion on that question. It is clear, however, that the rifle range in question is property, that it belonged to Canada and was acquired and maintained at the public expense; and that it is, using them in the largest sense, within the words of *The Expropriation Act* "and all other property which now belongs to Canada." But this general expression must, I think, be read in connection with words that precede it, and when one comes to deal with a rifle range with reference also to the special provisions of *The Militia Act* in respect to rifle ranges, so reading them I am not able to find that the rifle range at Côte St. Luc is a public work within the meaning of that term as used in *The Exchequer Court Act*, sec. 16, clause (c). In the case of *The City of Quebec v. The Queen* (1) Mr. Justice Taschereau expressed the opinion that the rock on which the Citadel of Quebec rests is not a public work or a work

(1) 24 S. C. R. 448.

at all within the meaning of the statute. That rock was property belonging to and maintained by Canada, and the argument in favour of holding it a public work was stronger, it seems to me, than any that can be urged in the present case. There was in that case some ground for saying that the rock formed in some sense part of a fortification or work of defence. Parliament has made provision for compensating persons for damages accruing to their properties from the use of a rifle range; but not for personal injuries, and it is not for the court to add to or to extend the remedies that Parliament has provided.

I am glad to know, however, that while the Crown contests any legal liability it has procured the sanction of Parliament to an appropriation with which to compensate the suppliant for his injuries.

By reference to the *Appropriation Act*, 1898 (Acts of 1898, p. 21) it will be seen that a sum of one thousand dollars was voted as a gratuity to "Joseph Larose shot at Côte St. Luc." This sum the Crown, without admitting legal liability, was willing to pay; but the suppliant thought it insufficient and brought his petition. The real controversy between the parties is as to the amount of compensation as to which I had hoped the parties would come to terms, as the case is one in which it seems to me the suppliant is deserving of the Crown's consideration.

*Judgment accordingly.*

Solicitors for the suppliant: *Charbonneau & Pelletier.*

Solicitor for the respondent: *E. L. Newcombe.*

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