

(1937) 07 PRI CK 0008

In the Privy Council

Case No : Privy Council Appeal No. 70 of 1936

The King

APPELLANT

Vs

Southern Canada Power Co. Ltd.

RESPONDENT

Date of Decision : 28-07-1937

Acts Referred:

Citation : (1937) AIR(PC) 319

Hon'ble Judges : Maugham, Alness, Wright, Macmillan, Lords Atkin, JJ.

Advocate : Redden, Blake, Charles Russell and Co., J. Marier, J.L. Ralston, Alphonse Decary, Crown, J.P. Prat, J.E. Perranet, for the Appearing Parties.

Judgement

Lord Maugham

This is an appeal by special leave from a judgment of the Supreme Court of Canada dated 15th January 1936, reducing the amount of damages awarded by a judgment of the Exchequer Court of Canada, rendered on 29th December 1933, in favour of the appellant, from \$80,923.20, with interest thereon from the date of the judgment, to \$31,41803. There is a cross-appeal, also by special leave, by which the respondents in the original appeal seek to have the judgment of the Supreme Court reversed and the action dismissed. It will be convenient to describe the original appellant as "the Crown" and the original respondents as "the Power Company".

The litigation arises from the fact of the construction by the Power Company in the year 1925 of a large power plant and dam across the St. Francis River in the Province of Quebec about two and a half miles above a railway line and bridge belonging at the material time to the Crown in right of the Dominion of Canada, and managed by the Canadian National Railways Company. It is not in dispute that the power, plant and dam were erected according to plans approved by the Minister of Public Works of Canada pursuant to the provisions of a law of Quebec, generally known as the Watercourse Act (Revised Statutes of Quebec, 1925, Ch. 46). By S. 12 of that Act, it is provided in reference to any dam or similar structure in a river constructed pursuant to the provisions of the Act that, "the

owner or lessee of any such work shall be liable for all damages resulting therefrom to any person, whether by excessive elevation of the floodgates or otherwise." The action was brought by the Crown for damages alleged to have been caused by a disastrous rush of water and ice in the spring of 1928 by which damages of different kinds were occasioned to a railway embankment near the town of Drummondville, to rolling stock and in other ways. The learned trial Judge (Angers, J.), after a trial which lasted fourteen days and at which more than a hundred witnesses gave evidence, came to the conclusion, which he stated in a very careful judgment, that the Power Company's dam "was responsible for the wash-out of the railway embankment at Drummondville on Sunday. 8th April 1928", and he awarded to the Crown the sum of \$80,923.20 as damages.

On the appeal to the Supreme Court of Canada, that Court by a unanimous decision agreed with the trial Judge that the Power Company's dam was responsible for the washing out of the railway embankment. As will be seen, there was a difference of opinion on other matters arising on the appeal; but the question whether the tremendous rush of water and ice which occasioned some at least of the damage, was caused by the interference of the Power Company with the natural condition of the St. Francis River, is a pure question of fact. Their Lordships see no reason for departing from their long established rule in relation to concurrent findings of fact, and they must accordingly deal with this appeal upon the basis that this difficult question has been decided adversely to the Power Company. It will accordingly be necessary to state the facts only so far as they are relevant to the other questions that arise on the appeal.

The dam of the Power Company, commonly called the Hemmings Falls Dam, raised the level of the water upstream by 9'2 feet and created a basin about 5 miles in length where there had previously been one about 3 miles in length. This basin had also become much wider. The dam consists mainly of a concrete wall about 54 feet in height, and there are of course sluice-gates and a spillway in connexion with it. About 5 miles upstream from the dam there are some rapids called the Dauphinais Rapids. At the foot of these rapids near an island called "La Ronde", No. 71 of the Township of Wickham, an extensive jam of broken ice and frazil had formed before the end of March 1928. It was almost totally obstructing the river, since it rested upon the bed of the river, extended from shore to shore, and was some 20 to 25 feet high.

About the 4th April weather of remarkably warm character set in. The minimum temperatures in the neighbourhood were well above freezing point and the maximum temperatures rose steadily and on 6th and 7th April exceeded 70°F. The snows on the banks of the river melted rapidly and water and ice began to come down in large quantities from above the jam. At about half past four in the evening of Saturday the 7th April the Dauphinais Rapids jam finally gave way and the ice flowed down the river till held up by the ice in the basin above the Hemmings Falls Dam. On Easter Sunday, the 8th April, at about one o'clock in

the afternoon, the whole basin above the dam was filled with broken ice and frazil (ice needles which form in waters flowing too rapidly to allow the formation of surface ice) gradually piling up where it was held by the dam. This artificial jam, if it may be so described, must be taken according to the findings above mentioned to have occurred at a place where it would not have occurred in nature. At 3 P. M. on Easter Sunday the water in the basin having risen, this jam suddenly gave way and vast quantities of ice and water amounting, it is said, to 600 million cubic feet rushed over the dam and in due course reached the railway bridge over the river some 2½ miles downstream. The river here runs from south to north. The railway which crosses the bridge is the line from Quebec to Montreal, and the station close to the river is at the town of Drummondville, which is on the west side of the river. Before reaching that station the line, coming from Quebec, crosses a viaduct over a highway, and reaches the railway bridge some 100 feet further on; but between the viaduct and the bridge there is an embankment of gravel about 90 feet in length and 20 feet in height. On the other, the west side of the bridge, there is another similar embankment. North of the railway bridge and close by there is a road bridge which carries the road from Drummondville in the direction of Quebec.

When the flood reached the bridge on 8th April, the railway embankment on the east side of the river began to be undermined by the sudden rush of water and ice. The sleepers and rails were soon hanging over a gap. A passenger train from Quebec bound for the City of Montreal was expected. It was due at 4.15 at Drummondville, about half a mile from the bridge, and it was on time. A woman residing on the East side of the river, Madame Malvina Grondin, whose name deserves to be recorded for her exceptional presence of mind and energy, had been watching the rising flood of water and ice. She heard the whistle of the locomotive, and having told her sister and child who were with her to save themselves, she ran along the track towards the approaching train. She signalled and doubtless screamed to the engineer to stop and he at once applied the emergency brakes. She called to the fireman who was leaning out of the cab to jump; he jumped and in jumping knocked her down. The brakes greatly reduced the speed of the train, but the engineer could not altogether stop the train before the gap was reached and the locomotive and two leading cars subsided or plunged downwards into the water. The engineer was so seriously burnt in the cab of his engine that he died within a week. Two men in the baggage car were drowned. Several passengers were injured. The cars and of course the track were badly damaged. The fireman escaped.

As already stated the Crown recovered judgment in the Exchequer Court of Canada for the full amount of the claims less only the sum of \$600, being the amount of a gratuity made to the woman who had signalled the train to stop. The different items of damage in the claim fell into three general classes. Firstly, there was the damage involved in the destruction of the embankment and the damage to the tracks amounting in all to \$18,259.04. It should be explained that the bridge itself as in no way injured. Secondly, the cost of repairs to the

locomotive and the cars and the cost of auxiliary and wrecking train service, and of the diversion of the train service. These items amounted to \$43,671.81. Thirdly, there was a class of items made up of disbursements for medical and hospital services, funeral and ambulance expenses, indemnities to passengers and employees, wages paid to the disabled conductor of the train and the \$600 gratuity paid to Madame Grondin. The items in this class amounted to \$19,592.35.

There was a preliminary objection raised by the Power Company which, if successful, related to the whole action, namely a contention that by statute the right of action was vested in the Canadian National Railways Company and that that Company alone could sue for the damages in question and that the action should not have been brought in the Exchequer Court of Canada. This objection failed in the Supreme Court as in the trial Court but it is raised by the cross-appeal. In the Supreme Court all the Judges held that the third class of damages amounting to \$19,592.35 was not recoverable, and the Crown has abandoned its claim to recover these damages which need not further be mentioned. The learned Judges held unanimously that the Power Company was responsible for the damage caused to the embankment, the tracks and the diversion of the train service, i. e. \$31,418.03. Assuming that the preliminary objection fails, and that the main question of responsibility is not now open having regard to the concurrent findings above mentioned, the Power Company does not dispute liability for these damages. But the Supreme Court by a majority of three to two (Cannon, Dysart and Crocket, JJ. against Lamont and Davis, JJ.) held that the damages caused to the locomotive and the two cars and certain incidental expenses were due to the failure of the railway employees to guard against the danger to the railway embankment and that the Power Company was accordingly relieved from liability in respect of this item of damage which amounts to \$30,512.82. The judgment of the trial Court was therefore reduced to the sum of \$31,418.03. Hence the present appeal is by the Crown claiming to recover the additional sum of \$30,512.82 and interest, while the cross-appeal by the Power Company seeks to set aside the whole judgment on the ground that the Crown is not entitled to sue. The alternative claim to set aside the judgment on the ground that the events which led to the damage were not due to the dam at Hemmings Falls is one which for the reason already given must be rejected by their Lordships. On the objection that the Crown had no right to sue and that the action should not have been brought in the Exchequer Court of Canada, the Power Company has failed to obtain any encouragement from any of the six Judges who have had to deal with the case. It seems to their Lordships that on these points there is little to add to the admirably clear statement contained in the judgment of Davis, J. concurred in apparently by the other learned Judges. After stating the contention, Davis, J. observed :

The learned trial Judge carefully reviewed the statutory law upon the subject and concluded, I think rightly, that the Crown was the owner of the railway and had never given up its right to sue for any claim it had in connexion with the

operation of the railway. The particular section of the railway in which the accident occurred has an interesting history as part of the old Intercolonial Railway, it having become the duty of the Government of Canada by virtue of S. 146, British North America Act, to provide for the commencement within six months after the Union of a railway connecting the River St. Lawrence with the City of Halifax in Nova Scotia, and for the construction of such railway without intermission and its completion with all practicable speed. It was in the fulfilment of that duty imposed upon the Government of Canada by the Act of Confederation that the undertaking of the Drummond County Railway Company was acquired in 1899, and thereafter formed part of the Intercolonial Railway. It became and has continued to be the property of His Majesty in right of Dominion of Canada. The ownership has never been conveyed to the Canadian National Railways Company, but to that company the management and operation of the railway have been entrusted by statute. While a right of action was given to the railway company by S. 33, Canadian National Railway Act, R. S. C. 1927, Ch. 172, and this action might have been taken in the name of the Canadian National Railways Company, His Majesty in right of the Dominion of Canada did not relinquish his right as owner to sue. That being so, there is no ground for the further objection that the action should not have been brought to the Exchequer Court of Canada. The learned trial Judge has carefully and correctly reviewed and stated the pertinent statutory provisions and the authorities, and it is unnecessary to repeat them.

It may be added that S. 33, Canadian National Railway Act, using as it does the word "may" in empowering certain actions, suits or other proceedings to be brought by the Canadian National Railways Company, contains nothing to indicate that the Crown, in right of the Dominion, was giving up its right to bring such proceedings. There was an obvious convenience, from the point of view both of Crown and subject, in permitting the managing company, though it possessed as owner neither the line nor the rolling stock, to bring actions and to be sued without the fiat of the Attorney-General; but it seems to their Lordships that no good reason can be stated for holding that the Crown by implication was itself precluded from suing. Their Lordships observe that this conclusion is in line with a statement which is to be found in the judgment of this Board in *Dominion Building Corporation, Ltd. v. The King*, (1930) AC 90=99 LJ PC 49=142 LT 77=46 TLR 22 at p. 96. The question as to the correct quantum of damages must now be dealt with. It raises two points: first, a question as to the true construction of S. 12, Watercourse Act (R. S. Q. 1925, Ch. 46) and secondly, a question of fact which will be defined later upon which the right to recover the damages to the locomotive and two cars will turn.

The Watercourse Act of 1925 was originally enacted as 19-20 Vict. Ch. 104, and has been the subject of many judicial pronouncements, some of which have been referred to in the judgment of Cannon, J. in the Supreme Court. He held that the damages contemplated by S. 12 of the Statute are those suffered by any riparian owner in respect of his riparian property either above or below the dam, and

must be limited to actual damages caused to the owner of a riparian piece of land as a result of the construction and maintenance of the dam. This view has not found favour with any of the other Judges, and their Lordships are unable to accept it. It may be observed that it has always been held in Quebec that S. 12 is not limited to damages caused by the original construction of a dam and that damages occurring long after the construction is complete can be recovered in the Courts of Quebec; and this view was not contested at the hearing. Why then should the generality of the words "all damages resulting therefrom to any person" be limited in the way suggested ? It is plain that lands and houses belonging to persons who are not riparian owners but occupiers of low-lying land in the vicinity of the river, may well be damaged as the result of a flood due to the dam. Why should these people not be within the words "any persons"? Moreover it is difficult to see why the liability imposed on the persons who are allowed under a statute to interfere with the flow of a natural water-course on the terms of being liable for all damages should be limited in the way suggested. On this point the judgments of Lord Finlay and Lord Dunedin in *Greenock Corporation v. Caledonian Railway*, (1917) AC 556=86 LJ PC 185=117 LT 483=81 JP 269=15 LGR 749=62 SJ 8= 33 TLR 531 and the authorities therein cited are conclusive to show that at common law, apart from statute, the duty of one who obstructs the natural flow of a river is to prevent damage, and if damage results to any persons he will be liable to them irrespective of whether they are riparian owners or not.

Their Lordships are of opinion, in agreement with the other Judges before whom this case came, that the liability under the section cannot be limited by the Articles of the Code of Quebec dealing with real servitudes; and they think that the authorities cited by Cannon, J. have not the effect which he attributes to them, though no doubt Judges dealing with cases of injury sustained by riparian owners have at times used language which referred only to the cases they were considering. Their Lordships need not add anything in relation to the final words "or otherwise" in the section, since it is well settled in Quebec that they are quite general : see *Proulx v. Tremblay*, (1881) 7 QLR 353, where Sir L. N. Casault (at p. 358) remarks after quoting the section "Cette dernière expression, "ou autrement," ne laisse aucun recours a decouvert; elle les comprend tous". It is now necessary to deal with the question whether the Power Company ought to be held liable for the damage to the locomotive and cars disallowed as already stated by the majority of the Supreme Court.

In order to appreciate this point, some further facts should be stated. The railway bridge over the River St. Francis was constructed in the year 1887 by the Drummond County Railway Company. The connecting embankments on the east and west sides of the bridge were constructed of the gravel material commonly used in the district. They were normally on land above the level of the water; but in floods and freshets the lower parts of them would be under water. In 1899 the Government of Canada bought the railway and undertaking. As already stated the Hemmings Falls dam was built in 1925. There was also a much smaller dam,

originally of wood, some 1100 feet upstream from the bridge; but the part it played as a cause of the accident is so small that it may for the present purpose be disregarded. The Canadian National Railway Company were managing not only the line from the City of Quebec to the City of Montreal but a line with a station at Richmond, 25 miles in a straight line from Drummondville and about 42 miles upstream from the railway bridge. The thaw having begun at the beginning of April, the railway tracts at Richmond were flooded, and traffic over them was stopped. The fact is mentioned because the Power Company rely upon it. It was a matter of general knowledge that the ice jams on the river would break up in a few days, and when that happened the river at the railway bridge would no doubt rise several feet. Floods on such occasions are not unusual on this part of the river. Before the dam was constructed, there were floods in 1887, 1913, 1915 and 1921; after the dam was made (in 1925) there was a very severe flood in 1927 which gave rise to several actions against the Power Company. It should be mentioned that the learned trial Judge found that the three worst floods in that section of the river were those of 1927, 1928 and 1932. The reasons which induced the majority of the Supreme Court to come to the conclusion that the Crown could not recover damages in relation to the locomotive and the two cars are very clearly stated in the judgment of Dysart, J. After describing the "break-up" which caused the damage on Sunday, 8th April, he proceeds as follows :

For some days prior to the wash-out, the local community was well aware of the condition of the river, and many citizens were watching the progress of the flood, and on Sunday, for several hours preceding the final burst, and during its progress, hundreds of citizens lined the banks, watchful and expectant. Although the railway company has within a few hundred yards of the embankment a station at which it maintains a staff, its railway officials or employees do not appear to have been on the scene. There is no suggestion that at any time during the several days preceding the wash-out nor during the final critical hours, any steps were taken by them to safeguard the trains; even when the washing-out process began - and it continued for some little time before finally completed-the only person of all the throng to do anything effective in giving warning to approaching trains was Madame Grondin whose action in the matter has been already described. He continues thus:

Common knowledge of the conditions which had been prevailing should have been sufficient to put railway officials on guard as to possibility - not to say probability-of danger to the embankment and connecting bridge with all that such dangers entailed. The mere fact that the Power Company's employees did not call upon the railway employees to take precautions does not of itself relieve the latter from performance of their duty--nor mean that the need of precautions was not apparent, we may fairly suppose the appellant's employees were engrossed in trying to minimize the flooding and to protect their own property, and that they naturally assumed that the railway employees would look after the protection of railway property. In all these circumstances, the failure of the

railway employees to safeguard the train was a failure in an obvious duty, and relieves the appellant from responsibility for all damage resulting directly and indirectly from the destruction of the train.

If the employees of the Railway Company had owed a duty (on behalf of the owners) to the Power Company to safeguard the embankments and the bridge from possible damage arising from a spring "break-up", these reasons if fully justified on the evidence would have considerable force. In the first place however, their Lordships must observe that there was no such duty in a legal sense since they are dealing with the obligations of the Power Company under a statute; and that no question of negligence or contributory negligence properly so called on the part of the employees of the Railway Company can arise. The liability of the Power Company under S. 12, Watercourse Act, for the damages resulting from the interference with the natural flow of the river is not qualified in any way. This is not to say that claims for damage in such a case can include damages due to the foolish and irrational acts of claimants. The latter are expected to behave as reasonable men, and in the event of probable danger, to take such steps to avoid injury or damage as reasonable men would take and to minimize damage if an accident occurs. This obligation will not however require them to foresee dangers which ordinary men would not be likely to anticipate. The onus of establishing the case against the Crown on these lines is clearly on the Power Company. It is from this standpoint that their Lordships have examined the evidence in the case. The learned trial Judge in his judgment dealt with great care with the material before him relating to this point. He appreciated that there were two matters to be considered, first, whether the persons in charge of the railway in the Drummondville area ought to have foreseen for some days prior to 8th April the probability or possibility of the damage to the railway line when the break-up of the ice should take place, and should therefore have taken special precautions; and secondly, whether they ought to have stopped the approaching train on 8th April as soon as it became apparent that the two embankments or either of them was being seriously damaged by the ice and flood. He came to the conclusion that neither of these propositions had been made out, and since he had heard the evidence of many local witnesses and had carefully considered the mass of documentary evidence (records, plans, charts, photographs and so forth) as to previous floods, his view is entitled to great respect. As already stated Lamont and Davis, JJ. in the Supreme Court agreed with him, and held that no blame could be attached to those in charge of the railway for not foreseeing the danger to the bridge, or for not stopping the approaching train which met with so disastrous an accident.

In order to appreciate their view, certain circumstances of considerable importance should be stated. The first is that the embankments on both sides of the bridge, constructed as we have seen in 1887, had resisted the floods and the ice "break-ups" for 40 years without damage, and in particular had suffered no injury from the serious flood of 1927. The second is that there seems to have been no reason in the spring of 1928 for anticipating a worse flood at the railway

bridge than that of the preceding year. The third is that the officials of the Power Company who were carefully watching the progress of events above the dam, being naturally concerned with the possible damage to their Power-house and other buildings, gave no notice or warning whatever to the station-master or other railway employees at Drummondville that any exceptional debacle of ice and water was to be anticipated or had taken place. There was indeed till 3 P. M. on the 8th April nothing unusual in the height of the water at the dam; and the flooding at Windsor, where the railway lines are on low-lying land, was not exceptional and suggested no risk of danger below the dam. The recorded water level at Hemmings Falls on 7th April at 7 P. M. was 320''5 feet. It could be controlled, at least to some extent, by opening or closing the sluice-gates. They were fully opened, and the water level fell till, at 9 A. M. on the 8th, the level was 316''8 feet. By 3 P. M. this level had only increased to 317''4 feet; but a few minutes later it rose suddenly and reached its peak, namely, 325''6. It was at this moment that the ice, which had previously begun to move in the middle of the basin, leaped over the dam. When this unusual occurrence took place it did not apparently suggest danger to the employees of the Power Company; they sent no telephone message to the station as they might have done, and the persons who were there on duty could not know what had happened 27 miles upstream. It may be observed here that no such event took place on the debacle of 1927. In that year except for a few pieces of ice that went over the spillway, the large amount of ice in the basin melted gradually. It seems reasonable to suppose-as did Lamont and Davis, JJ. -that the Power Company's officials did not think there would be any trouble at the railway bridge due to the ice and water jumping the dam.

It is at first sight very strange to hear that on Sunday, the 8th April, a large number of citizens of Drummondville for some hours before the accident to the train were watching the progress of the flood; but if this statement is carefully analysed, it is difficult to see that it suggests that the officials of the railway company are in any way to blame in not stopping the train expected at Drummondville at 4.15 before it reached the embankment. The debacle or spring flood is of annual recurrence and on an Easter Sunday afternoon many sightseers would come to watch it. There was, however, nothing unusual to be seen till after 3.30. The water was fairly high, but normal for the season. The bridge and embankments were intact and an express had passed a little after 1 P. M. It was proved beyond doubt that the "washing out" of the embankments was remarkably sudden; and it seems to have been this circumstance which led to so many spectators continuing to watch the flood and the catastrophe and not one of them taking the course of running back a few hundred yards to the station and warning the station master that the embankments were giving way.

From this point of view the time factor is very important. The ice and water as stated came over the dam soon after 3 P. M., and could not have reached the railway bridge till about 3.40, perhaps 3.45, about half an hour before the train from Quebec was due. The railway men would in the ordinary course have been

on their way to the station or have already reached it, and it is not at all surprising that none of them were at the railway bridge watching the flood. The train could have been stopped at St. Cyrille, some five miles and-a-half from Drummondville, and apparently not at a later stage of its journey except by the method adopted by Madame Grondin; but their Lordships, like the trial Judge, have been quite unable on the evidence to conclude that the railway employees had or ought to have had any knowledge of the fact that an unusual flood of water and ice had reached the railway bridge, still less that some minutes later the railway embankments were being cut into by the ice and the water, a process which according to the evidence did not become apparent till shortly before 4 P.M. The evidence of Severin Pineau, an agent of the Canadian National Railway at Drummondville, may here be cited. On the day of the accident he was off duty. At noon he went to the river : the water was high, but normal for the season : it carried little ice. About 4 P. M. he went down towards the railway bridge. Large quantities of ice were then going down the river. After watching for some minutes he went closer to the bridge. He then noticed that at one place the embankment on the east side of the bridge was beginning to disintegrate. He at once thought of signalling the train to stop, but realised on looking at the time that the train had probably passed St. Cyrille and that he had not time enough to cross to the other side of the river to give the signal to stop. He telephoned to the station agent and told him to telephone; but it was too late to stop the train and at 4.13 the accident occurred. A number of witnesses speak to the suddenness of the collapse of the embankment. "C'est parti tout d'un coup" is a phrase which represents this impression. No doubt it is only an impression, for the undermining of a substantial embankment would take a little time even if bombarded by blocks of ice borne by a flood of water. The probability is that during the first minutes of the process it would not be noticed by persons at a higher level. The point is that the disintegration process was not apparent till a moment of time when the train, unfortunately up to time, was too near the embankment to be stopped by ordinary means. This fact is a sufficient answer to the criticism that the railway officials at Drummondville should have stopped the train, unless it can be established that special guards (two at least would have been necessary) ought to have been continually watching the embankments to see that they were not being damaged.

It seems to their Lordships that it is impossible in the circumstances to reach the conclusion that, the railway company acted with a lack of ordinary prudence in not placing such guards. There was no reason to suppose that the mass of ice and water would come over the dam in the way it did. In the high flood of the previous year, as already stated, it did not. It was impossible with ordinary prescience to foresee either the event or the time at which it would take place; nor was there any reason to suppose that that which did in fact happen would with such startling rapidity wash out embankments which had stood uninjured for 40 years. It seems to be a probable conjecture, though it is no more, that the unusually high temperature during the preceding three days had the effect of

thawing the surface of the embankments so as to deprive them of the resisting power which they would usually have possessed at the time of the annual debacle. The railway company took the usual precautions of having the whole of the line inspected daily. This duty was performed on Easter Sunday by one Noel Tessier, who passed the embankments between 7 15 and 7 30 a.m. and again about an hour later. Everything was then in order, and in the circumstances above stated there was no reason for anticipating that which actually happened some hours later. On a careful review of the whole of the evidence relevant to the issue now under consideration, their Lordships must come to the conclusion that the respondents have failed to establish any failure of the ordinary duty of managing the railway with reasonable care. The result is that there is no interruption of the chain of causation between the flood of water and ice due to the dam on 8th April and the damage caused to the on coming train, and this damage must therefore be taken to be part of the damages sustained by the Crown. The judgment of the learned trial Judge on this point concurred in by Lamont and Davis JJ. was correct. For these reasons the appeal must succeed with costs and the Crown must have judgment for a sum of \$30,512.82 and interest in addition to the sum of \$31,418.03 and interest. The cross-appeal must be dismissed with costs. Their Lordships will humbly advise His Majesty accordingly.