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IN THE MATTER OF THE PETITION OF RIGHT OF
 THOMAS PAGETSUPPLIANT ;

AND

HIS MAJESTY THE KING.....RESPONDENT

*Action for return of moneys paid by mistake—Legal process—Recovery—
 Demurrer.*

The suppliant brought his petition of right to recover from the Crown the sum of \$190 which he alleged he had paid under mistake to the Crown in settlement of an information of intrusion in respect of certain lands occupied by him. He also claimed \$500.00 for damages for the loss he alleged resulted to him on the sale of said lands by reason of the proceedings taken against him by the Crown. Upon demurrer to the petition,

Held, that the suppliant's petition disclosed no right of action against the Crown, and that the demurrer should be allowed. *Moore v. The Vestry of Fulham* ([1895] 1 Q. B. 399) followed.

PETITION OF RIGHT for the return of moneys alleged to have been paid to the Crown under mistake of title, and for the recovery of damages for the loss of money upon a sale of lands by reason of proceedings being taken against the occupancy of them by the Crown.

By the suppliant's petition, after setting out the boundaries of the lands in question, he alleged, in substance, as follows:

“In the year 1876, and whilst the said lot No. 4 was in the possession of your suppliant's predecessors in title, the Crown, through the officers of Her Majesty's Ordnance, wrongly asserted title to that part of said lot set forth in said information, and by mutual mistake of the Crown and its officers and the several owners of said lot, and through ignorance and mistake

on the part of owners of the said lot, a lease of a portion thereof claimed in said information was issued by the Crown to the respective owners of said lot.

“When the said information was served upon your suppliant on or about the 24th day of April, 1898, suppliant paid to the Crown through its solicitor D. O'Connor, Esq., Q.C., the sum of \$180 being the amount claimed in said information, and also the sum of \$10 for costs.

“Suppliant says, that when he paid the sum of \$190 all parties to the said action were in ignorance as to the true state of the title to the land claimed by the Crown, and that the same was paid as a result of the mutual mistake of the Crown and the owners of said land when the said lease was executed.

“Your suppliant further says, that at the time he paid the said sum the Crown had no right, title or interest in the said land and wrongfully compelled him to pay the said moneys, and that the same were paid through ignorance and a mutual mistake on the part of the Crown and himself.

“Your suppliant further says, that at the time he paid the said sum of \$190 he sold the said land to one Dunn, and by reason of the claim set up by the Crown to a portion of the said land which comprised some fifteen or twenty acres of valuable farm land, he was thereby prevented from obtaining any consideration therefor and was compelled to sell the said land at a loss of at least \$500.

“Your suppliant further says, that by the judgment of the Exchequer Court of Canada dated the 30th day of May, 1898, in the case of *The Queen v. Hall* (1), it was determined that the lease had been entered into through the mutual mistake of the Crown and the

1901
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 PAGET  
 v.  
 THE KING.  
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 Statement  
 of Facts.  
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(1) 6 Ex. C. R. 145.

1901  
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 PAGET
 v.
 THE KING.
 ———
 Statement
 of Facts.
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respective owners of said lot, and that the same was null and void.

“Your suppliant respectfully submits that he is entitled to be repaid the sum of \$190.00 with interest thereon at the rate of six per cent. per annum to the payment thereof, and the sum of \$500.00 damages.”

The Crown demurred to the petition upon the following grounds :

“The amount claimed in paragraph 8 of the suppliant’s petition was the amount of the money demand claimed in the information by Her Majesty’s Attorney-General for the Dominion of Canada, as stated in paragraphs 1 and 2 of the petition and the costs of the said information, and was, therefore, paid by compulsion of law and to settle and compromise a demand then being litigated, and cannot be recovered as money paid voluntary under a mistake of fact.

“The amount claimed in paragraph 10 of the suppliant’s petition cannot be recovered from the respondent because no breach of duty is set forth giving rise to any claim by way of petition of right against the Crown.

“Paragraph 10 does not state any wrongful act which would entitle the suppliant to recover in an action as between subject and subject.

“No claim is stated in the said petition of right to which effect ought to be given by judgment upon a petition of right against Her Majesty the Queen.”

January, 14th, 1901.

The demurrer was now argued.

F. H. Chrysler, Q.C., in support of the demurrer :
 The suppliant asks by his petition of right to have money paid under legal process restored to him. It is submitted that he cannot so recover. The principle has been recognised since the decision in *Marriot*

v. *Hampton* (1), over one hundred years ago, that money paid under compulsion of legal process cannot be recovered back. The latest case on the point to which I desire to direct the court's attention is: *Moore v. Vestry of Fulham* (2).

1901
 PAGET
 v.
 THE KING.
 Argument
 of Counsel.

As to the second ground of demurrer, no action will lie against the Crown for the loss of profits derivable from a sale of land. As between subject and subject, the action in such a state of facts would be on the case, for slander of title. Such an action sounds in tort, and is not maintainable against the Crown.

Again, the petition is demurrable in this behalf because it is not stated how the money was lost:

Again, between subject and subject malice should be averred in an action on the case for slander of title. *Baker v. Carrick* (3); *Smith v. Spooner* (4).

No action for tort can be brought against the Crown, except by statutory invasion upon the ancient safeguards of the prerogative.

A. E. Fripp, contra, contended that as the money was paid under the mutual mistake of the parties as to the title, the money was recoverable back.

Again, it was not paid upon a judgment as was the case in *Marriot v. Hampton*, but was paid upon the summons being served. Therefore the cases cited in support of the demurrer do not apply.

He cited *Kelly v. Solari* (5); *Durrant v. Ecclesiastical Commissioners* (6); *Duke de Cadaval v. Collins* (7).

F. H. Chrysler, Q. C., in reply: The rule is not that money paid under a judgment may not be recovered back, but that money paid under compulsion of legal process cannot be recovered back.

(1) 2 Sm. L. C. 409.

(2) [1895] 1 Q. B. D. 399.

(3) [1894] 1 Q. B. 838.

(4) 3 Taun. 246.

(5) 9 M. & W. 54.

(6) 6 Q. B. D. 234.

(7) 4 A. & E. 858.

1901
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 PAGET  
 v.  
 THE KING.  
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 Reasons  
 for  
 Judgment.  
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THE JUDGE OF THE EXCHEQUER COURT now (February 7th, 1901) delivered judgment:

This is a demurrer to the petition of right, by which the suppliant claims from the Crown the sum of \$751.00. Apart from interest, this amount consists of a sum of \$190.00 which the suppliant alleges he paid, by mistake, to the Crown upon being served with an information of intrusion; and a sum of \$500.00 for damages which he claims represents the loss that resulted to him on the sale of the lands mentioned in the information of intrusion.

The suppliant concedes that in respect of the latter amount the demurrer must be allowed, and it seems clear that it must also be allowed in respect of the moneys alleged to have been paid under mistake.

The principle governing the case was stated by Lord Halsbury in *Moore v. The Vestry of Fulham* (1) as follows:

“The principle of law has not been quite accurately stated by counsel for the appellant, because the principle of law is not that money paid under a judgment, but that money paid under the pressure of legal process, cannot be recovered. The principle is based upon this, that when a person has had an opportunity of defending an action if he chose, but has thought proper to pay the money claimed by the action, the law will not allow him to try in a second action what he might have set up in defence to the original action.”

There will be judgment for the Crown upon the demurrer.

*Judgment accordingly.*

Solicitor for the suppliant: *A. E. Fripp.*

Solicitors for the Crown: *Chrysler & Bethune.*

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(1) [1895] 1 Q. B. 393.