1915
March 15.

IN THE MATTER OF THE PETITION OF RIGHT OF

UBALD COURTEAU,

SUPPLIANT,

AND

HIS MAJESTY THE KING,

RESPONDENT.

Negligence—Prescription—Public work—Vessel—Shore.

The prescription for filing a petition of right is interrupted by the deposit of the petition with the Secretary of State.

An injury to an employee of the Crown while taking a Crown vessel on launch-ways owned and operated by a company on lands leased from the Crown, is not an injury happening "on a public work" within the meaning of sec. 20 of the *Exchequer Court Act*, and is therefore not actionable against the Crown; the mere fact of a chain breaking is not *prima facie* negligence of the Crown.

PETITION OF RIGHT to recover damages for personal injuries.

Tried before the Honourable Mr. Justice Audette, at Three Rivers, Quebec, January 29, 1915.

Bruno Marchand, for suppliant.

Alfred Désy, for respondent.

AUDETTE, J. (March 15, 1915) delivered judgment.

The suppliant brought his petition of right to recover a yearly rent of $312, or in the alternative, the lump sum of $3,000, for alleged damages arising out of bodily injury suffered by him while in the employ of the Dominion Government, on the shores of the St. Maurice River, in the Province of Quebec.

The accident happened on November 27th, 1912, and the petition of right was filed in this court on February 12th, 1914,—that is, more than one year after the accident, a delay within which the right of action would be prescribed and extinguished under the laws of the Province of Quebec. However, it appears from the documentary evidence that the petition of right was, under the provision of sec. 4 of the *Petition of Right Act*,[1] left with the Secretary of State on the 10th November, 1913 (See Exhibit No. 1). Following the numerous decisions upon this question in this Court, it is found that such deposit with the Secretary of State interrupted prescription within the meaning of Art. 2224 C.C. P.Q.

During the month of November, 1912, the Government District Engineer at Three Rivers instructed P. Hamel, the Captain of the Government Steamboat "The Montmorency," to take his vessel ashore, in winter quarters, upon the launch-ways of the St. Maurice Lumber Company. These launch-ways belong to the St. Maurice Lumber Company and have been erected by them upon lands leased from the Government. Permission was obtained from the company to haul the vessel upon the launch-ways upon the condition that it should be done at the cost of the Government and upon its (the latter) making all the necessary repairs for that purpose.

A cross-beam was placed at the head of the launch-ways and a pulley was fastened to this beam by means of a three-quarter inch chain. This chain snapped in the course of the work of hauling the vessel, and striking the suppliant on the arm, caused a fracture of the same. It would appear, under the evidence, that the size of the chain was sufficient and

[1] R.S.C. 1906, ch. 142.

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was of the usual strength for that class of work, and the resident engineer stated that all chains bought by the Government were tested chains. There is no satisfactory evidence of defect or weakness in the chain or to establish what caused it to break; nor is there anything to indicate that the officers or servants of the Crown had been negligent either in not providing a better or different chain or that they had any knowledge of any condition from which they could have known that it was otherwise than safe and fit for the purposes for which it was used. Indeed, the mere fact of a chain breaking is not *primâ facie* evidence of negligence. *Hanson v. Lancashire and Yorkshire R. Co.*,[1] and that same view is shared by Mr. Ruegg in the 8th Ed. of his work on the *Employers' Liability and Workmen's Compensation Act. Haywood v. Hamilton Bridge Works Co.*[2]

There is no satisfactory evidence, apart from the mere breaking, that the chain was or appeared to be or was known to be weak or otherwise defective or insufficient or unfit for the purposes for which it was used,—there is not that additional evidence of defect in condition or of any negligence by the Crown's officer or servant which would so far support the suppliant's contention of actionable negligence under the Act. There must have been a latent or hidden defect in the chain, which the accident itself, by exposing the inside of the metal, failed to disclose and which would still continue to baffle the scientist.

At the time of the accident the Crown's officer offered the suppliant to be taken to a hospital to be

[1] (1872) 20 W.R. 297.
[2] 7 O.W.N. 231.

cared for by medical men. He refused and went to a bonesetter, with the result that the arm was not properly attended to. The doctor called and heard as a witness by the suppliant stated that the reduction of the wrist had been placed in a false position, and that if the limb had been properly treated it would not have been left in the position in which it was. Indeed, if one voluntarily submits himself to unprofessional medical treatment, proper skilled treatment being available, and the results of the injury are aggravated by such unskilled or improper treatment, he is in any case only entitled to such damages as would, with proper treatment, have resulted from the injury, but not to damages resulting from the improper treatment to which he subjected himself. *Vinet v. The King.*[1]

Now, to succeed in an action for tort against the Crown, the suppliant must bring the facts of his case within the provision of sec. 20 of the *Exchequer Court Act,* and that is, there must first be a public work; secondly, an officer or servant of the Crown whose duty it was to do a given thing; and thirdly, that officer or servant must have been guilty of a breach of such duty which would amount to a negligence from which the accident resulted.

In the present case the first requirement is wanting. That is, the St. Maurice Lumber Company's launch-ways, upon which the Government vessel was being hauled, is not a public work, within the meaning of any Act of the Parliament of Canada, or of any known decision of the Courts. See case of *City of Quebec v. The Queen.*[2]

[1] 9 Can. Ex. 352.
[2] 3 Can. Ex. 164, and 24 Can. S.C.R. 420.

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There will be judgment that the suppliant is not entitled to the relief sought by his petition of right.

Action dismissed.

Solicitor for suppliant: *Bruno Marchand.*

Solicitors for respondent: *Désy & Langlois.*