CANADA STEAMSHIP LINES LIMITED, ET AL..... } SUPPLIANTS;

AND

HIS MAJESTY THE KING..... RESPONDENT.

1925
Dec. 2.

Crown—Contract—Breach of contract—Damages—Wharfage

By an order in council passed in 1906 the Crown rented to a steamship company for $1,000 per annum the use of the wharves "between Quebec and Chicoutimi." By subsequent order in council of 1917 a similar arrangement was made for the consideration of the annual sum of $2,000 as commutation of wharfage for the use "of government

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wharves at which the steamers of the company call on the River St. Lawrence below Quebec." The wharf at l'Anse Tadoussac was built in 1912, after the first but before the second order in council. Following upon a lengthy correspondence between the company and the Crown, the Crown repaired this wharf early in 1923. It had been used by some of the company's steamers previous to 1923 and by the *R.* for five trips in 1923. On July 7, 1923, while the *R.* was landing passengers at such wharf, the slip upon which the passengers were standing collapsed precipitating several of them into the water. This slip was old and in a rotten and dangerous condition, to the knowledge of the Crown, and no warning was given. The steamship company was forced to settle with these passengers for the damages sustained, and presented a petition of right to recover from the Crown the amount so paid.

Held, that under the order in council of 1917 it was clear that the wharf at l'Anse Tadoussac was one of the wharves which the company had a right to use and was one of those for the use of which it was paying $2,000 per annum.

2. That on the above facts there existed between the Crown and the company a contract whereby the company for a yearly consideration, could, as of right, use for its vessels the Government wharves "between Quebec and Chicoutimi," which included the wharf in question.

3. That, inasmuch as a person who invites another to come onto his premises upon a business in which both are concerned, or a lessor who, for consideration, grants the use of certain premises to a lessee, is bound to take care that his premises, and all appliances provided by him as incident to the use thereof, are safe for that person to come upon and to use them as required, or to give warning, the Crown in not keeping the wharf or slip in safe and proper condition for the use for which it was intended, was guilty of a tortious breach of contract and liable for the damages suffered by its lessee.

PETITION OF RIGHT to recover from the Crown the sum of over $65,000, amount paid in damages to passengers by reason of the fact that a wharf rented by the Crown to the company was in poor and rotten condition, and broke down, causing damage to certain passengers.

Tadoussac, 22nd, 23rd and 24th July, 1925, and Ottawa, 22nd and 23rd October, 1925.

Action tried before the Honourable Mr. Justice Audette.

W. F. Chipman K.C. and *J. A. Mann K.C.* for suppliants.

Léon Garneau K.C. for respondent.

The facts are stated in the reasons for judgment.

Audette, now, this 2nd December, 1925, delivered judgment (1).

(1) An appeal has been taken to the Supreme Court of Canada.

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The suppliants, by their Petition of Right, seek to recover damages in the sum of $65,744.61, together with such other and further sums which it may be found they have been obliged to pay,

for the loss, cost, damage and expense arising out of an accident that occurred on the 7th July, 1923, at Tadoussac, P.Q., while landing their passengers in the usual and customary manner at L'Anse Tadoussac wharf, when a lateral tie-beam of the movable slip attached thereto suddenly broke and the slip collapsed injuring a number of passengers, some of them being thrown to the bottom of the cut in the wharf and two of them precipitated into the river.

It will be convenient, at this stage, to dispose of some preliminary matters.

[His Lordship here discusses two motions to amend; the question of prescription raised by the defence and disposes of the question of the right of the Traveler's Insurance Co. joining with the steamship company as suppliants, and then proceeds.]

Now the controversy as formulated and presented may be approached under two different heads or aspects. 1. A case in tort against the Crown under the Exchequer Court Act, namely, under sec. 19 and sub-sec. (*c*) of sec. 20 thereof; 2. A case against the Crown *ex contractu*, for breach of contract, or under any law of Canada under the provisions of sub-sec. (*d*) of sec. 20 of the Exchequer Court Act.

Considering the case on this last aspect, i.e., for damages against the Crown arising out of a tortious breach of contract depending upon a wrong arising out of contractual relation, etc., it will first appear, by reference to exhibit "C," that as far back as the 12th December, 1906, an Order in Council was passed on a report by the Minister of Marine and Fisheries, wherein the Minister recites that it had been decided to make an arrangement with the Richelieu and Ontario Navigation Company (now the suppliant Canada Steamship Lines, Limited) to receive from them a bulk sum of $1,000 per annum for wharfage at some of the wharves used by them between Quebec and Chicoutimi, Tadoussac coming within that territory.

Then by a further Order in Council of the 27th February, 1917, referring to the above-mentioned arrangement entered into between the said parties under the Order in

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Council of 1906, and the bulk sum of $1,000 payable thereunder per annum as commutation of wharfage, it is further provided that the charge of $1,000, owing to increase of business at the wharves, has been found inadequate and *that an arrangement* has been entered into with the Canada Steamship Lines, Limited, whereby the company agrees to pay to the Crown $2,000 per annum as commutation of wharfage, from the beginning of the season of 1916.

The Canada Steamship Lines, Limited, have ever since the passing of this last Order in Council—which is still in force—paid annually to the Crown for the use of the wharves between Quebec and Chicoutimi, including Tadoussac, which is specifically mentioned in the Order in Council, the sum of $2,000 per annum as commutation of wharfage, including the year 1923.

There are two wharves at Tadoussac—one at L'Anse à l'Eau and one at l'Anse Tadoussac. They are situate a short distance from each other. The former has been in existence from almost time immemorial and only accommodates vessels drawing a limited depth of water. The latter was built between the year 1910 and 1912. Now, it was contended by the Crown that at the time of the passing of the Order in Council of 1906, the wharf at l'Anse Tadoussac was not in existence and that it was not in contemplation and covered by either the Order in Council of 1906 or of 1917.

The Order in Council of 1906 rents to the company, for $1,000 per annum, the use of the wharves "between Quebec and Chicoutimi." By the Order in Council of 1917 a similar arrangement is made, for the consideration of the annual sum of $2,000, as commutation of wharfage for the use of "the Government wharves at which the steamers of the *company call on the river St. Lawrence* below Quebec."

I find that under the language used in this Order in Council, there cannot be any doubt that the company, in consideration of $2,000 duly paid, had the clear right to the use of any Government wharf below Quebec, including the Anse Tadoussac wharf built between the years 1910 and 1912.

This finding is still made clearer or rather confirmed by the lengthy correspondence exchanged between the officers

of the company and the Crown in anticipation of the user of that wharf, and in respect of the repairs and improvements which became necessary to allow the company's steamer *Richelieu* so to moor at the Anse Tadousac wharf, and which repairs and improvements were made in the early part of the season of 1923. Moreover l'Anse Tadousac wharf had also been used, previous to 1923, by some of the company's steamers without any additional charge. The *St. Irénée* had moored at that wharf a couple of times and the *Cap Trinité* came and moored there two or three times in 1921 or 1922. This was the fifth trip of the *Richelieu* to that wharf in 1923.

Therefore, I hold that, under the above facts there existed, between the Crown and the Company, a contract whereby the company, for the yearly consideration of $2,000 which had been duly paid, could, as of right, moor its vessels at l'Anse Tadousac wharf in 1923 which, by means of a slip, afforded facilities for its passengers landing from the boat onto the dock, and had therefore the right to assume that the wharf, or slip, was reasonably fit for the use for which it was let, trusting to the performance of duty of the owners of the wharf, without independent examination of their own. The suppliant company had no obligation under the contract to maintain or repair the wharf which was the exclusive property of the Crown, their lessor. There was no duty on the part of the company, or any one on its behalf, to test the safety of the slip supplied, but on the part of the owner there arose an obligation that the slip supplied should be reasonably fit for the purpose for which it was to be used. *Heaven* v. *Pender* (1); Beven, 3rd ed., pages 53, 54, 59.

A person who invites another to come on his premises upon a business in which both are concerned or a lessor who, for consideration, grants the use of certain premises to a lessee, is bound to take care that his premises and all appliances provided by him as incident to the use of his premises are safe for that other person to come upon and use them as required; or else to give due warning of any danger to be avoided. *Southcote* v. *Stanley* (2); *Indermaur* v. *Dames* (3); 2 Can. Bar Review 94.

(1) [1883] 11 Q.B.D. 503; 9 Q.B.D. 302.
(2) [1856] 1 Hurl. & Nor. 247.
(3) [1866] L.R. 1 C.P. 274 at 279.

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The company was under contractual obligation, as a carrier of passengers, to their passengers, and the Crown was under contractual obligation with the company, for consideration to provide and maintain a safe landing at the wharf. The Crown failed and the direct consequences of this breach are the damages claimed.

Under the arrangement or contract between the parties, the company had the right to expect the slip to be reasonably fit for their purposes. The injured passengers had obviously a right of action against the company as carrier of passengers. (See *Francis* v. *Cockrell* (1); 53 Can. Law Journal 417; *McFee* v. *Joss* (2).

As settled by the case of *The Windsor and Annapolis Railway Co.* v. *The Queen* (3) a petition of right will lie for damages resulting from a breach of contract by the Crown, whether or not the breach is occasioned by the acts or by the omissions of the Crown officials.

Moreover, it is further contended by the suppliants that they have a right of action against the Crown under any law of Canada, pursuant to sub-sec. (*d*) of sec. 20 of the Exchequer Court Act.

Furthermore that the cause of action having arisen in the province of Quebec the controversy must be determined by the laws of that province, citing in support of the same the cases of *The City of Quebec* v. *The Queen* (4); *The Queen* v. *Filion* (5); *The King* v. *Armstrong* (6); *The King* v. *Desrosiers* (7).

Under the arrangement or contract set out in the Order in Council above cited and the payment of $2,000 a year of which there is written acknowledgment, the company had a right to use the wharf in question and to take it for granted that it was reasonably fit for the use for which it was let. Therefore, in addition to what has already been said, under article 1054 C.C.P.Q. the Crown, being the owner of the wharf, became responsible for the damage "caused by the thing which it had under its care" and control.

(1) [1870] L.R. 5 Q.B. 184, 501.
(2) [1925] 2 D.L.R. 1059.
(3) [1886] 11 A.C. 607.
(4) [1894] 24 S.C.R. 420.
(5) [1894] 24 S.C.R. 482.
(6) [1908] 40 S.C.R. 229.
(7) [1908] 41 S.C.R. 71.

In the case of *Quebec Railway, Light, Heat and Power Co., Ltd.* v. *Vandry* (1) it was held that

upon the true construction of art. 1054 C.C. a person capable of discerning right from wrong is responsible, *without proof of negligence,* for damage caused by things which he has under his care, unless he establishes he was unable to prevent the event which caused the damage.

The evidence establishes this slip had been found old, rotten and in a dangerous state previous to the accident and specially on the day before the accident. The traffic was not stopped. It was the opinion of witness Cameron, the chief engineer of the Department of Public Works, that if he thought a degree of danger existed, he would stop traffic. The company was not notified of the dangerous condition of the slip (*The Grit* (2)) and the passengers fell in the trap, —an expression used by counsel at bar as a figure of speech —which involves the idea of an appearance of safety under circumstances cloaking a realty of danger. 2 Can. Bar Review 25. See *Exchange Bank of Canada* v. *The Queen* (3); *Indermaur* v. *Dames* (ubi supra), *Brebner* v. *The King* (4).

For the consideration to which I have adverted above it is obvious that the case is founded on contract and I find the Crown liable in damages for a tortious breach thereof. Therefore it becomes unnecessary to delve into the other numerous questions of law (some of them quite formidable) raised at bar, which would indeed carry us too far afield. However, as some of these questions have occupied the major part of the argument, I might merely mention it has become unnecessary, in the view I take of the case, to decide whether or not the suppliants would or would not have a right of action under sub-sec. (*c*) of sec. 20 of the Exchequer Court Act, or whether the subrogations, by the injured persons, as against the Crown are valid or not under the decision of the cases of *Powell* v. *The King* (5); *Malone* v. *The King* (6); *The Queen* v. *McCurdy* (7); *Olmstead* v. *The King* (8); *The Queen* v. *Dunn* (9). Furthermore as to whether or not under the

(1) [1920] A.C. 662.
(2) [1924] 94 L.J. Adm. 6.
(3) [1885] 11 A.C. 157.
(4) [1913] 14 Ex. C.R. 242.
(5) [1905] 9 Ex. C.R. 364.
(6) [1918] 18 Ex. C.R. 1 at 7; 59 S.C.R. 678.
(7) [1891] 2 Ex. C.R. 311 at 317.
(8) [1916] 53 S.C.R. 450 at 453.
(9) [1885] 11 S.C.R. 385.

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decision in *McHugh* v. *The Queen* (1); *Mavor* v. *The King* (2); *The Hamburg American Packet Co.* v. *The King* (3), the Crown, apart from a contract as in the case in question, was or was not bound to maintain the wharf in repair.

Therefore, having come to the conclusion that the Crown is liable *ex contractu* for the damages arising from the said accident, there will be judgment that the suppliants are entitled to recover the same from the respondent; and further there will be, as prayed, a reference to the Registrar of this Court, for enquiry and report to ascertain the amount of such damages, the whole with costs in favour of the suppliants.

Judgment accordingly.