

IN THE MATTER OF THE PETITION OF RIGHT OF

RONALD J. MCNEIL, PRESENTLY OF BADDECK, IN THE  
COUNTY OF VICTORIA, RAILROAD BRAKEMAN,  
SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

1916  
Nov. 4

*Crown—Negligence of Crown's servants—Railways—Injury to brakeman.*

A brakeman on the Intercolonial Railway has no recourse against the Crown for injuries sustained in the course of his employment in the absence of proof of any negligence on behalf of any officer or servant of the Crown giving rise to the accident.

**P**ETITION OF RIGHT to recover for the loss of a leg by a brakeman on the Intercolonial Railway.

Tried before the Honourable Mr. Justice Audette, at Sydney, N.S., May 31 and June 1, 1916.

*Hugh Ross*, K.C., and *N. A. Macmillan*, for suppliant;  
*T. S. Rogers*, K.C., and *J. A. McDonald*, K.C., for respondent.

AUDETTE, J. (November 4, 1916) delivered judgment.

The suppliant brought his petition of right to recover the sum of \$10,625 for the loss of a leg, resulting from an accident while engaged in the discharge of his duties as brakeman on the Intercolonial Railway, a public work of Canada.

The suppliant, on the evening of December 14, 1914, the date of the accident, was engaged in working as a brakeman on a train, which arrived at North Sydney Terminal about 7.30 o'clock in the evening. After the passengers had been taken off the cars the train started for the end of the pier to take away the freight cars lying on the east side of the shed erected on the wharf. The freight cars were, some of them, touching one another, and others were two or three feet apart, and the coupling had to be done accordingly. The accident happened at about

1916  
 McNEIL  
 v.  
 THE KING.  
 Reasons for  
 Judgment.

eight o'clock in the evening when the train-hands were engaged in the coupling of the last car. McPhee, the senior brakeman, who was working with the suppliant, went down to the ground from the top of the car to open his coupling, and on coming back to the top of the car, where the suppliant was, told him to signal for backing. The suppliant then by swinging his lantern all the way around several times, signalled the engineer to back up. The train started to move only after he had so signalled, and while so signalling his lamp went out, and the engineer not seeing any more light or signal stopped his train, which was going at about one mile an hour, and had at the time covered a distance of about two or three feet.

The suppliant was at the time in question walking on the foot-board on the top of the car—he was, he says, walking sidewise so as to see McPhee and the engineer—and when his lamp went out he continued walking in a northerly direction, and miscalculating the distance between the cars, placed his foot in the open space between the cars and fell to the ground where he met with the accident in question. If some cars were only 2 or 3 feet apart and some were touching, there was no occasion or necessity to walk any distance on the top of the car. Furthermore, he had gone several times over the foot-board at night at the very same place before the accident. The *locus in quo* is one where similar work is done 4 or 5 times every week.

It was a dark, bleak night, raining and blowing hard, and it is no wonder, as appears from the evidence, that his lamp went out in such weather. The charge that the oil was the cause of the lamp going out has not been substantiated by the evidence.

It appears that it is a common practice to work on the foot-board on top of the cars, that it is a matter of routine work, and every brakeman must undertake such work as being within the scope of his employment and duties.

The suppliant, to succeed in the present case, must bring the facts of his case within the ambit of subsecs. (c) and (f) of sec. 20 of the Exchequer Court Act,<sup>1</sup> as amended by 6-7 Geo. V, ch. 16. In other words, the accident must have

<sup>1</sup> R.S.C. 1906, c. 140.

happened, 1st, upon a public work; 2nd, there must be a servant of the Crown who has been guilty of negligence while acting within the scope of his duties and employment; and 3rd, the accident complained of must be the result of such negligence.

Under all the circumstances of the case, it is unnecessary to say any more than that the suppliant has failed to establish, under the evidence adduced, any negligence on behalf of any officer or servant of the Crown which would have occasioned the accident in question.

It is, indeed, a sad case to see a man crippled for life, at such an early age, and he is entitled to one's deepest sympathy. It is to be hoped some employment within the scope of his capacity will be procured for him.

The suppliant is not entitled to any portion of the relief sought by his petition of right.

*Petition dismissed.*

Solicitors for suppliant: *McKenzie & Macmillan.*

Solicitor for respondent: *J. A. McDonald.*

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1916  
MCNEIL  
v.  
THE KING.  
Reasons for  
Judgment.