

BETWEEN:

1944
}
Sept. 11
—
1947
}
Apr. 10
—

THE WORKMEN'S COMPENSATION
BOARD OF THE PROVINCE OF } SUPPLIANT;
SASKATCHEWAN }

AND

HIS MAJESTY THE KING RESPONDENT.

Crown—Exchequer Court Act, R.S.C. 1927, c. 34, s. 19(c)—The Workmen's Compensation (Accident Fund) Act, R.S.S. 1940, c. 303—Workmen's Compensation Board subrogated to rights of widow whose husband's death was caused by the negligence of a servant or employee of the Crown—Respondent's responsibility under Exchequer Court Act, R.S.C. 1927, c. 34, s. 19(c) not increased by ss. 3 of s. 9 of The Workmen's Compensation (Accident Fund) Act.

Suppliant seeks to recover from the Crown the sum of \$8,715.92, representing the capitalization of the compensation which suppliant is liable to pay to Mary Bélanger, widow of Joseph Bélanger, and the children of the said Joseph and Mary Bélanger, under the provisions of the Workmen's Compensation (Accident Fund) Act, R.S.S. 1940, c. 303, as the result of the death of Joseph Bélanger, caused by the negligence of an officer or servant of the Crown acting within the scope of his duties or employment.

Held: That the Workmen's Compensation Board of the Province of Saskatchewan is, under the provisions of The Workmen's Compensation (Accident Fund) Act of that Province, duly subrogated to the rights of the widow of Joseph Bélanger and is entitled to claim from the respondent the reimbursement of the compensation which it has paid in part and is liable to pay to her.

2. That this action brought by suppliant has not and cannot have the effect of increasing the respondent's responsibility under ss. (c) of s. 19 of the Exchequer Court Act, R.S.C. 1927, c. 34. The Petition of Right brought by suppliant could have been instituted by the widow of Joseph Bélanger for herself and her minor children.

PETITION OF RIGHT brought by suppliant to recover from respondent the compensation which it has paid and is liable to pay on account of the death of a workman caused by the negligence of an officer or employee of the respondent.

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The action was tried before the Honourable Mr. Justice Angers at Regina.

H. E. Sampson, K.C. for suppliant;

J. N. Conroy, K.C. for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

ANGERS J. now (April 10, 1947) delivered the following judgment:

The Workmen's Compensation Board of the Province of Saskatchewan by its petition of right seeks to recover from His Majesty the King the sum of \$8,715.92, representing the capitalization of the compensation which the suppliant is liable to pay to Mary Bélanger, widow of Joseph Bélanger, and their children under the provisions of the Workmen's Compensation (Accident Fund) Act, R.S.S. 1940, chap. 303, as the result of an accident which occurred on September 3, 1942, in which the said Joseph Bélanger was killed.

The petition of right alleges in substance:

His Majesty the King in the right of Canada owns and operates an airfield at the city of North Battleford, province of Saskatchewan, known as No. 35 S.F.T.S., those in charge thereof being members of His Majesty's Air Forces in the right of Canada and servants of the Crown;

Joseph Bélanger, of the said city of North Battleford, was killed on September 3, 1942, at said No. 35 S.F.T.S., while working as labourer for one W. C. Wells, who had a contract for building hangars and runways for the said airfield. At the time of such accident the said Bélanger and three other labourers associated with him were hauling gravel by truck and unloading it on the edge of the runway on said airfield, his death being caused by being struck

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by Oxford Bomber No. BM 702, driven by LAC No. 992619, Robert Arthur Williamson, who landed the said plane on No. 1 runway and who was at the time a member of His Majesty's Air Forces in the right of Canada and a servant of the Crown;

the said Joseph Bélanger died leaving him surviving:

his widow, Mary Bélanger, aged 40,

and the following children:

Marie Marceline Bélanger, aged 14 years,

Helen Bélanger, aged 14 years,

Teresa Blanche Bélanger, aged 11 years,

Wm. Martin Bernard Bélanger, aged 9 years,

Howard Alton Bélanger, aged 6 years,

Ralph Roland Bélanger, aged 4 years, and

Frederick Allan Bélanger, aged 5 months;

the death of the said Joseph Bélanger was caused by the negligence of the said LAC Robert Arthur Williamson and of those in charge of the said airfield and by the defective system used upon the said airfield in connection with the landing of aeroplanes thereon;

the negligence of said LAC Robert Arthur Williamson consisted:

- (a) in turning from the taxi strip on which he was to the apron directly leading to and upon the said Joseph Bélanger and those working with him, he having previously seen and known that the said workmen were engaged in necessary work at the time and place in question;
- (b) in parking his plane where he did after seeing the workmen employed on the apron;
- (c) in not parking his plane nearest the hangar at which the ground crew servicing that particular flight were waiting;
- (d) in not parking his plane further west;

those in charge of the airfield at the time were guilty of negligence and the system in vogue at the airfield was defective, in not providing red flags or other signs around the area and at the place where the labourers were working and that care should be taken to avoid coming in contact with the men so working;

the system in vogue was defective and those in charge were negligent in not providing for a member of a ground crew to wave the said plane to a proper berth on the apron as soon as it entered the taxi strip;

the system in vogue was defective and those in charge were negligent in not inspecting at more frequent intervals the brake cable on the said plane, which cable had not been inspected for about 320 hours and the breakage of which contributed to the accident;

by reason of the said accident the widow and children of the said Joseph Bélanger became entitled under the provisions of the Workmen's Compensation (Accident Fund) Act, R.S.S. 1940, chap. 303, to compensation from the Workmen's Compensation Board of the Province of Saskatchewan, the amount of such compensation being: as provided by section 32 of the Act, and the said Board is duly making payment of such compensation and will continue to do so as provided by the said Act, the total amount of the compensation for which the said Board is liable to the said widow and children being capitalized at \$8,715.92;

the said widow and children under section 9 of said Act have elected to claim such compensation from the said Board in lieu of bringing action against those responsible for the causing of said accident and by reason of such election the Board is subrogated to the rights of the said widow and children to claim damages on account of the said accident;

by reason of the premises the Workmen's Compensation Board of the Province of Saskatchewan claims the amount for which it is liable and so capitalized at \$8,715.92 to the said widow and children of said Joseph Bélanger.

In his statement of defence the Attorney-General on behalf of His Majesty the King, submits that the petition of right is bad in law in that it does not allege any cause of action against His Majesty or any facts giving rise to any liability for which His Majesty is bound or may be adjudged to respond and moreover that, if any cause of action against His Majesty be stated in the petition of right it is not a cause of action for which under the law

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a petition of right will lie; and reserving these and all other objections to the sufficiency in law of the petition, which he submits should be heard and determined before trial of the issues of fact herein, the Attorney-General says in substance:

he denies each and every allegation of fact contained in the petition, except that Joseph Bélanger was killed on September 3, 1942;

he denies that the persons mentioned in the petition, namely LAC R. A. Williamson and those in charge of the airfield and particularly of the plane involved in the accident, or any of them, were at any time officers or servants of the Crown;

in the alternative, if the persons above mentioned or any of them were officers or servants of the Crown, they were not at the time acting within the scope of their duties or employment;

the said Joseph Bélanger well knew that the work which he accepted was dangerous and he voluntarily incurred all the risks involved in the said work and in particular the risk of being injured by aircraft;

if the death of the said Joseph Bélanger was caused by a wrongful act, neglect or default, which is denied, such wrongful act, neglect or default, if death had not ensued, would not have entitled him to maintain an action and recover damages for the reason that the said Joseph Bélanger was injured solely as the result of his own fault or negligence, particulars of which are as follows:

- (a) the said Bélanger at the time of the injury was negligent in that he was unnecessarily standing upon the concrete parking strip, which he knew or should have known was a place of danger because it was to his knowledge customarily used and was then being used by aircraft moving into parking positions;
- (b) the said Bélanger was negligent in that he failed to keep a proper look-out and look for approaching aircraft and failed to see and avoid the aircraft which it is alleged struck him;

the Workmen's Compensation (Accident Fund) Act is not binding on His Majesty and the suppliant is not subrogated to the rights of the widow and children as alleged in the petition;

in the alternative, if any right of action arose by reason of the death of the said Joseph Bélanger, such right of action could not legally pass to the suppliant by assignment, subrogation or otherwise;

the suppliant is not the executor or administrator of the deceased Bélanger and further is not a person for whose benefit an action could be brought by such executor or administrator under the provisions of the Fatal Accidents Act, R.S.S. 1940, chapter 92;

neither the suppliant nor any person or persons suffered damages to the extent of \$8,715.92 or any damages;

the action by way of petition of right herein was not commenced within twelve months after the death of the said Joseph Bélanger, as required by section 5 of the said Fatal Accidents Act and by section 32 of the Exchequer Court Act.

The facts are simple and unchallenged. Joseph Bélanger, on September 3, 1942, date of the accident in which he was killed, was working as a labourer in the employ of one W. C. Wells, who had a contract for building hangars and runways at an airport at the city of North Battleford, province of Saskatchewan, known as No. 35 S.F.T.S. Bélanger, who at the time of the accident was, with three other labourers, hauling gravel by truck and unloading it on the edge of the runway, was hit by an airplane in charge of LAC Robert Arthur Williamson, which landed on the runway where he was working.

The widow elected to claim compensation for herself and her seven minor children under the Workmen's Compensation (Accident Fund) Act. She was granted a compensation as provided by section 32 of the Act, which capitalized totals \$8,715.92. The Workmen's Compensation Board has paid and is paying the said compensation to Mrs. Bélanger for herself and her children in monthly instalments spread over a period of years, depending on the age of the children.

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The Board, which claims to be subrogated to the rights of the widow and contends that the accident was caused by the negligence of the said Robert Arthur Williamson, an officer and servant of the Crown acting within the scope of his duties and employment, seeks to recover by its petition of right from His Majesty the King the said sum of \$8,715.92.

The petition of right is contested, the issues are joined and the solicitor for respondent moved to have the case entered for trial. It was set for the sittings of the Court commencing on the 14th day of September, 1944, in Regina.

At the opening counsel suggested that the Court might entertain argument only on the question as to whether there is a recourse against the Crown open to the Workmen's Compensation Board for the recovery of an amount in whole or in part, paid by it to a victim or the heirs of a victim of an accident under the Workmen's Compensation (Accident Fund) Act. Notwithstanding the omission by counsel to make application for leave to submit the questions of law before trial and the fixing of a date for that purpose in compliance with rule 149 of the General Rules and Orders of the Court and notwithstanding that other questions of law could have been disposed of on the same occasion, particularly that of the prescription of the action, I agreed, on the insistence of counsel, to entertain argument on the sole question of the existence of a recourse against the Crown in conditions similar to those prevailing herein.

The liability of the Crown for claims arising out of the death of or injury to any person is established by subsection (c) of section 19 of the Exchequer Court Act, the relevant portion thereof reading as follows:

The Exchequer Court shall also have exclusive original jurisdiction to hear and determine the following matters:

(c) Every claim against the Crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment;

As in the case of *McArthur v. The King* (1) the President held that a person enlisting in an active unit of the army is not an "officer or servant of the Crown" within the

meaning of section 19(c) of the Exchequer Court Act, Parliament amended the said Act by adding thereto section 50A, assented to on July 24, 1943, which is thus worded:

For the purpose of determining liability in any action or other proceeding by or against His Majesty, a person who was at any time since the twenty-fourth day of June, one thousand nine hundred and thirty-eight, a member of the naval, military or air forces of His Majesty in right of Canada shall be deemed to have been at such time a servant of the Crown.

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The question submitted for decision may be conveniently summed up thus: Has the Workmen's Compensation Board a recourse for the recovery of the sum of \$8,715.92, assuming that it can establish that the accident, of which Joseph Bélanger was victim, was caused by the negligence of the said Robert Arthur Williamson, an officer or servant of the Crown acting within the scope of his duties and employment?

It was submitted by counsel for suppliant that the Workmen's Compensation Board is, in virtue of section 9 of The Workmen's Compensation (Accident Fund) Act, subrogated to the rights of the widow and children of Joseph Bélanger. The material portion of section 9 reads as follows:

9. (1) Where an accident happens to a workman in the course of his employment under such circumstances as entitles him or his dependents to an action against some person other than his employer, the workman or his dependents if entitled to compensation under this Part may claim such compensation or may bring such action.

(2) If an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependents are entitled under this Part, the difference between the amount recovered and collected and the amount of such compensation shall be payable as compensation to such workman or his dependents.

(3) If the workman or his dependents elect to claim compensation under this Part, the board shall be subrogated to the rights of the workman or his dependents and may maintain an action in his or their names or in the name of the board against the person against whom the action lies and any sum recovered from him by the board shall form part of the accident fund.

It was urged on behalf of respondent that the Workmen's Compensation (Accident Fund) Act does not apply because it was not in force when the liability of the Crown for the death or injury to a person resulting from the negligence of an officer or servant of the Crown acting within the scope of his duties or employment was created by the enactment of the Exchequer Court Act, which was assented to on June 23, 1887, and came into force on October 1,

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1887. This liability is determined by subsection (c) of section 19, which was originally subsection (c) of section 16; the relevant part of the latter read as follows:

The Exchequer Court shall also have exclusive original jurisdiction to hear and determine the following matters:

(c) every claim against the Crown arising out of any death or injury to the person or to property on any public work, resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment.

Section 16 became section 20 in chapter 140 of the Revised Statutes of Canada, 1916. The initial paragraph of section 20 and subsection (c) thereof are literally the same as those of section 16.

By chapter 23 of 7-8 George V, which came into force on August 29, 1917, section 20 was repealed and the following substituted therefor:

(c) Every claim against the Crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment upon any public work.

In chapter 34 of the Revised Statutes of Canada, 1927, section 20 became section 19, which was word for word the same as the section inserted in chapter 23 of 7-8 George V.

By chapter 28 of 2 George VI, assented to on June 24, 1938, paragraph (c) of subsection 1 of section 19 was repealed and the following substituted therefor:

(c) Every claim against the Crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment.

As may be seen the repeal of the former paragraph (c) and the substitution of the new one simply amounted to the striking out of the words "upon any public work" at the end of the paragraph.

By chapter 25 of 7 George VI, assented to on July 24, 1943, the Exchequer Court Act was amended by adding thereto section 50A, which reads thus:

For the purpose of determining liability in any action or other proceeding by or against His Majesty, a person who was at any time since the twenty-fourth day of June, one thousand nine hundred and thirty-eight, a member of the naval, military or air forces of His Majesty in right of Canada shall be deemed to have been at such time a servant of the Crown.

By this section a person who was at any time since the 24th day of June, 1938, date on which chapter 28 of 2 George VI came into force, a member of the naval, military or air forces of His Majesty in right of Canada is explicitly declared to have been at such time a servant of the Crown.

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From June 24, 1938, members of the naval, military and air forces of Canada unquestionably rendered, by their negligence, the Crown subject to the provisions of paragraph (c) of subsection 1 of section 19.

I may note that when this new liability of the Crown was thus created The Workmen's Compensation (Accident Fund) Act of the Province of Saskatchewan was in force.

It was argued on behalf of respondent that provincial legislatures cannot by their own legislation vary and particularly add to the liability imposed upon the Crown in right of the Dominion of Canada by the enactment of the Exchequer Court Act on June 23, 1887.

In support of his argument counsel relied on the decisions in *Ryder v. The King* (1); *Rochon v. The King* (2); *Ching v. Canadian Pacific Railway Company* (3); *Gauthier v. The King* (4). I may say with deference that I agree with the judgments in these cases when they hold that a provincial statute cannot enlarge the liability of His Majesty the King in the right of Canada. The petition of right herein, instituted with the object of recovering from the respondent damages paid by the suppliant to the widow and the minor children of Joseph Bélanger, hit and killed on an airport at North Battleford by an airplane driven by a member of the air forces of His Majesty in right of Canada, while working as a labourer for one Wells, who was building hangars and runways on the said airport, does not come within the purview of the decisions aforesaid. It has not and cannot have the effect of increasing the respondent's responsibility under subsection (c) of section 19 of the Exchequer Court Act. The petition of right brought by the suppliant could have been instituted by the widow of the victim for herself and her minor children, had she not been content with setting forth a claim under The Workmen's Compensation (Accident Fund) Act, as

(1) (1905) 36 S.C.R. 462.
 (2) (1932) Ex. C.R. 161.

(3) (1943) S.C.R. 451.
 (4) (1917) 56 S.C.R. 176.

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she was entitled to do. As a result of the petition the Workmen's Compensation Board of the Province of Saskatchewan has partly paid and is liable to pay a compensation which has been capitalized at \$8,715.92. This is the sum which the Workmen's Compensation Board seeks to recover from the respondent on the ground that the suppliant is, under the provisions of section 9 of The Workmen's Compensation (Accident Fund) Act, subrogated to the rights of Mrs. Bélanger.

I cannot see that the subrogation provided by The Workmen's Compensation (Accident Fund) Act extends or even modifies in any manner the liability of the Crown. Mrs. Bélanger could unquestionably have instituted for herself and her minor children a petition of right with the object of claiming from the respondent the damages suffered as a consequence of the death of her husband. She obtained compensation from the suppliant and the latter now endeavours to recover from the respondent the sum which it is bound to pay.

In the case of *Bessie May Snell and The Workmen's Compensation Board of British Columbia v. His Majesty the King* (1), the facts were identical to those in the present case. It appears from the report that on October 27, 1943, Bessie May Snell made an application under the provisions of The Workmen's Compensation Act of British Columbia, R.S.B.C. 1936, chapter 312, for payment to her on behalf of herself and of her infant son of compensation in virtue of the Families' Compensation Act of British Columbia, R.S.B.C. 1936, chapter 93. This compensation was sought for the death of her husband in consequence of a collision between two motor trucks, one owned by one Dines and driven by the suppliant's husband and an army truck, property of His Majesty the King, driven by a member of the armed forces of Canada.

The suppliant's employment fell within part 1 of The Workmen's Compensation Act and the Board became obligated to pay to the suppliant the sum of \$40 per month during her lifetime, together with a monthly allowance of \$10 for her infant son until he reached the age

(1) (1945) Ex. C.R. 250.

of 16 years and thereafter of \$12.50 between the ages of 16 and 18 years, provided the child then regularly attended an academic, technical or vocational school.

Section 11 of The Workmen's Compensation Act of British Columbia contains (*inter alia*) the following provisions:

11. (1) Where an accident happens to a workman in the course of his employment in such circumstances as entitle him or his dependents to an action against some person other than his employer, the workman or his dependents, if entitled to compensation under this Part, may claim such compensation or may bring such action.

(2) If the workman or his dependents bring such action and less is recovered and collected than the amount of the compensation to which the workman or dependents would be entitled under this Part, the workman or dependents shall be entitled to compensation under this Part to the extent of the amount of the difference.

(3) If any such workman or dependent makes an application to the Board claiming compensation under this Part, the Board shall be subrogated to the rights of the workman or dependents as against such other person for the whole or any outstanding part of the claim of the workman or dependent against such other person.

The Board thereby acquired a statutory right of subrogation. Apart from this the Board thought convenient to obtain from Mrs. Snell an assignment of her claims against His Majesty the King and other parties in respect of her husband's death.

The Board brought a petition of right against the Crown in the name of Mrs. Snell by virtue of its right of subrogation and also of the said assignment, which, being equitable only, required the filing of the petition in the name of the assignor (*Union Assurance Company et al. v. B. C. Electric Railway Company Limited* (1)). The respondent did not deny that the collision was due to the negligence of the driver of the army truck, but he disputed liability upon three grounds: (1) that Mrs. Snell, having elected to claim compensation from the Workmen's Compensation Board and having accepted it, is barred from maintaining a claim against His Majesty; (2) that, as she has assigned her right of action against the respondent, she is not entitled to maintain an action against His Majesty; (3) that the provisions of The Workmen's Com-

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(1) (1914) 21 B.C.R. 71, 76.

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pensation Act are not applicable to His Majesty and that the Board cannot acquire any right of action against him by subrogation under the said Act.

Mr. Justice Smith could not find support for any of these contentions. After stating that subsection (c) of section 19 of The Exchequer Court Act imposes a liability upon the Crown for the negligence of its officer or servant while acting within the scope of his duties or employment, where such negligence has resulted in death or injury to the person or to property, that, as pointed out by the President in *Tremblay v. The King* (1), the language of this section does not only give jurisdiction to the Exchequer Court but that it imposes a liability upon the Crown which did not previously exist and that the provincial law applicable to circumstances such as those prevailing in the case before him is the law which was in force in the province on the 24th of June, 1938, when the amendment to section 19(c) came into force, the learned judge declared that on that date the relevant provisions of The Workmen's Compensation Act were in force in the Province of British Columbia.

After referring to the Interpretation Acts, R.S.C. 1927, ch. 1, s. 16 and R.S.B.C. 1936, ch. 1, s. 35, and quoting the text of said sections, which are alike and read thus: "No provision or enactment in any Act shall affect, in any manner (or way) whatsoever, the rights of His Majesty, his heirs or successors, unless it is expressly stated therein that His Majesty shall be bound thereby", Smith, D.J., made the following observations (p. 254):

It seems to me that the Workmen's Compensation Act in no way affects the liability of the Crown (Dominion) as created by Section 19(c) aforesaid. It neither adds to it, detracts from it, nor varies it in any manner whatsoever. *Dominion Building Corporation Limited v. The King*, (1933) A.C. 533 at 548. All it seeks to do in sec. 11 is to deal with the disposition of the damages as between the Board and the dependents of the deceased.

The learned judge then points out that this is evident from the language of Duff, J. in *Toronto Railway Company v. Hutton* (2) and quotes a passage therefrom, which is pertinent and interesting.

(1) (1944) Ex. C.R. 1 at 8.

(2) (1919) 59 S.C.R. 413 at 420.

Mr. Justice Smith held that the Crown was responsible in damages to Mrs. Snell and her child, and that they have individual rights.

His Majesty appealed. The Supreme Court dismissed the appeal and affirmed the judgment (1).

I deem it expedient to quote an extract from the reasons of Mr. Justice Kerwin (p. 83):

A petition of right was accordingly brought against the Crown by the widow for damages for Snell's death, (1946) 1 D.L.R. 632, (1945) Ex. C.R. 250. The accident having happened in such circumstances as entitled a workman's dependent to an action against some person other than the workman's employer, and the widow having claimed under The Workmen's Compensation Act, the Workmen's Compensation Board of British Columbia established thereby is by virtue of ss. (3) of s. 11 "subrogated to the rights of the workman or dependent as against such other person for the whole or any outstanding part of the claim of the workman or dependent against such other persons". The Board also took an equitable assignment in writing from the widow. The Board was joined as a co-suppliant, not as a necessary party,—since the claim is that of the widow on behalf of herself and her infant son—but as a proper party.

The dispute of the claim is founded upon the facts that the widow had a right to claim compensation under the provisions of The Workmen's Compensation Act, although she might choose not to exercise it; that she did make such a claim; that the Board ordered that certain monthly sums be paid to her for herself and for the son; and that these sums have been and are being paid. Although it is doubtful if the point is open on the pleadings, it was also argued that even if these circumstances did not defeat the present claim, the compensation awarded under The Workmen's Compensation Act should lessen *pro tanto* the sum awarded by the trial judge.

If the appellants' arguments were sound, they would apply as well between subjects as between the Crown and subject. It is well settled that it is only pecuniary loss for which compensation is to be paid under Lord Campbell's Act, 1846 (Imp.), c. 93, and legislation similar thereto, such as the British Columbia Families' Compensation Act, and that any pecuniary advantage a dependent has received from the death must be set off against her probable loss.

The learned judge then reviews the decision of the Privy Council in *G. T. R. v. Jennings* (2), an action under the Ontario Fatal Accidents Act. This part has no bearing on the present case.

Mr. Justice Kerwin then continues (p. 84):

In litigation between subjects, an action by the dependent of a workman whose death was caused by a third party would not be defeated by reason merely of the dependent's right to claim compensation under The Workmen's Compensation Act. If the dependent had claimed compensation, the Board, by ss. (3) of s. 11, would have been "sub-

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(1) (1947) 2 D.L.R. 81.

(2) (1888) 13 A.C. 800.

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rogated to the rights of the workman or dependent as against such other person for the whole or any outstanding part of the claim of the workman or dependent against such other person". It is not necessary to determine precisely to what the words "or any outstanding part" refer, but I am satisfied that they would not apply so as to reduce the claim of the dependent against a subject wrongdoer. The Board is subrogated to the dependent's rights against the third party and the Board's rights would not be defeated or curtailed by anything done by the dependent. That is, as between subjects, it seems clear that the wrongdoer could not successfully contend that the Legislature intended that the receipt by a dependent of compensation under The Workmen's Compensation Act should be deducted from the sum otherwise payable under The Families' Compensation Act. If that were so, the subrogation of the Board to the dependent's right would be illusory. Liability to the same extent attaches to the Crown.

The judgment of Taschereau and Estey, JJ., delivered by the latter, contains, among others, the following observations, which seem to me relevant (p. 85):

So far as the Workmen's Compensation Board is concerned the Crown sets up a number of defences which may be summarized thus: that the Board suffered no pecuniary damage; the assignment is ineffective as against the Crown, and s. 11(3) of The Workmen's Compensation Act does not give any remedy to the Board against the Crown in the right of the Dominion.

An examination of Mrs. Snell's position under The Workmen's Compensation Act and under the sections of The Exchequer Court Act already referred to indicates that she had both a claim under the provincial Compensation Act and under The Exchequer Court Act. The contention here is that, having exercised her right and having accepted compensation under provincial legislation, that election on her part has barred her right to recover from the Crown in the right of the Dominion, if not completely then to the extent that she has recovered compensation under that Act.

Taschereau and Estey, JJ., then analyze briefly the decision of the Supreme Court in *Toronto Railway Company v. Hutton* (1) and conclude (p. 86):

It follows, therefore, that the position of the party whose negligence caused the injury is unaffected by the provisions of The Workmen's Compensation Act.

Reverting then to the claim of Mrs. Snell and the compensation allotted to her under The Workmen's Compensation Act, the learned judges make the following observations (p. 86):

The compensation under the statute is in no way a settlement of Mrs. Snell's claim for damages arising out of the negligence of the appellant. The basis for the compensation under the statute, that of "injury by accident arising out of and in the course of employment", is a much wider and different basis from that of a claim founded in

(1) (1919) 59 S.C.R. 413 at 421; (1919) 50 D.L.R. 785 at 790.

negligence. A computation of the claim is also as set out in the statute quite different from that which would be followed in a negligence action. Moreover, The Workmen's Compensation Act provides in effect that the claim of Mrs. Snell at common law for damages continues and may be enforced. It, therefore, follows that the contention of the Crown that whatever damages Mrs. Snell may have suffered have been recovered and because thereof she has no further claim is not tenable.

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Reference may be had with some interest to the decision of the Supreme Court in the case of *The King v. Canadian Pacific Railway Company*, rendered on February 4, 1947, and yet unreported, although not so precisely to the point.

For a definition of "subrogation" and the distinction between "subrogation" and "assignment", see *Stroud's Judicial Dictionary*, second edition, page 1960; *Words and Phrases*, permanent edition, volume 40, page 435, under sub-title "Legal or conventional"; *King v. Phoenix Assurance Company* (1), reasons of Farwell, L.J.

After a careful perusal of the argument of counsel, an attentive study of the doctrine and a fairly elaborate review of the precedents, I have reached the conclusion that the Workmen's Compensation Board of the Province of Saskatchewan was, under the provisions of The Workmen's Compensation (Accident Fund) Act of the said province, duly subrogated to the rights of Mrs. Joseph Bélanger and that it is entitled to claim from the respondent the reimbursement of the compensation which it has paid in part and is liable to pay to her. Needless to say, the suppliant will have to prove negligence on the part of an officer or servant of the respondent while acting within the scope of his duties or employment.

As the application that the Court should, before the trial, entertain argument on the question as to whether there is a recourse against the Crown open to the suppliant for the recovery of the amount which it is liable to pay to Mrs. Joseph Bélanger was made both by counsel for the respondent and counsel for the suppliant, the costs on this application and the hearing which followed will be costs in the cause.

Judgment accordingly.

(1) (1911) L.J. 80 K.B. 44.