IN THE MATTER of the Petition of Right of

1905
Feb. 27.

EMMA RYDER.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Public work—Injury to the person—Negligence—Doctrine of common employment in Manitoba—Liability of Crown.

The effect of clause (*c*) section 16 of *The Exchequer Court Act* is not to extend the Crown's liability so as to enable any one to impute negligence to the Crown itself, or to make it liable in any case in which a subject under like circumstances would not be liable.

2. In the Province of Manitoba the Dominion Government is not liable for any injury to one of its servants arising from the negligence of a fellow-servant. *Filion* v. *The Queen* (24 Can. S. C. R. 482) referred to.

3. With respect to the liability of the Dominion Government in cases involving the doctrine of common employment, nothing short of an Act of Parliament of Canada can alter the law of Manitoba as it stood on that subject on the 15th July, 1870.

Semble: The Workmen's Compensation for Injuries Act, R. S. Man. c. 178, does not apply to the Crown, the Crown not being mentioned therein.

PETITION OF RIGHT for damages for injury causing the death of the suppliant's son alleged to have been occasioned by the negligence of a servant of the Crown.

The facts of the case are stated in the reasons for judgment.

F. Heap, for the suppliant, contended that the case was one of negligence by an officer or servant of the Crown while acting within the scope of his duty or employment. (50-51 Vict. c. 16, s. 16 (c)). The accident took place upon property under the control of the Minister of Public Works (1); *Brady* v. *The King* (2); *McKay's Sons* v. *King* (3).

The duty of the Crown to take care is not different from that of the subject. Greater care is necessary

(1) See R. S. C. c. 36, clause 2. (2) 2 Ex. C. R. 273.
(3) 6 Ex. C. R. 1.

1905

RYDER v. THE KING.

Argument of Counsel.

when the work is attended with extraordinary risk. (*Minton-Stenhouse on Accidents to Workmen* (1).

The accident itself bespeaks negligence. *Res ipsa loquitur*. (*Minton-Stenhouse on Accidents to Workman* (2); *Brown* v. *Leclerc* (3); *Webster* v. *Foley* (4); *Branigan* v. *Robinson* (5)).

If the Manitoba *Workmen's Compensation for Injuries Act* applies, we are in a still better position.

N. Howell, K.C., (with whom was *Mathers*) for the respondent

The Crown is not liable at common law. The Manitoba *Workmen's Compensation for Injuries Act* does not apply, the Crown not being a "person" within the meaning of the Act. *The Exchequer Court Act*, 50-51 Vict. c. 16, does not widen the liability of the Crown to the extent of precluding it from invoking the doctrine of common employment.

But there was no negligence in the method employed to launch the vessel. The cause of the accident was a defect in one of the lines used in launching the boat; a defect which it was not negligence on the part of those in charge not to have noticed. (*Jones* v. *Grand Trunk Railway Co.* (6); *Blackmore* v. *Toronto Street Ry. Co.* (7).

But if there was negligence at all, it was negligence of a fellow-servant for which the Crown in right of the Dominion is not responsible in cases arising in Manitoba.

The *locus* of the accident was not a public work. (*Filion* v. *The Queen* (8); *Hamburg American Packet Co.* v. *The King* (9).

Mr. Heap replied.

(1) 2nd ed. pp. 12, 13.
(2) 2nd ed. pp. 6, 18.
(3) 22 S. C. R. 53.
(4) 21 S. C. R. 580.
(5) [1892] 1 Q. B. 344.
(6) 45 U. C. R. 193.
(7) 38 U. C. R. 172.
(8) 4 Ex. C. R. 134; 24 S. C. R. 482.
(9) 7 Ex. C. R. at pp. 177, 178.

1905

RYDER
v.
THE KING.

Reasons for Judgment.

THE JUDGE OF THE EXCHEQUER COURT now (February 27th, 1905) delivered judgment.

The suppliant, as administratrix of the estate and effects of her son William Edward Ryder, brought her petition to recover damages for the loss sustained by his death, which happened while he and others were engaged in launching the Dominion steam-tug *Sir Hector* at or near Selkirk, in the Province of Manitoba. By an amendment that was applied for and granted at the hearing, the petition is prosecuted as well for the benefit of the brothers and sisters of the deceased as for the suppliant herself. The deceased was at the time of his death in the employ of the Crown, and it is alleged that his death was caused by the negligence of one Robert Francis Sweet, who was also in the employ of the Crown, and who at the time of the accident was in charge of the launching of the steam-tug.*

The statement in defence raises no issue in fact or in law. By it the suppliant is left to make such proof of her case as she may be enabled to do, and the Crown claims such interest in the premises as it may appear to have and submits itself to the judgment of the court. At the hearing, however, counsel for the Crown set up a number of defences, and asked leave to make any amendment necessary to raise the issues thereby presented. That amendment ought, I think, to be granted. Briefly, these defences were :—

1. That the accident did not occur on a public work ;

2. That it was not caused by negligence ;

3. That the negligence complained of (if any) was that of a fellow-servant of the deceased and the Crown is not liable therefor ;

* REPORTER'S NOTE.—The immediate cause of the accident was the breaking of a two-inch rope which was used as a bow-line in launching the tug. The evidence showed that this rope was new, and that those who used it did not know it was defective.

4. That *The Workmen's Compensation for Injuries Act* (R. S. Man. c. 178) does not apply to this case. I shall have occasion to deal with the 3rd and 4th defences only.

The jurisdiction of the court in a matter of this kind is defined by clause (c) of the 16th section of *The Exchequer Court* (50-51 Vict., c. 16) by which it is, among other things, provided that the Exchequer Court shall have original jurisdiction to hear and determine 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. Prior to the passing of the Act mentioned a petition of right would not lie for such a claim or cause of action. The only remedy the subject had in such a case was by a proceeding before the Official Arbitrators, who had been given jurisdiction in the premises by the Act of the Parliament of Canada 33rd Victoria, chapter 23. In the earlier cases arising after the passing of *The Exchequer Court Act* of 1887, it was contended that the clause cited had reference to the remedy only and did not in any way affect or alter the Crown's liability in such cases. (1) But that contention did not prevail; and there have been a number of cases in which petitions of right have been upheld where the suppliant claimed damages in respect of a tort. (2) It has never been thought, however, that the clause cited so extended the Crown's liability as to enable anyone to impute negligence to the Crown itself, or to make it liable in any case in which a subject under like circumstances would not

(1) See The Henrich Björn, 11 A. C. 270.

(2) See the City of Quebec v. The Queen, 24 S. C. R. 420; and Filion v. The Queen, 4 Ex. C. R. 134; 24 S. C. R. 482.

1905

RYDER
v.
THE KING.

Reasons for Judgment.

be liable. There may indeed be cases in which the Crown is not liable although a subject or a company would under like circumstances be liable.

In this case, as in *Filion's case* (1), the negligence complained of was that of a fellow-servant of the deceased. In the latter case that was held not to be a good defence, as the case was governed by the law of the Province of Quebec in which the doctrine of common employment has no place. The law of the Province of Manitoba on that subject is to be found in the law of England as it stood on the 15th of July, 1870, (2) and in *The Workmen's Compensation for Injuries Act* (3). By the law of England as it stood at the date mentioned, a master was liable to his workmen for his own personal negligence, as where he failed to provide proper appliances for doing his work, or adopted or sanctioned a defective system of doing it (4); but he was not liable to his workmen for injuries resulting from the negligence of a fellow-servant or workman. But personal negligence cannot be imputed to the Crown, and if in the execution of its works improper appliances are provided, or a defective system of doing the work is adopted, whereby one of its servants is injured, that in general will be found to be the act of a fellow employee or servant; and that would afford the Crown a good defence to the action.

Since 1870 several Acts have been passed by the Parliament of the United Kingdon by which the law on this subject in England has been altered :—*The Employees Liability Act*, 1880 viz., *The Workmen's Compensation Act*, 1897 ; and *The Workmen's Compensa-*

(1) 4 Ex.C.R. 134; 24 S.C.R. 420.

(2) 51 Vict. (D) c. 33, s. 1 ; 38 Vict. (M.) c. 12, s. 1 ; C. S. M. c. 31 s. 4 ; 48 Vict. (M.) c. 15, s. 7 ; R. S. M. (1891) c. 36. s. 9 ; R. S. M. (1902) c. 40, s. 23.

(3) R. S. M. (1902) c. 178 ; 56 Vict. (M.) c. 39 ; 58 & 59 Vict. (M.) c. 48 ; 61 Vict. (M.) c. 51.

(4) Smith v. Baker, (1891) A. C. 325 ; Grant v. The Acadia Coal Co. 32 S. C. R. 427.

1905

RYDER
v.
THE KING.

Reasons for Judgment.

tion Act 1900. In 1893 the Legislature of the Province of Manitoba passed *The Workmen's Compensation for Injuries Act* of that Province. This Act was amended in 1895, and also in 1898, and its provisions, with such amendments, now constitute chapter 178 of *The Revised Statutes of Manitoba*. By the 8th section of *The Worksmen's Compensation Act* 1897, to which reference has been made, it is provided that the Act shall not apply to persons in the naval or military service of the Crown, but otherwise shall apply to any employment by or under the Crown to which the Act would apply if the employer were a private person. In the Manitoba Statute the Crown is not mentioned; and if the question were raised it is probable that it would be held that the Crown, as represented by the Government of that Province, is not bound thereby. But however that may be it is clear, I think, that with respect to the liability in such cases of the Crown, as represented by the Government of Canada, nothing short of an Act of the Parliament of Canada can alter the law of Manitoba as it stood on that subject on the 15th of July, 1870.

It may seem anomalous that an employee of the Government of Canada who is injured by the negligence of his fellow-servant in the Province of Quebec may maintain a petition against the Crown for the injuries he receives; or in case death results from such injuries his representatives or those dependent on him may maintain their petition, while in a province in which the law of England prevails no petition will lie against the Crown under the same or like circumstances. But there are many anomalies in the law, and it is the office of the legislature, not of the court, to remove them.

In the present case for the reasons that the negligence complained of was that of a fellow-servant of the

1905

RYDER
v.
THE KING.

Reasons for Judgment.

deceased, and that *The Workmen's Compensation for Injuries Act* of the Province of Manitoba does not apply, I am of opinion that the petition cannot be maintained. The suppliant is not in law entitled to any part of the compensation that she seeks to recover, and in that respect she has nothing, I think, to look to except the grace and benevolence of the Crown.

There will be no costs to either party.

Judgment accordingly.

Solicitors for suppliant: *Heap & Heap.*

Solicitors for respondent: *Howell, Mathers & Howell.*