IN THE MATTER OF THE PETITION OF RIGHT OF JOHN JAMES THOMPSON .... SUPPLIANT;

1921
March 14.

AND

HIS MAJESTY THE KING........ RESPONDENT.

Railways—Employees—Relief and Insurance Association—Contract of Employment—Public Policy—Estoppel.

T. was a *temporary* employee of the Transcontinental Railway and as such a member of the Employees Relief and Insurance Association. By written agreement with the Association, he acknowledged having received copy of the rules of the association and agreed, as one of the terms and conditions of his employment, to comply with and be bound thereby. Each member had to contribute to the fund, and the Railway Department also contributed a certain sum annually, in consideration of which, by the rules, it was "relieved of all claims for compensation for injury or death of any member."

T. was injured in shunting operations, and subsequently received two cheques from the Association, payable out of the fund towards which the Crown contributed, and which he cashed. The cheques were handed to him because of his membership in the Association, and a daily or monthly deduction was duly made, to his knowledge, from his wages.

Held: That such an agreement was part of his contract of employment, was valid and binding upon him, and was not against public policy; and was a complete answer and bar to an action against the Crown for injury sustained by him whilst employed as aforesaid, and that suppliant was estopped from setting up any claim inconsistent with the rules and regulations of the Association. *Conrod* v. *The King* (1), followed, and *Saindon* v. *The King* (2), and *Miller* v. *The Grand Trunk* (3), distinguished. The last two dealing with the case of a *permanent* employee, and this case with a *temporary* employee

(1) 49 S.C.R. 577. (2) 15 Ex. C.R. 305.
(3) [1906] A.C. 187.

PETITION OF RIGHT to recover $10,500 damages alleged to have been suffered whilst employed on the Transcontinental Railway.

1921
THOMPSON v. THE KING.
Reasons for Judgment.
Audette J.

March 2nd, 1921.

The case was now heard before the Honourable Mr. Justice Audette at Quebec.

F. Savard for suppliant.

Auguste Sirois for respondent.

The facts are stated in the reasons for judgment.

AUDETTE J. now (March 14th, 1921), delivered judgment.

This is a Petition of Right whereby it is sought, by the suppliant, to recover the sum of $10,500 as damages, he alleges, he suffered as the result of an accident he met with, in the railway yard, at Parent, on the Transcontinental railway, a public work of Canada.

Counsel at bar for the suppliant, having become informed from the evidence adduced, that the Crown had paid all hospital and medical charges in respect of the suppliant's accident and injuries, abandoned his claim for $500 made in respect of the same by paragraph 15 of the Petition of Right.

The suppliant met with an accident late in the evening of the 16th February, 1918, when engaged, as brakeman, in the making up of a train called *Snow Plow Extra*, in the railway yard, at Parent, in the course of necessary shunting therefor. After leaving the switch and while backing, tender foremost, he was standing at the side, on the rear end of the tender—one foot on the sill and the other on the step, holding on with his right hand, facing the direction in which they were travelling and with his back turned to the engine, carrying his lamp in the left hand. After leaving the switch, he gave the signal to the engineer to back towards the two cars they intended to remove, to

allow them to get at their van and, when at about 5 car lengths from these two cars, he gave the signal to stop. He contends he looked back to ascertain if the engineer was getting the signal, but he could not see him. Then, being at about 20 feet distance from him, he hailed him (yelled), but received no reply. The tender and engine collided with the two cars, the suppliant was thrown from where he stood and suffered injuries both to his head and his right arm, for which he now sues. These injuries consisted of his right arm being injured, without being broken.

The accident happened on the 17th February, 1918, and the Petition of Right, in compliance with sec. 4 of the Petition of Right Act, appears, from the departmental stamp affixed thereon, to have been left with the Secretary of State, on the 30th April, 1919; that is more than one year after the accident and would therefore appear on its face to be prescribed. It was filed in the court on the 9th May, 1919.

Under sec. 33 of the Exchequer Court Act the laws respecting prescription and the limitation of actions in force in the province of Quebec must apply in a case of this kind.

Under Art. 2211 of the Civil Code of the province of Quebec, the Crown may avail itself of prescription and the manner in which the subject may interrupt prescription is by means of a petition of right,—apart from the cases in which the law gives another remedy.

Under Art. 2262 of the Civil Code the right of action for bodily injuries is prescribed by one year and Art. 2267 further enacts that in such case the debt is absolutely extinguished, and that no action can be maintained after the delay for prescription has expired. See also Art. 2188 and *The Queen* v. *Martin* (1).

(1) 20 S.C.R. 240.

1921
THOMPSON v. THE KING.
Reasons for Judgment.
Audette J.

The injury complained of in this case having been received more than a year before the lodging of the petition of right with the Secretary of State, the right of action is absolutely prescribed and extinguished.

Moreover, there is the further question of the insurance. I may say in a summary manner, that the suppliant was a temporary employee at the time of the accident; that he signed exhibit A and received the booklet exhibit C, whereby by Art. 115 thereof the railway in consideration of its financial contribution is relieved from all claims for compensation in respect to injuries or death of the insured.

The suppliant received two cheques, cashed them and kept the proceeds thereof. These cheques were handed to him because of his being a member of the Association and a daily or monthly deduction was duly made, to his knowledge, from his wages, towards the insurance,—"he is now estopped from setting up any claim inconsistent with the rules and regulations of the association and therefore precluded from maintaining this action"—Per Chief Justice of Canada in *re Conrod* v. *The King* (1).

Having said so much, it becomes unnecessary to express any opinion as to whether or not the suppliant's claim could have been sustained on the ground of negligence. It is unfortunate and greatly to be regretted that we did not have the advantage of hearing Marcotte, the engineer, as he might have thrown more light upon the circumstances of the accident. The agreement (exhibit A) entered into by the suppliant, whereby he became a member of the insurance society and consented to be bound by its rules, was a part of a contract of service which it

(1) 49 S.C.R. 580.

was competent for him to enter into. And this contract is an answer and a bar to this action, for the restrictive rules are such as an insurance society might reasonably make for the protection of their funds, and the contract as a whole was to a large extent for the benefit of the suppliant and binding upon him. *Clement* v. *London South-Western Ry. Co.* (1).

Such contract of service is perfectly valid and is not against public policy. *Griffiths* v. *Earl of Dudley* (2), and in the absence of any legislation to the contrary,—as with respect to the Quebec Workmen's Compensation Act (3), any arrangement made before or after the accident would seem perfectly valid. Sachet, Legislation sur les Accidents du Travail, Vol. 2, pp. 209 et seq.

The present case is in no way affected by the decision in the case *Saindon* v. *The King* (4), and *Miller* v. *Grand Trunk* (5), because in those two cases the question at issue was with respect to a *permanent* employee where the moneys and compensation due him, under the rules and regulations of the insurance company, were not taken from the funds toward which the Government or the Crown were contributing. It is otherwise in the case of a *temporary* employee, and I regret to come to the conclusion, following the decision in *Conrod* v. *The King* (6), that the suppliant's claim is absolutely barred by the condition of his engagement with the I.C. Ry.

See *Gingras* v. *The King* (7); *Gagnon* v. *The King* (8).

(1) L.R. 2 Q.B.D. 482.
(2) L.R. 9 Q.B.D. 357.
(3) 9 Edw. VII, c. 66, s. 19; Art. 7339, R.S.Q. 1909.
(4) 15 Ex. C.R. 305.
(5) [1906] A.C. 187.
(6) 49 Can. S.C.R. 577.
(7) 18 Ex. C.R. 248.
(8) 17 Ex. C.R. 301.

1921
THOMPSON v. THE KING.
Reasons for Judgment.
Audette J.

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

Judgment accordingly.

Solicitors for suppliant: *Rog. Langlois, Godbout & Rochette.*

Solicitors for respondent: *Belleau et Sirois.*