

IN THE MATTER of the Petition of Right of

BELIVARD ROBILLARD.....SUPPLIANT;

1908
January 7.

AND

HIS MAJESTY THE KING.....RESPONDENT.

Negligence on a Public Work—Unskilled labourer required to remove electric wire—Bodily injury—Timekeeper—Fellow-servant—Liability.

R., a labourer employed by the Department of Public Works in the reconstruction of a public building, was ordered by a timekeeper to remove an electric wire which had been used for the purposes of such reconstruction. R. had no skill in respect of this particular work. The timekeeper was permitted by the officer of the Department in charge of the work to direct the workmen to attend to matters of this nature, and they were done under his direction from time to time. Removing the wire under the conditions then existing was attended with danger, and this fact was known or ought to have been known to the timekeeper, but he gave no notice of this to R. at the time he directed him to remove the wire. While engaged in removing it, R. received a severe electric shock; and was thrown from a girder upon which he was standing, falling to a lower story of the building and in that way receiving serious bodily injury.

Held, following Ryder v. The King (9 Ex. C. R. 330; 36 S. C. R. 462), that the negligence of the timekeeper was the negligence of a fellow-servant of R., and that the Crown was not liable therefor.

PETITION OF RIGHT for damages for bodily injuries occasioned by the alleged negligence of a servant of the Crown on a public work.

The facts are stated in the reasons for judgment.

May 21st and 22nd, 1907.

The case was heard at Ottawa.

A. Lemieux, for the suppliant, contended that the facts disclosed that Fraser, the timekeeper, was an officer or servant of the Crown for whose negligence the Crown would be responsible under s. 20 (c) of R. S. 1906 c. 140.

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E. L. Newcombe, K.C., for the respondent, argued that the case was clearly within the doctrine laid down by the court in *Ryder v. The King* (1). Fraser was a fellow-servant of the suppliant, and there can be no recovery.

THE JUDGE OF THE EXCHEQUER COURT now (January 7th, 1908) delivered judgment.

The suppliant brings his petition under the provision of the statute which is now to be found in clause (c) in the 20th section of *The Exchequer Court Act* (R. S. 1906, Chap. 140, s. 20 (c)), which gives the court exclusive 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.

It appeared that the suppliant was employed as a labourer upon the reconstruction of the Post Office in the City of Ottawa, and that upon the morning of the 16th of October, 1905, he was ordered by one William J. Fraser to ascend to the roof of the building and remove an electric extension wire or cord which had been left hanging by the workmen employed in the building up to midnight of the preceding Saturday. Fraser was a time-keeper who was permitted to, and did from time to time, give directions in respect of the work being done on the Post Office building. Under the conditions then existing, the removal of the electric extension wire was attended with danger of which the suppliant was ignorant, but which was known or ought to have been known to Fraser, and of which he gave the suppliant no notice. In the result the suppliant received a severe electric shock, and was thrown from a girder upon which he

(1) 36 S. C. R. 462.

was standing and fell to a lower storey, and in that way sustained serious injuries.

The respondent, amongst other defences, pleads that the negligence complained of, if any, was that of a fellow-servant of the suppliant, and that the Crown is not liable therefor. In support of that defence reliance is placed upon the case of *Ryder v. The King* (1) As I am not able to distinguish the two cases in principle, it seems to me that this defence is made out.

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

Judgment accordingly.

Solicitor for the suppliant: *A. Lemieux.*

Solicitor for the respondent: *E. L. Newcombe.*

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