

1956  
Nov. 13  
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Jan. 8

BETWEEN:

LEONARD A. PARMENTER ..... SUPPLIANT;

AND

HER MAJESTY THE QUEEN ..... RESPONDENT.

*Crown—Petition of Right—Damages—Petition filed after expiration of twelve months from time of damages—The Highway Traffic Act of Manitoba, R.S.M. 1940, c. 93, s. 84(1)—Exchequer Court Act, R.S.C. 1952, c. 98, s. 31—Provincial limitation of action applicable—No estoppel against requirement or operation of statute.*

The suppliant brought a petition of right for damages for personal injuries alleged to have been suffered by him at Winnipeg in Manitoba on December 18, 1947, through having been struck by a motor vehicle driven by a member of the Royal Canadian Air Force. It was alleged that the injuries resulted from the negligence of the driver while acting within the scope of his duties. The petition was not filed in this Court until November 19, 1953. It was alleged in paragraph 8 of the statement of defence that the suppliant's action was barred by reason of the fact that it was not brought until after the expiration of twelve months from the time when his damages were sustained as required by section 84(1) of *The Highway Traffic Act* of Manitoba, R.S.M. 1940, Chapter 93, and section 31 of the *Exchequer Court Act*, R.S.C. 1952, Chapter 98. It was alleged in the suppliant's reply that the respondent was estopped from asserting the facts upon which the defence alleged in paragraph 8 of the statement of defence was based by reason of the representation made to the suppliant by officers and servants of the respondent that his injury was pensionable and that an action need not be commenced for compensation for it. Counsel for the respondent applied for judgment that the suppliant was not entitled to any of the relief sought in the petition of right.

*Held:* That the provincial laws relating to prescription and the limitation of actions referred to in section 31 of the *Exchequer Court Act* of which the Crown may avail itself in a petition of right are those of the province in which the cause of action arose that are in force in such province at the time when the Crown is called upon to make its defence to the petition of right and that the respondent was entitled, in the

absence of a valid reason to the contrary, to rely upon section 84(1) of *The Highway Traffic Act* of Manitoba as a bar to the suppliant's proceedings.

2. That there cannot be an estoppel to defeat the requirements of a statute or prevent its operation.
3. That representations of the kind alleged in the reply cannot operate as an estoppel to prevent the operation of a statutory limitation.
4. That the suppliant was not entitled to any of the relief sought in the petition of right.

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MOTION for judgment that suppliant not entitled to relief sought in petition of right.

The motion was heard before the President of the Court at Ottawa.

*D. S. Maxwell* for respondent.

*R. H. McKercher* for suppliant.

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

THE PRESIDENT now (January 8, 1957) delivered the following judgment:

On November 13, 1956, on the application of counsel for the respondent and after hearing counsel for the suppliant, I delivered judgment herein whereby it was ordered and adjudged that the suppliant was not entitled to any of the relief sought in his petition of right and that the respondent was entitled to costs and I stated that I would deliver reasons for judgment later. These now follow.

The suppliant's petition was for damages for personal injuries alleged to have been suffered by him at Winnipeg in Manitoba on December 18, 1947, through having been struck by a motor vehicle driven by a member of the Royal Canadian Air Force while acting within the scope of his duties. It was alleged that the suppliant was at that time a member of the Royal Canadian Air Force stationed at Winnipeg and that his injuries resulted from the negligence of the driver of the said vehicle. While the injuries were alleged to have been suffered on December 18, 1947, the petition of right was not filed in this Court until November 19, 1953.

In the statement of defence, which was filed in this Court on February 25, 1955, the allegations of fact in the suppliant's petition were denied and it was alleged in paragraph

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8 that his proceedings were barred by reasons of the fact that they were not brought until after the expiration of twelve months from the time when his alleged damages were sustained as required by subsection (1) of section 84 of *The Highway Traffic Act* of Manitoba, R.S.M. 1940, Chapter 93, as amended, and section 31 of the *Exchequer Court Act*, R.S.C. 1952, Chapter 98.

Section 84 (1) of *The Highway Traffic Act* of Manitoba, which was in force at the date of the suppliant's injury and at the date of the filing of the statement of defence, provides:

84. (1) No action shall be brought against a person for the recovery of damages occasioned by a motor vehicle after the expiration of twelve months from the time when the damages were sustained.

and section 31 of the *Exchequer Court Act* provides:

31. Subject to any Act of the Parliament of Canada, the law relating to prescription and the limitation of actions in force in any province between subject and subject apply to any proceeding against the Crown in respect of a cause of action arising in such province.

In the suppliant's reply the allegations of fact in the statement of defence were denied and it was alleged that the respondent was estopped from asserting the facts upon which the defence in paragraph 8 of the statement of defence was based by reason of the representation made to the suppliant by officers and servants of the respondent that the injury to the suppliant was pensionable and that an action need not be commenced for compensation for it.

In my opinion, it is established law that the provincial laws relating to prescription and the limitation of actions referred to in section 31 of the *Exchequer Court Act* of which the Crown may avail itself in a petition of right are those of the province in which the cause of action arose that are in force in such province at the time the Crown is called upon to make its defence to the petition of right. It was so held in *Zakrzewski v. The King*<sup>1</sup>. *Vide* also *Ivey v. The Queen*<sup>2</sup>. Consequently, the respondent was entitled, in the absence of a valid reason to the contrary, to rely upon section 84(1) of *The Highway Traffic Act* of Manitoba as a bar to the suppliant's proceedings.

<sup>1</sup> [1944] Ex. C.R. 163 at 169.

<sup>2</sup> [1954] Ex. C.R. 200.

It was contended for the suppliant, however, that the respondent was estopped from pleading the statutory limitation by reason, as alleged in the reply, of the representation made to the suppliant by officers and servants of the respondent that the suppliant's injury was pensionable and that an action need not be commenced for compensation for it.

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Thus the only issue in this case is whether the suppliant's plea of estoppel is valid. In my opinion, it is not.

It is well settled that there cannot be an estoppel to defeat the requirements of a statute or prevent its operation: *Maritime Electric Company, Limited v. General Dairies, Limited*<sup>1</sup>; *St. Ann's Island Shooting and Fishing Club Ltd. v. The King*<sup>2</sup>; *The King v. Cowichan Agricultural Society*<sup>3</sup>.

Nor can a person be estopped from alleging the invalidity of that which a statute has, on grounds of public policy, enacted shall be invalid: *In re a Bankruptcy Notice*<sup>4</sup>, per Atkin L.J. at page 97.

And, similarly, in my judgment, representations of the kind alleged in the reply cannot operate as an estoppel to prevent the operation of a statutory limitation: *Hewlett v. London County Council*<sup>5</sup>; *Norwell v. City of Toronto*<sup>6</sup>; *Ripley v. Merchants Casualty Insurance Co. Limited*<sup>7</sup>.

That being so, it is not necessary to refer to the other arguments submitted by counsel for the respondent.

Consequently, the respondent was entitled to rely on the statutory limitation of the suppliant's claim prescribed by section 84(1) of *The Highway Traffic Act* of Manitoba and since the suppliant's action was not brought until after the expiration of twelve months from the time when his injuries were alleged to have been sustained there was no course open to the Court other than the judgment delivered.

<sup>1</sup> [1937] A.C. 610.

<sup>4</sup> [1924] 2 Ch. 76.

<sup>2</sup> [1950] Ex. C.R. 185;

<sup>5</sup> (1908) 72 J.P. 136.

[1950] S.C.R. 211.

<sup>6</sup> (1925) 28 O.W.N. 224.

<sup>3</sup> [1950] Ex. C.R. 448.

<sup>7</sup> (1930) 37 O.W.N. 446.