

IN THE MATTER OF THE PETITION OF RIGHT OF

1917

Nov. 22.

ZEPHIRIN GAGNON,

SUPPLIANT,

AND

HIS MAJESTY THE KING,

RESPONDENT.

Railways—Negligence—Employees' Relief Fund—Validity of contract—Estoppel.

The agreement of an employee of the Intercolonial Railway, as a condition to his employment, to become a member of the temporary employees' relief and insurance association, and under its constitution and by-laws to accept its benefits in lieu of all claims for personal injury, is perfectly valid and may be set up as a complete bar to his action against the Crown for injuries sustained in the course of employment; by accepting the benefits he will be estopped from setting up any claim inconsistent with the rules and regulations.

PETITION OF RIGHT to recover damages for personal injuries to an employee of the Intercolonial Railway.

Tried before the Honourable Mr. Justice Audette, at Quebec, November 5 and 6, 1917.

Armand Lavergne, for suppliant.

P. J. Jolicoeur, for respondent.

AUDETTE, J. (November 22, 1917) delivered judgment.

The suppliant, by his petition of right, seeks to recover damages in the sum of \$10,521 for bodily injuries sustained by him and which he alleges re-

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sulted from defective machinery, and the incompetence of the foremen and employees of the Intercolonial Railway, a public work of Canada.

On December 17, 1916, some short time after one o'clock in the afternoon, the suppliant was engaged, with other labourers, in the railway yard of the I.C.R. at Chaudiere, P. Q., in the work of lifting a turn-table with the aid of a derrick,—his work consisting in placing blocks underneath the table as it was being raised. While engaged in this work the hooks, attached to the table, worked from the derrick, suddenly slipped from under the table; the latter fell, pinning the suppliant's right arm between the blocks and the table. For the purposes of this case, it is found unnecessary to go any more into the details of the accident and the causes which occasioned it. The sole question involved in this case can be stated without reciting the details of fact which have given rise to the litigation. It will be sufficient to state that as a result of the accident herein the suppliant's right arm was amputated three inches below the elbow joint, about 8 to 10 inches of the arm being removed.

To this claim for damages the Crown, *inter alia*, sets up the plea that the suppliant being a member of the I.C.R. Employees' Relief and Insurance Association, it was relieved by the rules and regulations of that association and by the suppliant's agreement on becoming a member thereof, of all liability for the claim now made.

At the time the suppliant entered the employ of the I.C.R. he was given (Exhibit C 2) a booklet intitled "Intercolonial and Prince Edward Island "Railways Employees' Relief and Insurance Asso-

“ciation.—Rules for the guidance of members of the “*Temporary Employees’ Accident Fund.*”

Having been given this book, containing the rules of this insurance association, for the *temporary* employees of the I.C.R., he signed a document or agreement in the form of Exhibit B, whereby he acknowledged having received the booklet in question and consented himself to be bound by it, as a condition to his employment, and to abide by the rules and regulations of the association.

Furthermore, the suppliant, at different dates subsequent to the accident, and in compliance with the rules and regulations of the insurance association, was paid and received a certain weekly sick allowance during a period of 26 weeks, for which he duly gave receipts, as appears by Exhibit F.

The receipts for these “sick allowances” contain the following words: “As full of all claims against “said association on account of injury to arm. . . . “in accordance with constitution, rules and regula- “tions.” These last words cannot be read otherwise than as being a full confirmation of that part of the original contract of service, Exhibit B.

The rules and regulations of the association contain the following provisions:

“The object of the Temporary Employees’ Accident Fund shall be to provide relief to its members “while they are suffering from bodily injury, and “in case of death by accident, to provide a sum of “money for the benefit of the family or relatives of “deceased members; all payments being made sub- “ject to the constitution, rules and regulations of “the Intercolonial and Prince Edward Island Rail- “ways Employees’ Relief and Insurance Associa- “tion from time to time in force.”

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“Rule 3. In consideration of the contribution of
“the Railway Department to the Association, the
“constitution, rules and regulations, and future
“amendments thereto, shall be subject to the ap-
“proval of the Chief Superintendent and the Rail-
“way Department shall be relieved of all claims for
“compensation for injury or death of any member.”

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. The agreement (Exhibit B) 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 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*

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 Can. Ex. 305.

*v. Grand Trunk.*¹ 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*,² that the suppliant's claim is absolutely barred by the condition of his engagement with the I. C. Ry.

Furthermore, the suppliant having accepted the weekly sick allowance and given the receipt therefor in the manner above mentioned, he "is estopped "from setting up any claim inconsistent with those "rules and regulations, and, therefore, precluded "from maintaining this action." Per Sir Charles Fitzpatrick.—*Conrod v. The King, supra.*³

Therefore the suppliant is not entitled to the relief sought by his petition of right.

Action dismissed.

Solicitor for suppliant: *Armand Lavergne.*

Solicitor for respondent: *P. J. Jolicoeur.*

¹ [1906] A.C. 187.

² 49 Can. S.C.R. 577.

³ p. 581-582.

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