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BETWEEN :

CANADIAN PACIFIC RAILWAY } SUPPLIANT;  
 COMPANY .....

AND

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

*Crown—Petition of Right—Workmen's Compensation Act, R.S., B.C. 1936, c. 312—Contract—Suppliant entitled to recover from respondent amount of award made by Workmen's Compensation Board to widow of suppliant's employee whose death was caused by negligence of servants of the Crown—Damages not too remote.*

An agreement entered into between suppliant and respondent provided, *inter alia*, that the respondent would indemnify and save harmless suppliant from any and all loss, costs and damages caused by or contributed to on account of non-compliance by respondent with the laws and orders of the Board of Transport Commissioners for Canada. Murray, an employee of suppliant, was killed because of the negligence of respondent's servants in failing to comply with General Order No. 236 of the Board of Transport Commissioners. Pursuant to the Workmen's Compensation Act of British Columbia, R.S. B.C. 1936, c. 312, suppliant became charged with the award made by the Workmen's Compensation Board to the widow of Murray. The award included certain sums paid by the Board for funeral and other expenses and also the capital amount of a pension of \$40.00 per month. The total award amounted to \$7,626.32.

Suppliant now seeks to recover the said sum of \$7,626.32 from respondent.

*Held:* That the position of suppliant under the Workmen's Compensation Act is such that it bears the burden of its own accidents and in the result becomes charged with the actual cost to the Workmen's Compensation Board of all accidents suffered by its employees.

2. That the fact that suppliant is assessed from year to year in accordance with an estimate of accidents that may happen in the course of the year and that these assessments become part of the Consolidated Revenue Fund of the Province out of which payments are made by the Board does not alter the legal position that suppliant has to re-pay to the Board whatever money the Board pays out in consequence of an accident to any one of suppliant's employees.
3. That the suppliant has lost the total amount paid by the Board on account of the accident resulting in the death of Murray and it does not matter that such loss is suffered by way of increased future assessments.
4. That the loss sustained by suppliant is not too remote to be recoverable under the express provision in the contract entered into between suppliant and respondent.

PETITION OF RIGHT by suppliant to recover from the Crown the amount of an award made by the Workmen's Compensation Board of British Columbia consequent upon the death of an employee of suppliant due to the negligence of employees of the respondent.

The action was tried before the Honourable Mr. Justice Sidney Smith, Deputy Judge of the Court, at Vancouver.

*J. E. McMullen, K.C.* and *J. A. Wright* for suppliant.

*F. A. Sheppard* and *K. L. Yule* for respondent.

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

SIDNEY SMITH D. J., now (January 14, 1946) delivered the following judgment:

A railway siding agreement of the 1st October, 1943, entered into between the suppliant Railway Company and the respondent, contained a provision to the effect that the respondent would "indemnify and save harmless the Railway Company from any and all loss, costs and damages caused by or contributed to on account of non-compliance by the party of the second part with such laws and orders" (namely, the laws and orders of the Board of Transport Commissioners for Canada).

The respondent's servants negligently failed to comply with General Order No. 236 of the said Commissioners and thereby caused the death of one, Murray, an employee of the Railway Company. I so held at the conclusion of the trial, leaving the question of damages for further argument and consideration.

The position taken by the Railway Company is: It submits that pursuant to the terms of the Workmen's Compensation Act of British Columbia, R.S.B.C. 1936, Ch. 312, it became charged with the award made by the Workmen's Compensation Board to the widow of the deceased Murray; that this award included certain sums for funeral and other expenses immediately paid by the Board, and also the capital amount of a pension of \$40.00 per month, the total award amounting to \$7,626.32; that this was a loss suffered by the Railway Company within the terms of the above contractual provision, and so recoverable from the respondent. But the respondent submits in answer thereto that the said award was too remote to be recoverable as loss or damage, and that in any event the Railway Company had suffered neither loss nor damage in that the amounts were paid out of the Consolidated Revenue Fund of the Province and were not paid out of the funds of the Railway Company.

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Mr. Archibald, the Secretary of the Workmen's Compensation Board, was called and gave useful evidence. From his evidence, and from a consideration of the Act, and of the case of *Workmen's Compensation Board v. Canadian Pacific Railway Company* (1), I think it is clear that the Railway Company is in a special position under the Statute. It is in a sub-class by itself, namely, the sub-class of Railway Companies under class 10 of section 28 of the Act; and in this sub-class of Railway Companies it is the sole member by reason of the fact that the Canadian Pacific Railway Company and the Esquimalt and Nanaimo Railway Company are the only Railway Companies included in class 10; and that the latter Company is wholly owned by and leased to the Canadian Pacific Railway Company. In these circumstances therefore, it is not here the case of the Railway Company being one of many industries, all of whom pay assessments into a common fund to answer for accidents to the employees of any one of their number. Its position under the Act is such that it bears the burden of its own accidents and in the result becomes charged with the actual cost to the Board of all accidents suffered by its employees. It is, of course, true that assessments are made upon it each year, in accordance with an estimate of accidents that may happen in the course of the year, and that these assessments become part of the Consolidated Revenue Fund of the Province; and that out of this fund payments are made by the Board. But that does not seem to me to alter the legal position, namely, that the Railway Company has to re-pay to the Board whatever monies the Board pays out in consequence of an accident to any one of its employees. A distinct and separate record is kept of the monies paid by the Board under the Railway sub-class of class 10. Mr. Archibald made this perfectly clear. There is no doubt that as this fund diminishes it has to be replenished; and that it has to be replenished by the Railway Company. It would therefore appear that the Railway Company has in fact lost the total amount paid by the Board on account of this accident, that is to say, \$7,626.32; and that this is not the less true because the loss is suffered by way of increased future assessments.

(1) (1920) A.C. 184.

I cannot see that this loss is in any legal sense too remote to be recoverable. It is a matter of contract. The respondent was negligent, the death ensued, the award was made and will be paid by the Board by way of pension as the years go on. The Railway Company thereby became obligated to recoup the Workmen's Compensation Board for the amount of the award by payment of increased assessments. This must have been within the contemplation of the parties when the contract was made. Why then should such loss to the Railway Company not be recoverable under the express provision in the contract? The fact that it may be charged by the Board to the Railway Company under the name of assessments can make no difference. We must look beneath the words to the legal realities of the situation and they seem to me to be such as I have indicated.

The suppliant will therefore have judgment for the amount of its claim and costs.

*Judgment accordingly.*

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