Supreme Court of Canada
Compagnie Générale d'Entreprises Publiques v. The King, (1917) 57 S.C.R. 527
Date: 1917-11-28

La Compagnie Generale D'entreprises Publiques (Plaintiff). Appellant;

and

His Majesty The King (Defendant). Respondent.

1917: November 2; 1917: November 28.

Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Negligence — Crown — Injury to "property on public work"—Scow attached to public wharf—"Government railways"—"Exchequer Court Act," R.S.C. (1906) c. 140, s. 20 (c).—9 & 10 Edw. VII, c. 19.

Held, Davies J. dissenting, that a scow, lying beside and attached to a public wharf, being used in making repairs to that public work, must be deemed to be engaged "on public work" within the meaning of section 20 (*c*) of the "Exchequer Court Act." Duff J. expressing no opinion and dismissing the appeal for want of jurisdiction.

Per Fitzpatrick C.J.:—The intention of the Parliament of Canada, in adding paragraph (f) to section 20 of the "Exchequer Court Act" (9 & 10 Edw. VII c. 19) was to include all Government railways, in mentioning "the Intercolonial Railway" and "the Prince Edward Island Railway."

Per Anglin J.:—"Public work" means not merely some building or other structure or erection belonging to the public, but any operations undertaken by or on behalf of the Government in constructing, repairing or maintaining public property.

APPEAL from a judgment of the Exchequer Court of Canada[1] dismissing the plaintiff's petition of right[2].

The appellant, under a contract with the Commissioners of the Transcontinental Railway, was ordered by them to do some repairs to a wharf situated at Levis and belonging to the Commissioners. In order

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to do the work, the appellant had to use a derrick-scow and to make her fast to the face of the wharf. The "Leonard," a ferry-boat belonging to respondent, was also using the wharf for ferrying the cars of the Transcontinental Railway from Quebec to Levis. The scow was crushed against the wharf by the "Leonard" and was sunk.

Marchand K.C. for the appellant.

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[1] 32 D.L.R. 506.
[2] Reporter's Note.—Since the judgment of the Exchequer Court, section 20, par. c. of the Exchequer Court Act has been amended. (7-8 Geo. V. c. 23, s. 2).

Meredith K.C. for the respondent.

THE CHIEF JUSTICE.—It is a little difficult to say from the record in what way this appeal comes before this Court. The Assistant Judge of the Exchequer Court before whom the petition of right came on for trial took all the evidence, but in his judgment says—

> at the opening of the case, it was ordered, both parties agreeing thereto' that the questions of law raised herein should be first disposed of before entering into the question of the quantum of the damages.

It would seem from this either that the Crown admitted negligence of its officers or servants or else that the case was argued on demurrer. No point of law is raised by the statement of defence which simply alleges negligence on the part of the petitioner.

The learned judge has held that

> the case does not come within the ambit of sub-section (f) of section 20 of the "Exchequer Court Act," since that section only applies to the Intercolonial Railway or the Prince Edward Island Railway.

In this I think he is wrong.

By the "Government Railways Act," R.S.C. 1906, ch. 36, s. 80, the Intercolonial Railway is defined as follows:—

> 80. All railways, and all branches and extensions thereof, and ferries in connection therewith, vested in His Majesty, under the control and management of the Minister, and situated in the Provinces of Quebec, Nova Scotia and New Brunswick, are hereby declared to constitute and form the Intercolonial Railway.

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By the "National Transcontinental Railway Act," as amended by the Act to amend the "National Transcontinental Railway Act," 4 & 5 Geo. V., ch. 43, it is provided:—

> After the Eastern Division is completed and until it is leased to the company, the said Eastern Division shall be under the control and management of the Minister of Railways and Canals who shall have power to operate the whole or any part of the said Division as a Government railway under the provisions of the "Government Railways Act," R.S.C. 1906, ch. 36.

Paragraph (f) added to section 20 of the "Exchequer Court Act" by the Act to amend the "Exchequer Court Act" (9 & 10 Edw. VII., ch. 19) was, no doubt, intended to include, and did in fact then include, all Government railways in mentioning the Intercolonial Railway and the Prince Edward Island Railway.

Since, then, the Eastern Division of the National Transcontinental Railway is certainly now a Government railway, and as regards the locus with which we are now concerned is within the letter of the statute a part of the Intercolonial Railway, I think we are justified in holding that, for the purposes of the present case at any rate, it forms part of the Intercolonial Railway so as to entitle the appellant to rely upon paragraph (f) of section 20 of the "Exchequer Court Act."

It does not perhaps necessarily follow from the case falling within the extended terms of liability in this paragraph (f) that the appellant is entitled to relief even if negligence is proved, as to which we have no finding by the Exchequer Court.

Inasmuch as the appeal was really from a decision on a point of law which is overruled, the case should, I think, go back to the Exchequer Court for determination and, if necessary, assessment of damages.

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DAVIES J. (dissenting)—I am of opinion that Mr. Justice Audette of the Exchequer Court was perfectly right in holding that the damages sustained by the scow or dredge of the suppliants while lying alongside of the Quebec Warehouse Wharf were not recoverable under sub-section (*c*) of section 20 of the "Exchequer Court Act," because the injuries complained of did not occur "on a public work."

The scow or dredge was at the time of the accident moored at the face of the wharf and a diver was preparing to descend the river at the face of the wharf to ascertain whether the foundation was strong enough to build on.

He had not, however, completed his preparations when the collision with the steamer "Leonard" occurred and to hold that the scow or dredge at the time of the collision was "on a public work" within the terms of the section would be to run counter to the construction of the sub-section established by this court in the cases of *Chamberlin* v. *The King*[3]; *Paul* v. *The King*[4]; *The Hamburg American Packet Co.* v. *The King*[5]; and *Olmstead v. The King*[6].

[3] 42 Can. S.C.R. 350.
[4] 38 Can. S.C.R. 126.
[5] 39 Can. S.C.R. 621.
[6] 53 Can. S.C.R. 450; 30 D.L.R. 345.

Paul's Case[4] is, in many respects, like this one and the construction of the section in question there determined must prevail in the case now before us unless that case is overruled. The decision, however, in *Paul's Case*[4] has been consistently followed ever since.

As my colleagues, however, have reached the conclusion that the cases I have referred to can be distinguished from this one, this case must, of course, go back to the Exchequer Court to have it determined

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whether there has been such negligence as the Crown is liable for and, if such is held, to assess the damages.

As far as I am concerned, I would dismiss the appeal and the suppliant's petition of right with costs.

IDINGTON J.—I agree with the learned trial judge below that a very narrow construction has unfortunately been placed upon the words "on a public work" in the statute in question, but I cannot agree that any of them have gone quite so far as the judgment now appealed from. There was always something to distinguish physically the spot where the alleged negligence took place from the actual spot where the work was actually being conducted.

In this case it is hardly possible unless we give the meaning to the word "on" of "upon" and insist that the scow in question could not be said to be "on a public work" unless it was on the top of the very spot in the wharf under and with which the appellant's men were engaged. I have also come to the conclusion that there was negligence attributable to the servants of the respondent which caused the destruction of the said scow whilst on the work in question. This court must, when the issues have been fully tried out as admittedly they were here, and all the evidence has been adduced that either party desires to present, give the judgment which the court below should have given. The judgment, I conceive, in this case should be to adjudge the respondent liable for the amount of the damages which the suppliant sustained in consequence of such negligence. Inasmuch, however, as the actual quantum of the damages was not dealt with in the evidence adduced, it will be necessary to refer the matter to the learned judge to assess the damages.

[4] 38 Can. S.C.R. 126.
[4] 38 Can. S.C.R. 126.

I think the appeal should be allowed and judgment entered accordingly.

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DUFF J. (dissenting).—I am of the opinion that the appeal should be dismissed for want of jurisdiction.

ANGLIN J.—This case seems to me, with respect, to be distinguishable from the series of decisions on the construction of clause (*c*) of section 20 of the "Exchequer Court Act (R.S.C., ch. 140), culminating in *Piggott* v. *The King*[7], the facts in which perhaps . most nearly resemble those now presented. In none of those cases was the property injured, in respect of which damages were sought, employed at the time of injury in the construction or repair of a public work. Here, though not physically "on a public work," the injured scow, lying beside and attached to a public wharf, was in the course of being used in making repairs to that public work. It may properly be said to have been engaged "on a public work" just as the men on the scow and the diver (to whose claims, if they had sustained personal injuries in the crushing of the scow, I think the clause in question would have applied) might properly be said to have been "on a public work." It does not seem to me to involve any undue straining of the language of the statute to hold that it covers a claim for injury to property so employed. "Public work" may, and I think should, be read as meaning not merely some building or other erection or structure belonging to the public, but any operations undertaken by or on behalf of the Government in constructing, repairing or maintaining public property. In this sense the appellant's scow was "on a public work" when it was injured. The judgment of the Exchequer Court cannot therefore be sustained on the ground on which it was based.

In the view he took the learned trial judge found it

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unnecessary to pass upon the issue of negligence. To determine that issue without the benefit of the trial judge's view as to the credibility and weight of the testimony, and without ourselves having had the opportunity of hearing the evidence and seeing the witnesses would be most unsatisfactory. The question of damages was not considered at all.

The case must, therefore, be remitted to the Exchequer Court to deal with it in accordance with the judgment now pronounced.

[7] 53 Can. S.C.R. 626; 32 D.L.R. 461.

Appeal allowed with costs.

Solicitors for the appellant: Rivard, Chauveau & Marchand.

Solicitor for the respondent: F. E. Meredith.