1946
*Oct. 7
1947
*Feb. 4

HIS MAJESTY THE KING ..... APPELLANT;

AND

GERMAIN BENDER (SUPPLIANT) ..... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Crown—Workmen's Compensation—Negligence—Employee of the Crown (Dom.) awarded compensation, in accordance with provisions of Government Employees Compensation Act (R.S.C. 1927, c. 30, as amended in 1931, c. 9), by Workmen's Compensation Commission of Province of Quebec for injuries suffered in Quebec—Right of employee further to claim damages against the Crown under s. 19(c) of Exchequer Court Act (R.S.C. 1927, c. 34)—Whether such right affected by provisions of Workmen's Compensation Act of Quebec—Whether doctrine of election applies.

An employee of the Crown (Dom.) who has, under the *Government Employees Compensation Act* (R.S.C. 1927, c. 30, as amended in 1931, c. 9), claimed and received compensation for personal injuries by accident arising out of and in the course of his employment is not thereby barred from pursuing a claim for damages against the Crown for such injuries under s. 19(*c*) of the *Exchequer Court Act* (R.S.C. 1927, c. 34).

The said enactments are not repugnant to each other; they deal with two entirely different matters; s. 19(*c*) of the *Exchequer Court Act* applies only where negligence is shown, while the *Government Employees Compensation Act* applies whether or not negligence on anyone's part is proved; the right thereunder arises, not out of tort, but out of the workman's statutory contract.

In the present case, the accident occurred in the province of Quebec, and, in accordance with provisions of said *Government Employees Compensation Act*, compensation was awarded by the Workmen's Compensation Commission of Quebec. S. 15 of the Quebec *Workmen's Compensation Act* (R.S.Q. 1941, c. 160) enacts in effect that the only recourse of a workman against his employer by reason of accident to him by reason of or in the course of his work for such employer is for compensation under that Act.

Held: Said s. 15 of said Quebec Act is not (nor is s. 13(1) of that Act nor art. 1056(*a*) of the *Civil Code*) made applicable by the provisions of s. 3(1) of said *Government Employees Compensation Act*. What was determined by the Quebec Commission was the amount of compensation the right to which was given by said s. 3(1) of said Dominion Act, and not the resulting effects upon other rights against the Crown given by a different Dominion Act. Said s. 15 of the Quebec Act is not incorporated in the *Government Employees Compensation Act*. (*Per* Kellock J.: While it is true that the "liability" is to be determined under provincial law, yet once the case is brought within the class where liability exists, the reference to the provincial

*Present:—Rinfret C.J. and Kerwin, Taschereau, Kellock and Estey JJ.

Act is exhausted and such a provision as that in said s. 15 is not made applicable). Cases affirming the proposition that the law of the province in which an accident occurred is applicable in determining the Crown's liability under s. 19(*c*) of the *Exchequer Court Act* have no application in determining whether a claim made and allowed under the *Government Employees Compensation Act* deprives a claimant of his remedy under the *Exchequer Court Act*. The two enactments deal with entirely different matters and separate and distinct rights are conferred.

An alternative contention by the Crown that, assuming that claims under both Acts existed, the claimant was put to his election, and, having claimed and received compensation under one Act, he had waived any right he might have under the other, was rejected. While there was but the one injury, the causes of action were different and the doctrine of election did not apply.

Judgment in the Exchequer Court, [1946] Ex. C.R. 529, on a question of law, affirmed.

APPEAL by the Crown from the judgment of Thorson J., President of the Exchequer Court of Canada (1), holding, on a question of law argued before trial of the action, that an employee of the Crown, who has, under the *Government Employees Compensation Act,* R.S.C. 1927, c. 30 (as amended in 1931, c. 9), claimed and received compensation for injuries arising out of and in the course of his employment is not thereby barred from pursuing his claim for damages for such injuries under s. 19(*c*) of the *Exchequer Court Act.*

The suppliant was employed in the province of Quebec by the Inspection Board of the United Kingdom and Canada, the employees of which were, by Order in Council, brought under the provisions of the said *Government Employees Compensation Act.* The accident causing the injuries occurred on June 7, 1941, in the province of Quebec, and the suppliant was awarded compensation, in accordance with provisions of the said *Government Employees Compensation Act* by the Workmen's Compensation Commission of the Province of Quebec. In the present action the suppliant claimed damages against the Crown (under s. 19(*c*) of the *Exchequer Court Act*), alleging that his injuries were the result of negligence of officers or servants of the Crown.

(1) [1946] Ex. C.R. 529; [1947] 1 D.L.R. 343.

1947

THE KING v. BENDER

The present question of law was, in effect, whether, assuming the acts or omissions alleged in the petition of right to be established, a petition of right lay.

L. A. Pouliot, K.C. and *C. Stein* for the appellant.

Fernand Choquette, K.C. for the respondent.

The judgment of the Chief Justice and Kerwin, Taschereau and Estey JJ. was delivered by

KERWIN J.—In this appeal from a judgment of the Exchequer Court answering affirmatively a question of law set down for disposition before the trial of the action, it is necessary to notice what that question of law was and the amendments made in the Exchequer Court to it and to the petition of right. But first, for a proper understanding of the matter, the substance of the allegations in the petition of right which, of course, must be taken as established, should be set forth.

While in the employment of the Inspection Board of the United Kingdom and Canada, the suppliant was injured on June 7, 1941, in the Province of Quebec. Paragraphs 3 and 13 of the petition of right originally read as follows:

3. Que votre requérant se trouvait ainsi à l'emploi tant du Conseil d'Inspection du Royaume-Uni et du Canada (Inspection Board of the United Kingdom and Canada) que du Ministère des Munitions et Approvisionnements (Munitions and Supply Department) et du Gouvernement de Sa Majesté pour le Canada;

13. Que cette compensation est dérisoire en comparaison des dommages subis par votre requérant qui a ainsi perdu son avenir et son intégrité physique, "alors qu'il était au service de Sa Majesté et de la Défense Nationale de son pays:"

On the argument of the question of law in the Exchequer Court, the petition of right was amended by striking out paragraph 3, and that part of paragraph 13 which appears in quotation marks. Paragraph 9 also was amended by inserting the words "serviteurs ou employés" in lieu of the word "préposés" in the following sentence: "Que cet accident est attribuable à la négligence grossière et inexcusable des préposés de Sa Majesté". It results from these amendments that what is alleged is that the suppliant was employed by the Inpection Board and, while in its employment, was injured through the negligence of the

servants or employees of His Majesty,—the claim being made under section 19(c) of the *Exchequer Court Act* as amended in 1938:

19. The Exchequer Court shall also have exclusive original jurisdiction to hear and determine the following matters:

(c) Every claim against the Crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment.

Although it is not alleged that the suppliant claimed compensation through the Quebec Workmen's Compensation Board, there is an award by the latter, dated June 17, 1942, granting the suppliant a monthly sum of $54.16 and another award, dated July 21, 1943, granting him an additional monthly sum of $15.00 down to May 7, 1944. On the other hand, the allegation by the suppliant in his petition of right is merely that he had received $50.00 per month with an additional sum of $30.00 to pay for the services of a nurse. As a matter of fact it was only by Order of the Governor General in Council, P.C. 37/1038, dated February 9, 1942, that the provisions of the *Government Employees Compensation Act,* R.S.C. 1927, chap. 30, as amended, was made to apply to each of certain persons (including the suppliant) "who has been, is now, or may hereafter be employed by the Inspection Board during the period of their employment in Canada to the same extent and in like manner as if each such person was an 'employee' as defined in the said Act". It was further provided by the Order in Council that, as to such persons, it should be deemed to have come into force and operation as and from November 6, 1940. It will be recalled that the suppliant was injured on June 7, 1941. While the petition of right was filed May 23, 1942, that is before either of the two awards made by the Quebec Board, it alleges that the $50.00 per month and the sum of $30.00 were paid through the intervention of the Quebec Board.

We were told that in the Exchequer Court the point was argued as to whether the claim advanced is against a different party to the suppliant's employer,—a distinction being drawn between the Inspection Board and His Majesty the King. However, in the reasons for judgment, after directing that the question of law be amended by striking

1947

THE KING
v.
BENDER

Kerwin J.

out the references therein to Exhibits D-3, D-4 and D-5 and adding the necessary reference to Exhibit D-3*a*, and identifying the compensation received by reference to Exhibits D-6 and D-7, it is stated:

> In effect, the question of law is whether the suppliant, having claimed and received compensation for his injuries under the *Government Employees Compensation Act,* R.S.C. 1927, chap. 30, as amended in 1931, can have any claim for damages for such injuries under section 19(*c*) of the *Exchequer Court Act,* R.S.C. 1927, chap. 34, as amended in 1938.

Furthermore, in the formal order it is recited that the action came on before the Court "on the argument on the question of law as to whether the suppliant, an employee of the Crown, who has claimed and received compensation," etc.

Under these circumstances, it should be assumed for the purpose of this appeal, but for that purpose only, that the suppliant was an employee of the Crown and that he claimed and received compensation under the *Government Employees Compensation Act.* In that situation it has been decided in the Exchequer Court that, notwithstanding the latter circumstance, a petition of right for damages lies under section 19(*c*) of the *Exchequer Court Act.* With that conclusion I agree.

Subsection 1 of section 3 of the *Government Employees Compensation Act,* R.S.C. 1927, chapter 30, as amended by chapter 9 of the 1931 Statutes, reads as follows:

> 3(1). An employee who is caused personal injury by accident arising out of and in the course of his employment, and the dependents of an employee whose death results from such an accident, shall, notwithstanding the nature or class of such employment, be entitled to receive compensation at the same rate as is provided for an employee, or a dependent of a deceased employee, of a person other than His Majesty under the law of the province in which the accident occurred for determining compensation in cases of employees other than of His Majesty, and the liability for and the amount of such compensation shall be determined subject to the above provisions under such law, and in the same manner and by the same board, officers or authority as that established by such law for determining compensation in cases of employees other than of His Majesty, or by such other board, officers or authority, or by such court as the Governor in Council shall from time to time direct: Provided that the benefits of this Act shall apply to an employee on the Government railways who is caused personal injury by accident arising out of and in the course of his employment, and the dependents of such an employee whose death results from such an accident, to such an extent and such an extent only as the Workmen's Compensation Act of the

province in which the accident occurred would apply to a person in the employ of a railway company or the dependents of such persons under like circumstances.

1947

THE KING v. BENDER

Kerwin J.

As we have seen, by virtue of the provisions of Order in Council P.C. 37/1038, dated February 9, 1942, this subsection applied to the suppliant because he had been employed by the Inspection Board. Assuming as I do that he claimed and received compensation under the *Government Employees Compensation Act,* it must also be taken as established that he had been caused personal injury by accident arising out of and in the course of his employment. The payment of such compensation is not dependent upon the injury having been caused by negligence. The *Government Employees Compensation Act* was first enacted in 1918 by chapter 15, at which time the forerunner of paragraph (*c*) of section 19 of the *Exchequer Court Act* (as enacted by chap. 33 of the 1917 Statutes) read as follows:

(*c*) Every claim against the Crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment upon any public work.

The amendment made in 1938 to the *Exchequer Court Act* struck out the words at the end "upon any public work".

It cannot be ascertained from the petition of right whether the negligence of the Crown's servants or employees complained of occurred while they were upon any public work, nor does it appear whether these officers or servants were members of the naval, military or air forces of His Majesty in right of Canada so as to fall within section 50A of the *Exchequer Court Act* as enacted in 1943 by chapter 25. It can make no difference, however, whether the applicable provision of the *Exchequer Court Act* be taken to have been enacted before or after the first *Government Employees Compensation Act* of 1918. At whatever stage the two enactments are compared, it is clear that they are dealing with two entirely different matters, since the *Exchequer Court Act* applies only where negligence is shown, while the *Government Employees Compensation Act* applies whether negligence on any one's part is proved or not.

1947

THE KING
v.
BENDER

Kerwin J.

The appellant contends that since section 3 of the *Government Employees Compensation Act* provides that the suppliant is thereby

> entitled to receive compensation at the same rate as is provided * * * under the law of the province in which the accident occurred * * * and the liability for and the amount of such compensation shall be determined subject to the above provisions under such law,

sections 13(1) and 15 of the Quebec *Workmen's Compensation Act,* R.S.Q. 1941, chapter 160, and Article 1056(*a*) of the Quebec *Civil Code* are made applicable. These enactments read as follows:

Quebec *Workmen's Compensation Act:*

> 13(1). No action before any court of justice shall lie for the recovery of the compensation whether it is payable by the employer individually or out of the accident fund, but all claims for compensation payable by the employer or out of the accident fund shall be heard and determined exclusively by the Commission, whose decision shall be final.
>
> 15. Accidents happening on or after the 1st of September, 1931, shall be governed by the provisions of this act and the compensation under this act shall be in lieu of all rights, recourses and rights of action, of any nature whatsoever, of the workman, of the members of his family, or his dependents against the employer of such workman by reason of any such accident happening to him on or after the said 1st day of September, 1931, by reason of or in the course of his work for such employer, and no action in respect thereof shall lie in any court of justice.

Article 1056(*a*) of the Quebec *Civil Code*:

> No recourse provided for under the provisions of this chapter shall lie, in the case of an accident contemplated by the *Workmen's Compensation Act,* 1931, except to the extent permitted by such Act.

The article of the Code does not advance the matter beyond the situation under the Quebec *Workmen's Compensation Act,* but it is alleged that section 15 of the latter does not deal with a consequential matter but determines the essential nature of the compensation payable under that Act and the liability imposed thereby. On the basis of that argument, it is contended that the decision of this Court in *Ching* v. *Canadian Pacific Railway Company* (1) is not applicable. It was there decided that an employee of the Dominion, having received compensation under the *Government Employees Compensation Act* through the intervention of the Alberta Workmen's Compensation Board, could still claim damages against a third party, whose employees had negligently caused the injury complained of.

(1) [1943] S.C.R. 451.

It is pointed out at page 458 that the important words of subsection 1 of section 3 of the Dominion Act are "and the liability for and the amount of such compensation shall be determined * * * in the same manner and by the same board" and it is stated that

> it is the liability of the Dominion Government to pay and the amount of the compensation, the right to which is given earlier in the section, which are to be determined; not the resulting effects upon collateral rights against third parties.

In the present case, where, for the purpose of the present appeal, the right claimed is against the same party, it should also be held that what was determined by the Quebec Workmen's Compensation Board was the amount of the compensation the right to which is given earlier in subsection 1 of section 3 of the *Government Employees Compensation Act,* and not the resulting effects upon other rights against the Crown given by a different Dominion statute. Section 15 of the Quebec Act is not incorporated in the Dominion *Government Employees Compensation Act.*

Such cases as *Ryder* v. *The King* (1), *The King* v. *Armstrong* (2), and *The King* v. *DesRosiers* (3), affirming the proposition that the law of the province in which an accident occurred is applicable in determining the Crown's liability under section 19(*c*) of the *Exchequer Court Act,* have no application in determining whether a claim made and allowed under the *Government Employees Compensation Act* deprives a claimant of his remedy under the *Exchequer Court Act.* The two enactments are dealing with entirely different matters since, as Viscount Haldane pointed out in connection with the British Columbia *Workmen's Compensation Act* in *Workmen's Compensation Board* v. *Canadian Pacific Ry. Co.* (4), the right under the Compensation Act arises, not out of tort, but out of the workman's statutory contract. Separate and distinct rights are conferred and the present claim is not barred.

An alternative submission by the appellant was that, assuming that claims under both Acts did exist, the suppliant was put to his election, and having claimed and received compensation under one Act, he had waived any

(1) (1905) 36 Can. S.C.R. 462.
(2) (1908) 40 Can. S.C.R. 229.
(3) (1908) 41 Can. S.C.R. 71.
(4) [1920] A.C. 184 at 191.

1947

THE KING
v.
BENDER

Kerwin J.

right he might have under the other. However, while there is but the one injury, the causes of action are different and the doctrine of election does not apply.

The appeal should be dismissed with costs and without prejudice to the right of the suppliant to contend that he was employed by a party other than the Crown.

KELLOCK J.—This is an appeal from a judgment or order of the Exchequer Court, dated 2nd August, 1946, determining a question of law which, shortly stated, may be said to be whether or not the respondent is entitled to maintain this action for damages for personal injuries under section 19(*c*) of the *Exchequer Court Act*, in view of the fact that he has been awarded, and is in receipt of compensation in respect of these injuries under the *Government Employees Compensation Act*, R.S.C., ch. 30, as amended by 21-22 Geo. V., ch. 9.

The Petition of Right which, for the purpose of the above question, must be taken as admitted, alleges that the respondent was on the 7th June, 1941, in the employ of the Inspection Board of the United Kingdom and of Canada and that on that date he sustained the injuries complained of through the negligence of servants of the appellant. It is further alleged that in respect of these injuries the respondent was awarded certain compensation by the Workmen's Compensation Board of the Province of Quebec, payable in instalments, but that such payments were entirely inadequate to compensate the respondent. It appears from the award of the Board that the respondent was totally and permanently disabled as a result of the injury complained of. The question of law came before the learned President of the Exchequer Court, who held that the award and payment of compensation did not disentitle the respondent to maintain the action.

In support of the appeal it is argued in the first place that payment of compensation under the *Government Employees Compensation Act* in respect of an accident in the Province of Quebec is in lieu of all rights, recourse and rights of action of any nature whatsoever against His Majesty by reason of the accident in respect of which compensation was paid. This contention is based upon the

view that section 15 of the *Workmen's Compensation Act* of Quebec, being Ch. 160, R.S. 1941, which is to the above effect, is made applicable in the circumstances by the provisions of section 3 of the Dominion Act. The relevant portions of section 3 as enacted by the amending statute of 1931 are as follows:

> 3. (1) An employee who is caused personal injury by accident arising out of and in the course of his employment * * * shall, notwithstanding the nature or class of such employment, be entitled to receive compensation at the same rate as is provided for an employee * * * of a person other than His Majesty under the law of the province in which the accident occurred for determining compensation in cases of employees other than of His Majesty, and the liability for and the amount of such compensation shall be determined subject to the above provisions under such law, and in the same manner and by the same board, officers or authority as that established by such law for determining compensation in cases of employees other than of His Majesty * * *

"Employee", as defined in section 2, includes persons in the service of His Majesty who are paid a direct wage or salary by or on behalf of His Majesty, with certain exceptions not applicable in the case at bar. Some discussion arose during the argument as to whether or not the respondent was in fact a servant of His Majesty, but as the question of law was dealt with below upon the basis that he was, the appeal should be similarly dealt with, leaving it open to the parties to raise the question at the trial if such question is otherwise open.

As provided by section 3, an employee of His Majesty suffering injury by accident is entitled to receive compensation at the same rate as an employee of a person other than His Majesty would be entitled to receive under the law of the province in which the accident occurred (in the case at bar, in the province of Quebec); and the Workmen's Compensation Board of the province is to determine the liability for, and the amount of such compensation. Such determination is to be made under the provincial law in the same manner as is established by such law for the determination of cases of employees other than of His Majesty. The phrase "subject to the above provisions" in subsection (1) of section 3 refers to the condition laid down

1947

THE KING v. BENDER

Kellock J.

in the early part of the subsection, that the personal injury must be injury by accident arising out of and in the course of the employment.

Section 15 of the provincial Act provides that the compensation "under this Act" is to be in lieu of all other rights of action of the workman against his employer, but I see nothing in the Dominion Act which incorporates or makes this provision of the provincial Act applicable to a claim for compensation arising under the terms of the Dominion Act. It is true that the "liability" is to be determined under provincial law. No doubt, if an employer other than His Majesty would have no liability to pay compensation, *e.g.*, "where the injury is attributable solely to the serious and wilful misconduct of the workman" (section 3(1)(*b*)), neither would the Crown in similar circumstances be liable to pay compensation to its employee. But once the case is brought within the class where liability exists, the reference to the provincial Act is exhausted and such a provision as that in section 15 is not made applicable. While the decision of this Court in *Ching* v. *Canadian Pacific Railway Company* (1) does not specifically cover the question arising in the present case, the principle of that decision is in accord with the view above expressed. At page 458 Rand J., in delivering the judgment of the Court, said: "It is the liability of the Dominion Government to pay and the amount of the compensation, the right to which is given earlier in the section", which are to be found by reference to provincial legislation "unencumbered by a referential incorporation of provisions of the provincial Act dealing with consequential matters".

Subsection 1 of section 13 of the provincial Act is also appealed to by appellant but, in my opinion, that section has no application. The present proceeding is not an action for the recovery of compensation within the meaning of that subsection. Much the same may be said of section 1056(*a*) of the *Civil Code*.

Appellant contends further that under section 19(*c*) of the *Exchequer Court Act* the result contended for is attained and that the law of Quebec which is to be applied in

(1) [1943] S.C.R. 451.

determining the liability of the Crown includes all provisions of provincial legislation which would provide a defence to a private employer with respect to a claim for compensation under the provisions of the provincial Act. *Ryder* v. *The King* (1) and similar authorities are cited. This argument is not, in my opinion, well founded. While it is true that by the law of Quebec a workman entitled to "workmen's compensation" is not, because of the provisions of the provincial legislation already discussed, entitled to any other remedy against his employer, the respondent here is not affected. He is not entitled to "workmen's compensation" under the provincial law but under the Dominion statute and, for the reasons already given, the provisions of the provincial legislation which would bar a workman claiming compensation thereunder do not apply.

It is further argued that the *Government Employees Compensation Act* is a special Act covering *pro tanto* the same ground as the provisions of the general Act, *i.e.*, section 19(*c*), and, as Parliament cannot have intended that a person injured should be compensated twice, the provisions of the special statute derogate from those of the general. In the first place it is to be observed that an affirmative statute does not repeal an earlier affirmative statute unless the statutes are repugnant to each other: *Foster's Case* (2), approved in *Garnett* v. *Bradley* (3). In *West Ham Churchwardens* v. *Fourth City Mutual Building Society* (4), A.L. Smith, J. said:

> The test of whether there has been a repeal by implication by subsequent legislation is this: Are the provisions of a later Act so inconsistent with, or repugnant to, the provisions of an earlier Act that the two cannot stand together?

In the case at bar the statutes are not so repugnant.

It may well be that it is not the necessary result of the concurrent operation of the two statutes that, in a case such as the present, the respondent will be paid twice in respect of the same injury. In *Workmen's Compensation Board* v. *Canadian Pacific Railway Co.* (5), which arose under the provisions of the *Workmen's Compensation Act* of British Columbia, it was held that the right to com-

(1) (1905) 36 Can. S.C.R. 462.
(2) 11 Co.R. 56.
(3) (1878) 3 App. Cas., 944.
(4) [1892] 1 Q.B., 654 at 658.
(5) [1920] A.C. 184.

1947

THE KING v. BENDER

Kellock J.

pensation under the statute was the result of a statutory condition of the contract of employment providing for a scheme of insurance. See also *Trim* v. *Kelly* (1), per Lord Haldane, L.C., at 675-6. If this insurance here in question is to be regarded as an indemnity against loss of wages and other expense which the injured workman incurs by reason of his injury, it may be that the appellant, being at one and the same time the tort-feaser and the person liable to pay the compensation, may be entitled to have the benefit of the compensation paid in case of any damages for which it may be liable. If the compensation is not to be regarded as in the nature of an indemnity, then on the principle of such cases as *Bradburn* v. *Great Western Railway* (2); *Dalby* v. *India, etc., Co.* (3); *Millard* v. *Toronto R. W. Co.* (4); *Tubb* v. *Lief* (5), the respondent will be entitled to compensation and damages. It is not necessary to decide the point on this appeal. I mention this aspect only in connection with the argument that if both statutes stand it will follow as of course that the respondent will recover both the compensation and also damages in full.

It is finally contended on behalf of the Crown that the respondent is obliged to elect as between his right to compensation and the present action and, having claimed compensation, is bound by his choice. In support of this contention, appellant refers to *Wright* v. *London General Omnibus Company* (6). I do not think this case has any application to the case at bar. In *Wright's* case the matter was governed by the particular statute there in question, where the remedies open to the plaintiff were expressly stated to be in the alternative. The other authorities to which appellant refers are also not in point. Election is defined in Wharton's Law Lexicon, 12 Ed., page 317, as: "the obligation imposed upon a person to choose between two inconsistent or alternative rights or claims." I see nothing in the legislation here in question casting any obligation upon the respondent to choose as between his right to compensation arising out of his contract with his employer and the right under a statute giving him in common with all other persons injured by the negligence of a

(1) [1914] A.C. 667.
(2) (1874) L.R. 10, Ex. 1.
(3) (1854) 15 C.B. 365.
(4) (1914) 31 O.L.R. 526.
(5) [1932] 3 W.W.R. 245.
(6) (1877) 2 Q.B.D. 271.

servant of the Crown a right of action to recover the damages sustained by reason of such negligence; *Campbell* v. *Bowes* (1); *Zimmerman* v. *Harding* (2). The fact that the Crown happens to be the employer and also the wrong-doer does not affect the question.

1947
THE KING
v.
BENDER
Kellock J.

I would dismiss the appeal with costs.

Appeal dismissed with costs (without prejudice to right of suppliant to contend that he was employed by a party other than the Crown).

Solicitor for the appellant: *F. P. Varcoe.*

Solicitor for the respondent: *F. Choquette.*