

TANCRÈDE DUBÉ.....SUPPLIANT ;

1891

Oct. 14.

AND

HER MAJESTY THE QUEEN.....RESPONDENT.

*Petition of Right—Injury received on Government railway—Negligence—
Order for particulars—Practice.*

Where in his petition the suppliant alleged in general terms that the injuries he received in an accident on a Government railway in the Province of Quebec resulted from the negligence of the servants of the crown in charge of the train, and from defects in the construction of the railway, an order was made for the delivery to the respondent of particulars of such negligence and defects.

MOTION for particulars of *demande* in a petition of right.

The facts upon which the motion was based are stated in the judgment.

October 10th, 1891.

Hogg, Q.C. in support of motion :

This is a motion for particulars of *demande* under rule 30 of the Rules of Practice of the Superior Court for the Province of Quebec (1). The petition contains only a bare declaration that the accident happened by reason of the negligence of the crown's servants and defects in the construction of the railway. There is no allegation of the specific acts of negligence, or the particular defects of construction, relied upon by the suppliant. The defendant is not called upon to answer such a declaration as this, and without particulars the court will be unable to determine the issues to be tried.

(Cites *Lemieux v. Phelps* (2) *Lapierre v. Granger* (3);

(1) *Wotherspoon's Manual of Procedure*, p. 237.

(2) M.L.R. 1 S. C. 305.

(3) M.L.R. 5. S. C. 154.

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Seligmann v. Young (1); *O'Meara v. Stone* (2); *The Rory* (3); *Spedding v. Fitzpatrick.*) (4)

Belcourt, contra :

The petition is well framed under article 50 *C.C.P.* for Lower Canada. Under that article all that has to be stated is the cause of action, and the time when and how it arose. Rule 30 of the Superior Court Rules of Practice simply applies to particulars of account, and not to an action for damages. The petition is also well framed under the Ontario practice. (Cites *Smith v. Greey* (5); *Niagara Falls Park Commissioners v. Howard* (6); *Mason v. VanCamp.*) (7)

Hogg, Q.C. in reply : Rule 30 does not distinguish between one kind of *demande* and another. (Cites *McDonald v. Dunn.*) (8)

BURBIDGE, J. now (October 14th, 1891) delivered judgment.

This, so far as it is necessary to deal with it, is an application for an order for the delivery to the respondent of particulars of the specific acts of negligence and improvidence on the part of the servants and employees of the crown in charge of the Intercolonial Railway, and of the specific defects in the construction of such railway, which it is alleged in general terms in the petition of right caused the derailment of the train and the accident by which the suppliant received the injuries of which he complains.

The Petition of Right Act (9) gives a form of petition of right in which the suppliant is directed to state the facts with convenient certainty. Section 21 of *The Exchequer Court Act* (10) adopts the practice and pro-

(1) W.N., 1884, 93.

(6) 13 P.R. Ont. 14.

(2) W.N., 1884, 72.

(7) 14 P.R. Ont. 297.

(3) 7 Prob. D. 120.

(8) 12 L.C.R. 345.

(4) 38 Ch. D. 410.

(9) R.S.C. c. 136 Schedule,

(5) 11 P. R. Ont. 169.

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(10) 50-51 Vic. c. 16

cedure of the High Court of Justice in England, so far as the same are not provided for by that Act or rules made thereunder; and by the 22nd section of the Act the rules of practice and procedure in force in the court when the Act was passed, so far as the same were consistent with the provisions thereof, were continued in force. These rules contain no direction as to the delivery of the particulars of any claim. The 2nd of such rules provides in effect that (except as otherwise provided) the practice, pleadings, evidence, forms and modes of procedure shall, where the cause of action arises in the Province of Quebec, conform as near as may be to those in use in like causes in Her Majesty's Superior Court of that Province. This rule was made in 1876, and it was not until 1883 that the Quebec Petition of Right Act was passed. Until the latter date it is doubtful if there could have been said to be any cause like a petition of right that could be prosecuted in the Superior Court of Quebec. Assuming, however, that the effect of the 22d section of *The Exchequer Court Act*, and of the 2nd rule of the rules of procedure thereby continued in force, was to adopt in any case in which the cause of action arose in Quebec the procedure prescribed by the Quebec Petition of Right Act, we find that so far as the direction to state with convenient certainty the facts entitling the suppliant to relief is concerned the Quebec Act does not differ from the Dominion Petition of Right Act, except that in the latter the direction is contained in the form of petition given by the Act, while in the former it constitutes a part of the Act itself (1). The Quebec Act goes on to provide that the petition shall be supported by an affidavit of the facts (886b) and that the suppliant shall deposit with the prothonotary a sum of two hundred dollars to pay the costs of the crown if costs are awarded

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(1) *Revised Statutes of Quebec*, s. 5976, 886b.

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to it (886c), and that the ordinary delays and rules of procedure, in so far as they are not incompatible, shall apply to suits by petition of right (886k). I have not been referred by counsel to any case in the Superior Court of Quebec in which, under circumstances similar to those existing in this case, an order for the delivery of a statement in writing of the particular acts of negligence complained of was granted or refused. I see no reason, however, to doubt that the considerations upon which the practice in respect to the delivery of particulars is founded are as applicable to the Superior Court of Quebec as they are to other courts. But, however that may be, it appears to me to be clear from the directions contained both in the Dominion and in the Quebec Petition of Right Acts, that the legislature intended that parties seeking relief under such Acts should conform to modern rules of pleading whereby, to prevent surprise or unnecessary expense, each party is, so far as is reasonable, informed of the case he has to meet at the trial. The suppliant is required to state with convenient certainty the facts that entitle him to relief; and, while as a mere matter of setting out a cause of action, the general allegations of negligence and defects contained in the petition in this case are sufficient, the crown is, I think, entitled to know the particular acts of negligence and the particular defects in the construction of the railway of which the suppliant complains. If it be that such negligence and defects are inferred from the fact of the accident the suppliant should say so, or if he relies upon specific acts of negligence, or upon specific defects of construction, the respondent is, I think, equally entitled to be put in possession of such information. Nor with the ample powers of amendment possessed by the court is it possible for the suppliant to be prejudiced. If at any time before or even

during the trial he should become aware of acts of negligence or defects of construction of which he may not have given particulars he would be allowed to amend. The only question would be as to the terms upon which such amendment ought to be made. The order may be in the form No. 13, Appendix K, of the English Rules of the Supreme Court, 1883, omitting the part of the order that refers to particulars of the injuries received (which are not asked for), and to the time and place of the accident, which are sufficiently stated in the petition, and adding a direction for particulars of the defects in the construction of the railway of which complaint is made. The suppliant may have thirty days in which to deliver such particulars, and until they are delivered all further proceedings will be stayed. The costs of this application will be costs in the cause.

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*Motion allowed; costs to be costs in the cause.*

Solicitor for suppliant : *P. A. Choquette.*

Solicitors for respondent : *O'Connor, Hogg & Balderson.*