

BETWEEN:

C. K. HANSEN.....SUPPLIANT;

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May 19.

AND

HIS MAJESTY THE KING.....RESPONDENT.

Practice—Petition of right—Amendment

Suppliant alleges that he suffered loss by his boat stranding on an island due to the negligence of Respondent's employee in the screening of a certain light and seeks to amend his Petition of Right by setting up that "the said light is a public work of Canada and that suppliant's claim is one for damages against the Crown arising out of injury to suppliant's property resulting from the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment on a public work."

Held, that the practice of the Court permits amendments to a Petition of Right provided the same do not state a new cause of action.

- 2. That the test whether a particular amendment should be allowed is: If the Petition had originally been presented in the form in which it stands after amendment, is there a reasonable probability that the fiat would not have been refused?
- 3. That the amendments proposed to the Petition of Right herein do not involve any material alteration in the cause of action; nor do they state a new cause of action.
- 4. After a fiat "Let Right be Done" is granted, and the Petition is filed in Court, it becomes a pleading, and under the Rules of Court is subject to any reasonable amendment, providing it does not involve any substantial alteration in the cause of action, or does not set up a fresh cause of action.

MOTION by suppliant to amend his Petition of Right.

The motion was argued before the Honourable Mr. Justice Maclean, President of the Court, in Chambers.

T. A. Beament, K.C., for Suppliant.

E. Miall for Respondent.

THE PRESIDENT (May 23, 1933) delivered the following judgment:

This is a motion made on behalf of the suppliant to amend a petition of right.

By his petition of right, filed November 18, 1932, the suppliant sets forth that he was and is the owner of a motor ship which in the course of a voyage from Vancouver to

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Nanoose Harbour, in the Province of British Columbia, stranded on an island; that a formal investigation into the circumstances attending the stranding of the suppliant's ship was held by the Deputy of the Dominion Wreck Commissioner, assisted by two assessors, and their finding was to the effect that a defect then existed in the screening of a recently installed unwatched light on the north side of Nanoose Bay and to that mechanical defect must be attributed the stranding of the ship; and that the defect in the screening of the light was due to negligence on the part of the Government employee who adjusted the screens. And the suppliant claims damages therefor.

The suppliant now moves for an order permitting him to amend his petition of right by adding paragraphs 3A, 3B, and 4A. The first two proposed amendments are hardly in controversy and I did not understand them to be seriously opposed. It is the last mentioned amendment that is opposed by counsel for the Crown, and it is as follows:

4A. The suppliant submits that the said light is a Public Work of Canada and that suppliant's claim is one for damages against the Crown arising out of injury to suppliant's property resulting from the negligence of an officer or servant of the Crown while acting within the scope of his duties or employment on a public work.

It has been the practice of this Court to permit amendments to a petition of right provided that the same did not state a new cause of action. See *Audette's Practice of the Exchequer Court*, at pages 447 and 448. Such amendments were allowed, I assume, upon the theory that a petition of right was a pleading, and, like any other pleading, stood subject to amendment, providing the amendment did not state a new cause of action. The Petition of Right Act contains no reference whatever as to pleadings in petition of right proceedings, as does the corresponding English Petition of Right Act of 1860, which provides by sec. 7 thereof that all laws and statutes in force, as to pleading, and the practice of the Courts of Law and Equity, "shall, unless the Court in which the petition is prosecuted shall otherwise order, be applicable and apply and extend to such Petition of Right". The Rules of the Exchequer Court of course provide for the amendment of pleadings. In England it has been held that the terms of sec. 7 of the Petition of Right Act, permit the Court to amend a petition of right provided the amendment does not involve a substantial

alteration in the cause of action. The test whether a particular amendment should be allowed is this: if the petition had originally been presented in the form in which it stands after amendments, is there a reasonable probability that the fiat would not have been refused? Mr. Miall for the Crown, upon the motion, admitted that it was probable that in this case the fiat would not have been refused if it had been originally presented in the proposed amended form. See *Badman Bros. v. The King* (1); *Ruffey Arnell Company v. The King* (2); and *Northern Construction Co. v. The King* (3).

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I do not think the amendments proposed to the petition of right involve any material alteration in the cause of action; nor do they state a new cause of action. One dictionary defines "cause of action" as meaning the fact or combination of facts which give rise to a right of action. The amendments here sought do not propose to change the character of the action which is one of damages for injury to property. It may be inferred from the petition that it is claimed that the alleged damages arise through the negligent act of some person or persons acting for or on behalf of the respondent; and by statute all aids to navigation in the way of lighthouses, etc., are vested in His Majesty and are under the control and management of the Minister of Marine. That fairly well discloses the cause of action. It will probably be necessary, though I do not now so decide, that the suppliant, in order to succeed, must satisfy the Court that the light in question was a public work of Canada, which, I assume, will be largely a question of law. I apprehend that one of the respondent's pleas, No. 3, means that the light in question is not a public work of Canada and that the damage did not occur through the negligence of the servants of the Crown, and that therefore there is no jurisdiction in this Court to adjudge upon the petition of right. But these are questions to be determined at the trial. I do not think the Crown ever misunderstood what was the cause of action. While I think the principal amendment proposed had better been pleaded originally, yet I should hesitate to say that the petitioner could not safely proceed to trial without the amendment.

(1) (1924) 1 K.B. p. 64.

(2) (1921) 38 T.L.R. p. 210.

(3) (1923) 3 D.L.R. p. 1069.

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When once it is said "Let Right be done," it would, I think, be unreasonable to refuse an amendment which after all is intended, I think, to clarify and not to alter the issue. I cannot but think that when once the fiat that right be done is granted, and the petition is filed in the Court, it becomes a pleading, and under the Rules of the Court is subject to any reasonable amendment, providing it does not involve any substantial alteration in the cause of action, or does not set up a fresh cause of action. While it is unfortunate that the Petition of Right Act does not contain some provision corresponding to sec. 7 of the English Act, so as to remove all doubt, I am inclined to the view that its absence is not fatal to the power of the Court, which has exclusive original cognizance of such petitions and with power to grant every species of relief claimed or prayed for, to permit the amendments here asked for. I therefore allow the amendments mentioned in the notice of motion and the costs of the motion will be costs in the cause.

Judgment accordingly.