

BETWEEN :

HIS MAJESTY THE KING PLAINTIFF;

AND

THE CANADIAN PACIFIC RAILWAY } DEFENDANT.
COMPANY, }

1945
Oct. 16
1946
Jan. 18

*Crown-Government Employees Compensation Act, R.S.C. 1927, c. 30—
Action to recover from defendant money paid to a servant of
plaintiff injured by negligence of servants of defendant dismissed—
No recovery at common law—No recovery on ground of loss to the
Crown of a servant's services—Damages too remote.*

The Crown seeks recovery from the defendant of certain sums of money paid out by the Crown to and on account of one, Christian, an employee of the Crown within the meaning of the Government Employees Compensation Act R.S.C. 1927 c. 30, injured by the negligence of servants of defendant.

Held: That the compensation sought by plaintiff cannot be regarded as legal damages since it is not the proximate and direct result of the negligence of defendant's servants.

1946
 THE KING
 v.
 CANADIAN
 PACIFIC
 RY. Co.
 —
 Sidney
 Smith
 D.J.
 —

2. That the compensation in question is compensation to an injured servant, payable by the Crown, and not compensation in the form of damages to the Crown for the loss to His Majesty of the services of a servant.
3. That the liability of the Crown to pay the compensation arises from an independent intervening cause, namely an act of the Parliament of Canada, which lies wholly outside the common law of the Province.

INFORMATION exhibited by the Attorney General of Canada to recover from defendant certain monies paid by the Crown to one of its servants injured by the negligence of servants of the defendant.

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

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

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

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

SIDNEY SMITH, D.J. now (January 18, 1946) delivered the following judgment:

I find negligence on the part of the Defendant's servants in leaving a certain gate ajar and projecting across the National Harbour Board Terminal Railway, owned and operated by the Plaintiff, at Vancouver, British Columbia. As a consequence of this negligence one, Herbert William Christian, a switchman, was severely injured and lost his right leg above the knee. The said Christian was an employee of the Crown within the meaning of the Government Employees' Compensation Act R.S.C. 1927, chap. 30, as amended by the 1931 Statutes, Chap. 9. Under the provisions of Sec. 3 (1) of this Act the plaintiff, through the Workmen's Compensation Board of British Columbia (which acted "not under the Provincial Act, but as the administrator of the Dominion law" per Rand J. in *Ching v. C.P.R.*) (1), made certain payments to Christian, and also set aside a capital sum to provide for a

(1) (1943) S.C.R. 451 at 459.

monthly payment to him of \$49.98, the whole of said outlays amounting to the sum of \$13,851.37. The Crown now claims recovery of this sum.

1946
 THE KING
 v.
 CANADIAN
 PACIFIC
 RY. Co.
 —
 Sidney
 Smith
 D.J.
 —

There can be no doubt that if Christian had sued the defendant for damages in his own name, and on similar evidence as in the present trial, Christian would have recovered judgment against the defendant, upon the ground that his injury was the direct result of the negligence of an employee of the defendant. His damages would then have been such as are allowed by the common law of the province, viz., future loss of earnings due to his injuries, allowance for pain and suffering, special damages such as medical and hospital expenses. But the defendant submits that the plaintiff cannot recover in the present case because the compensation sought to be recovered is not damages in the legal sense, but is a statutory obligation resting on His Majesty, created by an act of the Parliament of Canada. I think this view is sound.

The Plaintiff does not contend that this action is maintainable under any provision of the Government Employees' Compensation Act. Such a contention would indeed be without force in view of the language of Rand J., delivering the judgment of the Court in *Ching v. C.P.R. supra*. But the plaintiff says that this action lies at common law. It is true that His Majesty in his capacity of an employer would have a right of action at common law against the defendant if the defendant's negligence had so injured His Majesty's servant as to incapacitate the servant from performing his service to His Majesty. The gist of this action however is not the injury to the servant, but the loss of the service to the master—*The Amerika* (1). That is not this case. It is also true that at common law a parent may sue the defendant for medical expenses incurred by the parent in treating injuries inflicted upon his child by the negligent act of the defendant; and that a husband may sue a negligent defendant for medical expenses incurred in respect of injuries suffered by his wife. These are cases in which under the common law the parent is under a legal obligation to care for the child; and the husband is obligated to care for his wife. But these, too, have nothing to do with the present case.

1946
THE KING
v.
CANADIAN
PACIFIC
R.Y. Co.

Sidney
Smith
D.J.

What is here sought is the recovery of monies which by an Act of the Dominion Parliament, the Crown is made liable to pay to its injured servant. This obligation does not arise under the common law of the province, but is created by a Parliament that is excluded by the British North America Act from legislating upon civil rights in the province. It seems plain that such an action will not lie. The compensation cannot be regarded as legal damages for it is not the proximate and direct result of the act complained of; Halsbury, vol. 10, p.103, para. 130; *The Amerika supra*. The liability of the Crown (Dominion) to pay the compensation arises from an independent intervening cause, namely an act of the Dominion Parliament, which lies wholly outside the common law of the province; *The Circe* (1). The compensation in question is compensation to an injured servant, payable by the Crown, and is in no sense compensation in the form of damages to the Crown for the loss to His Majesty of a servant's services. Nor is it claimed as such.

For these reasons I am of opinion that the action must be dismissed with costs.

Judgment accordingly.