THE GRAND TRUNK PACIFIC RAILWAY COMPANY (DEFENDANTS) ..... APPELLANTS;

1910
*Oct. 20.
*Nov. 2.

AND

CHARLES M. WHITE (PLAINTIFF) ... RESPONDENT;

AND

JOHN A. HISLOP (DEFENDANT).

ON APPEAL FROM THE SUPREME COURT OF ALBERTA.

Negligence—Injury on public work—"Public Works Health Act"—Construction of statute—R.S.C. 1906, *c.* 135, *s.* 3—*Regulations by order-in-council—Breach of statutory duty—Action—Misjoinder.*

The provisions of section 3 of the "Public Works Health Act," R.S.C. 1906, ch. 135, do not impose on a Government Department or a company constructing a public work the obligation to provide hospitals and surgical attendance for the treatment of personal injuries sustained by employees, whether of themselves or of their contractors or sub-contractors, in the construction of such work.

APPEAL from the judgment of the Supreme Court of Alberta affirming the judgment of Harvey J., at the trial, whereby the plaintiff's action was maintained as against the company, with costs, and dismissed in respect to the other defendant.

The plaintiff, a labourer employed by a firm of sub-contractors engaged in the construction of a portion of the Grand Trunk Pacific Railway (a work being prosecuted under the control of the Parliament of

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington and Anglin JJ.

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Canada), while in the performance of his duties met with an accident by which his leg was broken. The injured limb was set and placed in a temporary splint at a local emergency hospital by the surgeon in charge, and the plaintiff was then transferred to the permanent hospital, at Edmonton, where he received treatment by Dr. Hislop, one of the defendants, until discharged from that hospital some weeks later. As a result of the injury the plaintiff's right leg remained shorter than the left and he lost the proper use of his right ankle. The action for damages was brought against the company and Dr. Hislop. The fault charged against the company was failure to provide proper surgical treatment and appliances, as required by the "Public Works Health Act" and the regulations made thereunder, by order-in-council, and it was also alleged that the medical attendant at the emergency hospital was not a properly qualified practitioner because he was not registered as such under the statute in force in the Province of Alberta. The other defendant, Hislop, was charged with malpractice. On an application, in Chambers, to compel the plaintiff to elect as to which of the defendants he would proceed against, Beck J. (1) held that these causes of action might properly be joined, and, at the trial, the jury exonerated Hislop and found that the plaintiff's injury was the result of negligence on the part of the company in failing to provide "a suitably equipped hospital, a duly authorized physician and attendants," in compliance with the terms of the "Public Works Health Act." The action was dismissed in respect to Hislop and, on the findings of the jury, the trial judge ordered judg-

(1) 2 Alta. L.R. 34.

ment to be entered against the company for the amount of damages assessed ($5,000), with costs of the action. This judgment was affirmed by the judgment now appealed from.

The issues in question on the present appeal are stated in the judgments now reported.

Chrysler K.C. for the appellants.

Ewart K.C. for the respondent.

THE CHIEF JUSTICE.—I agree that this appeal should be allowed. The object of the Act is to provide for the protection of the public health, although the regulations apparently go beyond the statute. If the Act or the regulations in so far as they are within the statute have not been observed the duty of enforcing them lies with the Government inspector but in default of his doing his duty no action lies at the suit of a party injured against the company. The statute has not created a contractual relation between the company and the employee of a contractor who may have his recourse on his contract of hire or against the medical man; but as to this I express no opinion. I am quite clear, however, that there is no *lien de droit* between the respondent and the appellants; and the appeal should be allowed with costs.

GIROUARD J.—I agree that this appeal should be allowed with costs.

DAVIES J.—I concur in the opinion stated by Mr. Justice Anglin.

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IDINGTON J.—The question is raised by this appeal of whether or not an action will lie upon the "Public Works Health Act," being chapter 135 of the Revised Statutes of Canada, at the suit of one of the labourers upon a public work who in the course of his employment had some bones of his leg broken which, in consequence, required surgical skill and due care which it is found were not given.

The third section enacts as follows:—

> For the preservation of health and the mitigation of disease amongst the persons employed in the construction of public works the Governor-General in Council may from time to time make regulations,—
>
> (*a*) As to the extent and character of the accommodation to be afforded by the houses, tents, or other quarters occupied by the employees on the works;
>
> (*b*) For the inspection of such houses, tents, or other quarters, and the cleansing, purifying and disinfecting thereof when necessary;
>
> (*c*) As to the number of qualified medical men to be employed on the works;
>
> (*d*) For the provision of hospitals on the works, and as to the number, location and character of such hospitals;
>
> (*e*) For the isolation and care of persons suffering from contagious or infectious diseases;
>
> (*f*) As to such other matters or things as he may deem best adapted to attain the objects of this Act.

The sub-sections (*c*) and (*d*) standing alone might in some way have been given some operation applicable to such a case as the treatment of respondent's leg, but, clearly, the other sub-sections relate to subjects quite foreign thereto.

Now, when we find these two sub-sections set in such a context and have regard to the primary and ordinary meaning of such phrases as

> the preservation of health and the mitigation of disease,

coupled thus together introducing and furnishing the key-note of the whole it seems impossible to find there-

in the purpose of providing an emergency hospital and surgery duly equipped for dealing with all that is involved in the product of accidents of any and every kind happening in the construction of great public works.

The subject-matter specified in sub-sections (*c*) and (*d*) must be held to relate to, and the regulations to be made thereunder to be such as to serve the obvious purposes of, the section as a whole.

Some stress is laid by respondent's factum on expressions in the regulations adopted tending to lead one to believe a wider purpose was had in view.

But the regulations can add nothing to the objects of the statute.

I need not say that, holding the opinion I express, it is unnecessary for me to give any opinion upon the important question of whether or not any liability to action can ever arise upon this statute.

I may, however, be permitted to point out that if the statute had expressly provided for the deduction of a weekly fee from the workmen, as the regulations seem to provide for, it would have been easier to hold that it was within the purview of the statute that such an action should lie thereon.

It would also in such a case have been easier to have found some force in the argument put forward based on the hypothesis that such a fee was legally exacted.

Its exaction seems to me bad both in law and in economics.

And, inasmuch as the unfortunate plaintiff had not paid any such fee, I can find nothing in regard to it upon which to found this action.

I regret to find no adequate legal machinery exists

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to enforce surgical and hospital provision to meet in a way that humane feelings dictate the necessities of the case of the ever-recurring accidents (inevitably attendant upon), the construction of public works.

When they are carried on in the depths of the wilderness some such provision is needed.

The appeal must be allowed, and with costs if insisted on.

ANGLIN J.—The plaintiff (respondent) was injured on the line of railway of the defendants, the Grand Trunk Pacific Railway Company, in course of construction between Edmonton and Pembina River. He sustained a fracture of the right leg. He admits that his injury was purely accidental. It is of his subsequent treatment that he complains. He was taken first to a temporary hospital distant about two miles from the place at which he was injured. His limb was there set and placed in a temporary wooden splint by the surgeon in charge, Dr. Culton, who is said not to be a duly qualified practitioner because his name does not appear upon the Medical Register of the Province of Alberta. He was then transferred to the hospital at Edmonton, a distance of sixty-five miles. The journey occupied nearly three days, being made partly in waggons and partly over the constructed line of railway. At the Edmonton Hospital he was attended by the division surgeon of the railway company, the defendant Hislop, against whom he charges malpractice. After some weeks' treatment he left the hospital. His right leg is, as a result of his injury, now somewhat shorter than the left, and he has not proper use of his right ankle.

The action went to the jury against both defendants. In answer to the question

Is the plaintiff's injury the result of any negligence on the part of the defendants ?

the jury replied "Yes." And to the question

If so, in what did that negligence consist ?

they answered —

In the failure of the Grand Trunk Pacific Railway Company to comply with the terms of the "Public Works Health Act" regarding the providing of a suitably equipped hospital, a duly authorized physician and attendants.

This verdict involved a finding in favour of the defendant Hislop, against whom the action was dismissed. From that judgment no appeal has been taken. Judgment was entered for the plaintiff against the Grand Trunk Pacific Railway Company for the damages assessed, $5,000, and, on appeal, this judgment was confirmed by the full court of the Province of Alberta.

After a careful perusal of the evidence I more than gravely doubt whether the permanent injuries sustained by the plaintiff are ascribable to the conditions found by the jury to constitute negligence on the part of the defendant railway company. Neither am I satisfied that, assuming the "Public Works Health Act" to require that the company should provide

a suitably equipped hospital and a duly authorized physician and attendants

for the care of employees, whether of themselves or of their contractors, injured during the construction of the railway, the evidence sufficiently establishes breaches of these duties. But, in the view I take of the purview of the statute, it is unnecessary to determine these questions.

Section 3 of the "Public Works Health Act" reads as follows:

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3. For the preservation of health and the mitigation of disease amongst persons employed in the construction of public works the Governor-General in Council may from time to time make regulations,—

(*a*) As to the extent and character of the accommodation to be afforded by the houses, tents, or other quarters occupied by the employees of the works;

(*b*) For the inspection of such houses, tents, or other quarters and the cleansing, purifying and disinfecting thereof when necessary;

(*c*) As to the number of qualified medical men to be employed on the works;

(*d*) For the provision of hospitals on the works, and as to the number, location and character of such hospitals;

(*e*) For the isolation and care of persons suffering from contagious or infectious diseases;

(*f*) As to such other matters and things as he may deem best adapted to attain the objects of this Act.

(2) Such regulations may be either general or special and may apply generally to all public works or specially to one or more public works or class of public works named therein.

In my opinion, the introductory words "for the preservation of health and the mitigation of disease" govern the construction of this entire section. These words exclude the idea that Parliament intended to impose upon persons and corporations in the position of the defendants an obligation to provide hospitals and medical attendance for employees injured in the construction of a public work as defined in the statute. It is true that in the regulations passed by the Governor-General in Council under the statute there are several provisions which might, perhaps, indicate that in the opinion of the Governor-General in Council the Act was intended to apply to surgical cases of accident. But these provisions do not suffice to extend the obligations imposed by section 3. Assuming, therefore, that the defendants failed to provide a suitably equipped hospital and proper surgical attendance for the plaintiff, that would not constitute a breach of

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any statutory duty imposed on them by the "Public Works Health Act."

Assuming that it was sufficiently established that the plaintiff was liable under section 11 of the regulations to a deduction of fifty cents per month from his wages for medical attendance, and that the statute authorizes such a regulation, the medical attendance which this would oblige the defendants to furnish would probably be confined to that which the statute itself prescribes. But upon this branch the plaintiff has wholly failed to make out a case. He has neither shewn any actual deduction from his wages nor any agreement for such a deduction. He has not even shewn that such a deduction was contemplated or was actually made from the wages of other contractors' employees. Moreover, as already stated, I incline to the view that the evidence may not warrant a finding that the plaintiff's permanent injuries are due to any lack of hospital conveniences or of proper medical attendance.

It was further objected on the part of the appellants that the statutory cause of action against the Grand Trunk Pacific Railway Company was improperly joined with the common law cause of action against the defendant Hislop for alleged malpractice and that, as a result of such misjoinder, there had been a mistrial. Inasmuch as I would allow the defendants' appeal on the ground that it has not been established that they owed any statutory duty to the plaintiff, it is unnecessary to dispose of the question of misjoinder.

The appeal should, in my opinion, be allowed with costs in this court and in the Supreme Court of Alberta, and the action dismissed with costs.

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Appeal allowed with costs.

Solicitors for the appellants: *Short, Biggar, Cowan & Collisson.*

Solicitor for the respondent: *C. C. McCaul.*