*1923
Oct. 23, 24.
1924
Feb. 5.

THE SINCENNES-McNAUGHTON LINES, LTD. (DEFENDANT)..... } APPELLANT;

AND

JOSEPH BRUNEAU (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC

Constitutional law—Legislative jurisdiction—Accident on vessel—Right of surviving consort—Workmen's Compensation Act, R.S.Q. (1909) Sections 7321 et seq.—Canada Shipping Act, R.S.C. (1906) c. 113, sections 915 to 921—B.N.A. Act, (1867) sections 91, 92—(Q) 9 Edw. VII, c. 66, s. 1—Arts. 1056, 2390 C.C.

Sections 7321 and 7323 of the Quebec Workmen's Compensation Act, in so far as they affect "workmen, apprentices and employees engaged * * * in any transportation business * * * by water" are *intra vires* the provincial legislatures, as they are not in their operation necessarily in conflict with the provisions of the Canada Shipping Act, contained in sections 915 to 921 nor, *per* Duff J., in their application to the circumstances of this case, with Article 2390 C.C. *Workmen's Compensation Board* v. *Canadian Pacific Ry. Co.* ([1920] A.C. 184) and *McColl* v. *Canadian Pacific Ry. Co.* ([1923] A.C. 126) discussed.

The husband, *de facto* but not judicially separated from bed and board, has the right to claim indemnity as "surviving consort" under the provisions of clause A of section 7323 of the Quebec Workmen's Compensation Act.

Judgment of the Court of King's Bench (Q.R. 35 K.B. 247) affirmed.

APPEAL from a decision of the Court of King's Bench, appeal side, province of Quebec (1) affirming the judg-

*PRESENT:—Sir Louis Davies C.J. and Idington, Duff, Anglin and Mignault JJ.

(1) Q.R. 35 K.B. 247.

ment of the Superior Court, maintaining the respondent's action.

The material facts of the case and the questions at issue are fully stated in the above head-note and in the judgments now reported.

Paul St. Germain K.C. for the appellant.

A. Chase-Casgrain K.C. for the respondent.

THE CHIEF JUSTICE.—The substantial question in this case is whether the "Workmen's Compensation Act" of the province of Quebec, so far as it relates to the liability of shipowners to their workmen employed in transportation by water, is *ultra vires* of the provincial legislature as being in conflict with the Canada "Shipping Act" and its provisions relating to such subject matter.

The contention of the appellant company is that the "British North America Act, 1867," had in its 91st section exclusively assigned the subject matter of "Shipping and Navigation" to the Parliament of Canada and that such Parliament had dealt fully in the Canada "Shipping Act" (R.S.C. c. 113) with the whole subject of the liability of ship-owners to their seamen (sections 916-921) and that the field being so covered the provincial legislation in question is *ultra vires*.

The trial judge rejected the contention of the defendant company and maintained the action of the plaintiff respondent for $1,820, which judgment was confirmed unanimously upon appeal to the Court of King's Bench.

At the conclusion of the argument at bar I felt grave doubts whether the company's contention was not well founded. Since then I have given the whole question much consideration and have had the advantage of reading the several judgments of my colleagues and of consulting personally with them. They are unanimously in favour of dismissing the appeal relying substantially on the ground that the "Workmen's Compensation Act" in question does not deal with the same subject matter as has been dealt with by the Canada "Shipping Act," and upon the two cases decided by the Judicial Committee: *Workmen's Compensation Board* v. *Canadian Pacific Ry. Co.* (1); *McColl* v. *Canadian Pacific Ry. Co.* (2).

(1) [1920] A.C. 184.

(2) [1923] A.C. 126.

1924

SINCENNES-MCNAUGHTON LINES, LTD. v. BRUNEAU.

The Chief Justice.

While my doubts on the question have not been entirely removed, I do not feel that they are sufficiently strong to justify me in reversing the judgment of the two courts below and allowing the appeal.

I will not, therefore, dissent from the judgment of my colleagues, dismissing this appeal.

IDINGTON J.—The appellant was the owner of a tug called *Spray* operating in the St. Lawrence river within the province of Quebec.

The late wife of the respondent was engaged as cook upon said tug when it collided with a steamer known as *Cairndhu* about three miles above Sorel on said river and, as a result of such accident, she and five other persons of the crew were drowned.

The respondent, her surviving husband, brought this action claiming, under the provisions of the Quebec "Workmen's Compensation Act," the damages allowed, under said Act and amendments thereto, to him under such circumstances.

That action was tried before Mr. Justice Loranger of the Superior Court of said province, who maintained same and awarded respondent the sum of $1,820.

On appeal therefrom to the appeal side of the Court of King's Bench, that court unanimously maintained the said judgment and dismissed said appeal with costs.

From that judgment this appeal is taken upon two grounds, first, that the said Act is *ultra vires* the legislature of the province of Quebec, so far as relevant, and secondly, that in any event the respondent and his late wife were *de facto* separate from bed and board.

There is no pretence that such separation had ever been judicially declared and but flimsy evidence of its existence *de facto*. Unless we are to hold that husband and wife by working in different places, without more, are so separate as to deprive the husband surviving of his otherwise legal rights as such under the provisions of said Act, there seems to me nothing in law to support such pretensions. I cannot maintain said appeal on any such ground.

The really important question raised herein is whether or not in view of the " British North America Act " assigning to the Parliament of the Dominion, by virtue of section

91 of said Act, and the enumerated items thereof 10. "Navigation and Shipping" and 29 such classes of subjects as are expressly excepted in the enumeration of the classes of subjects by this Act assigned to the legislatures of the provinces.

Of those so excepted in such enumeration there are the following:—

92. Item 10. (*a*) Lines of steam or other ships, railways, canals, telegraphs, and other works and undertakings connecting the province with any other or others of the provinces, or extending beyond the limits of the province:

(*b*) Lines of steamships between the province and any British or foreign country;

(*c*) Such works as, although wholly situate within the province, are before or after their execution declared by the Parliament of Canada to be for the general advantage of Canada or for the advantage of two or more of the provinces.

I cannot put the latter on any higher basis than those falling under said item 10 of section 91, or *vice versa*.

I think they all stand on the same footing and hence the "Canada Shipping Act" invoked herein by the appellant, is not to be read as having any higher class than the incorporation, and all implied therein, for example, of the Canadian Pacific Railway Company.

Now I find that this court, by its decision in the case of *The Canada Southern Ry. Co.* v. *Jackson* (1), expressly decided in a case arising under the Ontario "Workmen's Compensation Act" wherein the same objection of *ultra vires* was taken as herein, that such legislation was not *ultra vires* the legislature of the province of Ontario. The Ontario "Workmen's Compensation Act" of that day was not our present Ontario Act, but one that in its general features was like unto the present Quebec "Workmen's Compensation Act," though the latter is said to have been taken from a French Act.

I cannot distinguish that case from this in principle.

The power to enact the "Canada Shipping Act" rests virtually upon the same basis as to deal with the subject matter whereupon the Canada Southern Railway Act rested all its powers.

I hold we are bound in principle to follow this decision though I am bound to say that I have been unable to find any report of the *Rowland Case*, upon which the learned

(1) [1890] 17 Can. S.C.R. 316.

1924

SINCENNES-MCNAUGHTON LINES, LTD. v. BRUNEAU.

Idington J.

judge (Taschereau J.) therein relied; unless perhaps it was the same case as referred to in 13 Ont. P.R. 93, which in a later stage as that report indicates highly probable, the question came before this court by way of seeking an appeal here.

Sir Elzear Taschereau, the late Chief Justice of this court, was at that date a puisne judge of this court.

I may also say that this decision in the *Jackson Case* (1), though traced by me from another case cited by counsel for appellant, and relied upon by me in the case of *The Canadian Pacific Railway Co.* v. *The King* (2) seems to have escaped the notice of counsel on each side herein.

I feel so clearly bound thereby that I need not follow the matter further, but may be permitted to rely also upon the decision of the court above in the case of *The Workmen's Compensation Board* v. *Canadian Pacific Railway Co.* (3), arising out of the application of the provisions of the British Columbia "Workmen's Compensation Act."

I admit that it is by no means decisive of this case but am reminded thereby of what we have been so often reminded especially in the interpretation and construction of the "British North America Act," that you cannot, under that, do that indirectly which you cannot do directly.

I submit that bearing that principle in mind this decision furnishes a strong argument in favour of maintaining that the Quebec "Workmen's Compensation Act" is *intra vires* when the "Canada Shipping Act" is closely analyzed, and we are confronted with the proposition of the court below, that it is with only a matter of tort and not of contract that it deals, and thus impliedly leaves all involved in the contractual relations of parties to be dealt with by the local legislature under either item 13 or 16 of the enumerated powers conferred by section 92 of the B.N.A. Act.

The case of *McColl* v. *Canadian Pacific Ry. Co.* (4), in which the judgment of the Judicial Committee was written by my brother Duff, also seems to me incidentally very helpful in supporting this respondent by following same line of thought.

(1) 17 Can. S.C.R. 316.
(2) [1907] 39 Can. S.C.R. 476.
(3) [1920] A.C. 184.
(4) [1923] A.C. 126.

1924

SINCENNES-McNAUGHTON LINES, LTD. v. BRUNEAU.

Idington J.

I am by no means presenting this case as a final disposition on such a subject, but as tending thereto and well worthy of consideration.

I repeat that I feel bound by the decision of this court, above cited, and which I cannot in principle distinguish from what is involved herein, and that these several other considerations just now mentioned tend to support said decision. The decision of the Judicial Committee in the *Canadian Pacific Ry. Co.* v. *Corporation of the Parish of Notre Dame de Bonsecours* (1) should also be kept in view.

I must therefore conclude that this appeal should be dismissed with costs.

DUFF J.—By the decisions of the Lords of the Judicial Committee in *Workmen's Compensation Board* v. *Canadian Pacific Ry.* (2), and in *McColl* v. *Canadian Pacific Ry. Co.* (3), the proposition was settled beyond controversy that notwithstanding the terms of section 91 of the "British North America Act," by which exclusive legislative authority is reposed in the Dominion in respect of navigation and shipping and in respect of Dominion railways, the province has jurisdiction to provide for the payment of compensation to workmen injured by industrial accidents and to require railway companies and shipping companies to contribute to a fund provided for the purpose of furnishing the means of paying such compensation; and that such legislation may have full operation and impose binding obligations upon such companies so long as the Dominion does not in exercise of the authority mentioned enact legislation which conflicts with and overrides that of the province.

I think there is no sound distinction relevant to the point immediately under consideration to be drawn between the constitutional authority of a province as respects such legislation as that of Manitoba and British Columbia (considered in the decisions mentioned) and the enactment brought into force by the statute 9 Edw. VII, c. 66, sec. 1, passed by the legislature of Quebec. In substance this enactment provides that a duty shall rest upon the employer—a duty attached by law to the relation be-

(1) [1899] A.C. 367.
(2) [1920] A.C. 184.
(3) [1923] A.C. 126.

1924

SINCENNES-MCNAUGHTON LINES, LTD. v. BRUNEAU.

Duff J.

tween himself and his employees as a statutory term of the contract of employment, as it was put by Lord Haldane in the Case of the *Princess Sophia* (1)—entitling the injured employee or his representatives to compensation for injuries suffered by the employee in accidents happening by reason of or in the course of his work, where the accident is not brought about intentionally by the person injured. This obligation of the employer is qualified by a provision enabling the court to reduce the compensation where the accident is due to the "inexcusable fault" of the workman or to increase it where it is due to the "inexcusable fault" of the employer; but save in the case of "inexcusable fault" on the one side or the other, and in the case just mentioned of intentional misconduct by the employee, the Act requires the employer to insure his workmen against the consequences of industrial accidents by requiring him to pay compensation according to a definite scale fixed by the statute. Under the scheme of the British Columbia and Manitoba Acts, compensation is not, as a rule, paid by the employer directly, but out of a fund which is created by compulsory contributions levied against employers in accordance with certain principles laid down in the statutes. In neither case is the compensation paid to the employee a payment in the nature of damages as for a tort. The employee is entitled to receive it in the absence of any fault on part of the employer or his agents, and the amount recoverable is not determined by an estimate of the pecuniary loss suffered by the individual in the circumstances of the case, but according to a scale fixed by the statute. *Prima facie,* therefore, the provision of article 7321 of the Quebec statutes, conferring the right of compensation upon workmen engaged in any transportation business by land or by water is operative as a valid legislative enactment within the authority of the Quebec legislature.

The important question remains: Is there Dominion legislation in force applicable to the case presented by the respondent overriding this enactment and excluding his right of recovery? Secs. 915-917 inclusive of the Canada "Shipping Act" appear to apply only to damages arising through non-observance of the regulations in force under

part 14 of the Act, and so far as appears from this record, have no application to the circumstances out of which this litigation arose. I postpone for the moment the consideration of section 921. At the time of Confederation there was in force in the province of Quebec article 2390 of the Civil Code, which was in the following words:

> The owners are civilly responsible for the acts of the master in all matters which concern the ship and voyage and for damages caused by his fault or the fault of the crew. They are responsible in like manner for the acts and faults of any person lawfully substituted to the master.

The question whether after the passing of the "British North America Act" it was competent to the province of Quebec to amend this article by substituting therefor, in the case of injuries to employees, a right of compensation such as that given by the "Workmen's Compensation Act" of 1909 in lieu of all right of recovery of damages for fault except in the case of "inexcusable fault," is one which I do not think it is necessary to pass upon for the purposes of this appeal, and for this reason; Art. 2390 C.C., for reasons similar to those given in *McColl's Case* (1), conferred no right of action in respect of fault causing the death of the victim. In such a case resort must be had to article 1056 C.C. Now Article 1056 C.C. is an article strictly dealing, not with the subject of shipping or navigation, but with civil rights, and one which it is competent to the province of Quebec to amend without restriction. That article is unquestionably affected by the provisions of the "Workmen's Compensation Act," and ceases to have any operation in cases where death has arisen in circumstances giving a right to compensation under that Act. The case of the plaintiff is therefore not a case in respect of which Article 2390 C.C. could be invoked. The province was, I think, in the circumstances free to legislate with regard to such cases. Neither the province nor the Dominion was represented on the argument, and notwithstanding the ability with which the subject was discussed, I prefer to put my opinion on this branch of the appeal on this narrow ground, without passing upon or intimating any opinion upon the broader question.

(1) [1923] A.C. 126.

1924

SINCENNES-McNAUGHTON LINES, LTD. v. BRUNEAU.

Duff J.

I now come to sec. 921 of the Canada "Shipping Act." The answer to the contention based upon that section is succinctly and sufficiently stated, I think, in the judgments of Tellier J. and Hall J. If the appellants' premises be correct and that section applies and overrides the provisions of the "Workmen's Compensation Act" in so far as it is inconsistent with those provisions, then it is to be observed that the section does not deal with the subject of the conditions of liability, but only with the quantum of "damages" recoverable where the conditions of liability exist. It was open to the appellants in answer to the action to show that the sum *prima facie* recoverable under the "Workmen's Compensation Act" could not consistently with the provisions of sec. 921 be awarded to the plaintiff. No attempt was made to show this, and I agree with the Court of King's Bench that there is no material before us upon which it can be affirmed that the plaintiff's right of recovery is affected by that section.

I express no opinion upon the question whether or not the decision in the case of the *Princess Sophia* (*Workmen's Compensation Board* v. *Canadian Pacific Ry. Co.* (1)), that the analogous provisions of the "Merchant Shipping Act" of 1894 had no application to a liability such as that imposed upon employers by the British Columbia statute to contribute to a fund to be administered by a Workmen's Compensation Board, for indemnifying workmen in respect of injuries in industrial accidents governs the question of the application of this section to an employer's obligation under the "Workmen's Compensation Act" of Quebec. The judgment in the case of the *Princess Sophia* (1) was not addressed to any such question, although some observations made in the course of the judgment may fairly be said to have not a little relevancy to it. I desire to intimate no opinion in either sense upon the point.

The appeal should be dismissed with costs.

ANGLIN J.—The applicability of the Quebec "Workmen's Compensation Act" to

workmen, apprentices and employees engaged * * * in any transportation business * * * by water

(unless where the navigation of the vessel is by means of sails, 8 Geo. V, c. 71, s. 1) is clear upon the face of the

(1) [1920] A.C. 184.

statute. That persons so engaged may be given the benefit of such provincial legislation is conclusively established by the decision of the Judicial Committee in *Workmen's Compensation Board* v. *Canadian Pacific Ry. Co.* (1). That the plaintiff, as the consort of a deceased employee of the defendant company who lost her life in the sinking of their tug-boat *Spray,* on which she worked, is a person entitled to compensation under the combined operation of Arts. 7321 and 7323 R.S.Q., is therefore apparent, subject to two contentions pressed by the defendant—

(*a*) That the plaintiff was "separated from bed and board" within the meaning of clause (*a*) of Art. 7323; and

(*b*) That Arts. 7321 and 7323, in so far as they affect workmen or employees engaged on a vessel to which the provisions of the Canada "Shipping Act" (R.S.C. [1906], c. 113) apply, as they did to the *Spray,* are *ultra vires* of the Quebec legislature.

I agree with the learned judges of the provincial courts that the exception made by Art. 7323 (*a*) and relied on by the appellants applies only to a consort judicially separated. The plaintiff was not so separated from his wife.

In determining the nature of the right to compensation conferred by the Quebec "Workmen's Compensation Act" I cannot think it material that that statute (in this respect unlike the British Columbia "Workmen's Compensation Act" dealt with in *Workmen's Compensation Board* v. *Canadian Pacific Ry. Co.* (1), and the Manitoba "Workmen's Compensation Act" considered in *McColl* v. *Canadian Pacific Ry. Co.* (2), does not provide for the creation of a fund under the control of a Board appointed by the Government out of which claims for compensation shall be paid, but imposes direct liability for such claims upon employers. The right to the compensation is none the less on that account

the result of a statutory condition of the contract of employment with a workman;

it arises in both cases alike

not out of tort but out of the workmen's statutory contract

and is

a civil right within the province to compensation

(1) [1920] A.C. 184. (2) [1923] A.C. 126.

1924

SINCENNES-MCNAUGHTON LINES, LTD. v. BRUNEAU.

Anglin J.

in the nature of "insurance against fortuitous accident." The competency of the Quebec legislature "to pass laws regulating the civil duties" of a company such as the defendant,

> which carried on business within the province and in the course of that business was engaging workmen whose civil rights under their contracts of employment had been placed by the Act of 1867 (the B.N.A. Act) within the jurisdiction of the province

cannot be controverted. These matters are concluded by the decision in *Workmen's Compensation Board* v. *Canadian Pacific Ry. Co.* (1), at pp. 191-2.

The decision in *McColl's Case* (2) also serves to make it clear that, at all events in cases of claims for damages resulting from personal injuries causing death, liability independently of the operation of the provincial law is not created by sec. 917 of the "Canada Shipping Act."

That it was competent for the Quebec legislature to enact, as it has done by Art. 7335, that in cases in which compensation under the "Workmen's Compensation Act" is recoverable (see Art. 7347a, 4 Geo. V, c. 57, s. 2) there shall be no other right of recovery under provincial law against the employer by the person injured or his representatives cannot, I think, be questioned.

But it is contended that there is a necessary conflict between the rights conferred by articles 7321 and 7323 of the Quebec statute and section 921 of the "Canada Shipping Act" limiting the liability of the ship-owner where, as in the case before us, he is not privy to the cause of the injury, loss or damage which forms the subject of claim, and that the Dominion legislation must prevail.

The view taken in the Court of King's Bench on this part of the case was that it could be disposed of on the ground that the evidence does not disclose any other claims against the defendant arising out of the sinking of its tugboat and that the recovery in this action is well within the limit prescribed by section 921. But, with respect, I do not think those facts afford an answer to the contention that articles 7321 and 7323 in so far as they give rights against owners of vessels subject to the "Canada Shipping Act" are *ultra vires*. To the extent that those rights might in any case conflict with the restriction imposed by section

(1) [1920] A.C. 184. (2) [1923] A.C. 126.

921 of the Canada Shipping Act the validity of articles 7321 and 7323 probably could not be upheld. It would seem necessary, therefore, to face the issue whether there may be such conflict.

Section 921 of the "Canada Shipping Act" deals with liability for damages—

the owners * * shall not * * be answerable in damages * * .

I find in that section itself and in its collocation abundant evidence that it deals only with "damages" in the sense of indemnity for actionable injury or loss caused by tort for which the vessel owner is legally responsible.

"*Dammages*"—*Damma* in the common law hath a speciall signification for the recompence that is given by the jury to the plaintife or defendant (qy. demandant? V. Ritso's Intr. 119), for the wrong the defendant hath done unto him.

Co. Litt. 257a: Vf. Jacob: 4 Encyc. 93-109; Stroud's Judicial Dictionary (2nd ed.), p. 459.

The damages recoverable from the ship-owner dealt with by s. 921 are, as Lord Haldane (1) said, in speaking of s. 503 of the Imperial Merchant Shipping Act (in part in *pari materia*)

for injury arising out of what has not the less to be proved as a tort because it may have happened, in the language of s. 503, without his actual fault or privity.

It is upon the recovery of such damages that section 921 imposes a restriction in favour of the vessel owner. That section does not bear upon compensation claims arising solely out of contractual rights and in no wise dependent upon the establishment of some breach of duty for the consequences of which it is sought to make the vessel owner liable. The application of article 2434 of the R.S.Q. is obviously subject to the same restriction.

In *Workmen's Compensation Board* v. *Canadian Pacific Ry. Co.* (1) the circumstance that an employer who has not fully contributed to the accident fund is required by the British Columbia "Workmen's Compensation Act" to make good the capitalized value of the compensation payable to an injured employee was regarded as not bringing that statute into conflict with the limitation upon liability provided for by section 503 of the "Merchant Shipping Act," 1894. Nor did it involve a departure from the scheme

(1) [1920] A.C. 184, at p. 192.

1924

SINCENNES-MCNAUGHTON LINES, LTD. v. BRUNEAU.

Anglin J.

of the Compensation Acts to provide "insurance against fortuitous injury." The fact that under the Quebec statute, as under the English "Workmen's Compensation Act," compensation is required to be made directly by his employer to the injured workman instead of by a Government Board out of a fund to which the employed is obliged to contribute does not afford a ground for distinguishing it in these respects from the British Columbia statute dealt with by the Judicial Committee (1). In my opinion there can be no conflict between section 921 and the "Canada Shipping Act" and the clauses of the Quebec "Workmen's Compensation Act" with which we are dealing. The sole subject matter of section 921 is the ship-owner's liability for actionable loss or damage arising from tort or breach of navigation regulations for which he is legally responsible. If in the opinion of Parliament it should be desirable that the restriction of liability for which that section provides should apply to claims of employees for compensation under "Workmen's Compensation Acts," its scope must be extended to embrace them. As it now stands such claims are outside the limitations which, in my opinion, cannot be enlarged by the courts upon such considerations as influenced the decision of the Supreme Court of the United States in *South Pacific Co.* v. *Jensen* (2).

Other objections to the validity of the provincial statute based on provisions of the "Canada Shipping Act" providing for the care of sick and disabled seamen (ss. 215 and 394) would seem to be met by the observation of Viscount Haldane (3), at page 193 that they do not cover the same field as the provisions of the "Workmen's Compensation Act."

The appeal, in my opinion, fails.

MIGNAULT J.—The appellant questions the validity, from the constitutional point of view, of the Quebec "Workmen's Compensation Act," sections 7321 and following, R.S.Q., 1909, on which the respondent's action is based. Its contention is that, in so far as compensation is claimed under this statute for the death of the respondent's wife by drowning in the foundering of the appellant's tug *Spray,*

(1) [1920] A.C. 184. (2) 244 U.S. 205 at pp. 215, 218.

the Act conflicts with the provisions of the " Canada Shipping Act," R.S.C. [1906] c. 113, and is therefore *ultra vires* of the Quebec legislature.

Without entering into a detailed examination of the Quebec " Workmen's Compensation Act," I may say, as to its general scope, that it grants compensation, not on the basis of a liability for fault or negligence, but of a legal obligation to compensate the injured workman or the dependents of the deceased workman, without it being necessary to prove any fault or negligence. Perhaps this legislation would be better described by saying that the right to compensation is made by the statute an incident to the contract of employment.

That such a general law is within the legislative jurisdiction of the province cannot be doubted, but it is urged that section 7321 R.S.Q., which *inter alia* applies to any transportation business by water, and that was the business carried on by the appellant, comes into conflict with " The Canada Shipping Act," with the consequence that the latter statute must prevail.

The question thus raised is not entirely a new one, but came before the Judicial Committee, it is true with respect to a " Workmen's Compensation Act " of a different character, in *Workmen's Compensation Board* v. *Canadian Pacific Ry. Co.* (1).

Both the British Columbia Act in question in that case and the Quebec statute have this in common that compensation for injuries or death is granted without proof of negligence. The scheme really is equivalent in its results to a species of insurance in favour of workmen, and, to quote the language of their Lordships in the *British Columbia Case* (p. 191), the right conferred

> is the result of a statutory condition of the contract of employment made with a workman resident in the province, for his personal benefit and for that of members of his family dependent on him. This right arises, not out of tort, but out of the workman's statutory contract, and their Lordships think that it is a legitimate provincial object to secure that every workman resident within the province who so contracts should possess it as a benefit conferred on himself as a subject of the province.

The appellant singles out several provisions of the " Canada Shipping Act " which, it says, are inconsistent with the

(1) [1920] A.C. 184.

1924

SINCENNES-MCNAUGHTON LINES, LTD. v. BRUNEAU.

Mignault J.

Quebec "Workmen's Compensation Act" and should prevail against it.

Thus we are referred to sections 215 and following which provide for medical attendance to seamen injured in the service of their ship, or who are taken ill; but, as observed by their Lordships in the case above referred to (p. 193), these sections do not purport to cover the same field as the provincial statute.

Sections 381 and following of the "Canada Shipping Act" as to the care of sick and distressed mariners were also mentioned, and the same observation disposes of any contention that these provisions conflict with the Quebec law. This is true also of sections 394 *et seq.*, relied on by the appellant, and which are of the same character.

But the chief argument of the appellant is that there is a direct conflict between a limited liability under section 921 of the "Canada Shipping Act" and a liability such as is created by the "Workmen's Compensation Act" of Quebec. The latter liability is by no means an unlimited one, but it is conceivable that where several persons on a ship perish in the same accident, the total sum payable by the ship-owner may be greater under the Quebec statute than under section 921 of the "Canada Shipping Act."

I think it should first be observed that section 921 does not create a liability, but leaves the existence of liability to be determined by the law of the province where the accident occurs. It is a defence to, or rather a limitation on, a liability assumed to exist by virtue of the provincial law. It is concerned with damages, while the Quebec statute fixes a scale of compensation irrespective of the real damages. Moreover, the Quebec "Workmen's Compensation Act" deals with the relations *inter se* of employers and workmen, while section 921 limits the legal liability in favour of the owner of the ship, who is not necessarily the employer of the injured seaman.

It may be added that the field covered by section 921 is much wider than that of the Quebec statute since it would apply to a claim for damages suffered not only by a seaman, but by a passenger on a ship, as well as to a claim for damages to goods carried on the ship.

1924

SINCENNES-McNAUGHTON LINES, LTD. v. BRUNEAU.

Mignault J.

Whether or not section 921 may be resorted to in the case of several claims arising out of the same accident under the Quebec "Workmen's Compensation Act," and the appellant has not made out in evidence such a case here, there is no necessary conflict between the two statutes, and consequently I would not be justified in adopting the appellant's conclusion that the Quebec statute is *ultra vires* in so far as it applies to contracts of employment made by a person carrying on a transportation business by water. The same remark can be made in connection with section 918 of the "Canada Shipping Act" which applies the admiralty rule of division of damages where a collision occurs through the common fault of two colliding vessels.

On the whole case, I come to the conclusion that the appellant's attack on the Quebec statute fails.

There was another ground on which the appellant relied in the courts below, but which was not strongly pressed in this court, and that is that a state of separation existed between the plaintiff and his wife. The only separation, under the Quebec "Workmen's Compensation Act," which would serve as a bar to an action by the consort is a judicial separation from bed and board. Here the separation was purely voluntary and the plaintiff's right of action was not taken away.

I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *St. Germain, Guérin & Raymond.*

Solicitors for the respondent: *Robichon & Méthot.*