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 April 23

IN THE MATTER OF THE PETITION OF
 FRANCIS KEEGAN.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Crown—Negligence—Public work—Post office—Elevator—Measure of damages.

An injury sustained in the course of repairing an elevator-switch in a post office building, the elevator not being for the use of the public, is one happening on a "public work," and having been occasioned by the negligence of a servant of the Crown acting within the scope of his employment becomes a claim under sec. 20 of *The Exchequer Court Act*, for which the Crown is liable.

Damages in the amount of \$4,500, and an extra allowance for medical expenses may be fairly allowed for a spinal injury to an electrician, incapacitating him, at the age of 27, from pursuing his avocation.

PETITION OF RIGHT to recover damages for personal injuries.

Tried before the Honourable Mr. JUSTICE AUDETTE, at Montreal, Que., March 23, 1917.

H. N. Chauvin and *H. E. Walker*, for suppliant; *F. J. Laverty*, K.C., for respondent.

AUDETTE, J. (April 23, 1917) delivered judgment.

The suppliant, by his petition of right, seeks to recover the sum of \$25,000 for injuries, loss and damage suffered by him as the result of an accident, in the General Post Office Building, at Montreal, P.Q.

On December 21, 1914, the suppliant was engaged, with Charles Gylche, in repairing the limit-switch in the pit of the freight and passenger elevator at the post office, an elevator which is not in use by the public. Some work had been done in the morning and they resumed work in the afternoon.

Witness Donovan states in his evidence that in the absence of superintendent Morrison, who has charge of all the buildings and public works he, himself, has charge of the

elevators in the post office. At 3 o'clock in the afternoon, Tisdale, who does not speak English, was to take charge of the elevator. A few minutes before 3, after taking the power off, Donovan, in the presence of Keegan and Gylche, told Rochon, who speaks the French and English languages, to tell Tisdale that he could operate the elevator, but not to take it down to the basement, where the men were working:—that he was to operate above only, and both Keegan and Gylche declared themselves satisfied with this arrangement. Gylche said he did not like the idea of having the elevator operated while they were working; but on representations being made that the elevator was wanted, they all agreed to the above arrangement.

Donovan said that he then reconnected the electricity which he had shut off.

Tisdale says the accident in question occurred between 3.25 and 3.30 in the afternoon, he having taken charge of the elevator at 3 o'clock; and that between 3 o'clock and the time of the accident, he had been asked, by the men working in the pit, to come down five times to see how the elevator would work, and that each time, both Keegan and Gylche were out of the pit, standing on the floor of the cellar close by the elevator.

Now, immediately before the accident both men were in the pit underneath the elevator, engaged in the repairs in question, and while Keegan was in a bending position, his elbow resting on a projecting ledge of 15 to 18 inches in width at the back of the pit, leaning over this ledge or wall, holding a piece of wood into which he was running a screw to hold the limit switch, the elevator suddenly came down upon him and he was very severely injured.

Gylche, who was at the time in the pit with Keegan, says they were not expecting the elevator down, as it had been arranged it was not to be operated down to the basement. He was standing away from the wall, and the first intimation of the coming elevator was the feeling of a draft, made by the displacement of the air, as it was coming down rapidly. He then heard Keegan crying out "Oh!" before being struck. As soon as Gylche realized this predicament, he stooped down on his knees and kept his head clear of the car, and afterwards crawled out between

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the bottom of the car at the front, and the floor, through a space of 15 to 18 inches. The bottom of the pit is about 4 feet lower than the floor of the basement, and the ledge in question is about 23 to 24 inches from the floor.

Keegan moaned. He was caught between the edge of the ledge and the bottom of the car—he could not move—he was pinned down. When the car moved up, he slid to the bottom and moaned considerably.

He was afterwards moved to the hospital and placed under medical care.

Tisdale, the operator, says he took the elevator down, because he heard some one call "come down." A clerk in the post office, who happened to be in the basement at the time of the accident, says that when some distance from the elevator pit, he heard the words "come down;" and *he thinks the sound appeared to him as coming* from the pit. Another clerk who was in the act of going up, from the basement to the ground floor, in a small stairway open all around, with a door at the top, says he also heard the words "come down." The sound to him appeared to come from the basement. However, when he reached the ground floor, he found the elevator there, flush with the ground floor. There is, therefore, a conflict between Tisdale and this witness, because Tisdale said when he heard "come down" he was at the 3rd story, and that he came down direct from the 3rd story. Some one is in error.

It is proved beyond peradventure that these words "come down" were spoken by some one, but who did really pronounce them? Gylche denies absolutely that either Keegan or he did say "come down" at that moment. He said when he wanted the elevator to come for testing purposes he would ring and call; and unless both Keegan and Gylche had plotted to commit suicide, they would certainly not have called the elevator when they were in this dangerous position.

While the words "come down" were actually spoken, it must be found they were not pronounced by either Keegan or Gylche, and that it is quite possible they were pronounced by some one on the ground floor, where the elevator was found to be when witness Fauteux came up from the base-

ment, or possibly even at some other flat. Sound indeed, controlled by walls, pits and draughts, will travel in a very capricious manner and will often prove very deceiving. The laws of reflection of a sound are the same as those of the reflection of light and heat, and curved surfaces will give rise to acoustic focuses analogous to luminous and calorific focuses which are produced before concave reflectors. As long as the waves of a sound are not interfered with in their development, they will propagate in the shape of concentric spheres; but when they meet an obstacle, they follow the general rule of elastic bodies, that is to say they come back upon themselves in forming new concentric waves which seem to emanate from a second centre situate on the other side of the obstacle and this is what is called reflected waves. Therefore, it is obvious a sound is materially affected by its surrounding obstacles, and while on first impression it may appear to come from one direction, it can as a fact, have emanated from the very opposite direction.

If the elevator was at the third story when these words "come down" were pronounced, they might have come from the first or the second story, the sound striking the bottom of the elevator as an obstacle to the development of its waves, and may have bounced back to the cellar, and appear to many as having originated there. Such a call was, however, made, but it is under the evidence impossible to accurately locate it. But even if such a call has been made there was obviously great want of care and diligence in the manner in which Tisdale answered it, that is by rushing his elevator down to the basement notwithstanding the arrangement above mentioned respecting the service of the elevator in the basement. He knew the men were working in the pit, he knew he was not to run his elevator down to the basement—this was a departure from his usual run—and if he thought he was called to the basement he was bound under the circumstances, to use such care and diligence as an ordinary prudent man would use on such an occasion. There is no excuse or justification for taking his car down in such a reckless manner, oblivious of all sense of responsibility and sane behaviour. He probably

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had momentarily forgotten about the men in the pit and of the understanding about the service to the basement.

The accident having occurred on a public work, the General Post Office Building, at Montreal, and it being the result of the negligence of an officer or servant of the Crown acting within the scope of his duties and employment, the suppliant is entitled to recover. See *The Exchequer Court Act*, sec. 20.

Quantum.

Coming now to the question of quantum, the evidence establishes that when Keegan was brought to Notre Dame Hospital, after the accident, he was suffering from a fracture of the spine, in the last dorsal vertebrae, from a tear of the perineum and of the rectum, that his legs were paralysed, and the suppliant adds that he was struck on the head and several of his teeth were knocked out. He was placed by Dr. Mercier in a plaster jacket and the paralysis began to improve. In March, 1915, the fracture of the spine had partly consolidated, but he was still an invalid. A few weeks after leaving Notre Dame Hospital he went to the General Hospital, at Montreal, where he was treated by Dr. Nutter, who testified that when he first saw Keegan, he was still in a badly crippled condition with forward curvature, although one could see he had been still worse. He had a bad deformity of the spine, a hunch back, evidently due to the accident, and the X-Ray he had taken showed a fracture of the last dorsal vertebrae. He will always remain in a crouched condition and be permanently disfigured. The force of the elevator had crushed the bone. He had recovered the use of his legs and was then able to go about with care in a feeble manner, but could not stand for any time. He was happier sitting than standing, but happier on his back, and could not sit more than from one to two hours at a time. The solidification of the spine was not complete, and he went to England wearing a steel and leather jacket. And he further adds that the last time he saw him, he (Keegan) had lost 75% of his capacity, and that he would never be able to handle heavy work, and while he should find something to earn his living, he could not be an electrician having in that capacity to handle weights of 15 to 20 pounds.

Arrived in England he was under Dr. Miller's treatment, who says that his ability to work is practically nil, owing to his difficulty of remaining in an upright position for more than 3 hours a day, and his powers of locomotion very limited. He further says that the tendency of recovery is bad and that he will probably require close observation and be under medical treatment all along.

Keegan was 27 years of age at the time of the accident, and was earning, he says, an average of about \$22.50 a week. F. Lawson, the book-keeper, at the Otis Fensom Elevator Co., says that at 30 cents an hour Keegan would average about \$70 a month, and that in the 41 weeks preceding the accident Keegan earned \$750.

The suppliant's life is practically wrecked, his prospects blighted, his earning power is materially decreased, and he has suffered very much pain. He cannot follow or pursue his avocation as an electrician, a walk of life fairly remunerative in our days. His earning capacity is decreased by 75 per cent., says one medical gentleman; but, being intelligent it is quite probable that in the near future he will be able to find some suitable employment that will keep him busy yielding him some remuneration. He has some doctors' bills to pay and will have to meet some further expenditure in this respect.

In estimating the compensation to which the suppliant is entitled, under all the circumstances, bearing in mind all the legal elements under which he is entitled to recover, some consideration should be given to the fact that while he may not be entirely prevented from earning, his chances of employment in competition with others are very much lessened and his earning power consequently reduced to very, very little.

While, in assessing damages in a case of this kind, it is impossible to arrive at any amount with mathematical accuracy, several elements, however, must be taken into consideration and one must strive to compensate the suppliant for his loss generally, to make good to him the pecuniary benefits he might reasonably have expected had he not met with the accident. In doing so one must take into account the age of the suppliant, who at the time of the accident was 27, his state of health, his expectation of

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life, his employment, the income he was earning or had reason to expect to earn and his prospects, not overlooking, on the other hand, the several contingencies to which every one in his walk of life is necessarily subjected, such as being out of employment, to which in common with other persons, he was exposed, and his being also subject to illness. All of these surrounding circumstances must be taken into account.

In the present case the suppliant was in his prime, in good health, a steady worker and good electrician, and with work and good conduct he had the right to expect fair earnings.

Under all the circumstances of this case, I am of opinion to allow the sum of \$4,500 together with a further extra allowance of \$200, for medical expenses, past, present and future, making in all the sum of \$4,700, and with costs.

Judgment for suppliant.

Solicitors for suppliant: *Heneker, Chauwin, Baker & Walker.*

Solicitors for respondent: *Blair, Laverty & Hale.*
