1905
Jany. 12.

IN THE MATTER OF THE PETITION OF RIGHT OF

JOSEPH VINET, OF STE. ANNE DE LA PÉRADE, DISTRICT OF THREE RIVERS, LABOURER ..... } SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Public work—Injury to the person—Negligence—Aggravation of injury by unskilful treatment—Damages.

Where a person who is injured through the negligence of a servant of the Crown on a public work voluntarily submits himself to unprofessional medical treatment, proper skilled treatment being available, and the natural results of the injury are aggravated by such unskilled or improper treatment, he is entitled to such damages as would, with proper treatment, have resulted from the injury, but not to damages resulting from the improper treatment he subjected himself to.

PETITION OF RIGHT for damages for injury to the person alleged to have arisen from the negligence of servants of the Crown on a public work.

The facts of the case are set out in the report of the Registrar, to whom the case was referred by the court for enquiry and report.

The report of the learned referee was as follows:

" WHEREAS by an order made herein on the 5th day of April, A.D. 1904, by the Honourable Mr. Justice Burbidge, the matters in question herein were referred to L. A. Audette, Registrar of this Court, for enquiry and report under the provisions of section 26 of *The Exchequer Court Act.*

" AND WHEREAS, the reference herein was proceeded with, at the City of Three Rivers, on the 12th day of April, A.D. 1904, in presence of A. Delisle, Esq., of counsel for the suppliant, and R. S. Cook, Esq., of counsel for His Majesty the King, when evidence was adduced

1905

VINET
v.
THE KING.

Statement of Facts.

by both parties respectively, whereupon and upon hearing the same and what was alleged by counsel aforesaid, the undersigned humbly begs to submit as follows :—

"The suppliant's evidence herein was only filed on the 7th day of October instant, hence the delay in making this finding."

"The suppliant brings his petition of right to recover damages, as admitted by paragraph one of the statement in defence, for bodily injuries sustained by him while working, in the employ of the Federal Government, with other men on a kind of a boat called (arrache-pierre) stone-lifter, for the purpose of extracting and removing stones and boulders from the bottom of the Manigonce Rapids, on the St. Maurice River, in the District of Three Rivers, Province of Quebec, with the object of improving the navigation in the St. Maurice River."

"The works in question were being done under the superintendence of F. X. T. Berlinguet, the engineer in charge of the Public Works Department and resident engineer for the District of Three Rivers."

"This stone-lifter (arrache-pierre), a photograph of which is filed of record as Suppliant's Exhibit No. 3, is about 45 feet long and composed of two boats united together by a platform, forming a well in the centre through which the stones and boulders are lifted and extracted by means of a crane placed above the well. At each of the four corners there is a big post, also called anchor, about 30 feet long and nine inches in diameter, which is lowered to the bottom by means of a winch with cranks, when a stone is located, in order to make the boat solid and find a kind of resting base. These posts are really acting as legs to a table, as Mr. Berlinguet puts it."

1905

VINET v. THE KING.

Statement of Facts.

"These posts run up and down in a wooden box and are held in position by a cog-wheel. There are two catches, one to hold it up, the other to hold it down, as the case may be. Besides these catches, at about 3½ to 4 feet from the deck, there is also what is called a "safety-pin" which goes through the box and the post transversely for greater security and to prevent it from moving."

"Now it is proved beyond doubt, as admitted anyhow by paragraph 7 of the defence, and no one questions this point, that orders and instructions were repeatedly given by the proper authority to the men working on board this boat,—and each man called as a witness knew of this order,—to never pull out or take off this safety-pin without having three or four men on the cranks or handles of the winch, because it was recognized by everyone as a very dangerous piece of work. That notwithstanding such imperative orders, one man, Tousignant by name, who had been foreman the year before, was acting then as foreman in the absence of the regular foreman, and who was recognized by the men as a kind of sub-foreman retaining a certain amount of authority with the men even when foreman Crete was present, gave orders to remove the safety-pin without having three or four men at the cranks. It is also in evidence that he gave orders to the men when the foreman was present, and they would obey him without any hesitation."

"On the 27th of October, 1902, between the hours of 8.15 and 8.30 a.m., while the boat was proceeding from the shore to the channel, one of the men felt a stone with a pole and called out he had. Crete, the foreman, was at the time in the stern at the tiller. Tousignant was at the bow with Vinet and Gendron standing near one of the posts, and he told Gendron to pull out the safety-pin. Thereupon the suppliant said there

1905

VINET
v.
THE KING.

Statement of Facts.

was no hurry. Gendron then left the side of the winch on which he was standing and went over to the other side and said to Tousignant, there is no hurry. Tousignant then said, pull it out, it will be so much done. Then Gendron, although quite aware of the orders given never to take off this pin without there being three or four men at the cranks, pulled out the pin without any warning, and the post went down, the crank revolving with great force and rapidity striking the suppliant first on the arm and three times on the leg, throwing him to the deck with a broken thigh and the hip opened. The suppliant stated at the beginning of his evidence that his arm had been dislocated, but that was afterwards corrected; no injury was done to his arm."

"The suppliant says he has been unable to work ever since the accident; that his leg tires him. He was offered to act as watchman on board this very boat or stone-lifter, but refused to do so, declaring himself unable to perform the duties incumbent upon such work."

"It was contended by the Crown that this refusal was made because the suppliant had been advised it would hurt this case if he resumed working before it was decided. He however denied that."

"It appears from the conformation of the machinery of this stone-lifter that the post has to be lifted with the crank to allow one to take the catch off; but on this occasion everyone wondered that Gendron could take off the safety-pin alone, and much more that the post went down after taking out the safety-pin. Some of the witnesses contend that it is quite a mystery to them how the post could go down, and many are the conjectures made to explain how it did go down."

"Be it as it may the undersigned has no hesitation in finding that under the circumstances the accident

1905

VINET
v.
THE KING.

Statement of Facts.

happened on a public work, and that it resulted from the negligence of both Tousignant and Gendron while acting withing the scope of their duties or employment."

"There was negligence if the catch was not on, because it should have been. There was negligence in taking off the safety-pin without there being three or four men on the cranks or handles as called for by the repeated orders given to that effect. There was additional negligence in Gendron taking off the safety-pin without looking to see if the catch was on, and in not giving warning. The direct and immediate cause of the accident was the taking off of that safety-pin under the known circumstances. *Filion* v. *The Queen*, (1); *The Queen* v. *Grenier* (2); *Asbestos Co.* v. *Durand* (3)."

"By paragraph 9 of the statement in defence the Crown pleads, *inter alia*, that the accident occurred more than a year before the filing in this court of the petition of right herein, and that the suppliant's claim is therefore prescribed under the law of the Province of Quebec."

"It is true, indeed, that an action for bodily injuries is prescribed by one year under Art. 2262 C.C.L.C., but in this case while the accident happened on the 27th of October, 1902, the petition of right appears, by the date affixed upon the original, to have been left with the Secretary of State on the 16th of October, 1903, in compliance with section 4 of *The Petition of Right Act*, and filed in this court on the 23rd of December, 1903. The undersigned finds that the leaving of the Petition of Right with the Secretary of State within the year has created a civil interruption of the prescription (4)."

(1) 4 Ex. C. R. 134; 24 S.C.R. 482.
(2) 30 S.C.R. 42.
(3) 30 S.C.R. 285.
(4) Art. 2224, C.C.L.C.

1905

VINET v. THE KING.

Statement of Facts.

"Now, the suppliant claims $10,000.00 for all damages arising from such accident. *Allan* v. *Pratt* (1); Ency. Laws of England, Vol. 4, *Verbo*, Personal Injuries, 101; *Perrault* v *Henault* (2); *Belanger* v. *Riopel* (3)."

"He was earning $30 a month and his board at the time of the accident; had already worked for other various wages, with however the necessary idle days which a man in his walk of life must expect. He still walks with a cane and his injured leg is shorter than the other. Nevertheless Dr. Lambert says that provided it is not necessary for Vinet to use his leg with strength he can perform the duties of watchman. Dr. Marcotte, who attended Vinet during his illness, has no doubt he could act as watchman. Mr. Berlinguet, the government engineer, swears he is still ready to give him a position as watchman. The suppliant was 52 years of age at the time of the accident, a married man, father of four children; three are married, and one grown up son 19 years old still living at home and earning. This son nursed him at night during his illness."

"After the accident Vinet was not treated by a licensed practitioner for the fracture of his limb, but called in a bone-setter (rebouteur), or quack doctor. However, after the latter had attended him for the fracture of the limb, he was treated by a physician for paralysis of the bladder and the rectum, but his broken limb was not attended to by a duly licensed physician,—a very unfortunate feature of the result of the accident."

"While the trial was being proceeded with, on application of counsel for the Crown, the suppliant's limbs were examined in a private room by Dr. Napoleon Lambert, a duly licensed practitioner, who was after-

(1) 15 R.L. 291; M.L.R. 3 Q.B. at p. 11.

(2) 31 L.C.J. 287.

(3) M.L.R. 3 S.C. 258.

1905

VINET
v.
THE KING.

Statement of Facts.

wards heard as a witness, and informed us, first, that there was nothing at all the matter with the suppliant's arm. Secondly, that then Vinet appeared to have suffered from a fracture of the femur at the middle of the right leg, and this fracture is now cured. Thirdly, there appears also to have been probably a fracture of the neck of the femur, that is to say, at the articulation between the hip bone and the head of the thigh bone. This articulation is not cured. The position of the two bony parts is not cured, and that is why the articulation moves (mobile) and is a false articulation instead of being a real one. The articulation should have been better placed. Then he goes on telling us that Vinet walked too soon after the accident; that the two bony parts have not been replaced in the right position nor maintained in position with the necessary appliances, etc. Then counsel for the Crown, in re-examination, asked if the fracture had been reset as it should have been could Vinet have been as well as formerly? And the Doctor answers: Well, I cannot promise it to-day, but had it been done at the time of the accident, after three or four months of treatment he should have been as formerly, as before."

"Now, it was obviously the duty of Vinet after the accident to take proper care of himself, and not to aggravate the result of the accident by gross ignorance and negligence. That there is no contributory negligence with respect to the cause of the accident and the accident itself, there can be no doubt. But there is clearly contributory negligence with respect to the result of the accident, which the suppliant could have mitigated by calling a duly licensed practitioner. Living as he is in a populated centre where the services of a skilful and learned surgeon or physician were available, it was for Vinet an act of gross ignorance and negligence to call in a bone-setter (rebouteur) or

1905

VINET
v.
THE KING.

Statement of Facts.

quack doctor practising without any license; and by doing so he has obviously aggravated the result of the accident and perhaps hurt himself permanently, unless he still tries the services of a competent surgeon, as Dr. Lambert tells us."

"While the suppliant is entitled to recover a certain amount for the compensation of the damages arising from such bodily injuries, a substantial element to be considered in fixing the same will be that he has aggravated by his gross and unpardonable ignorance and negligence the result of the accident. The damages claimed by the suppliant are just as much, if not more, the result of improper treatment after the accident, than from the accident itself."

"WHEREFORE the undersigned has the honour humbly to report that, under the circumstances of the case as above mentioned, he finds the suppliant entitled to recover from His Majesty the King the sum of four hundred dollars ($400.00), and costs of an action above $400.00."

"IN WITNESS WHEREOF, the undersigned has hereunto set his hand at Ottawa, this 15th day of October, A.D., 1904."

(Sgd.) L. A. AUDETTE,
Registrar & Referee.

November 16th, 1904.

The case came before the court on motion by the suppliant by way of appeal from the referee's report, and on a counter-motion by the respondent for judgment upon such report.

W. H. Barry, for the suppliant, contended that the learned referee had erred in diminishing the damages established by the suppliants' evidence because of the alleged unskilful treatment he had submitted himself to Neither the facts nor the authorities applicable to

1905

VINET
v.
THE KING.

Argument of Counsel.

Judgment.

the case justified such a deduction. The damages sustained by the suppliant were the natural result of the injury, and were not augmented by improper treatment. It is customary in the district where the suppliant resides to resort to the bone-setters in cases of accident; and the evidence does not establish that the suppliant would not have suffered his permanent injuries if he had been treated by a regularly qualified medical practitioner at the time of the accident.

F. H. Gisborne, for the respondent, argued that the learned referee was right in taking into account the negligence of the suppliant in aggravating the natural and ordinary results of the injury he received. The proximate cause of his permanent injury was the lack of skilled treatment. *Beven on Negligence* (1); *York* v. *Canada Atlantic SS. Coy.* (2).

January 12th, 1905

Per Curiam: The motion by way of appeal from the referee's report will be dismissed, and the report confirmed.

Judgment accordingly.

Solicitor for the suppliant: *A. Delisle.*

Solicitor for the respondent: *R. S. Cooke.*

---

(1) 2nd ed. p. 115. (2) 22 S.C.R. 167.