

IN THE MATTER OF THE PETITION OF RIGHT OF  
FRANCOIS FRADETTE,1918  
March 11.

SUPPLIANT,

AND

HIS MAJESTY THE KING,

RESPONDENT.

*Limitation of actions—Negligence—Action against Dominion Crown—  
Interruption of prescription.*

By virtue of sec. 33 of the *Exchequer Court Act* (R.S.C. 1906, c. 140) the provincial laws relating to prescription and limitation of actions apply to an action for personal injuries against the Crown in right of the Dominion.

Mere "negotiation" does not operate as an interruption of the prescription.

**P**ETITION OF RIGHT to recover damages for personal injuries.

Tried before the Honourable Mr. Justice Audette, at Quebec, February 16, 1918.

*W. Amyot*, for suppliant.

*E. Belleau*, K.C., for respondent.

AUDETTE, J. (March 11, 1918) delivered judgment.

The suppliant, who is an employee of the Department of Marine, brought his petition of right to re-

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cover damages in the sum of \$2000, as arising out of an accident of which he was the victim while working, at Quebec, as boiler-maker on board the Steamer "*Princess*," a steamer owned by the Dominion Government. He claims that in course of this work a piece of steel flew from his tool, lodged in his left eye, and as a result he absolutely lost the use of the eye.

The accident happened on the 30th January, 1914. The petition of right is dated as of the 12th October, 1916, and the fiat was granted on the 7th November, 1916.

Sec. 33 of *The Exchequer Court Act* enacts that, "The laws relating to prescription and the limitation of actions in force in any province between subject and subject shall, subject to the provisions of any Act of the Parliament of Canada, apply to any proceeding against the Crown in respect of any cause of action arising in such province."

Moreover, under Art. 2211 of the Civil Code of the Province of Quebec, the Crown may avail itself of prescription, and the manner in which the subject may interrupt such prescription is by means of a petition of right,—apart from the cases in which the law gives another remedy.

Under Art. 2262 of the Civil Code the right of action for bodily injuries is prescribed by one year, and Art. 2267 thereof enacts that in such case the debt is absolutely extinguished, and that no action can be maintained after the delay for prescription has expired.

Counsel for the suppliant contends, however, that the correspondence produced of record amounts

to negotiations which would interrupt prescription. In that contention I am unable to acquiesce.

The term "negotiation," as defined in Black's Law Dictionary, is "the deliberation, discussion or conference upon the terms of a proposed agreement; the act of setting or arranging the terms and conditions of a bargain, sale, or other business transaction."

A demand of payment has been made and the Crown, when informed of the nature of the claim, declines to acknowledge any liability. The claimant cannot bind the other side by a mere demand for payment. It is, at most, a unilateral demand, without mutuality of purpose to negotiate, and it is in its very nature insufficient to interrupt prescription.

It is unnecessary to say any more upon this question; the matter is to my mind too clear. I therefore find that the injury complained of in this case having been received more than a year before the lodging of the petition of right with the Secretary of State, the right of action is absolutely prescribed and extinguished under the provisions of Articles 2262 and 2267 C. C. See also *The Queen v. Martin* (1)

In the view I take of the case it becomes unnecessary to consider both the question of "negligence" and the question of "public work," and while the accident is most unfortunate, it is, however, to some extent comforting, under the circumstances, to know the suppliant has been continued in his work and

(1) 20 Can. S.C.R. 240.

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that he has even received an increase in his wages.

The action is dismissed and the suppliant is declared not entitled to the relief sought by his petition of right.

*Action dismissed.*

Solicitors for suppliant: *Drouin & Amyot.*

Solicitors for respondent: *Belleau, Baillargeon & Belleau.*