



Toronto
1965
Oct. 4
Ottawa
Oct. 12

BETWEEN:

ALVIN LOCKWOOD GUNNSUPPLIANT;

AND

HER MAJESTY THE QUEENRESPONDENT.

Questions of law disposed of before trial made under Rule 149 of the General Rules and Orders of the Exchequer Court—Application of s. 31 of the Exchequer Court Act, R.S.C. 1952, c. 98—Crown Liability Act, S. of C. 1952-53, c. 30, s. 19—Articles 2262 and 2267 of Civil Code of Quebec—Canadian Bill of Rights, S. of C. 1960, c. 44, s. 2(3)—Determination of suppliant's rights—Cause of action arising in Province

of Quebec—“Laws relating to prescription” in force in Province of Quebec “between subject and subject”.

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This case was a hearing before trial of a question of law pursuant to an order of the Court made under Rule 149 of the General Rules and Orders of this Court.

When this Petition of Right for bodily injuries was filed, more than one year had elapsed since the injuries were alleged to have been sustained.

The question the Court had to decide was whether, on those facts, assuming them to be true, the suppliant's right to relief against the respondent had been “prescribed”.

The present problem must be resolved by the application of s. 31 of the *Exchequer Court Act*, R.S.C. 1952, c. 98 and s. 19(1) of the *Crown Liability Act*, S. of C. 1952-53, c. 30.

The cause of action set out in the Petition of Right is an assault that occurred in St. Vincent de Paul Penitentiary in the Province of Quebec. Being so, the Court came to the conclusion that the cause of action disclosed by the Petition of Right was a cause of action arising in that province within the meaning of s. 31 of the *Exchequer Court Act* and s. 19(1) of the *Crown Liability Act*.

The relevant provisions of the law of Quebec is Article 2262 of the Civil Code.

There is no Act of the Parliament of Canada to the contrary and there is no special law regulating cases such as that disclosed by this Petition of Right.

“Laws relating to prescription” in force in the Province of Quebec “between subject and subject” apply to this Petition of Right proceeding. Article 2267 of the Civil Code says that, in all cases mentioned in Article 2262 “the debt is absolutely extinguished”.

It was held, therefore, that, subject to consideration of the Canadian *Bill of Rights*, s. 31 of the *Exchequer Court Act* and s. 19 of the *Crown Liability Act* operated to make the one year prescription contained in Article 2262 of the Civil Code of Quebec applicable to these proceedings.

The submission that the Canadian *Bill of Rights* applied in the circumstances of this case was rejected. Section 2(e) of the Canadian *Bill of Rights* requires that s. 31 of the *Exchequer Court Act* and s. 19 of the *Crown Liability Act* be not “construed” or “applied” so as to deprive the suppliant of the right to “a fair hearing in accordance with the principles of fundamental justice” of his claim for relief against the respondent. In this case the suppliant was not deprived of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights. The statutory provisions in question do not relate to the procedure for the “determination” of the suppliant's rights. They operate to extinguish rights that the suppliant would otherwise have and must therefore be taken into account in the process of determining what his substantive rights are.

Held, the right to relief in respect to the bodily injuries sustained by the suppliant on June 22, 1962 was prescribed before this Petition of Right was filed on April 14, 1965.

2. The question of law was therefore answered in the affirmative.
3. The “laws relating to prescription” apply to this Petition of Right proceeding.

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PETITION OF RIGHT claiming damages for assault.

Harvey R. Daiter for suppliant.

Paul M. Ollivier, Q.C. for respondent.

JACKETT P.:—This was a hearing before trial of a question of law pursuant to an order of the Court made under Rule 149 of the General Rules and Orders of this Court.

These proceedings were instituted by a Petition of Right claiming damages for assault. By his defence, the Deputy Attorney General of Canada takes the position that the relief claimed by the suppliant is prescribed by reason of the fact that when the Petition of Right was filed more than one year had elapsed since the injuries are alleged to have been sustained. By the order of the Court for the hearing of the question of law before trial, the question of law was stated in the following terms:

Assuming the allegations of fact contained in the Petition of Right to be true, is the relief claimed in the Petition of Right prescribed?

While the Petition of Right is not as explicit as it might be, it appears, according to the Petition, that the suppliant was an inmate of Kingston Penitentiary in the Province of Ontario on January 29, 1962, and that, on that date, he was transferred to, and became, an inmate of St. Vincent de Paul Penitentiary, which is in the Province of Quebec. It further appears, according to the Petition of Right, that, for reasons that are irrelevant to the question of law that I have to decide, the suppliant was, while at St. Vincent de Paul Penitentiary on June 22, 1962, "assaulted and viciously beaten" by a number of the respondent's servants who were "entrusted with the duty of guarding prisoners in the said penitentiary" and who were "purportedly acting in the course of their duty as servants" of the respondent.

The question that I have to decide is whether, on those facts, assuming them to be true, the suppliant's right to relief against the respondent has been "prescribed".

Statutes providing for limitation of actions as between subject and subject do not, in the absence of some special provision, apply to proceedings by way of Petition of Right

against the Crown because proceedings by way of Petition of Right are not, strictly speaking, suits or actions. It is not so clear that the same situation would exist in respect of prescription provisions inasmuch as they, generally, operate to extinguish the right and not merely to bar the enforcement of it (compare Article 2267 of the Civil Code of Quebec). That problem does not, however, in my view, arise in connection with the present problem, which must be resolved by the application of section 31 of the *Exchequer Court Act*, R.S.C. 1952, chapter 98, which reads:

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31. Subject to any Act of the Parliament of Canada, the laws relating to prescription and the limitation of actions in force in any province between subject and subject apply to any proceeding against the Crown in respect of a cause of action arising in such province.

and section 19 of the *Crown Liability Act*, chapter 30 of the Statutes of 1952-53, subsection (1) of which reads as follows:

19. (1) Unless otherwise provided in this Act, the laws relating to prescription and the limitation of actions in force in any province between subject and subject apply to any proceedings against the Crown under this Act in respect of any cause of action arising in such province, and proceedings against the Crown under this Act in respect of a cause of action arising otherwise than in a province shall be taken within and not after six years after the cause of action arose.

The cause of action set out in the Petition of Right is an assault that occurred in St. Vincent de Paul Penitentiary in the Province of Quebec. Counsel for the respondent says that that is a cause of action arising in the Province of Quebec. Counsel for the suppliant agrees that it is a cause of action arising in the penitentiary, and that the penitentiary is in the Province of Quebec, but he says that the penitentiary, being Federal property, should not be regarded as part of the Province of Quebec for the purposes of section 19 of the *Crown Liability Act* and, presumably, section 31 of the *Exchequer Court Act*. He suggests an analogy to United Nations property in New York and to foreign embassies and legations, to which the doctrine of extritoriality applies. While I was impressed with the ingenuity of this argument, in support of which no authority was cited, I cannot accept it. I cannot escape the

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conclusion that St. Vincent de Paul Penitentiary is in the Province of Quebec and that the cause of action disclosed by the Petition of Right is a cause of action "arising" in that province within the meaning of the two provisions quoted above. Unless, therefore, there is some Act of the Parliament of Canada to the contrary, "laws relating to prescription" in force in the Province of Quebec "between subject and subject" apply to this Petition of Right proceeding.

The relevant provision of the law of Quebec is Article 2262 of the Civil Code of Quebec, which reads, in part:

2262. The following actions are prescribed by one year:

....

2. For bodily injuries, saving the special provisions contained in article 1056 and cases regulated by special laws.¹

.....

I know of no special law regulating cases such as that disclosed by this Petition of Right and my attention has not been drawn to any such special law. Article 1056, to which special reference is made in Article 2262, concerns the case where the injured person dies in consequence of that injury and it has, therefore, no application here. There is no doubt in my mind, therefore, that, subject to consideration of the Canadian *Bill of Rights*, section 31 of the *Exchequer Court Act* and section 19 of the *Crown Liability Act* would operate to make the one year prescription contained in Article 2262 of the Civil Code of Quebec applicable to these proceedings.

The question concerning the Canadian *Bill of Rights* arises out of a submission made by counsel for the respondent, which may be summarized as follows:

¹ See *The City of Montreal v. McGee*, [1900] 30 S.C.R. 582 for an example of the application of Article 2262.

Counsel for the suppliant conceded that being a prisoner did not deprive the suppliant of capacity to sue. He did not invoke Article 2232 of the Civil Code nor do the facts pleaded provide any support for its application in my view. See "Some Aspects of the Suspension and of the Starting Point of Prescription" by John W. Durnford in *Thémis Revue Juridique*, 1963, page 244 at pages 266 et seq.

- (a) an inmate of a penitentiary could not hope to obtain a fair hearing of a claim against members of the custodial staff of the institution while he continued to be an inmate;
- (b) the suppliant continued to be an inmate of St. Vincent de Paul Penitentiary until after the expiration of the prescription period of one year; and
- (c) it follows that section 2(e) of the Canadian *Bill of Rights*, chapter 44 of the Statutes of 1960, which reads as follows:

2. Every law of Canada shall, unless it is expressly declared by an Act of the Parliament of Canada that it shall operate notwithstanding the *Canadian Bill of Rights*, be so construed and applied as not to abrogate, abridge or infringe or to authorize the abrogation, abridgment or infringement of any of the rights or freedoms herein recognized and declared, and in particular, no law of Canada shall be construed or applied so as to

. . . .

- (e) deprive a person of the right to a fair hearing in accordance with the principles of fundamental justice for the determination of his rights and obligations;

requires that section 31 of the *Exchequer Court Act* and section 19 of the *Crown Liability Act* not be "construed" or "applied" so as to deprive the suppliant of the right to "a fair hearing in accordance with the principles of fundamental justice" of his claim for relief against the respondent.

Assuming, without making any finding with regard thereto, that

- (a) an inmate of a penitentiary could not hope to obtain a fair hearing of a claim against members of the custodial staff of the institution while he continued to be an inmate; and
- (b) the suppliant continued to be an inmate of St. Vincent de Paul Penitentiary until after the expiration of the prescription period of one year;

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I have come to the conclusion that this submission must be rejected. What section 31 of the *Exchequer Court Act* and section 19 of the *Crown Liability Act* do, on the facts of this case, is to extinguish the substantive rights that the suppliant would otherwise have. (See article 2267 of the Civil Code of Quebec, which says that, in all cases mentioned in Article 2262, "the debt is absolutely extinguished".) What the portion of section 2 of the Canadian *Bill of Rights* on which the suppliant relies says is that, in the absence of an appropriate declaration, no law of Canada shall be "construed" or "applied" so as to "deprive a person of a fair hearing . . ." for the determination of his rights. Section 2(e) is a prohibition against giving a statute the effect of depriving a person of a fair hearing for the "determination" of his rights unless it is expressly declared by the statute that it shall so operate "notwithstanding the Canadian Bill of Rights". The statutory provisions in question here do not relate to the procedure for the "determination" of the suppliant's rights. They operate to extinguish rights that the suppliant would otherwise have and must therefore be taken into account in the process of determining what his substantive rights are.

It follows that the right to relief in respect of the bodily injuries sustained by the suppliant on June 22, 1962, was prescribed before this Petition of Right was filed on April 14, 1965. The question of law is therefore answered in the affirmative.

The costs of the application to set the question of law down for hearing before trial and the costs of the hearing shall be costs in the cause.