1918
Nov. 27.

IN THE MATTER OF THE PETITION OF RIGHT OF

ISAI GINGRAS,

SUPPLIANT;

AND

HIS MAJESTY THE KING,

RESPONDENT.

Railways—Negligence—Employees' Relief Fund—Temporary employee—Contract of service—Estoppel.

An agreement by a *temporary* employee of the Intercolonial Railway, as a condition to his employment, to become a member of the Temporary Employees' Relief and Insurance Association and to accept the benefits provided by its rules and regulations in lieu of all claim for personal injury, is perfectly valid and is a bar to his action against the Crown for injuries sustained in the course of employment. By accepting the benefits he is estopped from setting up any claim inconsistent with those rules and regulations.

Miller v. Grand Trunk R. Co. [1906], A.C. 187, and *Saindon v. The King,* (1914), 15 Can. Ex. 305, distinguished; *Conrod v. The King,* (1914), 49 Can. S.C.R. 577, followed.

PETITION OF RIGHT to recover damages for personal injuries to an employee of the Intercolonial Railway.

Tried before the Honourable Mr. Justice Audette, at Quebec, February 14, 15 and 21, 1918.

Alleyn Taschereau, K.C., for suppliant.

E. Gelly, for respondent.

AUDETTE, J. (November 27, 1918) delivered judgment.

The suppliant, by his petition of right, seeks to recover damages in the sum of $3,000 for bodily in-

juries sustained by him and which he alleges resulted from the negligence of the Crown's servants.

On the morning of July 31, 1916, between the hours of ten and eleven, the suppliant was engaged, in the Intercolonial Railway yard, at Levis, P.Q., on the Government coal plant, or crane trestle, in loading railway cars, by means of coal chutes handled by him, while he was standing on the platform marked *"passerelle"* on plan Exhibit "E". His work consisted in opening the fly-gate, underneath the bin, by means of a lever pulled by hand, and to lower or raise the coal chutes, as from time to time required to fill the cars. The coal chute was so raised and lowered by means of a wire attached to the chute and worked on a pulley which he controlled by moving up and down, by means of a rope, the weight which appears on the plan and placed above the platform and so working alongside of wooden stringers of 12 x 12-inch.

In the course of one of these operations the nut, attached to the bolt holding together the two pieces of the pulley, having become loose, flew off, the pulley opened and the sheave fell upon the suppliant's head, and his hand becoming entangled in the rope, he was thereby lifted from the ground, having been felled by the sheave, remaining suspended on tip-toe upon the platform. *Toronto Power Co., Ltd. v. Paskwan.*[1]

As a result of the accident he suffered much pain, a cut on the head, a fracture of the little finger of the right hand. Finally gangrene having set in, the little finger had to be amputated, and he now remains with a crippled hand and without this finger. He was 59 years of age at the time of the accident,

[1] [1915] A.C. 734, 22 D.L.R. 340.

1918

GINGRAS v. THE KING.

Reasons for Judgment.

and he declares, being hardly able to work, earning now weekly from about a year after the accident, but a few dollars.

The Crown has paid all hospital and medical cares and charges occasioned by the accident.

In the view I take of the case it becomes unnecessary to go into further details of the accident and the cause which occasioned it.

To this claim for damages the Crown, *inter alia*, sets up the plea that the suppliant being a member of the I. C. R. Employees' Relief and Insurance Association, it is relieved, by the rules and regulations of that Association, and by the suppliant's agreement on becoming a member thereof, of all liability for the claim now made.

Under the evidence, and the admission of facts filed of record, I find the suppliant at the time he entered the employ of the Intercolonial Railway must have signed a document called form 40, and similar to Exhibit "B" filed herein, and especially that he was given a booklet (similar to Exhibit "A") intituled "Intercolonial and Prince Edward Island Railways Employees' Relief and Insurance Association—Rules for the Guidance of the *Temporary* Employees' Accident Fund."

He has been given this booklet containing the rules of this insurance association for the *temporary* employees of the Intercolonial Railway, and he has consented to be bound thereby, as a condition to his employment, and to abide by the rules and regulations of the Association.

Furthermore, the suppliant, at different dates subsequent to the accident, and in compliance with the rules and regulations of the insurance associa-

tion, was paid and he received weekly allowances for which he duly gave acknowledgment.

The rules and regulations of the association contain the following provisions:

"The object of the Temporary Employees' Acci-"dent Fund shall be to provide relief to its members "while they are suffering from bodily injury, and "in case of death by accident, to provide a sum of "money for the benefit of the family or relatives of "deceased members; all payments being made sub-"ject to the constitution, rules and regulations of "the Intercolonial and Prince Edward Island Rail-"ways Employees' Relief and Insurance Associa-"tion from time to time in force.

"Rule 3. In consideration of the contribution of "the Railway Department to the association, the "constitution, rules and regulations, and future "amendments thereto, shall be subject to the ap-"proval of the Chief Superintendent and the Rail-"way Department shall be relieved of all claims for "compensation for injury or death of any member."

Having said so much, it becomes unnecessary to express any opinion as to whether or not the suppliant's claim could have been sustained on the ground of negligence. The agreement (Exhibit A and B) entered into by the suppliant, whereby he became a member of the insurance society and consented to be bound by its rules, was a part of a contract of service which it was competent for him to enter into. And this contract is an answer and a bar to this action, for the restrictive rules are such as an insurance society might reasonably make for the protection of their funds, and the contract as a whole was to a large extent for the benefit of the

1918

GINGRAS v. THE KING.

Reasons for Judgment.

suppliant and binding upon him. *Clements v. London and North Western Ry. Co.*[1]

Such contract of service is perfectly valid and is not against public policy, *Griffiths v. Earl of Dudley,*[2] and in the absence of any legislation to the contrary, as with respect to the *Quebec Workmen's Compensation Act,*[3] any arrangement made before or after the accident would seem perfectly valid. *Sachet, Legislation sur les Accidents du Travail.*[4]

The present case is in no way affected by the decisions in the case of *Miller v. Grand Trunk,*[5] and *Saindon v. The King,*[6] because in those two cases the question at issue was with respect to a *permanent* employee where the moneys and compensation due him, under the rules and regulations of the insurance company were not taken from the funds toward which the Government or the Crown were contributing. It is otherwise in the case of a *temporary* employee, and I regret to come to the conclusion, following the decision in *Conrod v. The King,*[7] that the suppliant's claim is absolutely barred by the condition of his engagement with the Intercolonial Railway. See also *Gagnon v. The King.*[8]

Furthermore, the suppliant having accepted the weekly sick allowance and given the receipt therefor in the manner above mentioned, he "is estopped from setting up any claim inconsistent with those rules and regulations, and, therefore, precluded from

[1] [1894] 2 Q.B. 482.
[2] (1882), 9 Q.B.D. 357.
[3] 9 Edw. VII., c. 66, s. 19; Art. 7339, R.S.Q. 1909.
[4] Vol. 2, pp. 209 *et seq.*
[5] [1906] A.C. 187.
[6] (1914), 15 Can. Ex. 305.
[7] (1914), 49 Can. S.C.R. 577.
[8] (1917), 17 Can. Ex. 301, 41 D.L.R. 493.

1918

GINGRAS v. THE KING.

Reasons for Judgment.

maintaining this action." Per Sir Charles Fitzpatrick—*Conrod v. The King, supra.*

Therefore, the suppliant is not entitled to the relief sought by his petition of right.

Petition dismissed.

Solicitor for suppliant: *Alleyn Taschereau.*

Solicitors for respondent: *Gelly & Dion.*