

IN THE MATTER OF THE

1907
June 10.

PETITION OF RIGHT OF ANNIE }
SEDGEWICK..... } SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

*Public work—Government railway—Injury to the person—Negligence of
Crown's servant—Liability.*

The suppliant, while waiting on the platform of the Intercolonial Railway Station at Stellarton, N.S., to board a train, was knocked down by a baggage truck and injured. The truck was being moved by the baggage-master. The evidence shewed that the accident could have been prevented by the exercise of ordinary care on the part of the baggage-master.

Held, that as the injuries of which the suppliant complained were received on a public work, and resulted from the negligence of a servant of the Crown while acting within the scope of his duties and employment, the Crown was liable therefor.

PETITION OF RIGHT for damages arising from negligence on a Government railway in the Province of Nova Scotia.

The facts of the case are stated in the reasons for judgment.

January 23rd, 1907.

The case was heard at Halifax.

A. Drysdale, K.C., (Attorney-General of Nova Scotia),
H. Mellish, K.C., and *J. A. Sedgewick* for the suppliant;
R. T. McIlreith and *C. F. Tremaine* for the respondent.

Mr. Mellish contended that there was a clear case of negligence under the statute proved against the Crown. The suppliant had a perfect right to be where she was when knocked down. If the railway official had been propelling the baggage truck with proper care he could

not have failed to see the suppliant standing on the platform. The truck was being moved with too great speed consistent with the number of people on the station platform, and those in charge of it failed to take any measures to warn people of their approach. (*Shepperd v. Midland Ry. Co.* (1); *Snow v. Fitchburg Railroad Co.* (2).

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Mr. *MacIlreith* contended that upon the evidence there was no negligence on the part of the station-master; but if there was any negligence on his part, the real cause of the accident was contributory negligence on the part of the suppliant. Cited *Cornman v. Eastern Counties Ry. Co.* (3); *Powers v. New York, &c. Ry. Co.* (4).

Mr. *Mellish* in reply cited *Byrne v. Boadle* (5).

THE JUDGE OF THE EXCHEQUER COURT now (June 10th, 1907,) delivered judgment.

The petition is brought by Annie Sedgewick, wife of William W. Sedgewick, of Middle Musquodoboit, in the County of Halifax, and Province of Nova Scotia, to recover damages for injuries to the person, which she sustained on the 26th day of September, 1905, by being struck and thrown down by a loaded truck which Warren Johnson, the baggage-master at Stellarton Station, on the Intercolonial Railway, was moving from one end of the station platform to the other end thereof. The suppliant and her husband were at the time standing at the edge of the platform next to the railway track intending, as passengers, to go on board of a train that was then being backed in. The baggage-master was at the same time moving a truck loaded or partly loaded with luggage intended for the same train. He had ample room to pass on the platform between the suppliant and her husband and the station house. They, on the other

(1) 20 W. R. 705.

(2) 136 Mass. 552.

(3) 4 H. & N. 781.

(4) 98 N. Y. 274.

(5) 2 H. & C. 722.

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hand, were as close to the edge of the platform as it was safe for them to be. They had seen the truck approaching in a direction which if it had been continued parallel to the edge of the platform would have allowed the truck to pass them safely. However, as the baggage man approached them the direction of the truck was converging toward the edge of the platform, and this brought the suppliant and her husband into a danger of which they were not aware. For, having observed the truck, and come to the conclusion, rightly, I think, that it would pass them without danger, they fixed their attention on the train that was being backed in close to where they were standing. The truck passed the suppliant's husband who was standing on the left, but it, or some part of the load thereon, struck the suppliant and threw her down. There was not the slightest reason for the accident. It could have been prevented by the exercise of ordinary care on the part of the baggage man. The fact is that he did not see either the suppliant or her husband, and he did not observe that by moving his truck in the direction he was going he was bringing them into danger between the truck on one side and a moving train on the other. He ought, I think, to have seen them, and to have avoided striking them either with the truck or its load. There is, it seems to me, no doubt, that the injuries to the person of which the suppliant complains, and which were received on a public work, resulted from the negligence of a servant of the Crown while acting within the scope of his duties and employment.

I do not think there was any contributory negligence on the suppliant's part. There will be judgment for her for six hundred dollars and costs, to be taxed.

Judgment accordingly.

Solicitors for the suppliant: *Drysdale & McInnes.*

Solicitor for the suppliant: *R. T. MacIlreith.*