IN THE MATTER of the Petition of Right of

1908
Jan. 7.

FLORA LEFRANÇOIS.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Negligence—Government railway—Public work—Effect of Government acquiring running rights and powers over another railway and operating it as part of Intercolonial Railway.

The suppliant's husband was mortally injured while employed as a locomotive fireman on an Intercolonial Railway train, running between Levis and Chaudiere, at a point on the Grand Trunk Railway enclosed between two sections of the Intercolonial Railway over which the Government of Canada had acquired running rights and powers in perpetuity and free of charge under 43 Vic. c. 8. Over this section of railway the Government operated its trains and locomotives as on a part of the Intercolonial Railway system.

Held, that the place where the accident happened might properly be taken as an extension of the Intercolonial Railway, and therefore was to be regarded as a public work within the meaning of section 20 c. of R. S. 1906, c. 140.

MOTION to dismiss petition of right on points of law raised in defence.

December 2nd, 1907.

The argument of the motion now took place.

E. L. Newcombe, K.C, in support of the motion;

C. Lane, contra.

THE JUDGE OF THE EXCHEQUER COURT now (January 7th, 1908) delivered judgment.

The petition is brought by Flora Lefrançois for damages for the death of her husband, in his lifetime a locomotive fireman, who was mortally injured while running on an Intercolonial Railway train between Levis and Chaudiere, at a point on the Grand Trunk Railway enclosed between

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two sections of the Intercolonial Railway where the Government of Canada has acquired running rights and powers in perpetuity and free of charge under 43 Vic., chap. 8; and over which the Government of Canada runs its trains and locomotives as on a part of the Intercolonial Railway system. It is admitted that the Intercolonial Railway is a public work of Canada, but it is argued that the place where the accident happened was not a part of a public work of Canada, and therefore the suppliant has no right of action under the statute (R.S.C., 1906, Cap. 140, s. 20, clause (*c*)). That contention raises, I think, the question as to whether or not the part of the Grand Trunk Railway over which the Government has running powers may with propriety be considered an extension of the Intercolonial Railway as defined in the 80th section of *The Government Railways Act* (R.S.C. 1906, Cap. 36 s. 80), which is in these terms:—"All railways and all branches and extensions thereof and ferries in connection therewith vested in His Majesty, under the control and management of the Minister and situated in the Provinces of Quebec, Nova Scotia, and New Brunswick, are hereby declared to constitute and form the Intercolonial Railway."

In my view I think that the place where the accident happened may properly be taken to be an extension of the Intercolonial Railway. I am, therefore, of opinion that the accident complained of happened on a public work, and that the question of law raised should be determined against the respondent and in favour of the suppliant.

*Motion refused.**

* REPORTER'S NOTE:—Affirmed on appeal to Supreme Court of Canada, 40 S. C. R. 431.