Privy Council Appeal No. 81 of 1919.

The Workmen's Compensation Board - - - - *Appellants*

v.

Canadian Pacific Railway Company - - - - *Respondents*

FROM

THE COURT OF APPEAL OF BRITISH COLUMBIA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH AUGUST, 1919.

Present at the Hearing:

THE LORD CHANCELLOR.
VISCOUNT HALDANE.
LORD BUCKMASTER.
LORD PARMOOR.
MR. JUSTICE DUFF.

[*Delivered by* VISCOUNT HALDANE.]

This is an appeal from a judgment of the Court of Appeal of British Columbia dismissing, McPhillips, J.A. dissenting, an appeal from the judgment of Clement, J. in an action. That judgment declared that the enactment of the Workmen's Compensation Act of the Province, in so far as it purported to warrant the payment of compensation by the defendants, who are the appellants here, to the dependents of certain members of the crew of the steamship "Princess Sophia," which foundered with all hands in waters outside British territory on a return journey from Skagway in Alaska to Vancouver, was *ultra vires* of the Legislature of the Province. By the judgment an injunction was also granted. The respondents are a railway company incorporated by Dominion Statute. Their line runs through several Provinces, including British Columbia, and they own and operate steam vessels sailing between ports in that Province and ports in the territory of the United States. The appellant Board, of which the other appellants are the members, is a body corporate constituted by the

Workmen's Compensation Act referred to, for the purpose of administering the Act. The members of the crew who were lost, and to whose dependents the appellant Board claims the right to pay compensation, were engaged within the Province to do work and perform services which in part had to be done and performed within the Province.

It will be convenient in the first place to turn to the provisions of the Act in question. It was passed in 1918, and its primary purpose is to confer on workmen, out of an Accident Fund which it established, compensation for personal injury by accident arising out of and in course of their employment. The right of the workman does not, so far as Part I of the Act, with which alone their Lordships are concerned in this case, applies, depend on negligence on the part of the employer, as in ordinary Employers Liability Legislation, but arises from an insurance by the Board against fortuitous injury. The insurance money is not, as in the case of the British Workmen's Compensation Act of 1906, to be paid by the employer directly, but is provided by the Board from a fund which it collects from certain groups of employers generally. Part II of the Act is separate, and deals with Employers Liability of the ordinary type, as a different subject.

The Act defines dependents as meaning such members of the family of a workman as were dependent on his earnings at the time of his death or incapacitation, and no person is to be excluded as a dependent because he is a non-resident alien. Employer is defined to mean any person having in his service under a contract of hiring or apprenticeship any person engaged in any work in or about an industry. Part I is applied by section 4 to employers and workmen (other than persons casually employed) in a large number of enumerated industries, including railways and shipping. Section 6 enacts that the compensation is to be paid by the Board out of the Accident Fund.

Section 8 is important for the present purpose. It provides (sub-section 1) that where an accident happens while the workman is employed elsewhere than in the Province which would give a title to compensation if it had happened in the Province, he or his dependents are to be so entitled :—(*a*) if the place of business of the employer is situate in the Province and the residence and the usual place of employment are within it, and the employment out of the Province has immediately followed the employment by the same employer within it and has lasted less than six months ; or (*b*) if the accident happens on a steamship, ship, or vessel, or on a railway, and the workman is a resident of the Province, and the nature of the employment is such that in the course of the work or service which the workman performs it is required to be performed both within and without the Province. (2) Except as provided by sub-section 1 no compensation is to be payable under Part I of the Act where the accident happens elsewhere than in the Province. (3) In any case where compensation is payable in respect of an accident happening elsewhere than in the Province, if the employer has not fully contributed to the

Accident Fund in respect of all the wages of workmen in his employ who are engaged in the employment or work in which the accident happens, the employer shall pay to the Board the full amount of capitalised value, as determined by the Board, of the compensation payable in respect of the accident, and the payment of such amount may be enforced in the same manner as the payment of an assessment may be enforced.

By section 9, where by the law of the country where the accident happens the workman or his dependents are entitled to compensation in respect of it, they are put to their election between claiming under that law or under Part I of the Act. Under section 10 the Board is subrogated to the rights of the workman or dependent against persons other than the employer if compensation is claimed under Part I, and the workman is debarred from bringing an action against an employer in case of his claiming compensation under Part I. Section 11 substitutes the provision made under that part for all common law or statutory rights of action against the employer in respect of accident.

Sections 15 to 24 provide for the scale of the compensation. Section 25 classifies the industries to be assessed for the maintenance of the Accident Fund into groups, one of which includes the respondent Railway Company *nominatim*. By section 28 each employer is to furnish to the Board an estimate of the probable amount of the pay-roll of each of his industries for the following year, but in computing the amount regard is to be had only to such portion of the pay-roll as represents workmen and employment within the scope of Part I.

Section 29 directs the Board to create and maintain the Accident Fund by assessing the employers in each class according to the pay-rolls. The assessments may be general, as applicable to any class or sub-class, or special, as applicable to any industry. By section 30 every employer assessed is to retain from the wages of each workman a cent a day as a contribution towards medical aid, and to pay the amount to the Board. By section 31 the Government of the Province may contribute to the Accident Fund an annual sum not exceeding fifty thousand dollars. By section 51 the Board is given power to inspect premises and to introduce regulations and safeguards for the prevention of accidents.

It is not in dispute that the persons employed by the respondent company with reference to whose dependents the present question is raised, come within the conditions under which the enactment purported to be applicable to them. Nor can it be successfully contended that the Province had not a general power to impose direct taxation in this form on the respondents if for provincial purposes. In *Bank of Toronto* v. *Lambe* (12 A.C. 175) it was decided by the Judicial Committee that a Province could impose direct taxes in aid of its general revenue on a number of banks and insurance companies carrying on business within the Province, and none the less that some of them were, like the respondents, incorporated by Dominion Statute. The tax in that case was not a general one, and it was imposed, not on profits

nor on particular transactions, but on paid-up capital and places of business. The tax was held to be valid, notwithstanding that the burden might fall in part on persons or property outside the Province.

It is, however, argued for the respondents that the Act is *ultra vires* in other respects. It is said that the purpose is not a provincial one, inasmuch as it is to insure the dependents against accidents to the workmen which may happen, as in the present case, outside the limits of the Province. But in their Lordships' opinion this is not a case in which it is sought to enact any law giving a right to arise from a source outside the Province. The right conferred arises under section 8, and is the result of a statutory condition of the contract of employment made with a workman resident in the Province, for his personal benefit and for that of members of his family dependent on him. Where the services which he is engaged to perform are of such a nature that they have to be rendered both within and without the Province, he is given a right which enures for the benefit of himself and the members of his family dependent on him, not the less that the latter may happen to be non-resident aliens. This right arises, not out of tort, but out of the workman's statutory contract, and their Lordships think that it is a legitimate provincial object to secure that every workman resident within the Province who so contracts should possess it as a benefit conferred on himself as a subject of the Province. When he enters into this contract, it also appears to them to be within the power of the Province to enact that, if the employer does not fully contribute to the Accident Fund out of which the payment is normally to be made, the employer should make good to that Fund the amount required for giving effect to the title to compensation which the workman acquired for himself and his dependents. The scheme of the Act is not one for interfering with rights outside the Province. It is in substance a scheme for securing a civil right within the Province. The case is wholly different from that from Alberta which was before the Judicial Committee in *Royal Bank of Canada* v. *The King* (1913, A.C. 283), where it was held that the Provincial Statute was inoperative in so far as it sought to derogate from the rights of persons outside the Province of Alberta who had subscribed money outside it to recover that money from depositaries outside the Province with whom they had placed it for the purposes of a definite scheme to be carried out within the Province, on the ground that by the action of the Legislature of Alberta the scheme for which alone they had subscribed had been altered. The rights affected were in that case rights wholly outside the Province; here the rights in question are the rights of workmen within British Columbia. It makes no difference that the accident insured against might happen in foreign waters. For the question is not whether there should be damages for a tort, but whether a contract of employment made with persons within the Province has given a title to a civil right within the Province to compensation. The compensation, moreover, is to be paid by

the Board and not by the individual employer concerned. No doubt for some purposes the law sought to be enforced affects the liberty to carry on its business of a Dominion Railway Company to which various provisions of section 91 of the British North America Act of 1867 apply. But for other purposes, with which the Legislature of British Columbia had jurisdiction to deal under section 92, it was competent to that Legislature to pass laws regulating the civil duties of a Dominion Railway Company which carried on business within the Province, and in the course of that business was engaging workmen whose civil rights under their contracts of employment had been placed by the Act of 1867 within the jurisdiction of the Province.

It was further contended for the respondents that section 503 of an Imperial Statute, the Merchant Shipping Act, 1894, invalidated the provision in question made by the Provincial Legislature, on the ground that the Imperial Statute had conferred a civil right from which the Province could not derogate. Upon this they desire to point out that whether the expression "damages" in the section applies to a liability such as that under consideration, a liability not of the shipowner, but of the Board, is more than doubtful. For the taxation complained of in the present case is imposed with the object of establishing an institution which shall provide insurance benefits for persons whose contract of employment arises within the Province, and it is not directed to the very different purpose of making the employer directly compensate his workman by way of damages for injury arising out of what has not the less to be proved as a tort because it may have happened, in the language of section 503, without his actual fault or privity.

It was also argued that section 215 of the Canada Shipping Act, passed by the Dominion Parliament and forming chapter 113 in the Revised Statutes of 1906, was inconsistent with the right of the Province to legislate as it has done. That section provides that if the master or any seaman or apprentice of any Canadian foreign sea-going ship receives injury in the service of his ship, the owner is to defray *inter alia* the expense of providing the necessary surgical and medical advice, with attendance, medicines, and subsistence, until the person injured is cured or dies, or is brought back to a home port. The only observation which it is necessary to make about this section is that it does not purport to cover the same field as does the British Columbia Statute. It may conceivably give rise under that statute to particular questions of election. There are no materials before their Lordships upon which they can pronounce on this point, but it in no way renders *ultra vires* the scheme of the statute under consideration.

For these reasons their Lordships will humbly advise His Majesty that the judgment appealed from should be reversed, that the action should be dismissed, and that the appellants should have their costs of this appeal, and in both Courts below.

In the Privy Council.

THE WORKMEN'S COMPENSATION BOARD

v.

CANADIAN PACIFIC RAILWAY COMPANY.

DELIVERED BY VISCOUNT HALDANE.

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