Privy Council Appeal No. 98 of 1915.

The Canadian Pacific Railway Company - - - *Appellants*

v.

Dame Leosophie Parent and Another - - - *Respondents,*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 26TH JANUARY, 1917.

Present at the Hearing:

VISCOUNT HALDANE.
LORD DUNEDIN.
LORD PARKER OF WADDINGTON.
LORD PARMOOR.
LORD WRENBURY.

[*Delivered by* VISCOUNT HALDANE.]

This appeal raises questions of importance on which there has been considerable divergence of opinion among the learned Judges in the Courts below. These Courts have, however, for varying reasons, agreed in holding that the Chief Justice of Quebec, who tried the case, was right in his decree that the respondents were entitled to damages from the appellants for having by the negligence of their servants caused a collision which resulted in the death of one Joseph Chalifour.

As certain of the points of law decided were of general interest to the public in Canada, their Lordships gave special leave to appeal, but only on terms as to costs.

The important facts in the case are not in dispute; the real questions are questions of law. The respondents are the widow and son of Joseph Chalifour. He was a stockman employed by the Gordon Ironside and Fares Company to bring cattle by the appellants' railway from Winnipeg, in Manitoba, to Hochelaga, a suburb of Montreal, in Quebec. The cattle were consigned to the appellants, under a special Live Stock Contract, dated the 18th September, 1911, which contained a provision exempting the appellants from all liability in respect of the death, injury, or damage of a person travelling with the cattle, in case a pass had been granted to him to travel at less than

full fare for the purpose of taking care of them, whether such liability was caused by the negligence of the appellants or their servants or otherwise. Chalifour had signed a separate pass which for all material purpose repeated this exemption from liability as regarded himself individually. On the 21st September, 1911, while on the journey from Winnipeg to Hochelaga, Chalifour was killed in a collision at Chapleau, in Ontario. The collision was due to negligence on the part of the appellants' servants.

By Article 1056 of the Civil Code of Quebec it is provided that "in all cases where the person injured by the commission of an offence or a quasi-offence dies in consequence, without having obtained indemnity or satisfaction, his consort and his ascendant and descendant relations have a right, but only within a year after his death, to recover from the person who committed the offence or quasi-offence, or his representatives, all damages occasioned by such death." It is settled by the decisions of this Board in *Robinson* v. *The Canadian Pacific Railway* (1892, A.C. 481), and *Miller* v. *The Grand Trunk Railway* (1906, A.C. 187), that this article of the Code confers an independent and personal right, and not one conferred, as in the English statute known as Lord Campbell's Act, merely on the representatives as such of the deceased. In Manitoba and Ontario it is otherwise. The analogous right there arises only under statutes which are for this purpose substantially in the same terms as Lord Campbell's Act. There was some doubt expressed in the Courts of Quebec in the present case as to whether the law of Manitoba, assuming it to be relevant, was duly proved. If such proof was material in the Quebec Court, their Lordships are of opinion that, when the case reached the Supreme Court of Canada, this doubt could not properly be entertained. For the Supreme Court is the common forum of the Provinces of Canada, and is bound to take judicial notice of their laws. It is clear that if the law of either Manitoba or Ontario governs the case, the respondents were precluded from claiming.

In these Provinces the rule of the English common law prevails that in a civil Court the death of a human being cannot be complained of as an injury. The application of this rule is modified by statute in a fashion analogous to what obtains in England under Lord Campbell's Act; but the modification contained in the statutes in these Provinces has, like that contained in Lord Campbell's Act, no application unless the wrongful act done would, had not death ensued, have entitled the person injured to maintain an action and recover damages. If Chalifour validly contracted himself out of this right, his representatives could not therefore have sued if the law of either of these Provinces governs.

The crucial questions which arise are whether Chalifour, by signing the pass under the circumstances in which he was accepted as a passenger in charge ofthe cattle at less than the

full fare, bound himself to renounce what would otherwise have been his rights, and if so, whether the respondents were precluded from claiming under the article in the Quebec Code? If that article applied, it is not in controversy that the widow and son were proper plaintiffs in this action.

Dealing with the first of these questions, their Lordships have arrived at a conclusion different from that of the majority in the Supreme Court of Canada. Section 340 of the Railway Act of the Dominion provides that "no contract, condition, bye-law, regulation, declaration, or notice made or given by the company, impairing, restricting, or limiting its liability in respect of the carriage of any traffic, shall, except as hereinafter provided, relieve the company from such liability, unless such class of contract, condition, bye-law, regulation, declaration, or notice shall have been first authorised or approved by order or regulation of the Board." By Sub-section 2 "the Board may, in any case or by regulation, determine the extent to which the liability of the company may be so impaired, restricted, or limited." By Sub-section 3 "the Board may by regulation prescribe the terms and conditions under which any traffic may be carried by the Company." It appears that in 1904 the appellants applied to the Board for approval of their forms of bills of lading and other traffic forms. At the time they and three others were the only railway companies that had thus complied with the requirements of the Act, and there was much diversity in the forms used by different companies. The Board therefore abstained from making any final or definite order on the subject, but made an interim order, the effect of which was to permit the appellants to continue the use of their present forms until otherwise directed. Among the forms so authorised was that in which the Live Stock Special Contract in the present case was made. One of its clauses provided that—

"In case of the Company granting to the shipper or any "nominee or nominees of the shipper a pass or privilege less than full "fare to ride on the train in which the property is being carried, for "the purpose of taking care of the same while in transit, and at the "owner's risk as aforesaid, then, as to every person so travelling on "such a pass or privilege less than full fare, the Company is to be entirely "free from liability in respect of his death, injury, or damage, and "whether it be caused by the negligence of the Company or its servants "or employees or otherwise howsoever."

On the same date as the Live Stock Contract was made, on the 18th September, 1911, a pass was issued to Chalifour and a man named Adshead, who were the nominees of the Gordon Ironside and Fares Company (Limited), the shippers under the special Live Stock Contract. The pass was in the following form:—

CANADIAN PACIFIC RAILWAY, WESTERN DIVISION.

Live Stock Transportation Pass.

To Conductors. *Winnipeg, 18th September*, 1911.

The two men whose signatures are subscribed on back hereof are the only persons entitled to pass in charge of thirteen cars Live Stock

(170922, 167196, 166252, 165346, 169796, 168794, 167934, 166496 167128, 350154, 350130, 164574, 165058). Billed from Cardston to Montreal.

As men in charge of Live Stock are now only passed to Winnipeg on Stock Contracts, conductors east of Winnipeg will not honour Stock Contracts for passage.

Conductors in charge of train making last run will take up this pass and turn it to agent at destination of Live Stock.

Valid only when countersigned by

R. E. LARMOUR, *General Freight Agent.*

No. 7512.

Countersigned:

H. W. DICKSON, *L.F.A.*

CONDITIONS.

Each of us, the undersigned, having charge of Live Stock mentioned on face hereof, in consideration of the conditions of the Canadian Pacific Railway Company's Live Stock Transportation Contract, agree with the Company, while travelling on this pass, to assume all risk of accident or damage to person or property, and that the Company shall be entirely free from all liability in respect to any damage, injury, or loss to any of us or the property of any of us, whether such accident, injury, damage, or loss is caused by the negligence of the Company or its servants or employees or otherwise howsoever.

Signatures: Witness:

F. ADSHEAD, H. DE VILLERS.

JOSEPH CHALIFOUR.

Countersigned:

H. W. DICKSON, *Local Freight Agent.*

Their Lordships are of opinion that if this document was signed by Chalifour under such circumstances as to make it binding on him it relieved the Company effectually from all liability for damages caused to him by the accident which happened. The Railway Board had approved the condition in the main contract by which, if the Company granted a pass at less than full fare to a nominee, such as was Chalifour, it was to be free from all liability. No doubt this condition was contained in a contract made only between the Company and the shippers. But it was inserted to regulate the terms on which the nominee, if allowed to travel, was to be accepted, and the nominee, if he validly signed the pass in which its substance was repeated, accepted these approved terms as definitive of the footing on which the was tobe carried. In this respect there is no real distinction between the facts and those in *The Grand Trunk Railway* v. *Robinson* (1915 A.C. 740), where the pass was written on the same paper as the contract. All that Section 340 of the Railway Act requires is that the class of condition should have been approved by the Board, and such approval was obviously given in the present case. Their Lordships are unable to agree with the reasons given in the judgment of Duff, J., in the Supreme Court of Canada, for thinking that what was done did not comply with all that Section 340 required.

The next question to be considered is whether the appellants have discharged the burden of proving that Chalifour assented to the special terms on which he was invited to travel. The evidence on this point is somewhat meagre. No witness has any exact recollection of what took place. Chalifour understood but little English and he could not read or write, though he could sign his name. He had been for two years in the employment of the shippers, to look after stock; but he had not been in Western Canada prior to the occasion on which the particular journey was made, and on which his death took place. Before that he had worked in a brewery, apparently in Quebec. It was proved that the appellants kept a French clerk, whose duty it was to give explanations to any nominee who was called on to sign his pass and asked for explanations. This clerk was named De Villers, and he witnessed the signature of Chalifour. He could not remember whether or not he had been asked for any explanation of the conditions; but another clerk, named Anderson, says that he remembers a conversation in French taking place, on the occasion of the pass being signed, between Chalifour and De Villers. He knew Adshead and recalled what took place. The pass, after being signed by Adshead and Chalifour, was delivered to Adshead, who was present, along with the latter, when it was given out. Adshead himself was not called as a witness by either party. Under the circumstances, their Lordships are not satisfied that, as was held in *The Grand Trunk Railway* v. *Robinson*, the Company was not entitled to infer that Chalifour left it to Adshead to make the bargain for him. But it is unnecessary to decide this. For they think that, having regard to the general course of business and to the exigencies of time and place, the Company did enough to discharge the obligation that lay on them to enable Chalifour to know what he was about when he accepted the pass containing the condition to which he signed his name. They are unable to concur with the learned Judges in the Courts below, who have held that more was required to be done by the Company in order to make it reasonable to infer that Chalifour knew, or ought to have known, what he was assenting to when he signed the document. As was pointed out in the judgment of the Judicial Committee in *The Grand Trunk Railway Company* v. *Robinson*, the duty of railway companies to reduce delay when serving the public has to be borne in mind in estimating what the law will require in practice.

It follows that, as the statute law of Ontario, the Province where the accident occurred which caused Chalifour's death, did not confer on anyone claiming on his account a statutory right to sue, there was, so far as Ontario is concerned, no other right. For in Ontario the principle of the English common law applies, which precludes death from being complained of as an injury. If so, on the general principles which are applied in Canada and this country under the title of private international law, a common law action for damages for tort could not

be successfully maintained against the appellants in Quebec. It is not necessary to consider whether all the language used by the English Court of Appeal in the judgments in *Machado* v. *Fontes* (1897, 2 Q.B.D. 231) was sufficiently precise. The conclusion there reached was that it is not necessary, if the act was wrongful in the country where the action was brought, that it should be susceptible of civil proceedings in the other country, provided it is not an innocent act there. This question does not arise in the present case, where the action was brought, not against the servants of the appellants, who may or may not have been guilty of criminal negligence, but against the appellants themselves. It is clear that the appellants cannot be said to have committed in a corporate capacity any criminal act. The most that can be suggested is that, on the maxim *respondeat superior*, they might have been civilly responsible for the acts of their servants.

The other point that remains is whether Article 1056 of the Quebec Code which has already been quoted conferred a statutory right to sue in the events which happened. Their Lordships answer this question in the negative. The offence or quasi-offence took place, not in Quebec, but in Ontario. The presumption to be made is that in enacting Article 1056 the Quebec Legislature meant, as an Act of the Imperial Parliament would be construed as meaning, to confine the special remedy conferred to cases of offences or quasi-offences committed within its own jurisdiction. There is, in their Lordships' opinion, nothing in the context of the chapter of the Code in which the article occurs which displaces this presumption in its construction. The rule of interpretation is a natural one where law, as in the case of both Quebec and England, owes its origin largely to territorial custom. No doubt the Quebec Legislature could impose many obligations in respect of acts done outside the province on persons domiciled within its jurisdiction, as the Railway Company may have been by reason of having its head office at Montreal. But in the case of Article 1056 there does not appear to exist any sufficient reason for holding that it has intended to do so, and by so doing to place claims for torts committed outside Quebec on a footing differing from that on which the general rule of private international law already referred to would place them.

In the result, their Lordships will humbly advise His Majesty that the judgment appealed from should be reversed and that the action should be dismissed. As leave to appeal to His Majesty in Council was given only upon the special terms that the costs of the appeal as between solicitor and client should be borne by the appellants in any event this must be done. As to the costs in the Courts below, their Lordships think that under the circumstances which attend this appeal the parties ought to bear their own costs in these Courts. The effect of this will be that any costs already paid by the appellants to the respondents must be refunded.

Privy Council.

THE CANADIAN PACIFIC RAILWAY COMPANY

v.

DAME LEOSOPHIE PARENT AND ANOTHER.

DELIVERED BY VISCOUNT HALDANE.

PRINTED AT THE FOREIGN OFFICE BY C. R HARRISON.

1917.