

Dangerous Work Legally Defined

Pariseau Bros. Ltd. versus Travelers Insurance Co.

The Court of Appeal, Montreal in a majority judgment, has rejected a strenuously submitted argument that amongst workmen who are engaged in the operation of an edged-tool machine, only those who come into direct action with the actual tool can be classed as engaged on "dangerous work" within the meaning of the Quebec Factory Act; and that the work of other employees on other parts of the machine is not "dangerous."

The case in appeal was that of Pariseau Brothers, Limited, and the Travelers' Insurance Company. The appellants, Pariseau Brothers, were engaged in the manufacture of wooden boxes at 60 Ducharme street, Outremont, and held a policy from the company respondent under which it pretended the insurance company agreed to indemnify it against loss by reason of liability imposed by law for damages on account of accident to any of its employees.

Ernest Jolicoeur, a boy in the employ of the appellant, lost the thumb and two fingers of his left hand in an accident while engaged with a circular saw. This involved the employer in a liability of \$2,756.45 towards the father of the injured boy, and appellant submitted that the respondent insurance company was bound to indemnify it in that sum under the conditions of the policy of insurance.

The claim was contested on the ground that the employment of a boy under sixteen years of age at a trade which was "dangerous," according to the provisions of the Quebec Industrial Establishments Act, was illegal. In this circumstances, respondent, under the exceptions provided for in the policy, was not liable to indemnify the appellant.

The case was submitted under three points: Was the part of the factory where the boy was working properly within the operation of the Factory Act; was the respondent, in the circumstances, exempted from indemnity; and, even so, did an attempt which respondent made to adjust the claim with

the boy's father constitute a waiver to the extent of depriving it of the benefit of the exception created in its favor?

The Court's Finding.

Mr. Justice Howard pronounced the court's judgment. He said in part:

"It is contended on behalf of the appellants that the only authority which the Lieutenant-Governor has to classify industrial establishments as dangerous, unhealthy or inconvenient, is that conferred upon him by Article 3865 (2) R.S.Q., and as that refers only to establishments which he considers to be dangerous to the health of the operatives, he has no power to classify as dangerous an industrial establishment where the danger is not to the health but rather to the personal safety or security of the workmen. That cannot be accepted, for general authority is conferred upon the Lieutenant-Governor-in-Council by Article 3832, while Article 3865 is supplementary and not limitative in character. Article 3865 (2) is inserted to cover a special case or to make clear in the particular case the general provision of 3832. The Lieutenant-Governor-in-Council would have power to make such a regulation as that now under consideration if 3865 were omitted altogether.

"This brings us to a consideration of the meaning of the expression "woodworking" (on edged-tool machines) as found in this regulation. It may with great reason be urged that it covers that part of parts of the establishment in which are employed machines having edged tools and operated by mechanical power. Such appears to be the intention and tenor of the regulation and of the act under authority of which it has been enacted. It is a fundamental purpose of the act as far as possible to protect particularly young boys and girls from the dangers incident to the industry in which they are employed, and that purpose, from the evidence in this case, can be accomplished only by preventing them from coming in direct contact with machines which present inherent dangers, as do those in the department of appellants' factory

Guaranteed by Eagle Star and British Dominions Insurance Company, Limited, of London, England.

British Northwestern Fire Insurance Company

HON. EDWARD BROWN
President.

J. H. RIDDEL
Managing Director.

E. C. G. JOHNSON
Secretary.

LEWIS, APEDAILE & HANSON, INC., Lewis Building, MONTREAL.
GENERAL AGENTS. PROVINCE OF QUEBEC.