Legal Decisions

QUEBEC WORKMEN'S COMPENSATION ACT: INEXCUSABLE FAULT OF EMPLOYER.

The Court of King's Bench (Appeal Side) of the Province of Quebec has given a decision (through Mr. Justice Gervais) in the case of Poirier vs. Legrand, *es qual.*, the appellant seeking the reversal of the judgment rendered by the Superior Court for the district of Bedford on June 20th, 1912, condemning him to pay to the respondent personally a sum of $1,511.55; and in her quality of tutrix to her five minor children another sum of $1,138.50, as a result of the death of her husband, Alfred Bisaillon, on April 4th, 1911, at Ruxton Falls, due to the fault and inexcusable negligence of the appellant in compelling the said Bisaillon to work in his saw-mill at Ruxton Falls on an unprotected round-saw with the help of an inexperienced lad of 14 named Brin.

The case turned on the question of "inexcusable fault" on the part of the employer. It was stated in the judgment (French decisions being cited in support of the contention) that where an employer omits knowingly to have a dangerous machine protected with some covering, which covering or protection would in no way interfere with the proper running of the machine, he is inexcusably guilty.

The judgment proceeded:—Was the appellant guilty of inexcusable fault in this case? The respondent charges the appellant with having ordered Alfred Bisaillon to work on a round saw absolutely unprotected, with the help of Brin, a lad of only 14. The appellant knew that Alfred Bisaillon did not have the required experience to work this saw since his foreman had informed him of this fact a year before when the deceased had met with a first accident. And then he paid Bisaillon $1 a day only, whereas he paid the others who worked on this saw $1.50 a day. Besides the appellant had been told by his foreman that Bisaillon had not the required experience to work at this saw. Similarly the appellant knew of young Brin's inexperience, for Brin had arrived from Labelle, where he floated logs, only two days previous.

Is the inexcusable fault of the co-employee the inexcusable fault of the employer? The law of 1909 gives no answer to this question, nor as regards that of persons under his control, a judicial condition which is clearly defined by the French law. The fault of persons under his control, that is to say, the fault of a foreman, is under the French law, the fault of the employer; the fault of the ordinary co-employee in the discharge of his duties remaining subject to the rules regarding excusable or inexcusable fault? What are we to conclude on this subject in the present case? The appellant is certainly responsible for the inexcusable fault of young Brin in negligently passing over the saw in motion large and heavy pieces of hard wood; for the appellant knew of Brin's tender age, of his inexperience and of the consequences that might follow. It may be, therefore that Brin, under these circumstances, was a person under the appellant's control (prepose). And according to French law the inexcusable fault of a "prepose" is the inexcusable fault of the employer.....

Here we must, as a general rule, hold that the inexcusable fault of the co-employee is only excusable fault as regards the employer if the latter have not participated therein as did the employer in the present case by engaging a young lad of 14 without any experience to help Bisaillon, and this after the foreman's warning. The engagement of this boy under the circumstances bears all the earmarks of inexcusable fault.

Lastly we come to the dangers attendant upon this round saw? Did the appellant know that it was without any protective guard, that is to say, without a guard placed over the saw and crosswise to prevent the pieces of wood which had to be passed over the same from being caught by the teeth of the saw and hurled against the workmen manipulating these? The appellant knew the necessity of having such a guard for three reasons:

1st. On account of the rules passed by provincial order-in-Council under the Factory Inspection Law of this province, which obliged him to place such a guard.

2nd. Then, in the second place, his own experience must have warned him that it was necessary to protect this saw. And 3rd, his foremen had called his attention to the danger which threatened the workmen working on an unprotected round saw. Finally the requirements of the sawing in question did not demand the absence of a guard.

The appellant was, therefore, guilty of inexcusable fault, knowingly, without any useful reason, unless it be that of gain in making Bisaillon work on this dangerous and defective round saw, and this is our unanimous opinion. The judgment is confirmed.

THE NEW BANK BILL.

Consideration of the Bank Act by the Banking and Commerce Committee will begin on Wednesday next, and subsequently meetings will be held on Wednesday, Thursday and Friday of each week, the Bank bill to have priority on Wednesdays and Thursdays. On the method of procedure, it has been decided that non-contentious clauses should first be disposed of; that any clause might stand over on request of a member for future consideration, and that reconsideration be allowed by notice of motion.

Mr. W. F. Maclean has notified the committee of his intention to bring up the currency question and the matter of post office savings banks.

Outside opinions will be accepted if a motion is made by a member on behalf of such interests.

WILL THE PROVINCE OF QUEBEC PLEASE NOTE?

A large amount of fire insurance premiums in West Virginia are placed with unauthorized companies.

It is certainly no more than just that those who place their insurance with companies which do not pay tax should bear their share of the expenses of the state.

To accomplish this result a bill will be introduced requiring those insuring in unauthorized companies to pay into the State Treasury the same percentage of taxes as the state receives on premiums paid to authorized companies.—*West Virginia Insurance Department's Bulletin.*

At the annual meeting of Canada Foundries & Forgings, held at Brockville, it was reported that net earnings were sufficient to provide for the preferred stock dividend and bond interest.