Legal Decisions

CURIOUS WORKMEN'S COMPENSATION CASE.

A case which illustrates effectively some of the drawbacks of existing workmen's compensation legislation was disposed of by Mr. Justice Charbonneau, at Montreal this week, under the Quebec Act. The case was that of Ulric Couillard vs. John Allan. Plaintiff, a labourer, was injured in a fall from a scaffold, and the whole case hinged upon the interpretation to be put on a radiograph wherein it was shown that the cartilage between two of the victim's vertebrae had hardened, or had at least changed to such an extent that it "showed up" as solid in the radiograph. The question arose as to whether the alleged hardening of the cartilage was due to the previous accident or to the mishap which figured as the basis of the claim just disposed of. His Lordship, after making a lengthy review of the circumstances, held that, in the absence of positive proof, the court had to lean to the opinion that the condition of the inter-vertebral substance was brought about by the second mishap. Another interesting fact was that after the accident the plaintiff had gone back to work and had been working for several months, earning the same money as before the accident.

Mr. Justice Charbonneau, reviewing the case at great length, pointed out that the plaintiff had been unable to work from the time of the accident until June 8th, 1912. Thus he had been deprived of 124 days' pay, and under the Compensation Act he would have a right to 90 cents a day for that time. During that time and precedent to the interim order of the court, he had received a total sum of $62.40. Thus there was a balance of $49.20. Since June 26th up till February 20, plaintiff was engaged by the defendant at the same salary as he had been earning before the accident. As a result of the accident, plaintiff remained subject to a certain weakness of the spine, which might affect, in a degree difficult to estimate, his capacity to work as a laborer—a capacity which had been lessened by a previous accident, to such an extent that the plaintiff had been obliged to abandon his work as a roofer, in order to take up work as a laborer at the lowest salary and to do the lightest possible work. Taking into consideration these facts, as well as the age of the plaintiff, it was fitting that his pension be set at 15 cents per working day. Accordingly the defendant was condemned to pay the plaintiff a sum of $49.20 and an annual pension of $45.

JUDGE'S COMMENTS ON CASE.

Commenting on the case, His Lordship pointed out that the suit was one wherein the court might be inclined to think that the claimant had shown a disposition to take advantage of a misfortune which had happened to him in order to create for himself a life pension under the operation of the Workman's Compensation Act. One found in the plaintiff all the earmarks of that type of man in whom one might expect to find such deceit. He had started by abandoning a good trade. He justified such abandonment, it is true, by explaining that he had been a victim of typhoid fever, which had left him in such a state that he was unable to mount high roofs. He could, of course, have continued his trade as a workman in the shops, but he had preferred to become a laborer—and a laborer of the lowest category, such as are found doing nothing or almost nothing on almost any job. His companions were not at all hesitating in qualifying him as a loafer and a faker; the qualification was perhaps hard, but it seemed to have been justified by the fact that the plaintiff had abandoned his trade without a sufficiently plausible reason. Notwithstanding what the plaintiff might himself have said, it was hard to drive away the impression that liquor and laziness had played a large part—if not the sole part—in bringing about this change.

However, the law had to be applied—and what was all the more repugnant, it had to be applied on the testimony of the plaintiff as an almost exclusive basis. There remained, however, two proven facts apart from his testimony. These were the fact of the fall and the fact of the X-ray examination. The fall was sufficient to cause the injury of which plaintiff complained, and the radiographs taken of the spine most probably showed the effects of such injury.

INEXCUSABLE FAULT OF WORKMAN.

Mr. Justice Archer has given judgment at Montreal in the case under the Quebec Workmen's Compensation Act of Anton Peterson vs. the Garth Company, in which, owing to his inexcusable fault, the pension under the Act to which plaintiff was entitled as a result of the accident was reduced. When the accident in question occurred, plaintiff was at work in the new Windsor station in an elevator shaft holding a large steel chisel in his hand, a fellow workman being engaged in striking the chisel. Whilst the two were thus engaged, the elevator came down, hit the chisel, driving it into plaintiff's hand, and severing a finger.

In summing up, His Lordship pointed to a vital fact which had come out in the hearing, namely, that the representative of the Garth Company, on undertaking to do the work, had called upon those in charge of the building, and had notified them that, in view of the dangerous character of the work, it would be necessary for the elevator in question to be stopped whilst the particular work was being done in the shaft by the plaintiff. Plaintiff, who was in charge of the job, on arriving to do the work, saw that the elevator was running, and notwithstanding this fact he had set to work in the shaft. As a skilled workman, he must have had an idea of the imminent danger in which he was placed; yet, he had failed to notify his employers of the fact that the elevator was kept running by those in charge of the building. This neglect on his part constituted inexcusable fault, declared His Lordship.

However, according to the Compensation Act, where it was proven that a workman had suffered a permanent and partial incapacity he was entitled to a rente equal to one-half of the sum by which his earning capacity had been reduced. In the present case, although it was established that the plaintiff, after the accident, returned to work at the same salary as he was earning before the accident, it was quite apparent that his earning capacity had been reduced as his trade was one in which he required the full use of his hands. The court estimated that the earning capacity was decreased by eight per cent.