

Privy Council Appeal No. 112 of 1914.

The Canadian Pacific Railway Company - *Appellants,*
v.
Frank McDonald - *Respondent.*

FROM

**THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC
(APPEAL SIDE).**

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 22ND JULY 1915.

Present at the Hearing:

VISCOUNT HALDANE. LORD PARKER OF WADDINGTON.
LORD SUMNER.

[*Delivered by VISCOUNT HALDANE.*]

The question which their Lordships have to decide arises as follows:—The respondent was a railway man employed by the appellants. He suffered serious injury in an accident, the result of which was that he was partially but permanently incapacitated. He claimed that this entitled him to compensation, under the Workmen's Compensation Act of the Province of Quebec, to the extent of a rent or annuity for his life of \$337.50, being half of the amount by which his earning capacity had been reduced by the injury. The appellants did not dispute the title to compensation on this basis, but contended that under Article 7,322 (sub-head 2) of the Act the amount of the rent that could be claimed could not exceed the annual rent procurable with a capital sum of \$2,000. The only question to be decided is one of construction of the Statute.

[112] J. 112. 90.—7/1915. E. & S.

Article 7,322 provides in Sub-section 1 that in cases to which the section applies the person injured is to be entitled in case of absolute and permanent incapacity to a rent equal to half his yearly wages, and in case of permanent and partial incapacity to a rent equal to half the sum by which his wages have been reduced in consequence of the accident. Sub-head 2 of the same Article provides that "the capital of the rents shall not however in any case, except in the case mentioned in Article 7,325, exceed \$2,000." Under that Article the Court may reduce the compensation if the accident was due to the inexcusable fault of the workman, or increase it if the accident was due to the inexcusable fault of the employers. Under Article 7,329, after the amount of the compensation has been agreed or after judgment ordering it to be paid, the employer is to pay the amount of the compensation to the person injured or his representatives, "or, as the case may be and at the option of the person injured or his representatives, shall pay the capital of the rent to an Insurance Company designated for that purpose by Order-in-Council."

Their Lordships are of opinion that the Article last quoted interprets the reference to capital in sub-head 2 of Article 7,322, and that this sub-head cannot properly be read as applying to any other case than that in which the injured person or his representatives demand that the capital, by which they understand to be meant the capitalised value of the rent shall be paid over to an approved Insurance Company which will provide an annuity in lieu thereof. They observe that in subhead 2 of Article 7,322 the limitation is expressed to refer only to the capital of the rents described, and that no reference to this capital occurs elsewhere in the article. To read the words as governing the

amount of the rent where it is claimed from the employer himself, instead of the amount to be paid to an Insurance Company for providing an annuity in lieu thereof, would be to introduce extraordinary results. An old man with a short expectation of life would obtain a larger compensation than a younger man. The latter, though equally incapacitated, might have been earning higher wages than the former. Yet on the construction of the Act contended for by the appellants he would get a smaller annuity from the Insurance Company by reason of his longer expectation of life. But it is natural that the Act should give the claimant the option of having what will often prove the better security of the obligation of the approved Insurance Company. Their Lordships think that the meaning of sub-head 2 is that if the claimant exercises this option the capital sum which he can compel the employer to find and, it may be, to withdraw from his business, is to be limited. The sub-head would have been introduced by the draftsman more naturally after Article 7,329. But their Lordships do not find in the place in the Act where the words have been introduced any sufficient reason for construing them otherwise than according to what appears to be their natural meaning, and as they have been construed by the majority of the learned Judges in the Courts of Quebec both in the present case and in *The Grand Trunk Railway Company v. McDonell* (21 Quebec L. R. K. B. 532). They concur in the view that the expression "capital of the rents" in sub-head 2 of Article 7,322 derives its meaning as there used from the subsequent Article 7,329. If so, it is only at the option of the claimant that the capital demand can be made to which the limitation applies. It may or may not suit him, having regard to his age and his estimate of his security for his rent, to

exercise the option. The injured man may think it wisest to avoid the risk of proceedings to revise the amount of the compensation on the ground of diminution of the disability, under Article 7,346, which provides for such revision, by changing the rent into an annuity purchased from an Insurance Company. To enable him to secure these advantages it was natural that the Legislature should give him an option, and no less natural that the amount of capital he could call for in connection with them should be limited. It is, however, far from being obvious why the words should have been introduced at all if they are to bear the construction for which the Appellants contend, and are to restrict, not only the amount in case of exercise of the option, but the rent itself, in such a fashion that a man earning high wages would get no more compensation for being incapacitated from earning than a man earning much less. Their Lordships are of opinion that the language employed is not such as would naturally have been relied on if the intention had been to produce so remarkable a result.

They will therefore humbly advise His Majesty that the appeal should be dismissed with costs, to be taxed as between solicitor and client according to the conditions prescribed by the Order in Council giving leave to appeal.



In the Privy Council.

THE CANADIAN PACIFIC RAILWAY
COMPANY.

v.

FRANK McDONALD.

DELIVERED BY
VISCOUNT HALDANE

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