

CANADA / JUDGMENT

C.N.R. v. Williams

[1978] 1 SCR 1092**COURT**

Supreme Court of Canada

DECIDED

25 November 1977

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C.N.R. v. Williams Collection Supreme Court Judgments Date 1977-11-25 Report

[1978] 1 SCR 1092 Judges Laskin, Bora On appeal from Nova Scotia Subjects Action Constitutional law Decision Content Supreme Court of Canada C.N.R. v. Williams, [1978] 1 S.C.R. 1092 Date: 1977-11-25 Canadian National Railway Company (Defendant) Appellant; and Lawrence Angus Williams, an infant by his Guardian ad Litem, Robert Frederick Williams (Plaintiff) Respondent. 1977: November 25. Before Laskin C.J. in Chambers. ON A MOTION FOR DIRECTIONS Practice—Motion for directions—Appeal on preliminary point of law—Status of interventions on a constitutional question on discontinuance of action. Constitutional law—Intervention on constitutional question—Whether appeal on preliminary point should proceed despite discontinuance of the action. MOTION FOR DIRECTIONS as to whether the Court should proceed with an appeal on a preliminary point of law involving a constitutional issue on which there have been interventions notwithstanding that the merits may not be tried. Directions to the effect that upon notice of discontinuance of the action, the appeal will be struck off the list. John J. Callan, for the motion. B.A. Crane, for the respondent. G.W. Ainslie, Q.C., for the intervenant Attorney General of Canada. S. Grace, for the intervenant Attorney General for Nova Scotia. Robert Waddell, for the intervenant Attorney General for Quebec. THE CHIEF JUSTICE in Chambers—This is a motion for directions arising in the following circumstances. The appellant railway was sued for damages for negligence by reason of injuries suffered by the infant plaintiff who lost both legs when struck by a train. The action was not commenced until more than eight years after the accident, but in view of the infancy of the injured boy, reliance was placed on s. 3 of the Limitation of [Page 1093] Actions Act, R.S.N.S. 1967, c. 168 to support the bringing of the action notwithstanding the expiry of the general six year period. The defendant, appellant here, invoked s. 398 of the Railway Act, R.S.C. 1952, c. 234 (now s. 342 of R.S.C. 1970, c. R-2) which prescribes a two year limitation period without reference to any leeway by reason of infancy. A preliminary point of law was thereupon presented for determination, namely whether the limitation provision of the Railway Act governed to bar the action. Cowan C.J.T.D. decided this issue in favour of the defendant railway but on appeal his judgment was reversed. On January 25, 1977, leave to appeal was given by this Court to argue the point here. Notice of appeal was given on

February 14, 1977 and filed in this Court and subsequently a constitutional question was formulated on whether the federal limitation provision, if valid, superseded the provincial one. Following the usual notices to the Attorney-General of Canada and to the Attorneys-General of the Provinces, leave to intervene was given to the Attorney-General of Canada and to the Attorneys-General of Quebec and Nova Scotia. The appeal was set down by notice filed on September 22, 1977, for hearing at the October 1977 session of the Court. The judgment of this Court in *Wade v. C.N.R.*, also involving a railway accident in which an infant was seriously injured, was delivered on September 30, 1977. As a result of that judgment it appears that the plaintiffs (the father of the infant and the infant) propose to discontinue their action. The issue now presented to me is whether this Court should proceed with the appeal on the preliminary point, involving the constitutional issue on which there have been interventions, notwithstanding that the merits may not be tried. In my opinion, this Court should not do so because we would be ruling on an issue which does not come before us on a reference but one arising out of a particular cause of action. If that cause is abandoned, there is nothing to which the preliminary point of law can relate. However desirable it may be to have it determined, this Court cannot [Page 1094] proceed in a vacuum. Upon notice of discontinuance of the action being filed, the appeal herein will be struck off the list. There will be no order as to costs of this motion. Directions accordingly, no order as to costs. Solicitor for the appellant: T. Winton Toward, Moncton. Solicitors for the respondent: McInnes, Cooper & Robertson, Halifax. Solicitor for the Attorney General of Canada: P.M. Ollivier, Ottawa. Solicitors for the Attorney General for Nova Scotia: Burritt, Grace & Neville, Ottawa. Solicitors for the Attorney General for Quebec: Taché & Pharand, Hull.

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