

1909  
 May 12.

ALPHONSE LAMONTAGNE.....SUPPLIANT ;

AND

HIS MAJESTY THE KING..... RESPONDENT.

*Dominion steamer—Negligence—Stoker undertaking to perform an engineer's duty at his request but contrary to Chief Engineer's instructions—Liability.*

The suppliant was employed as a stoker on board the Dominion steamer *Montcalm*. Instructions had been given by the chief engineer of the ship, and communicated to the suppliant, that "no employee on board, including stoker or 'graisseur,' was to touch the machinery without a special order from the chief engineer." On the evening before the accident to the suppliant, one of the engineers, who was ill, asked him if he was competent to start the machinery. The suppliant replied that he was, and the said engineer asked him to start the machinery for him early the following morning. To oblige the latter, the suppliant undertook to do this. The machinery was in perfect order, but owing to the negligence or unskilfulness of the suppliant in handling a steam-pump an accident happened by which he lost three fingers of his left hand.

*Held*, upon the facts, that the Crown was not liable under sec. 20 (c) of of c. 140, R. S. 1906.

PETITION OF RIGHT for damages arising out of an accident on a public work.

The facts are stated in the reasons for judgment.

February 22nd, 23rd and 25th, 1908.

The case came on for trial at Quebec, and after a certain portion of the evidence was taken a reference was directed to the Registrar to complete the taking of the evidence.

*C. DeGuise, K.C.*, and *L. P. Grenier* for the suppliant ;  
 The *Solicitor-General of Canada* and *H. Boivin* for the respondent.

CASSELS, J. now (May 12, 1909), delivered judgment.

This is a Petition of Right filed on behalf of the suppliant, a stoker on the Dominion steamship "Montcalm."

The suppliant claims the sum of \$5,000 as damages for the loss of three fingers owing to an accident occurring on the 25th September, 1906, when starting the circular pump feeding the condenser.

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The petition was filed on the 12th of April, 1907. The case came before me for trial at Quebec on the 28th May, 1908, when an application was made on behalf of the suppliant to postpone the trial on account of the absence of necessary witnesses employed on the "Montcalm" then on duty.

It was suggested and agreed that the question of law, namely, whether the steamer "Montcalm" is a public work within the meaning of *The Exchequer Court Act* (R.S. ch. 140, sec 20, sub-sec. (c)) should be argued in Ottawa.

This argument did not take place, counsel, I presume, preferring to have the case tried, and it came on for trial at Quebec on the 22nd February, 1909.

After considerable evidence was adduced it was considered that more accurate evidence as to the construction of the machinery should be adduced, and by consent it was referred to the Registrar of the court to hear this evidence. This evidence was taken before the Registrar on the 19th March, 1909.

The suppliant bases his claim on the following allegations of fact, set out in the Petition of Right:—

"4. On or before the 16th September last, your suppliant as well as the whole crew of the Dominion Government steamship 'Montcalm' received an order to obey implicitly and without question all orders emanating from the superior officers and this order was specially directed for the crew or men concerned to obey without question all orders from the engineer in charge.

"5. On the 25th of September past, Alphonse Lamontagne, the suppliant, acting under orders from the ship's engineers, went below in the engine room to start up the

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circular pump feeding the condenser and other pumps and valves.

“6. That said pumps and said machinery he was ordered to attend to, were in such bad order that the spoke your suppliant was compelled to use to start said machinery flew out of his hands and, coming down with much force, cut off three fingers of his left hand.

“7. That the accident aforesaid was due to the fact that the engineer in charge had packed the safety valve and all the tubes connecting with the boiler, in such a manner as to choke said valves and tubes, and the negligent packing of these steam tubes occasioned the up heave and expansion of the two valves connecting with the machinery attended to by suppliant under orders as above stated.

“8. That the accident was caused purely through the negligence and carelessness of the engineer in charge of the machinery aboard the Dominion Government steamer ‘Montcalm’.”

A careful consideration of the evidence convinces me that there is no foundation whatever for these allegations. The machinery was in perfect order.

One Joseph Fontaine was the chief engineer of the “Montcalm”. At the time of the accident the “Montcalm” was moored to the King’s wharf at Quebec, ready at any moment on running orders, to depart for Sorel.

Jean Royer was either third or fourth engineer; it is immaterial which. Lamontagne, the suppliant, was a stoker. He himself testifies he was a “graisseur.” I think he is mistaken. It is immaterial which position he occupied

On the night previous to the accident, Royer, who was then ill, asked Lamontagne if he was competent to start the machinery. Lamontagne answered yes, and Royer asked him to start the machinery the following morning at an early hour. It is proved by a witness for the sup-

pliant, Jobin, corroborated by Fontaine, that strict orders had been given by Fontaine delivered through one Sauvageau that "no employee on board including stoker or "graisseur" was to touch the machinery without a special order from Fontaine."

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Langlois, another witness for the suppliant, states that Fontaine's order was as follows:—

"Les ordres étaient qu'aucun chauffeur, ni trimmeur, même graisseur, ne devait toucher aucune machinerie, ni faire partir aucune pompe sans un ordre de l'ingénieur lui-même."

Lamontagne was aware of this order, and apparently to oblige Royer, undertook the work. Lamontagne had been for many years on the steamship and had started the pump before:—

"Q. Mais cette pompe là, la pompe en question, vous l'aviez déjà vue? A. Celle-la.....du "Montcalm".....Oui."

"Q. L'aviez-vous fait partir avant? A. Bien, oui."

To oblige Royer, contrary to the express orders of Fontaine, Lamontagne undertook to do the work.

Owing to no fault in the machinery, but to want of care or skill on the part of Lamontagne the accident occurred.

The statement of Joseph Ouellet and Narcisse Ouellet in the evidence taken *de bene esse* of the admissions made by Royer are of little value. Assuming the evidence to be admissible, all it amounts to is that Royer having disobeyed Fontaine's express orders was apprehensive he would be discharged.

I think the suppliant has failed entirely in proving a case of negligence against the Crown.

Having arrived at this conclusion, it is not necessary to consider the question whether having regard to the views expressed by Mr. Justice Burbidge in *Leprohon v. The Queen* (1) the words in *The Exchequer Court Act* "on any public work" means on "any property of the Dominion."

(1) 4 Ex. C. R. 100.

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*Judgment accordingly.*

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Solicitor for suppliant: *L. P. Grenier.*

Solicitor for respondent: *H. Boivin.*

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