

The Montreal Transportation Company, Limited - - - *Appellants*

v.

The King - - - - - - - *Respondent*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 2ND MARCH, 1926.

Present at the Hearing :

THE LORD CHANCELLOR.

VISCOUNT HALDANE.

LORD PARMOOR.

LORD WRENBURY.

LORD BLANESBURGH.

[*Delivered by* THE LORD CHANCELLOR.]

Their Lordships do not consider it necessary to hear counsel for the respondent in this appeal.

This case has been ably and strenuously argued on behalf of the appellants, but their Lordships have come to the conclusion that they cannot differ from the decision which was arrived at by Mr. Justice Audette and the Supreme Court of Canada.

The proceedings were brought in the Exchequer Court of Canada under Section 20 of the Exchequer Court Act, which, as amended, provides that: "Every claim against the Crown arising out of any death or injury to the person or to property resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment upon any public work," may be brought in the Court of Exchequer. It has been assumed throughout these proceedings that this statute gives the subject a right to recover against the Crown for a tort committed by a Crown servant when employed on a public

work; and, for the purposes of this appeal, their Lordships will assume that that is the effect of the statute. Taking that to be so, the question raised is a question of pure fact, namely, whether the very distressing explosion which occurred in the elevator at Port Coleman, and which caused the loss of the appellant's barge, was or was not due to the negligence of the servants of the Crown employed in and about the elevator.

The facts are very clearly stated in the judgment of Mr. Justice Mignault, and it is not necessary to state them again. The charges of negligence are formulated in the judgment of Mr. Justice Anglin, as he then was, and as stated by him were five in number. Upon the questions so raised a great deal of oral evidence was given, the trial lasting nine days; and the learned trial Judge, having heard the evidence, decided all the issues of fact in favour of the Crown. As to the first charge of negligence, namely, "Improperly keeping closed the ventilators or valves in the dust-collecting system," their Lordships were not referred to any evidence which supported it, and it was not relied on by counsel for the appellants. As to the second charge: "Failure to regulate properly the quantity of grain allowed to pass from the bin to the conveyor resulting in a 'choke,'" which means practically a charge of overfeeding the boot from which the buckets are fed, the learned Judge believed the emphatic denial of the workmen who were called that anything of the kind had occurred; he found distinctly that there had been no overfeeding. As to the charge of "Failure to observe overfeeding of the conveyor and the resultant development of a 'choke,'" the learned Judge held there was no noise, or other circumstance, which should have warned the workmen that the choke was developing. As to the alleged "Failure to discover the ignition of the belt in the loft-head," he was satisfied that there was no reason, from the facts known to the workmen, to anticipate that this ignition had occurred, and that, to use the words of Mr. Justice Mignault, the employees did not do anything which a reasonable person would not have done, nor did they omit anything which a reasonable person would not have omitted, after the choke occurred. The last charge, that there was "Failure to pay due attention to the fire after it had started," was plainly untenable, because, as soon as the fire was discovered everything possible was done; but, unfortunately, it was too late to prevent an explosion. The result was, that in the opinion of the trial Judge, no negligence was proved, and that if, in a claim founded on this section, the maxim *res ipsa loquitur* applied, the Crown had discharged the burden so thrown upon them then, and had given a sufficient explanation. In short, he held that the explosion was purely accidental.

This judgment was affirmed on appeal by the Supreme Court of Canada, and accordingly the appellants are faced with concurrent judgments of both Courts on a pure question of fact.

With a view to displacing these judgments, the evidence on both sides has been carefully examined and analysed before their Lordships; and, no doubt, there are statements contained in the evidence which, if they had been accepted by the Judge of fact, might well have supported a judgment for the suppliants. But in a case of this kind, where there are concurrent judgments of two Courts on a question of fact, that is not sufficient. The trial Judge accepted the evidence for the Crown and decided the issues of fact in favour of the respondent; there was ample evidence to support his finding, and the Supreme Court agreed. Their Lordships, having carefully considered the evidence and the arguments placed before them, do not find any sufficient reason for disturbing the decision which has been so reached.

Their Lordships will accordingly humbly advise His Majesty that this appeal fails and should be dismissed with costs.

In the Privy Council.

THE MONTREAL TRANSPORTATION COMPANY
LIMITED

v.

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DELIVERED BY THE LORD CHANCELLOR.

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