

1916
 Dec. 23

IN THE MATTER OF THE PETITION OF RIGHT OF
 PIERRE DESPINS.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Negligence—Exchequer Court Act—Sec. 20,(c)—“Public work.”

The suppliant sought damages against the Crown for the death of his son by drowning, alleged to have been caused by the negligence of a servant of the Crown on a steam-tug engaged in serving dredges, employed in improving the ship channel between Montreal and Quebec.

Held, (following *Paul v. The King*, 38 Can. S.C.R. 126) that the tug in question was not a public work within the meaning of sec. 20 of *The Exchequer Court Act*, (R.S.C. 1906, c. 140), and therefore the suppliant was not entitled to the relief sought by the petition.

PETITION OF RIGHT for damages arising out of a fatal accident to an employe of the Crown on the Steamer “Becancour,” in the Province of Quebec.

The case was heard before the Honourable Mr. Justice AUDETTE, at Three Rivers, P.Q., on December 5, 1916.

L. P. Guillet, for suppliant; *F. Lefebvre*, for defendant.

Mr. Guillet relied on the following cases:

Canadian Northern Railway v. Anderson, 45 Can. S.C.R. 355; *Paul v. The King*, 38 Can. S.C.R. 126; *Piggott v. The King*, 38 Can. S.C.R. 501; *Chamberlain v. The King*, 42 Can. S.C.R. 350; R.S. 1906, ch. 39, sec. 3.

Mr. Lefebvre cited:

Price v. The King, 10 Can. Ex. 105; *Paul v. The King*, 38 Can. S.C.R. 126.

AUDETTE, J. (December 23, 1916) delivered judgment.

The suppliant, by his petition of right, seeks to recover the sum of \$5,000, as representing alleged damages suffered from the death of his son by accident while in the employ of the Government of Canada.

On September 6, 1915, the tug "Becancour" was engaged serving Government dredges employed in digging the ship channel between Montreal and Quebec. The tug had been at anchor during the night about opposite Lanoraie, and in the early morning raised anchor and steamed to a scow which was also at anchor close by. The anchor of the tug had been raised by means of a winch and was hanging at the bow of the tug, the officer in charge of the same, having directed that the anchor would be placed on deck after mooring at the scow. After mooring at the scow and while the crew was in the act of starting to heave the anchor on deck, Carpentier, one of the sailors who was usually attending to such work, had a block in his hands and was preparing to hook it to the anchor, when Despins, the suppliant's son, rushed up on deck and coming to Carpentier took the block from him and said, "I will attend to that work." He went over the railing, stood on the anchor and while in that position one of the sailors slightly loosened the winch to test it, and the pawl being off, the anchor went down to the bottom carrying Despins with it. Despins was drowned despite the crew immediately throwing out a boat to rescue him.

This action is in its very essence one in tort for damages and such an action does not lie against the Crown, except under special statutory authority and the suppliant to succeed must necessarily bring his action within the ambit of sub-sec. (c) of sec. 20 of The Exchequer Court Act (R.S.C. 1906, c. 140). In other words the accident must have happened 1st, on a public work; 2nd, there must be a servant or officer of the Crown who has been guilty of negligence while acting within the scope of his duties or employment; and 3rd, the accident complained of must be the result of such negligence.

Following the decision in the case of *Paul v. The King*,¹ I must come to the conclusion that the accident did not happen on a public work. Having so found it is unnecessary to consider whether or not the accident resulted from the negligence of an officer or servant of the Crown while acting in the scope of his duties or employment.

¹ 38 Can. S.C.R. 126.

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See also *Chamberlin v. The King*;¹ *Hamburg American Packet Co. v. The King*;² *Olmstead v. The King*;³ *Piggott v. The King*;⁴ *Montgomery v. The King*.⁵ Having so found, I have come to the conclusion that the suppliant, under the circumstances of the case, is not entitled to the relief sought by his petition of right.

Petition dismissed.

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

Solicitor for respondent: *F. Lefebvre.*

¹ 42 Can. S.C.R. 350.

² 39 Can. S.C.R. 651.

³ 53 Can. S.C.R. 450.

⁴ 53 Can. S.C.R., 626, 32 D.L.R., 461.

⁵ 15 Can. Ex. 374.