1955
Mar. 16
Apr. 29

BETWEEN:

FREDERICK R. MEREDITH *et al.* .....SUPPLIANTS;

AND

HER MAJESTY THE QUEEN .....RESPONDENT.

Crown—Petition of Right—Claim for damages as a result of a fall on a floor in a building owned and operated by the Crown—Negligence—The Crown Liability Act, S. of C. 1952-53, c. 30, ss. 3(1)(a), 4(2)—The Exchequer Court Act, R.S.C. 1952, c. 98, s. 18(c)—Liability of the Crown only vicarious—Onus of proof on suppliants.

On leaving the shower-room suppliant, Mrs. Meredith, slipped and fell on the floor of the ladies' dressing room at the Miette Hot Springs Bath House, Jasper National Park, the property of respondent and operated at the time by its servants. Suppliants sought to recover damages for personal injuries and losses alleging that the fall was caused by the dangerous condition of the floor because of the negligence of respondent's servants in omitting to remove the water on it or to place matting on its concrete surface or to give proper warning of its dangerous condition.

Held: That in a claim against the Crown under the Crown Liability Act, S. of C. 1952-53, c. 30, for damages resulting from the negligence of its servant while in the performance of his duties it must be established conclusively that the servant himself could be held liable for the damages sustained and claimed. S. 4(2) of the Act affirms the principle that the Crown's liability is a vicarious and not a direct liability. *The King* v. *Anthony* [1948] S.C.R. 569; *Magda* v. *The Queen* [1953] Ex. C.R. 22 referred to.

2. That the Crown's liability under that Act is a statutory one and the suppliants in order to succeed against respondent must bring their claim within the ambit of the terms of the Act. The onus of proof in respect of that matter rests upon suppliants and no presumption or assumption can displace this statutory obligation. If suppliants do not discharge this obligation their claim fails. This rule applies under s. 3(1)(*a*) of the Act as it applied to claims made under s. 18(*c*) of the Exchequer Court Act, R.S.C. 1952, c. 98.

3. That suppliants failed to establish any negligence on the part of some servant of respondent in the performance of his duties on the day of the accident.

4. That suppliant, Mrs. Meredith, suffered injury through her own fault and carelessness.

PETITION OF RIGHT under the Crown Liability Act.

The action was tried before the Honourable Mr. Justice Fournier at Edmonton.

A. F. Moir for suppliants.

A. W. Miller, Q.C. and *D. S. Maxwell* for respondent.

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The facts and questions of law raised are stated in the reasons for judgment.

FOURNIER J. now (April 29, 1955) delivered the following judgment:

In this petition of right the suppliants, husband and wife, seek to recover from the Crown damages for personal injuries and losses sustained by them as the result of a fall by the suppliant Lorna M. Meredith, hereinafter referred to as Mrs. Meredith, on the floor of the ladies' dressing room at the Miette Hot Springs Bath House at Jasper National Park in the Province of Alberta, the property of the respondent and operated by its servants at the time.

The suppliants and members of their family went with Mrs. Helen Morris on Sunday, June 21, 1953, to Miette Hot Springs for a swim. They arrived around noon. The women of the party and the children proceeded to the ladies' dressing room to divest themselves of their clothing and put on their swimming suits. The floor, which was made of cement, had been freshly painted before the opening of the season on or about May 24, 1953. There was water on the floor. They went to the cubicles to undress and after putting on their swimming suits they placed their clothes in the lockers. Then Mrs. Meredith, holding two of her grandchildren by the hand, crossed part of the dressing room and went out to the pool. While in the dressing room, the children slid or slipped and were held up by the protecting hands of their grandmother. They remained in the pool until nearly four o'clock.

Mrs. Morris was the first to leave the pool to go to the dressing room; she was followed by Mrs. Meredith with the eldest of the children. Then Mrs. Breton, mother of the children, came in with the two youngest. There was more water on the floor than when they had arrived. Mrs. Morris proceeded to her cubicle and locker room without difficulty. Mrs. Breton and her two children went to their locker room and cubicle without incident. Mrs. Meredith and the eldest child went in the shower room. When they came out Mrs. Meredith led the child to her mother's cubicle and proceeded to her own cubicle. She states that at that time there was $\frac{1}{4}$ of an inch of water on the floor. Before reaching her cubicle, she slipped and fell, then tried to get up

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but felt a pain in her left arm or wrist and called for help. She was helped to the first-aid room, then to the steam room where an attendant, a medical student, gave her first aid. Her left arm was in an awkward position and swollen. It was found that her left wrist was fractured.

She was then driven to Jasper, where a doctor gave her an anaesthetic and set the fracture. She wore splints for one week, then a plaster cast was applied from below the elbow down over part of the hand. This cast was removed after eight weeks and for a short period thereafter the arm was supported by a sling.

The suppliants contend that the fall was due to the dangerous condition of the floor resulting from the negligence of the respondent's servants who neglected or omitted to remove or mop up the water on the floor or to place matting on the concrete flooring or to give proper warning of the dangerous condition there existing. The respondent denies responsibility and alleges that the injuries and damages complained of were the result solely of the suppliant Mrs. Meredith's own negligence and carelessness.

If the accident had happened prior to May 14, 1953, the basis of the suppliants' claim would have been section 18 (1) (*c*) of the Exchequer Court Act, R.S.C. 1952, chapter 98, formerly section 19 (*c*) of the Exchequer Court Act, R.S.C. 1927, chapter 34, which reads as follows:

18. (1) The Exchequer Court also has exclusive original jurisdiction to hear and determine the following matters:

(*c*) 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;

The injuries and damages having occurred on June 21, 1953, the claim has to be considered under the Crown Liability Act, Statutes of Canada, 1952-53, chapter 30, section 3(1) (*a*), which is thus worded:

3. (1) The Crown is liable in tort for the damages for which, if it were a private person of full age and capacity, it would be liable

(*a*) in respect of a tort committed by a servant of the Crown, or

Counsel for the suppliants admitted at the hearing that the claim for the damages sustained was based on the negligence of the respondent's servants, though he would also

have invoked paragraph (*b*) of subsection (1) of section 3 of the Act, if it had been in force. This paragraph is in the following words:

(*b*) in respect of a breach of duty attaching to the ownership, occupation, possession or control of property.

The Crown's liability under the Crown Liability Act is a statutory one and the suppliants to succeed against the respondent must bring their claim within the ambit of the terms of the statute and specially within the provision of section 4 (2) of the Act:

4. (2) No proceedings lie against the Crown by virtue of paragraph (*a*) of subsection (1) of section 3 in respect of any act or omission of a servant of the Crown unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in tort against that servant or his personal representative.

It would seem that when a claim is made against the Crown for damages resulting from the negligence of its servant in the performance of his duties it must be shown conclusively that the servant himself could be held liable for the damages sustained and claimed. In the present instance it should be established without doubt that the servant was negligent in the performance of his duties; that the injuries to Mrs. Meredith resulted from his negligence; that his negligence was such that he could be held personally responsible for the damages claimed had he been sued for same.

The onus of proof of these facts rests upon the suppliants and no presumption or assumption can displace this statutory obligation. Suppositions, speculations, conjectures are not sufficient to discharge the duty which lies with the suppliants to establish the above matters; and, if they do not discharge this obligation, their claim fails. In my opinion this rule applies to claims under section 3(1) (*a*) of the Crown Liability Act as it applied to claims made under section 18(*c*) of the Exchequer Court Act.

Furthermore, section 4 (2) of the Act puts into statute form a principle which has received its application in a number of outstanding cases. It affirms that the Crown's liability is a vicarious and not a direct liability. To become responsible, it must be shown that one or several of its

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servants could have been held liable if the claim had been directed against them. In *The King* v. *Anthony* (1) it was held (*inter alia*):

> Paragraph (*c*) of section 19 of the Exchequer Court Act creates a liability against the Crown through negligence under the rule of *respondeat superior*, and it does not impose duties on the Crown in favour of subjects. The liability is vicarious, based as it is upon a tortious act of negligence committed by a servant while acting within the scope of his employment; and its condition is that the servant shall have drawn upon himself a personal liability to the third person. If the liability is placed merely on the negligent failure to carry out a duty to the Crown and not on a violation of a duty to the injured person, then there will be imposed on the Crown a greater responsibility in relation to a servant than rests on a private citizen. . . .

In a more recent decision, the President of this Court dealt with the same question: *vide Magda* v. *The Queen* (2). He said (pp. 31 *et seq.*):

> . . . To engage the responsibility of the Crown to a suppliant under section 19(*c*) it must be shown that an officer or servant of the Crown, while acting within the scope of his duties or employment, was guilty of such negligence as to make himself personally liable to the suppliant, for the Crown's liability under section 19(*c*) if the term liability is a precise one to apply to the Crown, is only a vicarious one. Consequently, the suppliant must allege facts from which negligence on the part of an officer or servant of the Crown may be found, that is to say, facts showing that the officer or servant of the Crown owed a legal duty, whether imposed by statute or arising otherwise, to the suppliant to take care to avoid injury to him, that there was a breach of such duty while the officer or servant was acting within the scope of his duties or employment and that injury to the suppliant resulted therefrom: *vide Lochgelly Iron and Coal Co.* v. *McMullan*, [1934] A.C. 1; *Hay or Bourhill* v. *Young*, [1943] A.C. 92; *The King* v. *Anthony*, [1946] S.C.R. 569.

Now, in this case it is shown by the evidence that the cement floor of the ladies' dressing-room had been painted a month or two before the accident. When Mrs. Meredith first went to the dressing-room there was water on the floor and more water on the floor when she returned from the pool. There was no matting on the floor though such matting was on the premises. From these facts, the suppliants contend that the condition of the floor in the ladies' dressing-room was dangerous and that due warning of this danger should have been given to the guests. By not wiping or mopping the water on the floor, or putting a matting on the said floor or not warning the guests of the dangerous condition of the floor, it is submitted that some servant of the Crown was negligent in the performance of his duties.

(1) [1946] S.C.R. 569, 570. (2) [1953] Ex. C.R. 22.

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I will first consider the facts and circumstances to see if in reality the floor was in a dangerous condition. One must keep in mind that the ladies' dressing-room was adjacent to the open deck of the swimming pool and contained a shower-room, lockers and dressing cubicles. After bathing, the guests entered the shower-room and then proceeded to the lockers and dressing cubicles. Along the way, water dripped from the bodies and swimming suits. Consequently there was bound to be water on the floor. As to the floor itself, it had a smooth, painted cement surface. The paint was put on for sanitary purposes and for cleanliness. It seems to me that a floor made of smooth concrete does not become dangerous because it is covered with paint; it becomes a little smoother because the paint fills in certain cavities, but to conclude that it becomes a dangerous floor is far-fetched. As to the water, it is agreed that there is always some water on the floor of dressing-rooms close to swimming pools and especially if there is a shower-room therein. This water may make the floor more slippery, but the quantity or depth of the water would have little effect on the condition of the floor. True, matting on the floor may be less slippery, but would be, in my opinion, far from being sanitary, even with the best of care. As to a warning of danger I cannot bring myself to believe that it was necessary, because I cannot think that it would have been noticed or would have made any difference in the way the guests would have walked, ran or acted while in the dressing-room. The flooring described by the witness, in my view, compares with the flooring of most dressing-rooms servicing swimming pools and seems to be the standard type of floor in such establishments.

With regard to the contention that some servant of the respondent was negligent in the performance of his duties on the day of the accident, it is necessary to consider what those duties were.

Mrs. Agnes Truxler was in charges of the ladies' dressing-room on that day. Her duties were to attend people in the steam-rooms, on the deck, issuing towels, etc., and to maintain the ladies' dressing-room in a satisfactory manner and to preserve cleanliness. The floor was to be mopped as became necessary, the object being to keep it as dry and clean as possible.

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At the hearing, when counsel for the suppliants was asked to name the respondent's servants who could be held liable for the damages involved in the present instance, he mentioned Mrs. Truxler and the superintendent of the Park. His argument was that Mrs. Truxler, in charge of the dressing-room, should have mopped the floor so that the water should not have accumulated and that by neglecting to do so she had failed to fulfil her duty to care for the guests who used the dressing-room. The answer to that allegation was that the floor was in its ordinary condition when the place was being used by a large number of persons. A quarter of an inch of water on the floor presented no more danger than if the floor had only been damp. The condition of the floor was well known to Mrs. Meredith, who had been visiting the place regularly in season for the last fifteen years, and offered no danger to her or to other guests. There had never been an accident at this place before. Mrs. Meredith, though she saw the condition of the floor, did not complain to the authorities but took upon herself to use the facilities. Personally, I think she did not believe that the floor was dangerous. If she had thought it dangerous, she would not have used the dressing-room or would have put on shoes or sandals with rubber soles or would have seen to it that the floor had been wiped or mopped. Furthermore, if it was that dangerous, I believe she would have been more careful. I cannot forget the two witnesses who testified that she had said that it was her own fault—or words to that effect. She denied that fact, but the credibility of those witnesses was not challenged and I feel bound to give some weight to their evidence.

As to the superintendent of the Park, he was taken to task for not having seen that the matting was put on the floor. He had given instructions to an employee to do so, but it was not done. I fail to see that he had a duty to care for the respondent in the present instance, which would have included putting a matting on a standard normal floor of a dressing-room. Though I am not clear on this point, I believe that there never had been matting on the floor prior to the accident. The matting had been purchased and was to be put on the floor as an experiment or on trial. He had a duty to the respondent to see that covering

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was put on the floor, but his omission or neglect, in my opinion, did not constitute a breach of private duty toward the suppliants.

I find, therefore, that the floor of the ladies' dressing-room at Miette Hot Spring Bath House on June 21, 1953, when and where the suppliant was injured was not in a dangerous condition, but seemed to meet the standard specifications of similar rooms in such establishments, though there was water on the floor. Mrs. Meredith repeatedly said that the floor covered with water was a danger. If right, she should have avoided using the same or should have been more careful when doing so. Furthermore, the evidence has convinced me that at the time of the accident nobody thought it dangerous to be walking on the floor of the dressing-room.

I also find that the suppliants failed to establish that some servant of the respondent had been negligent while acting within the scope of his duties in taking care of the dressing-room where Mrs. Meredith was injured.

I am of opinion that the suppliant Mrs. Meredith suffered injury through her own fault and carelessness. I repeat, if she knew there was danger, she should have avoided it or have proceeded more carefully on the floor of the dressing-room. It is evident that the suppliants have failed to establish facts which would have been good grounds for their claims.

Therefore, the judgment of the Court is that the suppliants are not entitled to any of the relief sought by them in their petition of right and that the respondent is entitled to costs.

Judgment accordingly.