

HILDA JOHNSON.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT

1931  
April 23.  
May 20.

*Crown—Responsibility—Petition of Right*

About 11.30 a.m. on February 10, 1928, suppliant, while entering the Ottawa Post Office to purchase stamps, was struck on the head by an icicle falling from the coping of that building, causing her injury. An employee of the Public Works Department who had full charge and care of the roofs of Government buildings, especially that of the Post Office, and whose duty it was to remove snow and icicles therefrom, passed the building twice on the morning of the accident, first between 8 and 8.30 and again between 9.30 and 10 o'clock, but claims no snow or ice needed to be removed.

*Held* that the omission of the officer, whose duty it was to keep roofs free of snow and ice, to notice the presence of icicles and to remove them, when he had ample time to do so before the accident, constituted negligence, making the Crown liable for the damage resulting from such careless omission.

PETITION OF RIGHT seeking to recover damages for personal injuries received while entering the Post Office of the City of Ottawa.

The action was tried before the Honourable Mr. Justice Audette at Ottawa.

*Gordon Henderson, K.C.*, for suppliant.

*H. A. Ayles* for respondent.

The facts are stated in the Reasons for Judgment.

Audette J. now (May 20, 1931), delivered the following judgment.

The suppliant, by her Petition of Right, seeks to recover damages for personal injuries received under the following circumstances.

On the 10th February, 1928, somewhere around 11.30 in the morning, on her way to purchase stamps at the Post Office, Ottawa, on Sparks street, while having one foot on the sidewalk and the other foot on the first step of the western entrance on Sparks street, she was struck upon the head by icicles which fell from the building. She saw on the sidewalk the icicle that struck her. This first step, according to witness Randall, overlaps the sidewalk, extending 2½ feet from the building and is on the cement pavement. On her way in she met witness, Miss Dumouchel, who testified seeing blood coming out of the petitioner's head—

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blood was streaming down her face. She brought her upstairs by the elevator and then Mr. Aiken asked her, with the aid of one employeë of the Post Office, to take the suppliant down to the hospital, which she did. Miss Dumouchel adds that the suppliant was nervous, a nurse came and gave her something and suppliant fell unconscious for a while.

The petitioner contends she was in a state of good health before the accident. She had, however, been treated before for weakness. Her doctor told her she was run down and to go to the hospital.

Dr. Fenton, of the staff of the Civic Hospital at Ottawa, treated her at the hospital on the 6th April, 1928, and found she was suffering from nervous exhaustion and diagnosed her disease as neurasthenia. She suffered from spells which are usually noticeable during pregnancy. There was no bone broken and no sign of epilepsy that he could observe and no permanent injury, and he filed as Exhibit No. 1 the analysis of her examination. The suppliant is married, the mother of five children and had a great deal of family trouble. She is separated from her husband.

Dr. Cathcart examined the suppliant on the 19th March, 1931, and was of opinion, from the nature of her seizure, that she suffered from hysteria which he described as a functional disease of the nervous system, where there is no organic manifestation of the disease of the brain or spinal cord, and that such disease is not caused by ice that might fall on a person's head. His conclusion was that she was suffering from hysterical seizure, and that she did not suffer from epilepsy. Furthermore, that her injury, at the time in question, was a minor one.

Dr. Craig treated her in August, 1928, attending her when she had these seizures and from the reading of medical books, he thought they resembled epilepsy. He, however, testified he is unable to ascribe the accident as the cause of such seizures. He further added he had no personal experience with epilepsy and he could not verify epilepsy, for want of personal experience, in traumatism cause. He did not treat her often. He adds that neurasthenia will create hysterical crises.

The suppliant has had much family trouble. She gave birth to five children. Had a hard time generally, indeed

which would tend to make her nervous and develop neurasthenia; but under the medical testimony on record, I am unable to find she suffers from epilepsy.

Coming now to the question of liability of the Crown under the circumstances, it is necessary to bring her case within the ambit of sub-section (c) of section 19 of The Exchequer Court Act (R.S.C. 1927, ch. 34), which reads as follows:

(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 upon any public work.

To bring the case within the provisions of the section, there must be 1st—a public work; 2nd—there must be some negligence of an officer or servant of the Crown acting within the scope of his duties or employment; 3rd—the injury must be the result of such negligence.

I find first that the Post Office is a public work of Canada.

Coming to the second and third requirements, the evidence of Mr. Shearer, the Superintendent of Public Buildings in Ottawa, established that it is part of his duties to remove snow and icicles on the Post Office. He testified that it is the duty of his men to remove any ice they see on the buildings. On hearing of the accident, he sent his Clerk of Works, witness Randall, to the Post Office, to enquire and report upon the accident, and he reported that there were icicles on the cornice.

This witness said he saw a few icicles, but none, in his view, that could injure anyone.

Witness Mayer, foreman roofer for the Department of Public Works, working under instruction from both witness Shearer and Randall, is in full charge of all roofs and specially that of the Post Office, at Ottawa.

The roof of the Post Office is so constructed that it is unlikely that snow or ice would gather there; but below the roof there are three cornices, one at each story, and snow and ice do gather and accumulate there and it is from such cornices that the ice, which injured the suppliant, fell on the day in question.

This witness Mayer testified that on the day of the accident, on the 10th February, 1928, he passed the Post Office twice, before the accident, viz., between 8 and 8.30 a.m. and between 9.30 and 10 a.m., and testified there was no

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accumulation of snow or ice on the *roof*. He said he saw no icicle that was worth removing, as there was no occasion to open the windows and freeze the inside of the building. He further added that he passed the Post Office *four times* that day, adding I always look up, as it is the *custom*. He said further, we remove snow and ice from cornices; sometimes, not once a month; it is one of these buildings that you need not pay much attention to. Yet another witness, anxious to prove too much, testified that it was the building they saw to first. Mayer said he did not walk around the building that morning, adding, because I know the nature of the building, it is not necessary for me to stop and look at the building. He knew, he said, those icicles would not become dangerous. This witness seemed to take too much for granted. The following question was put to him:—

Q. You did not go around the building and inspect it on any occasion to see if there was any icicle there or not?

and he answered:—

A. After report, I went around and there was nothing to see.

The icicles had then fallen.

The day previous to the accident it had been snowing. The day of the accident was a bright, sunny February day. It is true that with our sudden climatic changes, a reasonable time must be allowed for removing snow and ice, and that in such cases the negligence consists in allowing premises to remain an unreasonable length of time in an unsafe condition. But in the present case the negligence, and there is negligence, consists in witness Mayer taking too much for granted that the cornices were all right. He passed there twice before the accident, as above mentioned, and had he used ordinary care and caution, he would obviously have found the icicles that injured the suppliant and in omitting to do so he was derelict in his duties and the accident occurred through such negligence.

Other witnesses saw, on the sidewalk, broken pieces of icicles, which must have caused the accident and they were obviously large enough to injure a pedestrian passing near the Post Office. *Meredith vs. Peer* (1).

Counsel for the Crown cited at bar the case of *Leprohon vs. The Queen* (2), but that case must be distinguished from

(1) (1917) 35 D.L.R. 592.

(2) (1894) 4 Ex. C.R. 100.

the present one in that the Post Office in that case was situate around forty feet from the municipal sidewalk in the city of Three Rivers, P.Q. Here the Post Office abuts on the sidewalk and even overlaps it, according to the evidence.

Approaching the question of damages, one finds that the Petition of Right does not mention any amount. However, I find that the suppliant has substantiated her claim; but there is no permanent incapacity resulting from the accident. She suffered the injury, was taken to the hospital, incurred medical expenses and lost time—although her occupation did not bring large return, yet it did some. Under all the circumstances of the case, I will fix the amount of damages at the sum of \$300.

Therefore there will be judgment declaring that the suppliant is entitled to recover from the respondent the sum of \$300 being the relief sought by her Petition of Right and with costs in her favour.

*Judgment accordingly.*

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