

1918
June 15.

IN THE MATTER OF THE PETITION OF RIGHT OF
DAME LOUISE BONIN,
SUPPLIANT,
AND
HIS MAJESTY THE KING,
RESPONDENT.

Negligence—Right of action—"Ascendant" relative—Stepmother.

A stepmother is not an "ascendant" relative within the meaning of art. 1056 of the Quebec Civil Code, so as to entitle her to a right of action for the death of a stepson killed while in the discharge of his duties in a ship-yard of the Crown.

PETITION OF RIGHT to recover for the death of an employee while in the service of the Crown.

Tried before the Honourable Mr. Justice Audette, at Sorel, P.Q., June 5th, 1918.

Adolphe Allard, and *P. J. A. Cardin*, for suppliant.

F. Lefebvre, K.C., for respondent.

AUDETTE, J. (June 15, 1918) delivered judgment.

The suppliant, by her petition of right, seeks to recover the sum of \$5,000 for alleged damages arising out of Alfred Goulet's death, resulting from an accident which occurred while he was engaged in the discharge of his duties as boiler-maker in the Government shipyard at Sorel.

On August 11th, 1915, Alfred Goulet was occupied with other workmen in assembling or uniting the head and the shell of a boiler. This head, which, according to the evidence, weighed, according to

some witnesses, about 2,500 lbs., and to others about 4,000 lbs., was suspended on a tackle working on a traveller extending from one end of the building to the other. To the truck, working on this traveller, was attached a block, with 5 or 6 pulleys; and hanging under the block was a large hook, to which was inserted a double strap of chains terminated with hooks opening at a bent of about 45 degrees. These hooks were inserted in the head of the boiler, which was held upright by the tackle, and had thereby been brought close to the shell. All around the inside part of the head was a flange, which at the time of the accident, rested, at the bottom, on the inside, of the shell, which was lying on the ground.

The foreman had gone inside of the shell with the object of bolting the head and the shell together, and finding that the hole on the flange did not quite coincide with the hole in the shell, he called out, "*Donnez un petit coup.*" On this; Alfred Goulet, the deceased, took a crow-bar and raised the head with it. By so doing the head slanted and its weight was released from the tackle and the hooks slipped out, the head falling upon Goulet. He died about an hour and a half after being extricated from underneath this heavy piece of metal.

According to the evidence of the witnesses heard in this case, the use of the crow-bar in the manner mentioned was very dangerous, and a manner of operating unknown to them under such circumstances, and one which never should have been resorted to. The tackle should have been used. Although Alfred Goulet is given a very good character, and is presented as a good and experienced workman, he was condemned by all hands in respect of the use of the crow-bar. This was the sort of work

1918BONIN
v.
THE KING.

Reasons for
Judgment.

1918
 BONIN
 v.
 THE KING.
 Reasons for
 Judgment.

he was daily engaged in, and the tackle was always used to move the head of the boiler; but it is to be assumed that the victim had become so familiarized with this class of dangerous work that he did not see fit to take the precaution consistent with ordinary prudence.

Goulet having died intestate, his brothers and sisters inherited all he had at the time of his death, obviously to the exclusion of his stepmother, who is not a blood relation.

Be the facts as they may, a very serious question of law confronts the suppliant and stands in her way, preventing her from recovering. Indeed, Alfred Goulet is not the son of the suppliant. He is the son of Henri Goulet and of Marie Louise Genereux, his father's first wife, as appears by the baptism certificate filed herein as Exhibit No. 1.

Henri Goulet, the victim's father, married twice, and the suppliant is the second wife and a stepmother to Alfred Goulet, therefore there is no consanguinity or blood relationship between them.

Under Art. 166, C. C. P. Q., children are bound to maintain their father, mother and other ascendants, who are in want. Under Art. 167, sons-in-law and daughters-in-law are also obliged, in like circumstances, to maintain their father-in-law and mother-in-law, and such obligation ceases when the mother-in-law contracts a second marriage, and when the consort through whom the affinity existed, and all the children issue of the marriage are dead. However, the obligation towards a mother-in-law does not extend to a stepmother, who cannot be considered as an ascendant. And, as it is said by Mr. Mignault,¹ no maintenance is due, under the circumstances, "a

¹ *Droit Civil Canadien*, at p. 483.

la seconde femme de mon père (ma marâtre)."
Therefore, a step-mother is not an "ascendant" within the meaning of the Code.

The only right of action the suppliant can have, in the present case, as against the Crown—provided always the facts can be brought within the provisions of sec. 20 of the *Exchequer Court Act*—arises under Art. 1056 of the Civil Code. This article reads as follows:

"In all cases where the person injured by the
"commission of an offence or a quasi-offence dies
"in consequence, without having obtained indemnity
"or satisfaction, his consort and his ascendant and
"descendant relations have a right, but only within
"a year after his death, to recover from the person
"who committed the offence or quasi-offence, or his
"representatives, all damages occasioned by such
death."

Alfred Goulet, after the accident and while alive, had a right of action under Arts. 1053 and 1054, C. C. After his death, without having obtained indemnity or satisfaction, and he being unmarried, his ascendants alone had a right of action, and as his step-mother (*marâtre*) is not his ascendant, within the meaning of the Code, she has no right of action. This right of action did not form part of Alfred Goulet's estate, and can only be exercised by the blood relations mentioned in Art. 1056 of the Civil Code for the torts suffered by them. See Mr. Mignault's *Canadian Civil Law*, Vol. 5, p. 379, and the numerous cases therein cited.

Therefore, the suppliant is not entitled to any portion of the relief sought for by her petition of right, and judgment will be entered for the respondent.

Petition dismissed.

1918

BONIN
V.
THE KING.

Reasons for
Judgment.