

1918
April 27

IN THE MATTER OF THE PETITION OF RIGHT OF
ALDERIC BOYER,

SUPPLIANT,

AND

HIS MAJESTY THE KING,

RESPONDENT.

Negligence—Canal—Open bridge—Automobile—Reckless driving.

The suppliant, in the course of a joy-ride, driving an automobile without a chauffeur's license, attempted to cross a Government canal bridge when the bridge was being opened and the gates down, after being signalled to that effect by the bridge-master, resulting in the machine and its occupants plunging into the canal.

Held, under the circumstances and evidence, the suppliant has made out no case against the Crown, and that the accident was brought about by his own negligence.

PETITION OF RIGHT to recover damages for alleged negligence of officers and servants of the Crown.

Tried before the Honourable Mr. Justice Audette, at Montreal, April 19th, 1918.

L. Camirand, and *J. A. Thowin*, for suppliant.

J. A. Sullivan, for respondent.

AUDETTE, J. (April 27, 1918) delivered judgment.

The suppliant brought his petition of right to recover the sum of \$1,525, for alleged damages resulting from an accident which happened while he was driving an automobile, without the license of a

chauffeur, in the course of a joy-ride and in the attempt to cross over the Wellington bridge, over the Lachine Canal, when the bridge was open and the gates down.

At about 4 o'clock, on Sunday afternoon, July 15th, 1917, a vessel was coming up the Lachine Canal, when the bridge-master, standing at point "A" on plan, Exhibit No. 1, rang a first bell, indicating the bridge was to be opened. At this bell, the bridge-tender, or gate-man, being somewhere around point "B" on the plan, put down his southern gates and the motorman got to his post, inside his small building, in the centre of the bridge, 23 feet above the travelled part thereof. This square building has 4 windows overlooking all around.

There being no traffic on the bridge, the bridge-master gave the second bell, which carried with it the order to open the bridge. When hearing the second bell, Drolet, the man in charge of the mechanism, and placed in the small building 23 feet above the bridge, after especially ascertaining there was no one on the bridge, started to open the bridge, which is managed by electricity.

Hanney, the bridge-master, testifies that before he gave the second bell, he ascertained there was no one on the bridge, and that the gates were down; and adds, that no one was in sight at the time the gates were put down.

However, after the second bell, and when the bridge had started to move, he says he saw an automobile, by St. Patrick Street corner, coming from Verdun toward Montreal. He then "halloed" to the gateman, on the south-eastern side, to stop the

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automobile, and he himself shouted once or twice. Mullin, the gateman, standing in the street, put up his hands to stop the automobile; but its occupants paid no heed to his warning, and he had to run out of the street not to be knocked down.

Coming at a rate of speed between 16 to 17 miles, according to some witnesses, and at 18 to 20 miles an hour, according to others, the automobile dashed into the gate. The radiator of this McLaughlin machine smashed the leg of the gate, raised the hand or gate, and coming to the edge of the approach, which the bridge had already left, plunged into the canal with its 5 occupants.

The support of the gate had been broken, the hand of the gate scratched, forced and strained. From that time on until the gate was repaired on the Monday, ropes were used in place of the gate, which was taken down on the Monday and repaired, as testified by the foreman of the machine shops at the Lachine Canal.

Freed from unnecessary details, these are the facts as testified by witnesses, who impressed me both by their demeanour and the honest manner in which they gave their evidence. This evidence is the result of the testimony of the bridge-master, the gateman, the engineer at the bridge, and also by an entirely disinterested intelligent witness, an employe of the Montreal Street Railway, who was stationed on the south-eastern end of the bridge, and who witnessed the accident.

In face of this evidence, the suppliant, who was heard as a witness, under his oath testified the gates were opened and that no signal to stop was given him. Repeating if the gate had been closed, he

would not have passed, and that after getting beyond the gate the left wheel of his motor ran onto the moving bridge, where, after being suspended for a short while, they plunged into the canal, as above mentioned. The suppliant further stated he perhaps touched the gate with the top of the motor, but that he did not perceive it himself. This painfully reckless testimony is corroborated by one of the occupants of the automobile, who was asked whether he had heard the suppliant giving his testimony, and whether he approved of it, and he answered in the affirmative.

The other two occupants of the automobile, besides the child, were not heard as witnesses.

As a sequence of this testimony, the suppliant charges the officers of the Crown with negligence for leaving the gate open and for want of giving warning when the bridge was open. Is such behaviour and testimony the result of mental insolvency or of dishonesty?

However, without unqualified hesitation, I find the evidence adduced on behalf of the suppliant as most unreliable, and disbelieve it. The abuse of the sanctity of an oath was most manifest in the present case. I will leave the persons who have been guilty of such an abuse to settle the matter between their conscience and their God.

I leave the case at this point untrammelled with any further details which would only go towards establishing more clearly the result I have arrived at.

The case is not proven.

The suppliant has been financially the victim of his foolhardy and reckless driving. Seemingly the

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case would, with greater propriety, under the circumstances, have come before this Court at the instance of the Crown for the damages caused by the suppliant.

There will be judgment dismissing the action, and with costs, in favour of the Crown.

Petition dismissed.