

IN THE MATTER of the Petition of Right of

1907
March 18.

DAME CLARA E. MASSICOTTE.....SUPPLIANTS ;

AND

HIS MAJESTY THE KING.....RESPONDENT ;

*Government steam dredge—Negligence of employee—Boiler explosion—
Fatal injury—Liability of Crown—Public work.*

B., an employee on board of a dredge belonging to the Dominion Government, was charged with the duty of keeping the boilers supplied with water, the condition of the boilers being indicated to him by means of water-gauges. These gauges demanded unremitting attention owing to the peculiar character of the boilers. B. was instructed by the engineer and fully understood that these gauges demanded his unremitting attention, and that it was dangerous for him to leave except momentarily a position which gave him a view of some of the gauges. B. left such a position for about ten minutes, going to another part of the dredge, and during his absence one of the boilers exploded and he was fatally injured. Upon a petition of right by his widow for damages,

Held, that the accident was attributable to B's own neglect, and that the petition must be dismissed.

Quere: Whether the dredge was a "public work" within the meaning of sec. 20 (c) of *The Exchequer Court Act*.

PETITION OF RIGHT for damages for injury resulting in the death of the suppliant's husband on a Government steam dredge within the Province of Quebec.

The facts are fully stated in the report of the Registrar printed below.

June 15th, 1905. The case was referred to the Registrar for enquiry and report.

December 5th, 1905. The Registrar now filed his report which was as follows:—

"Whereas by an order made herein on the 15th day of June, A.D. 1905, by the Honourable Mr. Justice Bur-

bidge, the matters in question in this case were referred to Louis Arthur Audette, Registrar of this court, for enquiry and report, under the provisions of section 26 of *The Exchequer Court Act*, the rules of court and the amendments thereto in respect of the same;

1907
 MASSICOTTE
 v.
 THE KING.
 ———
 Statement
 of Facts.
 ———

“And whereas the reference was proceeded with before the undersigned, at the town of Sorel, on the 28th and 29th days of June, A.D. 1905, and at the city of Montreal, on the 20th day of July, A.D. 1905, in the presence of E. Brassard, Esq., and P. G. Martineau, Esq., of counsel for the suppliant, and L. P. Bérard, Esq., of counsel for His Majesty the King; and upon hearing read the pleadings, and upon hearing the evidence adduced and what was alleged by counsel aforesaid, the undersigned submits as follows:—

“The suppliant brings her petition of right to recover the sum of \$8,000 for alleged damages resulting from the death of her husband who was killed by one of the boilers of the dredge *J. Israel Tarte* which exploded on the 3rd of November, 1903, while engaged at Lake St. Peter on Government works. She claims that her husband was so killed on a public work through the negligence of the employees of the Crown while acting within the scope of their duties or employment.

“The respondent admits that the suppliant’s husband was so employed on board the said dredge and that he was killed in the above mentioned manner, but through his own negligence, he being the one in charge of the boiler which so exploded.

“Now there were four locomotive boilers in use on the dredge, and the water was fed into each boiler by means of a steam pump sending water by a main pipe to which was attached a small distributing pipe connecting with each boiler. This pump was proved to be amply sufficient to supply the water to the four boilers. There was a glass gauge at each end of each boiler, *i.e.*, there were

1907
 MASSICOTTE
 v.
 THE KING.
 Statement
 of Facts.

eight glass gauges in all. One set of four were at one end where the man in charge of them stood, and the other four were placed at the other end of the boilers, for greater security, at the end where the firemen were working.

“ At the time of the accident in question, which resulted in the death of Theophile Brunelle, the latter was in charge of these gauge-glasses which serve as an index to what is going on inside the boilers, showing the height of the water therein. That was the work assigned to him by the engineer in charge, and Brunelle had been performing it both during 1903 and sometime during 1902, and was looked upon as perfectly competent to discharge that duty, and he had nothing else to do but to watch these glass gauges and supply water as required to each boiler by means of a valve on top to be opened or closed as required. The glass guages placed at the extremity of the boilers where the fireman were working were a kind of check upon the other four and Brunelle could refer to them when he wished, and it was the custom of the man in charge to go two or three times per hour to that end and look at them, and it is a matter of half a minute to go to those near the firemen.

“ This work of controlling these gauges and feeding the boilers was looked upon as easy and not difficult; but as in these locomotive boilers the water goes up and down in a comparatively short time, and use quite a quantity of water, Brunelle’s work required a constant, assiduous watch.

“ Jean Bilodeau, engineer in charge of the dredge, performed Brunelle’s work during four and a half to five months the first year, besides his own work of engineer, and at that time they had no glass guages on the fireman’s side of the boiler.

“ Felix Saint-Martin who was discharging the same duties as Brunelle during 12 hours of the day, while

Brunelle had the other 12 hours, says he was always watching his glass gauges, and that he had to go and look at them every seven or eight minutes. He contends he could not remain seven or eight minutes without seeing to the gauges, and that he never failed in this obligation.

1907
 MASSICOTTE
 v.
 THE KING.
 Statement
 of Facts.

“The consensus of opinion is, and all the witnesses to whom the question was put are of opinion, that the cause of the accident was the want (*manque*) of water in the boiler which exploded. Who was the officer in charge whose duty it was to look to that very thing not occurring? It was Brunelle.

“Now, what did happen to Brunelle at the time of the accident? Where was he? Was he at his post near the glass gauges? The evidence shows us he was on deck.

“According to the evidence it takes about half a minute to go from the four glass gauges immediately under Brunell’s care to the four other checking glass gauges at the firemen’s quarters.

“Then we have the evidence of Napoleon Dumas, a fireman at the time of the accident, who says that Brunelle had left the firemen’s quarters, inspecting the gauges there, “ten minutes, seven or eight minutes, ten minutes “at most before the explosion.”

“Then we have the evidence of Adeodas Cherrier, the assistant engineer on board the dredge, who comes and tells us that Brunelle “at the time of the explosion “was with him on the bridge, inside, at the platform, “just opposite from where they start to leave the engine, “that is where they were stopping (*c’est l’où qu’on était arrêté.*”) Asked at what distance Brunelle was from the feeding pipe, witness says there were two small flights of steps to go down, one of three steps and the other of five or six steps. Asked at what distance he was from Brunelle, he says he was alongside of him when

1907
 MASSICOTTE
 v.
 THE KING.
 ———
 Statement
 of Facts.
 ———

the explosion took place, and Brunelle was on duty at the time, and was coming from the fire-hole, and he told him that he was coming from the engine and that he was going to the stern * * * he was coming back from verifying the gauges in the bow of the dredge.

It was while standing on deck with Cherrier that the boiler exploded and went up about 100 feet in the air. Brunelle then ran away with the view of protecting himself, but it struck him on the back of the head and broke one of his legs. Had he been at his post or remained on the bridge at the place he was at the time of the accident, he would not have been touched, but the irony of fate willed it otherwise.

“Engineer Desy took Brunelle to the hospital after the accident, and as people were saying he had been the cause of the accident, he told Desy that what he was most sorry about and regretted the most, was that he was accused of having been negligent, not having kept water in the boilers * * *

“Now in view of what has been said, if we look for some officer or servant of the Crown whose negligence can have caused the accident, we would obviously say that Brunelle was the person to see that there should be water in the boilers. Moreover, if we pursue this course and ask ourselves where was Brunelle at the time of the accident? It would appear that, while the inspection of the gauges at the fire-hole might take half a minute, he had left them about ten minutes before the explosion, and that on his way back he had met Cherrier on the bridge and that they were both standing there at the time of the accident.

“I regret to say that the late Brunelle had but himself to blame for the accident, and that under the circumstances the suppliant cannot recover.”

October 26th, 1906. The case now came before the court by way of appeal by the suppliant from the Registrar's report.

P. G. Martineau, K.C., for the suppliant;
L. P. Bérard for the respondent.

1907
MASSICOTTE
v.
THE KING.
Reasons for
Judgment.

BURBIDGE, J. now (March 18th, 1907,) delivered judgment.

The suppliant is the widow of Theophile Brunelle, who being on the 3rd day of November, 1903, employed on the Government dredge *J. Israel Tarte*, was killed by the explosion of one of the boilers of the dredge. The explosion, it appears, occurred because there was not sufficient water in the boiler, it being the duty of the deceased at the time to attend to that matter.

The claim is based upon the statute that gives the court jurisdiction to hear and determine, among other things, every claim against the Crown arising out of any death on any public work resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment (1). On the question as to whether this accident happened on a public work within the meaning of the statute, I express no opinion one way or the other. It is not necessary to do so, in the view which on the other branch of the case ought, it seems to me, to prevail. The Registrar of the court, to whom the matter was referred for enquiry and report, has found that the deceased met his death in an accident which happened by reason of his own neglect, and not by reason of the negligence of any other servant or officer of the Crown. On the appeal from the Registrar's finding on this question of fact it was contended that as the type of boilers used on this dredge required constant and exacting care and watchfulness to see that sufficient water was maintained therein, and that any neglect of duty in that behalf was likely to lead to an explosion, Brunelle's superior officers were negligent in permitting him to be and remain in charge of such

(1) R. S. C. 1906, c. 140, s. 20 (c).

1907
MASSICOTTE
v.
THE KING.
Reasons for
Judgment.

boilers. But surely that was a matter for himself to decide and not for them. He knew as well as they the care that was required and the danger to which he and others were exposed in case he neglected his duty. It is clear, I think, that the accident happened through his own fault and not through the neglect of his fellow-servants.

There will be judgment for the respondent, and a declaration that the suppliant is not entitled to any portion of the relief sought by her petition.

Judgment accordingly.

Solicitors for suppliant: *Gouin & Brassard.*

Solicitor for respondent: *L. P. Bérard.*
