

47, 1935

IN THE PRIVY COUNCIL

No. 49 of 1934

15077

ON APPEAL FROM THE COURT OF KING'S BENCH
OF THE PROVINCE OF QUEBEC.

B E T W E E N

MADAME THOMAS POTVIN, as well personally
as in her capacity of tutrix and ROSANNA
POTVIN (Plaintiffs) ...

UNIVERSITY OF LONDON
W.C.1
Appellants

- and -

THE GATINEAU ELECTRIC LIGHT COMPANY
LIMITED (Defendant) ...

INSTITUTE OF ADVANCED
LEGAL STUDIES
Respondent

16 NOV 1956

CASE FOR THE RESPONDENT.

1. This is an appeal in forma pauperis by ^{Record} p.322
special leave from a judgment dated the 27th April, p.282
1934, of the Court of King's Bench of the Province
of Quebec whereby by a majority (Sir J.M. Tellier,
Chief Justice, Rivard and Hall JJ.; Bernier and
Letourneau JJ., dissenting) the Court dismissed
with costs an appeal from a judgment of the Superior p.270
Court (Trahan, J.) dated the 19th January, 1933 p.1
dismissing with costs a claim by the Appellant
Madame Thomas Potvin made on her own behalf and as
tutrix of three minor children of Thomas Potvin her p.7, 1.4
deceased husband (of whom one the Appellant Rosanna p.7, 1.20
Potvin has since become of age and another Joseph
Arthur will become of age on the 25th August 1935)
for damages arising from the death of her said
husband as a result of an electric shock.

2. The question for decision is whether in the
circumstances proved at the trial the Respondent
is liable under the following articles of the Civil
Code:

RESPONDENT'S CASE.

Record

"1053. Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

"1054. He is responsible not only for the damage caused by his own fault, but also for that caused by the fault of persons under his control and by things he has under his care;

"The father, or, after his decease, the mother, is responsible for the damage caused by their minor children;

"Tutors are responsible in like manner for their pupils;

"Curators or others having the legal custody of insane persons, for the damage done by the latter;

"Schoolmasters and artisans, for the damage caused by their pupils or apprentices while under their care.

"The responsibility attaches in the above cases only when the person subject to it fails to establish that he was unable to prevent the act which has caused the damage.

"Masters and employers are responsible for the damage caused by their servants and workmen in the performance of the work for which they are employed.

"1055. The owner of an animal is responsible for the damages caused by it, whether it be under his own care or under that of his servants, or have strayed or escaped from it.

"He who is using the animal is equally responsible while it is in his service.

"The owner of a building is responsible for the damage caused by its ruin, where it has happened from want of repairs or from an original defect in its construction.

"1056. 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.

"In the case of a duel, action may be brought in like manner not only against the immediate author of the death, but also against all those who took part in the duel, whether as seconds or witnesses.

"In all cases no more than one action can be brought in behalf of those who are entitled to the indemnity and the judgment determines the proportion of such indemnity

which each is to receive.

"These actions are independent of criminal proceedings to which the parties may be liable and are without prejudice thereto."

3. The Respondent near the village of Bois-Franc in the Gatineau Valley owns and operates a sub-station and transformer where electric current of 30,000 volts is taken from a line of the Gatineau Power Company and transformed to current of 2,200 volts for distribution to the Respondent's customers in the neighbouring village of Montcerf. The sub-station is at the side of the road and consists of a transformer resting on skids with a super-structure of wooden poles with wooden cross arms carrying high tension wires, a choke coil, a switch and an S. & C. fuse to protect the transformer from excessive current. The fuse is about twenty feet from the ground. The transformer is surrounded by a wire mesh fence and is separated from the roadway by a narrow strip of land and a ditch about four feet wide. A plan and photographs of the sub-station were given in evidence but the warning of danger shown in the largest photograph was not put up until after the accident giving rise to this Appeal.
4. On the evening of the 31st August, 1929, a thunderstorm broke over the district and lasted until about 9 o'clock after which the rain continued without thunder. At 10 o'clock or thereabouts Thomas Potvin and four companions named Renaud, Curry, Carey and White passed the transformer station in a motor car and noticed a flickering light at the fuse. Almost immediately afterwards they stopped as Renaud had been accosted by an acquaintance (Leger). They backed the car about 50 feet and
- p.24, ll.15-39;
p.5A.
- p.25, ll.2-20
- p.215, l.41
- p.131, ll.34-44.
- p.214, l.40-
p.216, l.23
- p.216, l.33-
p.218, l.12.
- pp.21B, 10A
- 10B, 21A
- 10A, p.96,
ll. 1-20
- p.97, ll. 15-20;
p.135, l.21
- p.62, ll. 35-40;
p.57, l.13
- p.58, ll.4-25

Record.

parked it in front of the transformer station on the opposite side of the roadway. Renaud alighted and went to converse with Leger. Potvin alighted and passed round the front of the car and between it and the transformer station towards the back of the car. None of his companions saw what Potvin did, although there was disputed evidence that Renaud had said that Potvin had climbed the fence or a pole with a remark that his father was a fireman and that he was going to put out the fire. Renaud according to his own account, was talking to Leger when he heard a noise, turned round, saw a flash and found Potvin on the ground. Curry had also alighted and had his back to the transformer. He heard a shout and found Potvin injured. Carey was getting out of the car when there was a flash and he saw Potvin falling. White, who had remained in the car, shut his eyes. He was startled by a flash and saw Potvin, then a distance of two feet from the ground, falling backward from the transformer station towards the ditch with a zigzag light from the fuse to Potvin's head. Potvin was severely burned and on the 11th September 1929, he died. The flickering light at the fuse continued after the accident exactly as before. Potvin's companions gave him prompt assistance and went about the scene of the accident without suffering any hurt.

p.154, l.18
 p.202, ll.2-8
 p.193, l.45-
 p.194, l.29;
 p.209, ll.25-31;
 p.90, l.19-p.91,
 l.25; p.94, l.29.
 p.59, ll.11-14
 p.80, l.18-p.82,
 l.15
 p.168, ll.27-38
 p.172, ll.1-3
 p.154, ll.22-35;
 p.156, ll.20-40
 p.138, ll.20-30
 p.147, l.17-
 p.148, l.35.
 p.124, ll.25-40
 p.62, ll.20-30;
 p.141, l.20;
 p.149, l.40
 p.61, ll.11-40;
 p.140, ll.35-45;
 p.154, ll.30-40;
 p.169, ll.12-16.

5. The action was commenced on the 10th September, 1930, and at the trial the facts set out in paragraphs 3 and 4 of this Case were proved. Technical evidence was given. The Appellants called one Archambault an engineer of the Public Service Commission who produced a report made by him to the Commission on the 4th January, 1930, to which

p.133, ll.19-30
 pp. 11-20.
 pp. 20-21.

effect was given by an order of the Commission dated the 6th January 1930. The Respondent called expert witnesses who, (as the trial Judge and the majority in the Court of King's Bench found) proved that the accident could not have happened unless Potvin had climbed up on the fence or one of the poles of the sub-station. This theoretic conclusion was supported by the above-mentioned disputed evidence of statements to that effect by Renaud; by evidence that after the accident the strands of the fence were bent as if someone had been standing on them; by the fact that witnesses whose backs were turned when the flash occurred on turning saw Potvin falling and one of them (White) on turning saw Potvin still two feet from the ground, and by the fact that immediately afterwards Potvin's companions and others continued at the scene of the accident, while the fuse was still burning, without suffering any hurt.

6. By his judgment of the 19th January, 1933, the Honourable Mr. Justice Trahan dismissed the action with costs. He held that Article 1054 was inapplicable to the case, partly on the ground that the article does not govern liability for immovables. To establish liability under Article 1055 faulty construction or failure to repair must be proved, and there was no such proof. The learned Judge found as a fact that the defect causing the flickering light was due to forces of nature for which the Respondent was not responsible and was a defect which the Respondent had had no opportunity of correcting; that Potvin's own recklessness had caused his death by reason of his having climbed up to put out the flame and in so doing had touched a live wire; and that the proved facts absolved

Record.

pp.22-39; 213-248; 249-266

p.198, 1.10;
p.227 11.30-46;
p.248, 1.28

pp.270-280

p.271, 1.21-
p.275, 1.41

p.275, 1.42-
p.278, 1.20

p.277, 1.30-
p.278, 1.20

p.278, 1.20-
p.280, 1.21

p.280, 11.22-32

Record.

the Respondent from blame and showed Potvin to be alone responsible for the accident.

pp.282-284 7. The Appellants appealed to the Court of King's Bench which on the 27th April, 1934, dismissed the appeal with costs. The Court disagreed with the trial judge's opinion that Article 1054 had no application, but held that the cause of the accident was Potvin's unjustified conduct. Consequently the Respondent had exculpated itself from liability under Article 1054.

p.285, 11.3-8 8. The Honourable Chief Justice rested his judgment on the short ground that the Respondent had proved Potvin's fault to be the cause of the accident.

p.285, 1.22-
p.287, 1.17 9. The Honourable Mr. Justice Rivard held that the Appellants had failed to prove any liability under Article 1053. There was no evidence that Potvin's death was attributable to any delict or quasi-delict by the Respondent. Nevertheless he considered Article 1054 to apply so as to raise a presumption against the Respondent. The presumption was rebutted, however, by the evidence, which proved the accident to be due to Potvin's folly and fault.

pp.291-295 10. The Honourable Mr. Justice Hall set out the facts. He agreed with the learned trial judge that there was no defect in the equipment and no evidence of actual negligence. Article 1054 was applicable, however. The learned judge then reviewed the evidence and found that the presumption under Article 1054 was rebutted and that the accident was due to the victim's own fault.

pp.302-304 11. The Honourable Mr. Justice Bernier dissented.

He did not think that the evidence rebutted the presumption arising under Article 1054. He agreed with the conclusions reached by the Honourable Mr. Justice Letourneau who also dissented. The latter Judge set out the facts and came to the conclusion that the Appellants had failed to establish liability under Article 1053. The Appellants were entitled to rely on Article 1054 under which (apart from "force majeure" and "cas fortuit") the Respondent could only exonerate itself by definite proof of some specific fault on Potvin's part, and had failed so to exonerate itself. In the Respondent's respectful submission the burden thus put upon the Respondent is much heavier than is warranted by Article 1054, but the Respondent also submits that in any case it was fully discharged by the evidence given. The dissenting judges assessed the damages at \$12,000 in all.

pp.305-308

pp.309-312

p.312, l.35-
p.321, l.12.p.304, l.30;
p.321, l.12.

12. The Respondent respectfully submits that the judgment appealed from is right and should be affirmed for the following amongst other

R E A S O N S

1. BECAUSE Thomas Potvin's death was caused by his own fault.
2. BECAUSE there are concurrent findings of fact in the Courts below that no fault was proved against the Respondent and (by the trial judge and the majority of the Court of King's Bench) that Thomas Potvin's death was proved to have been caused by his own fault.
3. BECAUSE Thomas Potvin's death was not caused by a thing under the Respondent's care so as to raise a presumption against the Respondent under Article 1054.
4. BECAUSE the Respondent completely rebutted any presumption against the Respondent arising under Article 1054 or otherwise.

8.

5. BECAUSE the Respondent had been guilty of no offence or quasi-offence.
6. BECAUSE there was no evidence of any fault on the part of the Respondent causing or contributing to the fatal accident to Thomas Potvin.
7. FOR the other reasons given by the trial judge and the majority of the Court of King's Bench.

STUART BEVAN

FRANK GAHAN

IN THE PRIVY COUNCIL

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BENCH OF THE PROVINCE OF QUEBEC.

BETWEEN

MADAME THOMAS POTVIN, as well
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tutrix and ROSANNA POTVIN
(Plaintiffs) Appellants

- and -

THE GATINEAU ELECTRIC LIGHT
COMPANY LIMITED (Defendant)
Respondent

CASE FOR THE RESPONDENT
