CANADIAN NATIONAL RAILWAYS COMPANY (DEFENDANT) ..... APPELLANT;

AND

DAME ALBERTINE LEPAGE (PLAINTIFF) ..... RESPONDENT.

1927
*May 25.
*June 17.

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

Railways—Negligence—Station—Waiting-room—Door leading to cellar—Unlocked and no sign—Accident—Person falling down—Liability of railway company.—Art. 1053 C.C.

A station owned by the appellant railway company contained a waiting-room inside of which were four doors: one leading to, or from, the platform on the track side; a second to the office of the station master

PRESENT:—Anglin C.J.C. and Mignault, Newcombe, Rinfret and Lamont JJ.

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from which tickets were sold; a third bearing on a metal sign "Water closet," and a fourth, unmarked, situated at the rear, was giving access to a landing place at the head of the stairs leading to the cellar. At night, the waiting-room was well lighted while the landing and the staircase were dark. The respondent's husband, after sitting in the waiting-room for some time, was seen to get up, to walk towards the rear and to open the door leading to the cellar stair-case. He was heard to fall to the floor below and, being found lying unconscious, died the next evening from a fracture of the skull. The respondent took the present action in damages, alleging fault under art. 1053 C.C. consisting in the neglect of the railway company to indicate that ingress through that door was forbidden and in the omission of its employees to keep the door locked.

Held, reversing the judgment of the Court of King's Bench (Q.R. 43 K.B. 342), that the railway company was not liable. Besides the accommodation and facilities provided for its passengers in a station, a railway company can also have rooms and offices for the exclusive use of its employees, and the public cannot assume that access is allowed through all the doors opening into or leading out of a waiting-room. When the doors intended for public use are indicated, failure to put on the other doors notices that ingress through them is forbidden does not amount to negligence; on the contrary, the absence of any notice should put the public upon inquiry whether it should attempt to open these doors and to proceed further into a place where it has no business. But, even if the failure to keep the door locked would amount to legal negligence on appellant's part, the latter is still free from liability, as the cause of the accident was the deceased's own want of caution in proceeding beyond the door in the dark and in a strange place.

Knight v. *Grand Trunk Pacific Ry. Co.* ([1926] S.C.R. 674) and *Walker* v. *Midland Ry. Co.* (55 L.T.R. 489) discussed.

APPEAL from the decision of the Court of King's Bench, appeal side, province of Quebec (1) affirming the judgment of the Superior Court at Rimouski, D'Auteuil J. and maintaining the respondent's action in damages for $11,413.80.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgment now reported.

C. V. Darveau K.C. and *I. C. Rand K.C.* for the appellant.

L. St. Laurent K.C. and *A. Taschereau* for the respondent.

The judgment of the court was delivered by

RINFRET J.—Some few minutes after nine o'clock in the evening the respondent's husband, Alphonse Talbot, was in the waiting-room of the station owned by the appellant

(1) (1927) Q.R. 43 K.B. 342.

railway company, at Mont Joli. Although the train he intended to take was due only at 11.50 p.m., it is not disputed that Talbot stayed where he was with the acquiescence of the company.

The waiting-room had four doors: one leading to, or from, the platform on the track side; a second to the office of the station-master, from which, as usual, tickets were sold through the wicket; a third bore on a metal sign fastened to it the inscription in large yellow letters: "Water Closet" —"*Chambre de toilette*"; and the fourth, unmarked, was at the rear to the right hand of one entering the waiting-room from the station platform. This latter door opened inwards and gave access to a landing place at the head of the stairs leading to the cellar, which stairs descended at right angles to the doorway. In stepping on the landing, one found a blank wall in front of him; so that, in order to descend the steps, he had first to turn to his right and then go down. The top landing was thus encased on three sides by the walls of the building and the door, with a floor space of 3 feet 10 inches wide between the latter and the wall opposite and extending on the stair side (as the evidence shows) from one to two feet beyond the door. There was nothing unusual about these stairs. They were just ordinary stairs (*comme un autre escalier*). It was suggested that two employees had already fallen when descending, but no proof was made of the actual occurrences, far less of the surrounding circumstances, and no conclusions can be derived therefrom relevant to the present action.

The station-master tells us the use to which the cellar was put:—

> Il y a la fournaise, du charbon, des affaires, du matériel pour les employés, les lampes, des chambres pour le *supply* électrique, différentes choses, des batteries dans une autre chambre, une autre chambre pour le laveur, celui qui balaye, séparément, et ça passe par cette porte-là.
>
> Q. Est-ce qu'il y avait beaucoup de circulation dans cet escalier-là?
>
> R. Oui, passablement: 3 porteurs, 2 baggage-men, l'homme des lampes, 2 baggage-men et l'homme de la station, 4 *trans-shippers* qui prennent leurs quartiers là, et quand on a besoin d'eux autres, on va les chercher là, ils ont soin de la fournaise.

None but employees of the company had any business in the cellar and it was common ground that the door leading to it was not intended to be used by the public. For

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the last three years it had been the habit to leave it unlocked, and it was so on the night in question.

Talbot had been sitting in the waiting-room for some time, on a seat facing the toilet-room, his travelling bag beside him. He was seen to get up (although he left his bag by the seat), to walk towards the rear, to open the door leading to the cellar stair-case and to pass through it. Then he was heard to fall to the floor below. Those who had been in the waiting-room at once went down to the cellar, where he was found lying unconscious. He died the following evening from a fracture of the skull caused by the fall.

The waiting-room was well lighted, while the landing and the stair-case were dark. All these facts are undisputed and liability admittedly depends exclusively upon the inference to be drawn from them.

The widow and the children brought action against the company. The only charge of negligence in the declaration was:—

Les employés de la défenderesse, par leur faute et leur négligence grossière, avaient omis de fermer cette porte à clef.

The case was tried without a jury and the trial judge held that the door (which he found to be for the exclusive use of the employees) should have been locked, but had been left ajar, so that Talbot evidently believed and had reason to believe that this door was an exit or, at least, was intended to be used by the public. He thought the company had been negligent.

dans le fait d'avoir laissé cette porte ouverte sans indication que l'usage en est interdit au public.

Three of the judges of the Court of King's Bench adopted the reasoning of the trial judge, while the two others, Dorion and Allard JJ., were of the contrary opinion and would have dismissed the action.

The respondent's case is rested on fault consisting not in any positive act or imprudence, but in the neglect of the company and its employees (art. 1053 C.C.). The fault ascribed to the employees is their omission to keep the door locked, and to the company, its failure to indicate that ingress through that door was forbidden.

It is a familiar principle that neglect may, in law, be considered a fault only if it corresponds with a duty to act.

What, then, was the duty of the company towards the deceased?

No doubt, if the door had been locked, the accident would not have happened. Such, however, is not the test, and the duty must be made out upon legal grounds.

Railway companies must maintain and operate stations and provide them with accommodation and facilities for their passengers; but these stations are their private property, and it is necessary and proper that the companies should operate them also for their own convenience and the carrying out of their work and duties. A waiting-room is, of course, one of the facilities expected in a railway station, and an intending passenger is entitled to the use of it. In some stations, but not by any means in all of them in the country districts, a toilet-room connecting with the waiting-room is also provided. This was the case at Mont Joli. Usually several doors open into or lead out of the waiting-room. The public may not assume that access is allowed through all these doors. The company must have rooms and offices for the exclusive use of its employees and the efficient conduct of its business. These rooms and offices may, and often must, open on to the waiting-room.

We know of no reason why the company should expect intending passengers to be likely to open these doors or why the passengers should believe that they are entitled to do so. Generally speaking, and in the absence of some sign or indication from the lay-out, a door leading out of a public room is in itself a warning that access beyond it may be restricted. Passengers at the Mont Joli station were shown by appropriate notices what doors were intended for their convenience and accommodation. The absence of any notice on the door in question should at least have put the deceased upon inquiry whether he should attempt to open it and (more particularly) to proceed further into a place where he had no business. The question for Talbot was not whether there was anything to indicate to him that he should not use the door and stair-way, but rather whether there was anything to indicate to him that he might do so. There may be peculiar circumstances where leaving a door ajar (" entr'ouverte ") is an invitation to enter. More often it is as indiscreet to

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open a door wider, when it is almost closed, as it would be, were it completely closed, to open it at all. Moreover, that, on the night in question, this particular door was ajar is not established. The only evidence upon the point is that of one Lebrun, who says:—

Il a ouvert la porte, elle avait un petit slack, elle n'était pas fermée à net * * *

Q. La porte était entre-baillée?

R. En tout cas, elle n'était pas barrée certain, il l'a ouverte.

We cannot, as a general principle, accept the proposition that, in the waiting-room of a railway station, where the doors intended for public use are indicated, failure to put on the other doors notices that ingress through them is forbidden is negligence.

It was argued, however, that the duty of the appellant was to guard against any mistake which a man might naturally make. Evidence was offered that, to the knowledge of at least one of the employees of the company, there were instances where people had walked to the door and opened it, apparently in the mistaken belief that it led to the toilet-room. That is the strongest point made in support of the respondent's case and was, no doubt, the reason which induced the trial judge to hold

que Talbot * * * avait raison de prendre cette porte comme une porte de sortie ou du moins une porte destinée au public.

The argument is fortified by the fact that this was also the view taken by three judges of the Court of King's Bench. The consequence, it is said, must follow that, in order to guard against this possible mistake, the company should have kept the door locked.

A duty such as this could perhaps be cast upon the company if, beyond the door, a condition of unusual danger was to be found, as, for example, a hole, a precipice, an open trap-door. But such things differ *toto coelo* from this staircase. The basis of a charge of negligence in omitting to lock the door is lacking. There was no duty owing to the deceased to keep it locked.

Counsel have not brought to our attention any decision, under the law of Quebec or of France, applicable to this case. The general principle is laid down in Sourdat, *De la Responsabilité*, 6e éd., vol. 1, no. 661. But the case bears a strong resemblance to *Toomey* v. *London and Brighton Railway Co.* (1), which, although decided under the English

(1) 3 C.B.R., n.s., 146.

law, may be usefully cited as an illustration. On the platform of a railway station, there were two doors in close proximity to each other. One had painted over it the words: "For gentlemen" and the other: "Lamp-room." The plaintiff, being unable to read, inquired from a stranger where he would find the urinal. Having received a direction, he by mistake opened the door to the lamp-room, fell down some steps and was injured. Upon action being brought, the ground taken was that the door should have been kept locked. The plaintiff was non-suited by the trial judge, who said that, in the absence of evidence that the place was more than ordinarily dangerous, no negligence could be found on the part of the company. This judgment was affirmed by the Court of Common Pleas.

But, should we have regarded the failure to keep the door locked as something amounting to legal negligence in the premises, the respondent, in our view, would still fall short of proving that the unfortunate accident was due to this omission. The cause of the accident was Talbot's own want of caution in proceeding beyond the door in the dark and in a strange place. In the previous instances told about in the evidence, where strangers opened this door by mistake, they perceived the imprudence of advancing and they went no further. In the words of one of the witnesses:—

Ils ouvraient la porte, il faisait noir et ils arrêtaient.

We have there a vivid illustration of what a careful and reasonable person would do under these circumstances and what Talbot should have done. Unfortunately, he chose to run the risk of going ahead in the dark and through his own carelessness in so doing he fell down the stairs.

The judgment of the Court of Appeal proceeds largely upon a discussion of the judgment of this court in *Knight* v. *Grand Trunk Pacific Ry. Co.* (1), and the case of *Walker* v. *Midland Ry. Co.* (2), which are the only cases referred to in the reasons of the judges.

Knight v. *G.T.P. Ry.* (1) was a case from the province of Alberta and, although the circumstances were somewhat different, many of the principles there laid down are familiar rules of the civil law applicable here.

As for *Walker* v. *Midland Ry. Co.* (2), we are forcibly reminded of the words of the Earl of Selborne (with whom

(1) [1926] S.C.R. 674. (2) 55 L.T.R. 489.

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Lord Bramwell and Lord Watson concurred) in his speech before the House of Lords. They seem peculiarly apposite and no exception can be taken to them in a case which must be decided upon the law of Quebec. The facts were these: A guest in an inn, the property of the respondent company, left his bedroom in the middle of the night to go to a water-closet. There were properly lighted and easily accesible closets in the same corridor, but he went into a dark "service-room," the door of which was shut, but not locked, and fell down the unguarded well of a lift at the end of the room and was killed. The "service-room" was not lighted or used at night and boarders had no business there at any time. In an action brought by the personal representatives of the deceased, the House of Lords, affirming the judgment of the court below, held that there was no evidence of negligence on the part of the defendant company to go to a jury. After having stated the facts and pointed out the particular circumstances, Lord Selborne said:—

> At the most, these circumstances might explain his first act, in opening the door to see what (if anything) might be discernable within; but when he had done this, and found the room quite dark, I cannot regard either of them alone, or both together, as furnishing reasonable ground for his going forward in the dark to the place where he fell, instead of proceeding a little further along the corridor, where proper water-closets, with proper light, might have been found. Would the respondents have been wrong-doers towards him (all other circumstances being the same) if he had come to a steep staircase instead of the unguarded well of a lift, and had fallen down it? I think not.

The appeal should, therefore, be allowed and the action dismissed. The appellant is entitled to its costs throughout if it elects to claim them.

Appeal allowed with costs.

Solicitor for the appellant: *C. V. Darveau.*

Solicitors for the respondent: *St. Laurent, Gagné, Devlin & Taschereau.*