

COLLETTE v. PONTON

1931

*May 15.

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

Evidence—Marriage—Motor vehicle—Accident—Failure to file marriage certificate—Art. 159 C.C.

APPEAL by the defendant appellant from the decision of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, Loranger J., and maintaining the respondent's action.

The appellant was the owner of a motor truck which was parked in front of his grocery store. One Mrs. Marie Anne Carreau, the alleged wife of the respondent, was standing on the sidewalk just behind the motor truck and when the street car she was waiting for came along she left the sidewalk to reach the street car, but, before reaching the street car, she was hit by the truck of the appellant suddenly started on reverse in order to avoid another accident. She was thrown on the pavement and she suffered a broken wrist. The respondent alleged that he was married to Mrs. Carreau, in the province of Quebec and that they passed a marriage contract stating that they would be in community as to property, and he therefore took alone the action in damages against the appellant for \$15,537.10.

The appellant, by his contestation, declared that he was ignorant of the alleged marriage between the plaintiff and Mrs. Carreau and declined responsibility on the ground that the accident was due to the negligence of Mrs. Carreau herself. Judgment was given in the Superior Court by Loranger J. for \$3,087.10, which judgment was affirmed by the appellate court.

The grounds of appeal were that the alleged marriage between the respondent and Mrs. Marie Anne Carreau had not been legally proven and, therefore, the respondent had absolutely no ground of action; the appellant submitted that article 159 C.C. made it imperative on the respondent to file the certificate of his marriage with Mrs. Carreau, and that even the appellant had no right to make an

*PRESENT:—Anglin C.J.C. and Rinfret, Lamont, Smith and Cannon JJ.

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admission of their marriage, because such admission would be against public order. The other ground was that the amount of the judgment had been arrived at on an erroneous basis, and that it was therefore exorbitant, arbitrary and most exaggerated and far in excess of the damages which had been suffered by Mrs. Carreau.

The first ground was set aside by the appellate court for the reason that marriage had been proved as a result of the questions put by the appellant's counsel to the respondent upon his examination on discovery and that there was no question of public order; and, on the second ground, the appellate court affirmed the amount of damages.

The Supreme Court of Canada, after hearing counsel for the appellant and for the respondent, delivered judgment dismissing the appeal with costs.

Appeal dismissed with costs.

Ls. St-Laurent K.C. and M. Delage K.C. for the appellant.

L. E. Beaulieu K.C. for the respondent.
