PIERRE TANGUAY (DEFENDANT) ....APPELLANT; 1906

AND *Oct. 24, 25. *Nov. 15.

WILLIAM PRICE (PLAINTIFF) .....RESPONDENT.

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

Rivers and streams—Floating sawlogs—Use of booms—Vis major—Action—Salvage—Quantum meruit—Riparian rights.

P. placed booms across a floatable river to hold logs at a place where he had erected a sawmill on land owned by him on the bank of the river. T. had a boom further upstream for storing pulpwood. An unusual freshet broke T.'s boom and brought a quantity of his wood down with the current into P.'s boom, where it was caught and held for some time, until removed by T., without causing any damage or expense to P. In an action by P. to recover salvage or the value of the use of his boom for the time during which T.'s wood had remained therein,

Held, reversing the judgment appealed from (Q.R. 14 K.B. 513), that as P. had no right of property in the waters of the river where he had placed his boom those waters were *publici juris*, notwithstanding the construction of the boom; that T.'s wood came there lawfully, and that, as the service rendered in stopping the wood was involuntary and accidental, P. could recover nothing therefor.

Per Fitzpatrick C.J.—There is no difference between the laws of the Province of Quebec and those of England in respect to the rights of riparian owners to the waters of floatable streams flowing past their lands. *Miner* v. *Gilmour* (12 Moo. P.C. 131) referred to.

APPEAL and CROSS-APPEAL from the judgment of the Court of King's Bench, appeal side (1), reversing the judgment of the Superior Court, District of

*PRESENT:—Fitzpatrick C.J. and Davies, Idington, Maclennan and Duff JJ.

(1) Q.R. 14 K.B. 513.

1906

TANGUAY v. PRICE.

Montmagny, and maintaining the plaintiff's action, to the extent of $100, with costs.

The circumstances of the case are shortly stated by His Lordship, Mr. Justice Maclennan, now reported, and in the head-note. It may, however, be added, that the river in question, Rivière du Sud, is floatable *â bûches perdues,* and that the respondent is riparian owner of the land on the side of the river where his mill was erected and opposite which he had placed his boom across the entire breadth of the stream.

The plaintiff, by his action, claimed $4,000 for the value of salvage of the defendant's wood, and of the use and occupation by the defendant for a period of two months, during which the defendant's wood was allowed to remain in plaintiff's boom.

At the trial Mr. Justice Pelletier dismissed the plaintiff's action for reasons stated as follows:—

"Considérant qu'il est en preuve que le défendeur a, sur la Rivière du Sud, * * à 2 à 5 milles en amont des estacades du demandeur, un barrage pour arrêter et retenir son bois de pulpe;

"Considérant que ce barrage derrière lequel se trouvait une certaine quantité de bois de pulpe appartenant au défendeur et un grand nombre de billots appartenant au demandeur, s'est rompu et que tout ce bois est descendu dans les booms du demandeur et y été retenu;

"Considérant que le défendeur a été chercher son bois dans les booms du demandeur;

"Considérant que le demandeur n'a fait aucune dépense pour reçevoir et retenir son bois de pulpe et le livrer au défendeur;

"Considérant que le fait seul que ce bois appartenant au défendeur a été arrêté et retenu par les

booms du demandeur ne constitue pas une obligation de la part du défendeur d'indemniser le demandeur;

"Considérant que le demandeur n'a pas prouvé que l'arrivée et la rétention de ce bois dans ses booms lui aient causé aucun tort."

1906

TANGUAY v. PRICE.

On appeal, this judgment was reversed by the Court of King's Bench, Lacoste C.J. and Ouimet J. dissenting, and judgment was entered in favour of the plaintiff for $100 with costs, for reasons stated, in the formal judgment, as follows:

"Vu que les parties en cette cause font sur la Rivière du Sud, chacune pour leur propre compte, l'exploitation et la descente de bois de différentes espèces;

"Vu que cette exploitation ne peut être conduite à bonne fin qu'au moyen d'écluses et estacades qui doivent être construites en prévision des crues des eaux, afin de retenir les bois malgré ces crues;

"Considérant que ces écluses et estacades doivent partant être faites, placées et construites de manière à éviter leur rupture et l'entraînment des bois sur les fonds inférieurs;

"Considérant que, dans l'espèce, les estacades établies par le défendeur n'ont pu retenir la grande quantité de bois de pulpe qui s'y trouvait, plusieurs mille cordes qui ont été entraînées dans les estacades du demandeur, solidement établies et renforcées davantage en prévision de la descente des bois du défendeur;

"Considérant que ce flot de bois de pulpe constituait un danger pour l'établissement du demandeur, qui s'en est garé par les travaux susdits;

Considérant que les estacades du demandeur ont empêché les bois du défendeur de descendre jusqu'au fleuve et d'y être complètement, ou à peu près perdus;

1906

TANGUAY v. PRICE.

Considérant que ces bois sont ainsi restés chez le demandeur pendant deux mois et ont été conservés dans ses estacades, d'où ils ont été retirés par le défendeur, à son bénefice, au fur et à mesure qu'il pouvait le faire;

"Considérant que le défendeur s'est partant enrichi aux dépens du demandeur et lui doit compensation pour l'usage d'écluses et estacades, dont il a tiré profit de même que pour les travaux faits en prévision de la descente des bois provenant de la région supérieure;

"Considérant que cette indemnité n'est pas couverte ni prévue par les statuts en vigeur et qu'elle ne peut être établie qu'en vertu des régles du droit commun et de l'équité."

The defendant appealed to the Supreme Court of Canada, and, by cross-appeal, the plaintiff asked that the amount of the judgment in his favour should be increased to $3,000.

Belcourt K.C. and *Turcotte K.C.* for the appellant and cross-respondent. The principle of salvage can have no application. Salvage is an act performed, at the moment of danger, to save a thing from destruction, and the word implies the intention of so preserving it. There must be very meritorious and exceptional services to entitle any one to salvage. There can be no question of lease, mandate or *negotiorum gestio.* Art. 1043 C.C.; 7 Larombière, Obligations (ed. 1885), No. 4, p. 406; 31 Demonlombe, Nos. 56, 57, tome 8, "Contrats." Mandate and *negotiorum gestio* are gratuitous. The *gestor* can recover only his *actual* and useful expenses which he has incurred *specially.* He who performs a work for his own advantage has no claim against a third party who may benefit by

it. Arts. 1702, 1046 C.C.; 20 Laurent, No. 331, p. 359; 8 Huc, No. 384, p. 510; 31 Demolombe, No. 173, p. 153, No. 103, p. 100; 7 Larombière, Obligations, No. 8, pp. 407, 408; 33 Dal. Rép., "Obligation," Nos. 5402, 5403; *Caldwell* v. *McLaren*(1).

There is no action *de in rem verso;* 3 Baudry-Lacantinerie, Obligations, 2e partie, No. 2826, p. 1060.

The respondent suffered no loss or expense by reason of Tanguay's wood being in his boom. *Nemo ex alterius detrimento fieri debet locupletari; Fletcher* v. *Alexander*(2).

This river is naturally floatable, and both its waters and bed are of the public domain; it is a public highway. No one can place any boom or barrier in a floatable stream and exact toll or remuneration on the ground of services rendered without having been thereto previously authorized by competent authority. Art. 400 C.C.; *McBean* v. *Carlisle*(3); *Pierce* v. *McConville*(4); *Atkinson* v. *Couture*(5); *Vézina* v. *Drummond Lumber Co.*(6); 1 Stephens, Commentaries (7 ed.), p. 664; 12 Encycl, Laws of England, "Tolls," p. 85; *Reg.* v. *Patton*(7); *Oliva* v. *Boissonnault*(8).

Stuart K.C. and *Bender K.C.* for the respondent. It is shewn that we have used and maintained the booms which saved the defendant's wood, with piers planted on our lands, for over thirty years. We refer to the reasons of the majority of the judges of the court below, as reported(9), but insist that, on our cross-appeal, we should have the amount of the

(1) 9 App. Cas. 392.
(2) L.R. 3 C.P. 375, at p. 381.
(3) 19 L.C. Jur. 276.
(4) 5 Rev. de Jur. 534.
(5) Q.R. 2 S.C. 46.
(6) Q.R. 26 S.C. 492.
(7) 13 L.C.R. 311.
(8) Stu. K.B. 524.
(9) Q.R. 14 K.B. 513.

1906

TANGUAY v. PRICE.

judgment in our favour increased to $3,000, on the evidence.

The conclusive answer to the reasoning of the minority of the court of appeal is the defendant's plea, wherein he not only does not say that his pulp-wood went down into the respondent's boom as a result of an accident, nor that the respondent is making use of his misfortune to enrich himself, but in which he does say that his pulp-wood went down in the ordinary course of the "driving" of the river and in the ordinary carrying on of his lumbering operations and in which he directly claims to be entitled to use the respondent's property without paying for it until such time as the Lieutenant Governor in Council shall have fixed a toll of payment for its use.

On the facts in the case the respondent is entitled to compensation, and the appellant has no right to the free use during two months of the respondent's property, nor to endanger the whole of the respondent's mills and logs, simply on the excuse that he is in the exercise of his rights in "driving" the river. No person may occupy the property of another for a period of two months without payment, and, under such circumstances, the question whether or not damage is caused to the proprietor is not relevant except to increase the sum. If the appellant had not made use of the respondent's booms he would have completely lost his pulp-wood, worth from $15,000 to $18,000; he very seriously endangered the respondent's logs in the boom, worth some $46,000, and some 36,000 logs were kept back by the appellant's boom, solely for his own convenience. Arts. 407, 7608 C.C.

In addition to the use and occupation, the respondent can recover upon a *quasi* contract of *negotiorum gestio*. Arts. 1041, 1043, *et seq.*, 1053 C.C.; 3 Beau-

dry-Lacantinerie, Obligations, Nos. 2789, 2795, 2796, 2798. The fact that respondent was acting also in his own interest does not prevent the act from being one of *negotiorum gestio*. Sirey, Code Civile ann. (4 ed), art. 1375, Nos. 26, 27, 28, 29, art. 1111, 1112, No. 13; 1 Domat (Rémy), lib. 2, tit. 4, sec. 2; 31 Demolombe, Nos. 174—104, 81, 82, 83; Larombière, arts, 1372 et 1373, notes 6 and 18; 20 Laurent, Nos. 322, 323, 324; 13 Duranton, No. 649; Marcadé on art. 1375, No. 35, No. 3; 5 Massé et Vergé on Zachariae, No. 622, note 5; 5 Pothier, Buguet's Ed., No. 189; C.C. 1043, 1722, C.N. 1999; Beaudry-Lacantinerie, Obligations, No. 2821; 4 Aubry & Rau, pp. 723-725; Larombière on Arts. 1372 and 1373, No. 20; Paquin & G.T.T.R., Quebec Reports 9 S.C., p. 336; Forest & Cadot, 1 Revue de Jurisprudence, p. 173; *King* v. *Ouellet*(1), and cases in foot-note; *Boswell* v. *Denis* (2); *Pierce* v. *McConville*(3); *McBain* v. *Carlisle* (4); *Ferrier* v. *Trepannier*(5); *Arpin* v. *The Merchants Bank*(6); *Toronto Railway Co.* v. *Balfour*(7); *Finnie* v. *City of Montreal*(8).

The statute, 55 Vict. ch. 25 (Que.), does not bear the meaning appellant places upon it; all the courts have been unanimous in holding that it did not apply; it, however, establishes the right to compensation for the use of the improvements on the river in favour of the proprietor of such improvements and it does not subordinate that right to the fixing of a tariff by the Lieutenant Governor in Council. It has been held, in interpreting C.S.L.C. ch. 51 (now art. 5535 R.S.Q.), that the common law right to indemnity continued to

(1) 14 R.L. 331.
(2) 10 L.C.R. 294.
(3) Q.R. 12 K.B. 163.
(4) 19 L.C. Jur. 276.
(5) 24 Can. S.C.R. 86.
(6) 24 Can. S.C.R. 142.
(7) 32 Can. S.C.R. 239.
(8) 32 Can. S.C.R. 335.

1906

TANGUAY v. PRICE.

exist. *McGillivray* v. *McLaren*(1); *Emond* v. *Gauthier*(2); *Proulx* v. *Tremblay*(3); *Bazinet* v. *Gadoury*(4); *Brissette* v. *Pillsbury*(5); *Larochelle* v. *Price*(6); *Hamelin* v. *Bannerman*(7).

THE CHIEF JUSTICE.—The appeal is allowed with costs and the judgment of the Superior Court is restored; the cross-appeal is dismissed with costs. I concur for the reasons stated by my brother Maclennan.

There is no difference between Quebec and English law on the points raised in this case with respect to the rights of riparian owners to waters of floatable streams flowing past their lands. *Miner* v. *Gilmour* (8).

DAVIES and IDINGTON JJ. also concurred for the reasons stated by His Lordship Mr. Justice Maclennan.

MACLENNAN J.—This is an appeal by the plaintiff from a judgment of the Court of King's Bench of Quebec which, two of the learned judges, the Chief Justice Lacoste and Mr. Justice Ouimet, dissenting, reversed the judgment of the Superior Court, District of Montmagny, which had dismissed the action.

The plaintiff is the owner of a sawmill on the bank of the Rivière du Sud, near its débouchure into the St. Lawrence, and, in connection with his mill, has constructed a boom upon and across the river for the

(1) 5 Legal News 199.
(2) 3 Q.L.R. 360.
(3) 7 Q.L.R. 353.
(4) 21 R.L. 299; M.L.R. 7 Q. B. 233.
(5) 4 Rev. de Jur. 243.
(6) Q.R. 19 S.C. 403.
(7) Q.R. 10 Q.B. 68; 31 Can. S.C.R. 534.
(8) 12 Moo. P.C. 131.

reception and safekeeping of his logs, which are cut in the woods up and along the river, and are floated down to his mill. It is said that this boom was constructed at a cost of about $25,000.

The defendant is a manufacturer and dealer in pulpwood, and has also constructed a boom on the river some miles above the plaintiff's mill and boom, for the safekeeping of his wood, which is also cut higher up the river and is brought down by flotation.

In the month of September, 1904, there was in the defendant's boom a large quantity of the defendant's pulpwood, it is said about 4,000 cords, and there was at the same time in the defendant's boom a large quantity of the plaintiff's logs on their way down to the plaintiff's boom and mill.

In that month an unusually heavy rainfall occurred which caused a flood in the river, the force of which, acting upon the pulpwood and logs, broke the defendant's boom, and the plaintiff's logs and the defendant's pulpwood were carried down the stream until they were stopped by the plaintiff's boom.

The defendant promptly used every exertion to separate his pulpwood from the plaintiff's logs and to convey it back to his own boom, and this operation was only completed in about two months.

On the 5th of December following the plaintiff brought this action to recover the sum of $4,000 from the defendant as the value of the salvage of the defendant's pulpwood by means of the plaintiff's boom, on the ground that but for his boom the defendant's pulpwood would have been carried out to sea and would have been lost, or would have cost more in the recovery than it was worth.

In the course of his pleadings the plaintiff admitted that in constructing his boom he had not im-

1906

TANGUAY v. PRICE.

Maclennan J.

proved the condition of the river as a floatable stream, *au point de vue du flottage,* which effectually excluded from the case the application of the statute, 54 Vict. ch. 25 (Que.), and the offer of the defendant to pay the toll which under that Act might be fixed by the Lieutenant Governor in Council. He also frankly admitted that the defendant's wood was collected in his boom without any labour of any of his men, and was brought there by the current. He urged at the trial, however, and before us, that, seeing the mass of wood which was coming down the river, he had expended some labour in strengthening his boom.

The trial judge, as I have said, dismissed the action, but the judges of the Court of King's Bench reversed that judgment, and by a majority of three to two awarded the plaintiff the sum of one hundred dollars. This they did, as they say, *"en vertu des règles du droit commun et de l'équité."*

Besides resisting the defendant's appeal the plaintiff has taken a cross-appeal, insisting on his right to the larger sum claimed by him for his alleged service to the defendant.

I am clearly of opinion that we ought to allow the defendant's appeal, and to disallow the cross-appeal, and that the plaintiff should pay all the costs both here and below.

The reasons of the learned Chief Justice of the Court of King's Bench are so full and satisfactory that little is left to be said in support of his conclusion.

I may point out, however, that the shelter which the plaintiff had provided for his logs was not his private property; his boom was stretched across the public floatable river, and we have not to consider what his rights might have been if the defendant's

wood had been carried down and received into an artificial haven or shelter constructed by the plaintiff upon his own land. The defendant's logs were lawfully in the river while on their way down, and until they were stopped by the plaintiff's barrier, and they continued to be lawfully there after they were stopped. They were there quite as lawfully as the plaintiff's own logs, and for the reason that the water in which they were lying was public water. Beyond all question, that water was and continued to be *publici juris,* notwithstanding the plaintiff's structure. It is true that the plaintiff might have opened his boom and have allowed the defendant's wood to pass out and be lost. But because he did not do such an unneighbourly act is no reason for claiming the large compensation to which he thinks himself entitled. The plaintiff's logs and the defendant's wood having been mixed together, to have opened his boom would probably have been as disastrous to the plaintiff himself as to the defendant. The truth is that the service rendered to the defendant by the plaintiff's boom, although of great value, was involuntary and accidental, and could afford no ground of action upon any principle of common law or equity which has been brought to our attention.

DUFF J. concurred.

Appeal allowed with costs; cross-appeal dismissed with costs.

Solicitors for the appellant: *Bedard, Roy & Chaloult.*

Solicitor for the respondent: *A. J. Bender.*