

TÉLESPHORE PARADIS (DEFENDANT)..APPELLANT;

1892

AND

*May 31.

THE HON. J. G. BOSSÉ (PLAINTIFF)....RESPONDENT.

June 1.

*Oct. 10.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR
LOWER CANADA (APPEAL SIDE).*Proceedings before Exchequer and Supreme Courts of Canada—Solicitor and client—Costs—Quantum meruit—Parol evidence—Art. 3597 R. S. Q.*

In proceedings before the Exchequer and Supreme Courts there being no tariff as between attorney and client an attorney has the right in an action for his costs to establish the *quantum meruit* of his services by oral evidence.

APPEAL from a judgment of the Court of Queen's Bench for Lower Canada (appeal side) confirming the judgment of the Superior Court in favour of the respondent for the sum of \$2,152.

The action was instituted by the respondent against the appellant to recover the sum of \$2,999.52 being the balance of the sum of \$4,195.42 for the value of fees, costs and disbursements in a case before the Federal Arbitrators, before the Exchequer Court on an appeal and cross appeal from the award, and also before the Supreme Court on an appeal and cross appeal from the judgment of the Exchequer Court, and in which the appellant claimed from the crown the sum of \$96,441.67 due him for land expropriated for the purposes of the Intercolonial Railway of Canada.

To this action appellant pleaded by a general denial (*défense au fonds en fait*), and by a peremptory exception, in which he admitted the fact that respondent acted as

*PRESENT:—Strong, Taschereau, Gwynne and Patterson JJ.

(Sir W. J. Ritchie C.J. was present at the argument, but died before judgment was delivered.)

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his attorney and solicitor but alleged that the cross appeal to the Supreme Court was taken against his will; that respondent's services in no way benefited him; and that he was more than paid for his said services by the amounts he had received from appellant.

At the trial the respondent produced as witnesses to prove the value (*quantum meruit*) of his services, one judge who had acted while at the bar on behalf of the crown in expropriation cases and two prominent lawyers of the Quebec bar, and the Superior Court gave judgment for \$2,152 in favour of the respondent. This judgment was confirmed by the Court of Queen's Bench on appeal.

Belcourt and *Mackay* for appellant, contended that under the law of the province of Quebec unless there is an agreement in writing the attorney cannot recover against his client more than what the tariff of fees will allow him, and in the present action the respondent had no right to base his action on the tariffs of the Supreme and Exchequer Courts, and charge also a commission on the amount of judgment without an agreement in writing. The learned counsel referred to *Brown v. Dorion* (1); *Larue v. Loranger* (2); *Amyot v. Gugy* (3).

Casgrain Q.C., Attorney-General for the province of Quebec, for respondent, contended that under rule 57 of the Supreme Court Rules the tariff is only applicable as between party and party and that the respondent, having a right of action for a *quantum meruit*, had the right to claim and prove by oral evidence the full and real value of his services rendered; (see *Doutre v. The Queen* (4); art. 3597, R. S. Q.); and this court would not, upon the question of *quantum*, review the decision arrived at by the courts below.

(1) 2 Leg. News 214.

(3) 2 Q. L. R. 201.

(2) 3 Leg. News 284.

(4) 9 App. Cas. 745.

The judgment of the court was delivered by :

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Taschereau
J.

TASCHEREAU J.—There is nothing in this appeal. I would have been of opinion to dismiss it immediately after hearing the appellant. The respondent's right of action cannot be denied in the face of the decision of the Privy Council in *Doutre v. The Queen* (1). Then, it being in evidence that there is no tariff in the Exchequer Court or in the Supreme Court as between attorney and client, the respondent had the right to establish the *quantum meruit* of his services by oral evidence. Such is the well settled jurisprudence of the province. As to the amount allowed to the respondent it is amply supported by the evidence. The appeal is dismissed with costs.

Appeal dismissed with costs.

Solicitors for appellant: *Mackay & Lemay.*

Solicitors for respondent: *Casgrain, Angers & Lavery.*

(1) 9 App. Cas. 745.