

1902

\*Mar. 3.

RICHARD DALLAS (PLAINTIFF) . . . . . APPELLANT ;

AND

THE TOWN OF ST. LOUIS (DEFEND- ) } RESPONDENT.  
ANT) . . . . . }ON APPEAL FROM THE COURT OF KING'S BENCH (APPEAL  
SIDE), PROVINCE OF QUEBEC.*Negligence—Personal injuries—Drains and sewers—Liability of municipi-  
pality—Officers and employees of municipal corporation—59 V. c. 55,  
s. 26, s.s. 18 (Que.)*

The Act incorporating the Town of St. Louis, Que., gives power to the council to regulate the connection of private drains with the sewers, "owners or occupants being bound to make and establish connections at their own cost, under the superintendence of an officer appointed by the corporation."

*Held*, affirming the judgment appealed from, that the municipality cannot be made liable for damages caused through the acts of a person permitted by the council to make such connections, as he is neither an employee of the corporation nor under its control.

**APPEAL** from a judgment of the Court of King's Bench, appeal side, reversing the judgment of the Superior Court, District of Montreal, and dismissing the plaintiff's action with costs.

The plaintiff's action was for damages sustained by him through alleged negligence of the employees of a property owner, named Niquette, in carrying on blasting operations while sinking trenches to connect his private house-drains with the main sewer of the Town of St. Louis under permits granted by the municipal corporation, according to the provisions of the town charter, 59 Vict. ch. 55, sec. 26, sub-sec. 18 (Que.), and the municipal regulations in respect to making such

\*PRESENT :—Sir Henry Strong C.J. and Sedgewick, Girouard, Davies and Mills JJ.

connections. The permits were granted on condition that the private owner should conform with the requirements of the law and of the corporation regulations, and that he should be responsible for all damages resulting from the construction of the works which might arise either directly or indirectly against the corporation.

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*Lafleur K.C.* and *Hibbari* for the appellant, cited *Smith on Negligence* (2 ed) page 40; *Tiedman on Municipal Corporations*, secs 345, 347; *Shearman & Redfield on Negligence* (3 ed.) sec. 400; 24 *Am. & Eng. Enc.* (1 ed.) page 99; *City of Indianapolis v. Doherty* (1); *Deane v. The Inhabitants of Randolph* (2); *Normandin v. City of Montreal* (3); *Gallery v. City of Montreal* (4); *Prévost v. City of Montreal* (5); *Forget v. City of Montreal* (6).

*Bisaillon K.C.* and *Mignault K.C.* for the respondent were not called upon for any argument.

The judgment of the court was delivered by :

THE CHIEF JUSTICE (oral).—We are all of opinion that this appeal cannot be maintained. We have an elaborate judgment of the Court of Appeal with clear and plain *motifs* in the body of it, and also the notes of Mr. Justice Bossé which show the principle on which the judgment proceeded. It lies upon the appellant to shew that this judgment was wrong. This he has failed to do.

The only ground on which it was sought to make the municipality liable was that Niquette was under its control and that the municipality was responsible for his acts. It appears to us that there was not any such responsibility. The statute under which the

(1) 71 Ind. 5.

(2) 132 Mass. 475.

(3) Q. R. 7 S. C. 278.

(4) Q. R. 8 S. C. 166.

(5) Q. R. 15 S. C. 39.

(6) M. L. R. 4 S. C. 77.

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municipality acted, 59 Vict. ch. 55, sec. 26, s.s. 18<sup>7</sup> says in so many words that where a landowner desires to connect his private drain with the main drain of the municipality, he may do so at his own cost under the "surveillance" of an officer appointed by the corporation. That does not constitute the private owner an employee of the municipality nor under its control.

So far as I can see the judgment appealed from was well founded according to the law of Lower Canada, without resorting to English decisions, which are abundant, or to American or Ontario authorities. If these were referred to there would be still less doubt in the case, but I do not profess to act on any law except that of Quebec, namely, the statute referred to, which requires the "surveillance" referred to only in the interest of the municipality in order that the main drain may be protected from injury during the work of connecting the private drain with it and not for the purpose of otherwise controlling the private owner in the work. The reasons to this effect given in the judgment appealed against are, we think, in all respects a correct interpretation of the law.

The conclusion is that the appeal must be dismissed with costs.

*Appeal dismissed with costs.*

Solicitors for the appellant : *Hibbard & Glass.*

Solicitors for the respondent : *Bisaillon & Brossard.*

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