WILLIAM PRICE (DEFENDANT).....APPELLANT; 1902

AND *Mar. 3, 4.

DAMASE TALON, *ès-qual* (PLAINTIFF) ..RESPONDENT.

ON APPEAL FROM THE COURT OF REVIEW FOR THE PROVINCE OF QUEBEC.

Negligence—Sawmill—Injury to workman—Opening in floor—Fencing—Appeal—Findings at trial—Contributory negligence.

T. was working in a sawmill at a time when the saws were stopped in order to change any requiring to be replaced. One only, the butting saw, was left running, being near the end of a board 12 feet long used to measure the planks before they were cut. While the saws were stopped several of the workmen set on this table, and T. going towards the end to find a seat slipped and fell into an opening in the floor where the deal ends were dropped on being cut off. On slipping he threw out his left arm which came against the saw in motion and was cut off. In an action for damages against the mill-owners the trial judge held that the latter was negligent in not protecting the opening and in not stopping the butting saw with the others. On appeal from the decision of the Court of Review confirming the judgment at the trial:

Held, affirming said judgment, that the want of protection of the opening was negligence for which the owner was responsible.

Held also, Strong C. J. *hesitante*, that if T. was guilty of contributory negligence he was sufficiently punished by a division of the damages at the trial.

Held, per Sedgewick, Davies and Mills JJ. that negligence could not be attributed to the owner from the fact that the butting saw was not stopped with the others.

APPEAL from a decision of the Court of Review sitting at Quebec affirming the judgment of the Superior Court at Montmagny in favour of the plaintiff.

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

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The material facts are sufficiently stated in the above head-note.

Stuart K.C. and *Bender K.C.* for the appellant.

Belcourt K.C. and *Martineau* for the respondent.

THE CHIEF JUSTICE (oral).—I had during the argument and still have, a doubt on one point, namely, whether or not the plaintiff had a right to be where he was when the accident happened, and, therefore, whether there was any negligence proved, but I do not think it right to withhold the judgment, and would not do so even though my doubt was much stronger than it is, since four members of the court have made up their minds that the case need not be reserved for consideration.

As regards the point on which I doubt there is a good deal to be said on both sides.

I think the plaintiff was guilty of contributory negligence, but that has been dealt with by the learned judge in assessing the damages according to the rule in the Province of Quebec.

We are all agreed that there was an obligation on the appellants to guard the hole for the protection of persons whose duty required them to pass near it, and it is clear that if it had been fenced or otherwise protected the accident would not have happened.

The appeal is dismissed with costs.

SEDGEWICK J. (oral).—I agree with the judgment appealed from except in its reference to the circular saw. I cannot see that there was negligence in not stopping the saw when the accident happened.

GIROUARD J. (oral).—Assuming that Talon had no business to be where he was, yet he is paying heavily

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for his imprudence as he suffers half the damages. As to the fencing of the hole, one witness at least, Jobin, the provincial inspector, says that he has seen it in several similar establishments. This case is therefore very different from the Corcoran case. Finally the facts in this case were found in the same way by both courts below and on several occasions we have refused to interfere unless they were clearly wrong. In *The George Matthews Co.* v. *Bouchard* (1) we held that we would not interfere where there is some evidence for the jury which is the case here.

DAVIES and MILLS JJ. concurred in the opinion of Mr. Justice Sedgewick.

Appeal dismissed with costs.

Solicitor for the appellant: *A. T. Bender.*

Solicitors for the respondent: *Vidal & Martineau.*

(1) 28 Can. S. C. R. 580.