JACQUES SÉNÉSAC (PLAINTIFF) .....APPELLANT;

AND

THE CENTRAL VERMONT RAILWAY COMPANY (DEFENDANT)..... } RESPONDENT.

1896

*Oct. 30.

*Dec. 9.

ON APPEAL FROM THE SUPERIOR COURT FOR LOWER CANADA, SITTING IN REVIEW AT MONTREAL.

Railway company—Negligence—Sparks from engine or "hot-box"—Damages by fire—Evidence—Burden of proof—Art. 1053 C. C.—Questions of fact.

In an action against a railway company for damages for loss of property by fire alleged to have been occasioned by sparks from an engine or hot-box of a passing train, in which the court appealed from held that there was no sufficient proof that the fire occurred through the fault or negligence of the company and it was not shewn that such finding was clearly wrong or erroneous, the Supreme Court would not interfere with the finding.

*PRESENT :—Sir Henry Strong C.J. and Gwynne, Sedgewick, King and Girouard JJ.

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APPEAL from a judgment of the Superior Court of Lower Canada, District of Montreal, (sitting in review), dismissing plaintiff's action (1).

The appellant sued to recover damages for the destruction of certain buildings and their contents, and consequent loss of business, by a fire at Stanbridge station on the line of the respondent's railway, which, as he alleged, was caused by sparks falling from a passing train and, through the carelessness of the train-crew in neglecting to extinguish the fire in respondent's woodshed thereby occasioned, spread with a strong wind until it became a general conflagration destroying a large portion of the village. At the time of the fire the company's agent was absent and it did not appear that there was a night watchman or any other person in charge of the station grounds or buildings. The appellant's case rested upon circumstantial evidence, there being no proof that the fire was actually communicated from the engine or train which passed a short time previously, but it was urged that from the facts proved there was an irresistible conclusion that the fire was caused either by sparks from the engine or a "hot-box" on one of the cars. The courts below considered that there was no proof that the fire was caused by the act, imprudence, neglect or want of skill of the defendant, and dismissed the plaintiff's action with costs.

Geoffrion Q.C. for the appellant. The absence of any proof in rebuttal of the presumptions from the facts proved by the plaintiff, produces the irresistible conclusion that the fire was communicated from their passing train to the open woodshed, from which it spread and became a disastrous conflagration. The fault must be imputed to the defendant who carried

(1) Q. R. 9 S. C. 319.

on a dangerous traffic there without proper precautions. It is responsible under the law of the province of Quebec for damages caused by fire originating from the trains, even when all possible precautions have been taken. C. C. art. 1053; *Grand Trunk Railway Co.* v. *Meegan* (1); *Jodoin* v. *The South-Eastern Railway Co.* (2); *Leonard* v. *Canadian Pacific Railway Co.* (3); *North Shore Railway Co.* v. *McWillie* (4); 12 Demolombe, par. 653; 6 Laurent, pp. 201, 202, 203; 2 Aubry & Rau, s. 194. Persons carrying on dangerous enterprises must pay for damages suffered in consequence. *Saint Charles* v. *Doutre* (5); *Drysdale* v. *Dugas* (6). In Abbott on Railways (7), there is a full examination of the authorities on negligence by railway companies.

The judges in the courts below erred in their appreciation of the facts and held in this case in the same manner as had been held in the case of Lamoureux, reported as *Central Vermont Railway Co.* v. *La Compagnie d'Assurance Mutuelle de Montmagny* (8), from which case only a portion of the evidence was admitted by consent. The court should have given effect to the additional proofs given in the present case which establish negligence on the part of the respondent.

Greenshields Q.C. and *Lafleur* for the respondent. We rely on the want of proof to connect the fire with any act, neglect or imprudence of the defendant; the evidence on these points was considered and found insufficient in the courts below.

Findings on matters of fact ought not to be disturbed on appeal. *Grasett* v. *Carter* (9); *Bickford* v. *Hawkins* (10); *Arpin* v. *The Queen* (11); *Cossette* v. *Dun* (12).

(1) M. L. R. 1 Q. B. 364.
(2) M. L. R. 1 S. C. 316.
(3) 15 Q. L. R. 93.
(4) 17 Can. S. C. R. 511.
(5) 18 L. C. Jur. 253.
(6) 26 Can. S. C. R. 20.
(7) P. 414 *et seq.*
(8) Q. R. 2 Q. B. 450.
(9) 10 Can. S. C. R. 105.
(10) 19 Can. S. C. R. 362.
(11) 14 Can. S. C. R. 736.
(12) 18 Can. S. C. R. 222.

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The use of steam engines on a railway cannot be imputed as a fault to a company under statutory protection. *New Brunswick Railway Co.* v. *Robinson* (1); *Phillips* v. *Canadian Pacific Railway Co.* (2). The doctrine of statutory protection was not discussed in *North Shore Railway Co.* v. *McWillie* (3). The case of *Smith* v. *London and South-Western Railway* Co. (4) dealt with proximate cause, which is altogether wanting here.

The fire was not caused either directly or indirectly by any fault or negligence of the respondent or its employees. Every practically sufficient device and apparatus to prevent the emission of fire was in use. *Bourassa* v. *Grand Trunk Railway Co.* (5); *Canada Southern Railway Co.* v. *Phelps* (6); *Port Glasgow & Newark Sailcloth Co.* v. *Caledonian Railway Co.* (7); Redfield on Railways (8). In the cases cited by the appellant there was abundant proof of negligence, so those cases cannot apply here where that proof is wanting.

Precautions not enjoined by the legislature need not be observed by a railway company in the ordinary course of its traffic. *Grand Trunk Railway Co.* v. *Godbout* (9); *Vanwart* v. *New Brunswick Railway Co.* (10).

The company cannot be condemned for probable cause. So far as the appellant's property was concerned the cause of the fire is too remote, it was not directly communicated either from the train or from the woodshed; *Canada Southern Railway Co.* v. *Phelps* (6); *Central Vermont Railway Co.* v. *Stanstead and*

(1) 11 Can. S.C.R. 688.
(2) 1 Man. L. R. 110.
(3) 17 Can. S. C. R. 511; M. L. R. 5. Q. B. 122.
(4) L. R. 5 C. P. 98; L. R. 6 C. P. 14.
(5) Q. R. 4 S. C. 361; 4 Q. B. 235.
(6) 14 Can. S. C. R. 148.
(7) 30 Sc. Law Rep. 587.
(8) 6 ed. p. 470.
(9) 6 Q. L. R. 63.
(10) 17 Can. S. C. R. 39.

Sherbrooke Mutual Fire Insurance Co. (1). The onus of proof was upon the plaintiff and he failed to establish presumptions requiring rebuttal; *Mattoon* v. *The Fremont, Elkhorn & Missouri Valley Railroad Co.* (2). The state of the weather or strength of the wind imposed no extraordinary duty upon the railroad company. *Blue* v. *The Aberdeen & West-End Railroad Co.* (3).

The judgment of the court was delivered by:

GIROUARD J.—On the 25th day of April, 1889, about two o'clock in the morning, the appellant's store and other buildings, situated at Stanbridge station on the railway line of the respondent, were consumed by fire. He contends that the fire was caused by a spark from the engine of one of the company's trains, and through the fault, negligence, imprudence or want of skill of its employees and servants, and demands $30,000 damages. Another similar case had been previously taken by one Lamoureux and others against the Mutual Insurance Co. of Montmagny, and the said railway company defendant in warranty, for loss arising out of the same fire. The Court of Appeal held in the latter case that the plaintiff in warranty had failed to prove that the fire was caused by any fault of the railway company. In the present case, the evidence adduced in the case of Lamoureux was filed by consent of parties and some additional evidence was also adduced, which did not however change substantially the evidence already taken as to the origin of the fire. Both the Superior Court and the Court of Review were of the opinion that the origin of the fire was still a mystery. There seems to be no doubt that it originated in the woodshed of the company, but this is not sufficient to constitute a fault within art. 1053 of the Civil Code. After

(1) Q. R. 5 Q. B. 224.
(2) 61 Am. & Eng. Railroad cases, 469.
(3) 116 N. C. 955.

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carefully examining the proofs the learned judges found there was no ground for interfering with the judgment already rendered. The jurisprudence of the Privy Council and of this court has been not to disturb judgments appealed from upon mere questions of fact, unless clearly wrong or erroneous. *Arpin* v. *The Queen* (1); *Schwersenski* v. *Vineberg* (2); *Gravel* v. *Martin* (3); *Canada Central Railway Co.* v. *Murray* (4); *Allen* v. *Quebec Warehouse Co.* (5). We cannot see that there was any mistake in the appreciation of the facts by the courts below, and we are unanimously of opinion that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Geoffrion, Dorion & Allan.*

Solicitors for the respondent: *Greenshields & Greenshields.*