

ALFRED DICKIE (DEFENDANT).....APPELLANT ;

1903

AND

*Dec. 3.

FOSTER CAMPBELL AND OTHERS }
(PLAINTIFFS) } RESPONDENTS

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA.

*Rivers and streams—Floating logs—Damage by R. S. N. S. (1900) c. 95 s.**17—Procedure—Charge to jury—New trial.*

Persons engaged in the floating or transmission of logs down rivers and streams under the authority of R.S.N.S. (1900) ch. 95 sec. 17 are liable for all damage caused thereby whether by negligence or otherwise, and the owner of the logs is not relieved from liability because the damage was done while the logs were being transmitted by another person under contract with him.

One ground of a motion for a new trial was misdirection in the charge to the jury. The trial judge reported to the full court that he had not made the remarks claimed to be misdirection and stated what he actually did say.

Held, that this proceeding was not objectionable and moreover it was a matter to be dealt with by the court appealed from whose ruling was not open to review.

Judgment of the Supreme Court of Nova Scotia (36 N. S. Rep. 40) affirmed.

APPEAL from a decision of the Supreme Court of Nova Scotia (1) maintaining the judgment entered on a verdict for the plaintiff at the trial.

The plaintiffs are farmers residing and owning lands on the Stewiacke River, in the Municipality of Colchester, and the defendant is the owner of a mill lower down on the said river. The action was brought to recover damages from the defendant for injuries alleged to have been done to the plaintiffs' lands by logs of the

*PRESENT.—Sir Elzéar Taschereau C. J. and Sedgewick, Davies, Nesbitt and Killam JJ.

(1) 36 N. S. Rep. 40.

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defendant, on the drive in the Stewiacke River, floating on to the lands of the plaintiffs, and for injuries done to said lands in the removal of said logs.

The defendant by his pleadings denied specifically the acts alleged and set up that, in doing the several acts alleged, he was lawfully engaged in lumbering operations on the Stewiacke River, and that he was acting lawfully and did no damage,—that, if any damage was done, it was the result of inevitable accident. He also justified his acts under the provisions of section 17 of chapter 95 of the Revised Statutes of Nova Scotia, 1900, and under regulations adopted by the municipal council for the Municipality of Colchester.

Section 17, chapter 95, R. S. N. S., 1900, reads as follows:—

“Persons engaged in the floating and transmission of saw-logs and timber of every kind, down rivers, lakes, creeks, and streams, shall be entitled to have the reasonable use of and access to the banks of such rivers, creeks and streams, during such floating or transmission, and for the purpose of enabling such saw logs and timber to be floated or transmitted, and shall also have the right to enter into and upon the banks of, and lands adjoining such rivers, streams or creeks for the purpose of taking therefrom any saw-logs or timber that have come upon such banks and lands during such floating or transmission, and they shall not be liable for any but actual damage done by the floating, transmission, or removal of such saw-logs and timber, nor for any discoloration or impurity of the water caused by the floating or transmission of such saw-logs or timber, nor for any discoloration or impurity of the water caused by the floating or transmission of such saw-logs or timber, unless the same is caused by their wilful act.”

On the findings of the jury, which are set out in the judgment of the court, a verdict was entered for plaintiffs for \$135. Defendant moved the full court for a new trial which was refused and he then appealed to the Supreme Court of Canada.

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Harris K.C. for the appellant.

W. B. A. Ritchie K.C. for the respondent.

The judgment of the court was delivered by :—

THE CHIEF JUSTICE :—By section 17 of chap. 95 R. S. N. S. 1900, it is enacted that :

Persons engaged in the floating and transmission of saw-logs and timber of every kind, down rivers, lakes, creeks and streams, shall be entitled to have the reasonable use of and access to the banks of such rivers, creeks and streams, during such floating or transmission, and for the purpose of enabling such saw-logs and timber to be floated or transmitted, and shall also have the right to enter into and upon the banks of, and lands adjoining such rivers, streams or creeks for the purpose of taking therefrom any saw-logs or timber that have come upon such banks and lands during such floating or transmission, and they shall not be liable for any but actual damages done by the floating transmission or removal of such saw-logs and timber, nor for any discolouration or impurity of the water caused by the floating or transmission of such saw-logs or timber, unless the same is caused by their wilful act.

This action was brought by the respondents to recover damages from the appellant for damages caused to their lands, as they allege, in consequence of the appellant's doings in floating up and down the Stewiacke river logs belonging to the said appellant, and for damages done to respondents' lands by the removal of said logs.

The case was tried by Mr. Justice Townshend with a jury.

The learned trial judge submitted certain questions to them, which they answered as follows :

1. Did defendant's logs cause damage to the plaintiffs' lands by injuring and carrying away any portion of the banks of the river ?

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Ans. They did.

If they did, what damages have plaintiffs suffered in consequence?

Ans. \$100.

2. Did defendant use reasonable care in having his logs brought down the river to prevent them causing injury to plaintiffs' lands on the river bank?

Ans. No.

3. Did defendant use all proper care to keep his logs from going on the plaintiffs' lands?

Ans. No.

4. Did defendant remove logs which went on plaintiffs' land with all reasonable expedition?

Ans. No.

5. What damage was done to plaintiffs' land by the logs?

(1.) In the month of April?

Ans. \$15.

(2.) In the month of May?

Ans. \$20.

(3.) In years previous to 1900?

Ans. No damages proven.

Upon these findings judgment was subsequently entered in favour of the respondents for \$135.

The appellant moved the court *in banco* to set aside the findings of the jury and for a new trial, but his motion was disallowed.

Hence the present appeal.

The first ground of the appellant's motion is on an alleged misdirection in the learned trial judge's charge to the jury. We disposed of that objection *instante* at the hearing. It is based on a supposed charge by the learned judge, which he later reported to the full court not to have been made, sending at the same time the correct report of his charge. Now we do not see anything objectionable in this, as it appears on the record. Then this is a matter entirely within the province of the court appealed from, which cannot be reviewed by this court.

Another ground taken by the appellant is that damages were awarded against him for a period of five

years and that during some portion of that time the conveyance and floating of these logs was not done by him but by contractors. That contention is, under the circumstances of this case, unfounded.

There are no doubt cases whereby it is held, and we may assume it to be the law as a general rule, that when any one employs an independent contractor to do a lawful work he is not responsible for damages caused by the collateral negligence of the contractor. But there is no question of negligence in this case. The statute imposes upon the appellant the liability to all the damages that follow his exercise of the right thereby given to him whether he exercised all the care and diligence possible to avoid such damages or not. He, it is in evidence, was aware of the risk that attended his operations, and was under the law bound to see that proper means were taken to prevent injurious consequences thereof, and could not discharge himself of that liability upon the shoulders of his contractors. It cannot be that any one who intends to carry on operations which, though lawful, are of a nature to cause damages for which the law makes him liable, could have it in his power to get rid of the risks of such damages and of his liability therefor by simply having the operations put into execution by a contractor.

There are a number of cases cited in the respondents' factum on this point to which I need not refer in detail. The following may be added to them: *Maxwell v. British Thompson Houston Co.* (1); *Hill v. Tottenham Urban Dist. Coun.* (2); *Holliday v. The National Telephone Co.* (3); *The Snark* (4).

As to the ground of excess of damages, I do not believe it has been seriously taken. The jury under

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(1) 18 Times L. R. 278.

(2) 15 Times L. R. 53.

(3) 15 Times L. R. 483.

(4) 16 Times L. R. 160.

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the evidence did not show great excess of generosity
in allowing the respondents \$135.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *Hugh Mackenzie.*

Solicitor for the respondents: *F. A. Lawrence.*
