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\* Oct. 8.

LUCIEN ALBERT (PLAINTIFF)..... APPELLANT;

AND

THE ALUMINUM COMPANY OF }  
CANADA LIMITED (DEFENDANT).. } RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL  
SIDE, PROVINCE OF QUEBEC.

*Appeal—Findings of facts by trial judge—Concurred in by appellate  
court—Onus upon appellant to show errors of courts below.*

When, on an appeal to this Court, the findings of facts of the trial judge have been concurred in by the appellate court, this Court will not interfere unless the appellant establishes that the courts below were clearly wrong in the manner in which they disposed of the issues of law or facts raised in the appeal.

APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec, affirming unanimously the judgment of the trial judge, Marchand J., and dismissing the appellant's action with costs.

The appellant claimed the sum of \$23,900 as damages for an illness which he alleged he contracted whilst in the employ of the respondent, between May and September, 1929. The appellant's claim was that his disease (Bright's disease in chronic form) had been caused by his having absorbed gases in respondent's establishment in Shawinigan Falls, and he attributed it to a number of alleged defects in respondent's establishment, absence of or defect in ventilation, faulty handling of material, absence of masks or breathing apparatus, absence of instructions on the dangers, excessive heat, too long hours of work exceeding appellant's and other workmen's strength, exposure to cold after intense heat, bad quality of drinking water, use of metals causing undue danger. The appellant alleged that a great many other workmen who were employed in respondent's establishment became ill as a result of the conditions existing there and that he was suffering permanent incapacity. The respondent pleaded that, if the appellant was affected by any disease, it was not caused by any noxious substances emanating from the metals that he was handling or that were being treated in the company's workshops, but that

\* PRESENT:—Duff C.J. and Rinfret, Cannon, Crocket and Kerwin JJ.

his state of health was weak for a long time previous to his employment; that his illness was due to causes absolutely foreign to the work that he performed for the respondent or the things that the respondent had in its care; that many men employed by the respondent remained in its employ for a great many years without suffering any ill-effect, that its establishment was operated in accordance with the law respecting industrial establishments and the law respecting hygiene for the province of Quebec; that its process of manufacture was most modern; that its operations were carried on according to the rules of art and that its establishment was kept in healthy and sanitary conditions, considering the kind of production that has to be done by the respondent; that in the remelting department where the appellant worked there were no gases or metallic evaporation which could cause the illness of which he complained and that the working conditions in that department were normal; that previous to his employment by the respondent, the appellant was in a poor state of health; that he had been weak for many years and suffered from earache; that the disease (Bright's disease) affecting the appellant was not caused by his working conditions when employed with the respondent.

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The appellant's action was dismissed by the trial judge, Marchand J., who delivered elaborate reasons for judgment dealing with all the facts of the case; and the judgment was unanimously affirmed by the appellate court.

*Louis A. Pouliot K.C.* for the appellant.

*J. A. Prud'homme K.C.* and *Léon Girard* for the respondent.

On the appeal to this Court, after hearing argument of counsel for the appellant, without calling upon the respondent's counsel, the Chief Justice delivered orally the judgment of the Court.

DUFF C.J.—We think, Mr. Prud'homme, it is unnecessary to call upon you. We have had some opportunity of looking into the appeal since it was opened yesterday afternoon and have had the advantage of a very exhaustive and able argument by Mr. Pouliot in which, we are quite

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satisfied, everything that reasonably could be said has been said in support of the appeal.

The appellant's case is put upon article 1054 C.C. as well as on article 1053 C.C. Mr. Pouliot, with frankness and candour, agrees that, in every respect of the case, the onus was upon the plaintiff (now the appellant) to establish causal relation between the faults of the respondents or the plant or something under the care of the respondents and the malady from which the appellant suffers and in respect of which he claims reparation.

The learned trial judge found, not only that the appellant had not acquitted himself of the onus upon him in respect of this issue, but he found that, in fact, the causal relation did not exist. The Court of King's Bench confirmed that finding by the declaration in its formal judgment that there was no error in the judgment of the Superior Court.

In this Court, in view of the concurrent findings of the courts below, we are not called upon to say what we should have done if one of us had been sitting in the place of the trial judge. We say nothing whatever about that. The onus was upon the appellant to establish that the courts below were clearly wrong in the manner in which they disposed of the issue, and, in order to do that, it is necessary that something should be pointed out that is definitely wrong in what they did. Our attention has not been called to any error of law, to any error with respect to the burden of proof, to any material misapprehension of the effect of the evidence, and we are satisfied that, on the whole, this is a case in which we could not properly interfere.

The appeal will be dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for the appellant: *Louis A. Pouliot.*

Solicitors for the respondent: *Bigué, Gouin, Girard & Provencher.*

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