

M. J. O'BRIEN AND ANOTHER (SUPPLI- }
 ANTS) } APPELLANTS;

1927
 *Feb. 14.
 *April 20.

AND

HIS MAJESTY THE KING (RESPOND- }
 ENT) } RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

*Crown lands—Timber limits—License—Expiration—Duration—Fire—Dam-
 ages—Rights of holders*

On the 12th of September, 1918, M. & O. acquired from the province of Quebec a license to cut timber on the line of the Transcontinental Railway Company, which license expired on the 30th of April, 1919. The license, transferred in December, 1918, to O. & D., the appellants, was not renewed until the 11th of December, 1919. Such a license could only be granted under s. 3598, R.S.Q. (1909), for a period of 12 months. The appellants claim damages for destruction of timber on the limit covered by the license, arising from a fire, in June, 1919, alleged to have occurred owing to the negligence of the servants of the railway company.

Held that the appellants cannot recover from the Crown the damages claimed. They had no title to the timber at the time it was destroyed by fire and there is no evidence that they were then in possession of the limit nor in such possession alleged. Therefore no retroactive effect can be given to the license subsequently issued in December in such a way as to confer upon the appellants rights as against the railway company.

Judgment of the Exchequer Court of Canada ([1927] Ex. C.R. 154) aff.

APPEAL from the judgment of the Exchequer Court of Canada (1) dismissing the appellants' action for damages.

The material facts of the case are stated in the judgment now reported.

G. A. Campbell K.C. and *P. Bigué K.C.* for the appellants.

F. Lajoie K.C. and *L. Garneau K.C.* for the respondent.

The judgment of the court was delivered by

DUFF J.—On the 12th of September, 1918, MacDonell & O'Brien, contractors, acquired from the province of Quebec, under the authority of Art. 1309 R.S.Q., a license to

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

(1) [1927] Ex. C.R. 154.

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cut timber in the township of Bazin, on the line of the Transcontinental Railway Company, a license which according to its terms, expired on the 30th of April, 1919. This license was transferred in December, 1918, to O'Brien & Doheny, and the petition is brought by O'Brien, the survivor of the firm, and the Capital Trust Company, executors of Doheny.

The license was renewed on the 11th of December, 1919, and by the action damages are claimed for destruction, in June, 1919, of timber on the limit arising from a fire alleged to have occurred owing to the negligence of the servants of the Transcontinental Railway Company.

Section 3598, R.S.P.Q. (1909), declares, in reference to such licenses, that

no license shall be granted for longer than twelve months from the date thereof.

It is settled law that under such a provision as this the licensee cannot be given the right by any departmental or executive regulation to a renewal of his yearly license. *Booth v. The King* (1); *Edwards v. D'Halewyn* (2); *Gillies v. Railway Commission* (3); *Smylie v. the Queen* (4). The appellants clearly had no title to the timber which was destroyed by the fire in June at the time the fire occurred, and there is no evidence that at that time they were in possession of the limit, nor is such possession alleged. In these circumstances, one cannot see on what ground retroactive effect can be given to the license subsequently issued in December, so as to confer upon them rights as against the Transcontinental Railway Company.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellants: *Bureau, Biqué & Gouin.*

Solicitors for the respondent: *Lajoie & Lajoie.*

(1) 51 Can. S.C.R. 20.

(2) Q.R. 18 Q.B. 419.

(3) 10 Ont. W.R. 971.

(4) 27 Ont. A.R. 172.