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HÉLOÏSE LEMAIGNAN DEKÉRANGAT (PLAINTIFF) ..... APPELLANT; *Nov. 20, 23. *Dec. 15.

AND

THE EASTERN TOWNSHIPS BANK (DEFENDANT) ..... RESPONDENT.

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

Negligence—Sale of ruined building—Personal responsibility of vendor.

Where a ruined building is sold by A. to B., B. engaging himself to remove the materials from the ground, there is no responsibility imposed upon A., under the provisions of article 1054 of the Civil Code of Lower Canada, in respect of injuries sustained in consequence of the negligence of B. in the removal of the materials, as A. had no control over the operations of demolition and removal by B. and his workmen.

Judgment appealed from (Q.R. 17 K.B. 232) affirmed.

APPEAL from the judgment of the Court of King's Bench, appeal side(1), setting aside the judgment entered upon the verdict of the jury, at the trial, against the bank, and dismissing the plaintiff's action against the bank, with costs.

The appellant brought the action to recover damages in consequence of the death of her husband, alleged to have been caused by the negligence of the respondent. The respondent was the owner of a build-

*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Davies, Idington, Maclennan and Duff JJ.

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ing, in the City of Montreal, which had been seriously damaged by a fire, and, after attempting to make repairs, had sold it to a contractor, named Dagenais, who was also a defendant in the action. Dagenais had agreed to remove the materials in the ruined building and, while the operation of demolition was in progress, the cornice, which had been insecurely attached by ropes, and a portion of the walls, fell upon the deceased, who was then engaged in the removal of a fence which had been placed round an enclosure upon the sidewalk of the street below, and he died in consequence of the injuries thus received. The negligence charged against the bank was that the necessary precautions for the safety of persons in the vicinity of the ruined building, and required by the city by-laws, had not been taken either by the bank or by Dagenais, who was alleged to have been a contractor employed for the purpose of the demolition of the ruin.

Upon a verdict by the jury at the trial, judgment was entered in favour of the plaintiff for $5,500, against the bank and Dagenais. On an appeal, the Court of King's Bench, by the judgment now appealed from, set aside the judgment of the trial court, in so far as it affected the bank, on the ground that the accident was wholly due to the fault of the purchaser of the building and that he was not an agent or employee of the bank for whose acts it could be held responsible.

H. J. Elliott K.C. and *Beulac* for the appellant.

J. E. Martin K.C. and *Duff* for the respondent.

THE CHIEF JUSTICE agreed that the appeal should be dismissed with costs.

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Girouard J.

GIROUARD J.—Je n'ai aucune hésitation à confirmer le jugement de la cour d'appel qui me paraît inattaquable. Je pourrais purement et simplement me contenter d'adopter les raisons données par le juge-en-chef Taschereau; mais, comme la cause est importante, il est peutêtre bon de résumer en quelques mots le point en litige.

Deux règlements de la ville de Montréal déterminent la manière de faire des démolitions de bâtisses; l'un (No. 260) lorsque ces bâtisses sont dangereuses et ont été condamnées par l'inspecteur; et l'autre (No. 107) lorsqu'il s'agit d'une démolition ordinaire dans le but de reconstruire. Il est admis que la bâtisse en question n'était pas dangereuse et que sa démolition n'a pas été ordonnée par l'inspecteur comme telle. Il s'agit donc d'une construction nouvelle. Un incendie ayant détruit le premier étage et endommagé le deuxième, il fut d'abord question de réparer ces dommages et un entrepreneur fut choisi pour l'execution des travaux nécessaires. Cet entrepreneur donna avis de son intention, aux désirs des règlements. Mais on s'apperçut bientôt qu'il valait mieux démolir toute la bâtisse et en construire une nouvelle plus moderne. A cet effet l'intimée vendit tout l'édifice à un nommé Dagenais, entrepreneur bien connu de Montréal. Elle ne garda, bien entendu, aucun contrôle sur l'entrepreneur, qui, aux termes de l'article 415 du code civil, devint propriétaire de la dite bâtisse. Il procéda à la démolition et pendant qu'on était à enlever la corniche au haut de l'édifice, le câble qui la retenait se cassa et la corniche alla tomber sur la tête d'un ouvrier occupé dans le moment à élever une clôture sur le trottoir. La cour d'appel a decidé que l'entrepreneur, propriétaire de la bâtisse,

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était seul responsable et nous croyons qu'elle a eu raison. L'article 1054 du code civil est formel. Le propriétaire n'est responsable que de la faute de ceux dont il a le contrôle. On a cité certains arrêts des cours de France où des distinctions sont faites dans le cas où les règlements municipaux imposent au propriétaire certaines précautions pour éviter les accidents. On cite aussi l'article 479, par. 4, du code pénal; mais nous n'avons aucune semblable disposition soit dans le code civil, soit dans nos lois criminelles. Tout ce que nous avons ce sont les règlements municipaux; et le règlement No. 107, qui gouverne cette matiere, est formel. Le devoir d'enlever une clôture et de prendre d'autres mesures de précaution pour éviter les accidents en cas de démolitions et constructions est imposé à l'entrepreneur et non pas au propriétaire. Voir section 2. La section 9 dit également que c'est l'entrepreneur qui est responsable des dommages. Voir Dalloz, Jurisprudence Générale, 1869, partie, 2, p. 153.

Je suis donc d'avis de renvoyer l'appel avec dépens.

DAVIES J.—I concur in the result of the judgment dismissing the appeal.

IDINGTON J.—I agree this appeal should be dismissed, but cannot say I agree in the reasons given by my brother Girouard J. in notes I have had a chance of perusing.

It seems safe to say that there was a sale of material which, so long as undisturbed at the part we are concerned with, was no menace to any one. When the buyer paid his cash instalment of price he was master and no one could or did control him.

I hesitate, with great respect, to adopt the opinions of those who go further and place the case as if identical with that of a contractor doing the same work.

The difficulty I have is that, when a sale is made, I cannot see how any conditions can be attached to it requiring in the buyer any sort of qualification as to his capacity or equipment for removal of that which he buys, whether a house or other material such as piles of lumber or stone. In the case of the contractor the capacity may well have to be looked to by him letting the work.

I do not find in the by-laws of Montreal that provision for the case of removal of buildings which was assumed in argument to exist and which public safety needs.

Nor do I see how the stipulations properly made for the buyer assuming all risks could alter the legal quality of what was being contracted for or the consequences thereof.

These stipulations were merely the result of abundant caution.

MACLENNAN J.—I agree in the opinion stated by Mr. Justice Girouard.

DUFF J.—I agree that the appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitors for the appellant: *Goldstein & Beullac.*
Solicitors for the respondent: *Heneker & Duff.*