A SEQUEL TO THE DRAGON EXPLOSION

An important judgment was rendered a few days ago in the Court of Appeal, Montreal, confirming the judgment of the Superior Court rendered on November 17th, 1919, condemning Curtis & Harvey Limited to pay George Boyce $7,655 for damages the latter suffered, as a sequel to the explosion which occurred in the plant of Curtis & Harvey at Dragon, Ont., on August 18th, 1917, destroying the Company's plant.

Boyce sued for damages done to his home at the time of the explosion. He claimed that the accident was due to the fault, neglect and improvidence of the defendants. The force of the explosion was such that his house was shaken and took fire, and was destroyed, together with the contents.

Respondents contended that the accident was something over which they had no control and that there was no neglect, everything having been conducted with the utmost precaution and care.

The Superior Court held that the fire which destroyed respondent's property was caused by burning material from appelant's plant; that appellant's had failed to prove force majeure; and, further, that there was actual fault on the part of appellants in the construction and operation of its plant.

The Court of Appeal concurred in finding that the evidence was sufficient to support the decision that respondent's house was destroyed and burned by reason of the fire and consequent explosion which occurred in appellants' plant; but Mr. Justice Martin, who delivered the judgment, was not prepared to say there was fault on the part of appellants in having so many nitrators in the same building or to have the buildings containing nitrators so close together. A policy adopted by the light of experience derived from the event could not support the basis of a charge of fault previous to the event.

WHERE LIABILITY LAY.

His Lordship added that he would not be disposed to maintain the action under the provisions of Article 1053 of the Civil Code. The more difficult point involved in this case was the consideration and determination of appellants' liability under Article 1054. After much diversity of judicial opinion the Privy Council, in a judgment delivered on February 17, 1920, in the case of the Quebec Railway & Light, Heat and Power Company and Vendry, settled the true construction of Article 1054 of the Civil Code. They held that the exculpatory paragraph of 1054 applied to all classes of cases in the preceding paragraphs of that article, including damage done by things which a defendant had under his care. Applying the principles thus formulated as the proper interpretation of Article 1054, Judge Martin said it was not a case of mere presumption of fault which appellant might rebut by proving affirmatively that he was guilty of no fault, but a clear liability was established and put upon him which could be annulled only by proof of inability to prevent the damage.

The appellants pleaded a fortuitous event, and they would be relieved from liability if they proved that plea, or that the damage was caused by irresistible force. Had they established their case? His Lordship cited the definition of a fortuitous event, said fire, unless caused by lightning, was not a fortuitous event, and, in the light of all the facts and legal obligations bearing on them in this instance, concluded that appellants had not proved their plea. They were called upon to do more than repel a mere presumption of fault. They were bound to establish that they were unable to prevent the act which caused the damage, and that it was caused by a superior force impossible to resist. Having failed to do this, they were responsible toward respondent for the damage done to his property by the thing under their care.

The judgment appealed from was therefore maintained and the appeal dismissed with costs.

Davidson, Wainwright & Co. appeared for appellants; and Elliott and David for respondent.