

PROVINCE OF
LOWER-CANADA. }

In Appeal.

PETER PATTERSON, *et al.*

(*Defendants in the Court below,*)

APPELLANTS;

AND

PAUL RAINVILLE,

(*Plaintiff in the Court below,*)

RESPONDENT.

THE APPELLANTS' CASE.

THE declaration states that the Respondent was possessor of certain lots of ground, situated in the Parish of Beauport.

That the Appellants being proprietors of certain Saw Mills, situate in the said parish, "font continuellement transporter et conduire diverses grandes quantités de bois, de la dite Cité de Québec à leurs dits moulin, et que, par la faute de leurs employés, ou autrement, leurs dits bois, tous les jours, depuis le premier Mai dernier jusqu'à ce jour, ont brisé et abattu les clôtures des terres, terrains et emplacements du dit Demandeur, ont été laissés en grande partie sur les dites terres, terrains ou emplacements—en ont empêché la culture, et causé divers dommages au dit demandeur, au montant de cinq cent livres courant."

To this action the Respondent pleaded the general issue.

When injury is done by the goods of one person to the person's goods or lands of another, it is material to inquire, whether there have been any fault on the part of the owner of the goods from which the injury proceeded.

If there be a fault, action *ex quasi delecto* lies against him.

If the injury be accidental *no action* lies, the sole right of the person injured is a right of retaining the goods from which the injury proceeded until he receive compensation for the damage suffered.

This rule is clearly established by the authorities subjoined herewith.

Bearing this rule in mind, it is difficult to understand upon what principle the Court below pronounced its judgment against the Appellants.

The gist of the action of the Plaintiff is his having suffered injury from *fault* in the Defendants, in conveying timber to his Mills at Montmorency.

Now on examining the evidence it will be found that the timber mentioned by the witnesses had, previous to the alleged injury, *been conveyed* to the Mills in question. And that the subsequent conveyance of it to the lands of the Plaintiff, from the ground and Mills of the Defendants, where it had been piled up and fastened, was by no means a voluntary act of the Defendants, nor in the slightest degree imputable to the Defendants as a fault, but on the contrary, the effect of an unusually high tide and of a storm of unexampled violence, from which the Defendants and Plaintiffs it would appear both suffered, though certainly in very unequal degrees.

The Defendants had therefore reason to expect a judgment, dismissing the action, and even if the Plaintiff had made out a sufficient case to entitle him to recover; the quantum of damages was by no means ascertained in legal form or by legal evidence. Yet the Court without any reference to experts to ascertain this quantum, without any thing but the vague and general declarations of the witnesses of the party himself, condemned the Defendants to pay a sum of £25 with costs.

It is from this judgment that the present Appeal is brought.

H. Munn
arr

Mem. of authorities on following page