

ARTHUR SURVEYER, EMILE NEN-
NIGER AND GEORGE CHENEVERT }
(*Plaintiffs*)

APPELLANTS; ¹⁹⁶¹
*May 25, 26
June 12

AND

H. G. ACRES & COMPANY LIMITED }
(*Defendant*) RESPONDENT.

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

Procedure—Joinder of actions—Different parties—Code of Civil Procedure, arts. 291, 292.

Q Co. and L Co. claimed in two separate actions against the plaintiffs damages arising out of a forest fire allegedly due to the negligence of the plaintiffs' employees. A third action was taken by L Co. against the Quebec Hydro-Electric Commission for damages arising out of the same cause of action, and these three actions were ordered to be tried at the same time and on the same evidence.

The present action for indemnification, based on a contractual relationship, was taken by the plaintiffs against the defendant. The trial judge granted the plaintiffs' motion to have these four actions tried at the same time and decided upon the same evidence as far as the pleadings permitted. This judgment was reversed by a majority judgment in the Court of Queen's Bench. The plaintiffs were granted leave to appeal to this Court.

Held: The appeal should be dismissed.

It was not necessary to decide whether art. 292 of the *Code of Civil Procedure* was to be read as subject to the provisions of art. 291, because, even if a discretion was given under art. 292 to join such cases—as to which no opinion was expressed—the present action should not be ordered joined with the three damage actions.

APPEAL from a judgment of the Court of Queen's Bench, Appeal Side, Province of Quebec¹, reversing a judgment of St. Germain J. Appeal dismissed.

François Mercier, Q.C., for the plaintiffs, appellants.

James E. Mitchell, Q.C., for the defendant, respondent.

The judgment of the Court was delivered by

ABBOTT J.:—This appeal, by leave under s. 41 of the *Supreme Court Act*, is from a majority judgment of the Court of Queen's Bench¹ reversing an interlocutory judgment of the Superior Court made under art. 292 of the *Code*

*PRESENT: Taschereau, Fauteux, Abbott, Martland and Ritchie JJ.

¹[1961] Que. Q.B. 44.

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of *Civil Procedure*, which ordered that four actions then pending in the Superior Court be tried at the same time and decided on the same evidence in so far as the pleadings would permit.

Abbott J.

In two of the said actions, appellants were the defendants and the plaintiffs were respectively the Quebec North Shore Paper Company and the Laurentian Forest Protective Association Limited, both claiming substantial damages arising from a forest fire allegedly due to negligence on the part of employees of appellants. A third action was taken by the said Laurentian Forest Protective Association Limited against the Quebec Hydro-Electric Commission, for damages arising out of the same cause of action. These three actions were ordered joined for trial by a previous judgment of the Superior Court.

Some eighteen months after the said three actions were taken, appellants instituted the present action against respondent, asking that by reason of a contractual arrangement alleged to subsist between the parties, appellants be indemnified by respondent in the manner set forth in their declaration.

Two questions arise on this appeal:

- (1) Whether under art. 292 C.C.P. the court has any authority to join for trial actions in which the parties are not the same.
- (2) If such authority exists, whether it should have been exercised.

On the first question the substance of appellants' argument, shortly stated, is that art. 292 C.C.P. must be read independently of art. 291 C.C.P. Respondent's argument is the opposite, namely that art. 292 C.C.P. must be read as subject to the provisions of art. 291. On this point there appear to have been conflicting opinions expressed in the Quebec courts, and Mr. Mercier in his able argument suggested to us that this Court should resolve those differences. For the purposes of this appeal, however, we do not find it necessary to resolve such a difficulty if it exists.

Even if a discretion is given under art. 292 C.C.P. to join such cases—as to which we express no opinion—after the full and helpful argument before us, we are all of the view that the present action should not be ordered joined with the three damage actions and that the court below was right in concluding that the motion to join should have been dismissed.

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The appeal should be dismissed with costs.

Appeal dismissed with costs.

Attorneys for the plaintiffs, appellants: Brais, Campbell, Mercier, Leduc & Pepper, Montreal.

Attorneys for the defendant, respondent: Senecal, Turnbull, Mitchell, Stairs, Culver, Kierans & Claxton, Montreal.
