WILLIAM H. LOGAN (DEFENDANT) . . . APPELLANT

AND

FRANK LEE (PLAINTIFF) . . . . . RESPONDENT.

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*Oct. 3, 4.
*Oct. 3, 17.

ON APPEAL FROM THE SUPERIOR COURT, SITTING IN REVIEW, AT MONTREAL.

Evidence—Provincial laws in Canada—Judicial notice—Conflict of laws—Negligence—Common employment—Construction of statute—3 Edw. VII. c. 11, s. 2, s.-s. 3 (N.B.)— "Longshoreman" —"Workman."

As an appellate tribunal for the Dominion of Canada, the Supreme Court of Canada requires no evidence of the laws in force in any of the provinces or territories of Canada. It is bound to take judicial notice of the statutory or other laws prevailing in every province or territory in Canada, even where they may not have been proved in the courts below, or although the opinion of the judges of the Supreme Court of Canada may differ from the evidence adduced upon those points in the courts below. *Cooper* v. *Cooper* (13 App. Cas. 88) followed(*a*).

The plaintiff, a longshoreman, was engaged by the defendant, in Montreal, to act as foreman on his contracts as a stevedore at the port of St. John, N.B. While in the performance of his work, the plaintiff went into the hold to re-arrange a part of the cargo in a vessel, in the port of St. John, and, in assisting the labourers, stood under an open hatchway where he was injured by a heavy weight falling upon him on account of the negligence of the winchman in passing it across the upper deck. The winchman had attempted to remove the article which fell, without any order from his foreman, the plaintiff, and with improperly adjusted tackle. In an action for damages instituted in the Superior Court, at Montreal,

Held, that the plaintiff was entitled to recover either under the law of the Province of Quebec or under the provisions of the New Brunswick Act, 3 Edw. VII. ch. 11, as he came within the class

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

(*a*) NOTE: Cf. R.S.C. (1906) ch. 145, sec. 17.

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of persons therein mentioned to whom the law of the latter province relating to the doctrine of common employment does not apply.

APPEAL from the judgment of the Superior Court, sitting in review, at Montreal, affirming the judgment of the Superior Court, District of Montreal, (Charbonneau J. dissenting), whereby the plaintiff's action was maintained with costs.

The action was instituted in the Superior Court, at Montreal, for recovery of damages for injuries sustained by the plaintiff while in the discharge of the duties of his employment as a foreman or "walking boss" on the steamship "Evangeline," in the port of St. John, in the Province of New Brunswick, under an engagement by the defendant, a contracting stevedore, alleged to have been made at Montreal.

One of the grounds of defence in respect of which an issue was raised on the appeal was that, if the damages claimed had resulted from negligence by one of the plaintiff's fellow-servants, in the service of the defendant at the time of the accident, the law applicable to the obligations and rights of the parties was the law of the place where the *délit* or *quasi-délit* occurred, viz., the law of the Province of New Brunswick, by which the defendant would be relieved from liability towards the plaintiff under the doctrine known as that of common employment. In order to prove the law of New Brunswick, the evidence of legal counsel of that province was received at the trial.

Atwater K.C., for the appellant, during the argument proceeded to discuss the question upon the evidence thus adduced. He was interrupted by the court and the following decision was delivered by

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THE CHIEF JUSTICE.—I think it proper that I should here announce, after having consulted with my brother judges, that this court, constituted as an appellate tribunal for the whole Dominion of Canada, requires no evidence as to what laws may be in force in any of the provinces or territories of Canada. This court is bound to follow the rule laid down by the House of Lords in the case of *Cooper* v. *Cooper*(1), in 1888, and to take judicial notice of the statutory or other laws prevailing in every province and territory in Canada, *suo motû*, even in cases where such statutes or laws may not have been proved in evidence in the courts below, and although it might happen that the views as to what the law might be, as entertained by the members of this court, might be in absolute contradiction of any evidence upon those points adduced in the courts below.

The argument then proceeded upon the other issues in question on the appeal.

At the trial in the Superior Court at Montreal, Mr. Justice Curran found that the plaintiff, a longshoreman, had entered into a contract with the defendant, a stevedore, at the City of Montreal, to act as chief foreman in the loading and unloading of vessels at the ports of Montreal and St. John, N.B.; that he sustained the injuries complained of on account of the negligence of a fellow workman in unloading a heavy barrel which fell upon him through an open hatchway while he was assisting the ship-labourers in re-arranging part of the cargo in the hold; that he

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was not guilty of negligence which contributed to the accident and that the defendant was responsible in damages.

The principal grounds of defence, urged upon the appeal, were that the plaintiff had been guilty of contributory negligence and, consequently that he could not recover under the law, as proved, of the Province of New Brunswick, where the doctrine of common employment prevailed; that the plaintiff was not a person engaged as a "workman" within the meaning of the third sub-section of section 2 of "The Workmen's Compensation for Injuries Act" (3 Edw. VII. ch. 11), of the Province of New Brunswick, where the injury had been sustained, and that, under the law of the Province of Quebec, if applicable, there should be mitigation of damages on account of the contributory negligence of the plaintiff.

The effect of the judgment appealed from was to affirm the judgment entered in favour of the plaintiff.

Atwater K.C. and *Duff* for the appellant.

Lafleur K.C. and *H. U. Paget Aylmer* for the respondent.

THE CHIEF JUSTICE.—This appeal is dismissed with costs. The two courts below find that the accident complained of was caused by the negligent act of a workman in the service of the appellant during the regular course of his employment and, on this finding of fact with which we see no ground for interfering, the appellant would be liable in damages both under the law of New Brunswick and that of Quebec.

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GIROUARD J.—It is not necessary for the determination of this appeal to decide the question of interprovincial law. Whether the responsibility of the appellant is to be decided by the Quebec law or by the law of New Brunswick, the action of the respondent lies, in Quebec under the common law and in New Brunswick under the Workingmen's Compensation Act. This Act, differently worded from the English Act, applies in express terms to "longshoremen," and we have no difficulty in deciding that Lee belonged to that class of workingmen.

I am of the opinion, therefore, that the appeal should be dismissed with costs.

DAVIES J.—I concur for the reasons stated by His Lordship the Chief Justice.

IDINGTON J.—Whether the law of Quebec or the law of New Brunswick is to prevail in this case the result is the same. I cannot find any evidence of contributory negligence that would, in the one case, deprive the respondent of his right to claim anything, or, in the other reduce the amount of damages he might be entitled to.

On the evidence he is clearly entitled to recover.

His injuries are admitted and the appellant admits that they were the result of the negligence of the appellant's man in charge of a winch, in handling therewith the barrel that fell upon the respondent and produced the injuries in question.

The only hope of escape for appellant from liability seemed to rest in his establishing, first, that the law of New Brunswick should prevail, and next, that "The Workmen's Compensation for Injuries Act" of

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that province did not cover the respondent's case because he was not engaged in manual labour.

I incline to think that the law of New Brunswick should prevail on the facts here. And I have no difficulty in holding that the Act in question clearly covers the respondent as a longshoreman specifically designated in section 2, sub-section 3, of the Act, as one of the class of men who are to be entitled to the benefit of the Act. The test of manual labour is quite beside the question, as I view it.

I concur in the judgment of the Chief Justice during the argument that we must act on the doctrine laid down in *Cooper* v. *Cooper*(1), and acted upon by the House of Lords therein, in our dealing with the conflicts of law that may arise between, or rather the differences of law that may arise for consideration in the different provinces. This is the common forum of all and, though the provincial courts may, of necessity, hear evidence of the laws of another province, we must place our own construction upon that law (which may be foreign law in the provincial court), whenever the case comes here for consideration.

The appeal should be dismissed with costs.

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

DUFF J.—It is unnecessary to consider whether the law of Quebec or the law of New Brunswick furnishes the rule of decision in this case; if the former, it is not disputed that the plaintiff is entitled to succeed; if the latter, the statute relied upon clearly, I

(1) 13 App. Cas. 88.

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think, applies and confers upon him a right to relief. I do not enter upon an examination of the views of the learned gentlemen who gave evidence in the court below as to the state of the law of New Brunswick. Upon that question we are bound, I think, to apply the rule acted upon by the House of Lords in *Cooper* v. *Cooper*(1) and to give effect to our own views.

Appeal dismissed with costs.

Solicitors for the appellant: *Heneker & Duff.*

Solicitors for the respondent: *McLennan, Howard & Aylmer.*

(1) 13 App. Cas. 88.