

JEAN MOREL (DEFENDANT) APPELLANT;

1906

AND

*Oct. 29.

*Nov. 23.

ALEXANDRE LEFRANCOIS

(PLAINTIFF) } RESPONDENT.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL
SIDE, PROVINCE OF QUEBEC.*Construction of deed—Description of lands—License to cut timber—
Ambiguities latens—Evidence—Boundary.*

A license to cut timber on a lot of land described the portion affected as bounded on the south by a river. The river almost crossed the lot at a point near its northern boundary and, at another point, about nineteen arpents further south, it again crossed the lot, completely. In an action to eject the licensee from the portion of the lot between the first and second bends of the river and to recover damages,

Held, that, under the circumstances, there was no ambiguity in the designation of the quantity of the land affected by the license and, in any event, the language of the instrument must be literally construed in favour of the grantee and the party bound thereby could not be permitted to shew a different intention by evidence of surrounding circumstances.

APPEAL from the judgment of the Court of King's Bench, appeal side (Lacoste C.J. and Hall J. dissenting), reversing the judgment of the Superior Court, sitting in review, at Quebec, and restoring the judgment of the Superior Court, District of Quebec, by which the plaintiff's action was maintained with costs.

The circumstances of the case and questions at issue on the present appeal are stated in the judgment of the court now reported.

*PRESENT:—Fitzpatrick C.J., and Girouard, Davies, Idington, MacLennan and Duff JJ.

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C. E. Dorion K.C. for the appellant.*L. P. Pelletier K.C.* for the respondent.

The judgment of the court was delivered by

THE CHIEF JUSTICE.—The respondent brought an action in the Superior Court at Quebec to revendicate, as against the appellant, the western half of lot 36 in the Parish of Château Richer, County of Montmorency.

In answer the appellant admitted that he had no title to the land; denied that he had ever exercised or ever pretended to exercise any act of ownership with reference to it, and affirmatively alleged that he had acquired from the respondent, through one Vézina, the right to cut the standing timber on a certain portion of the property in question, and that he had not cut beyond the limits covered by the agreement *sous seing privé*, under which this right had been conveyed. On these issues the parties went to trial.

All the courts below held that Vézina's interest was vested in the respondent and the only doubt suggested turned upon the solution of the question—What are the true boundaries to be assigned to the *coupe de bois* conveyed by the respondent to Vézina? The appellant mainly relied on the literal construction of the words used in the *sous seing privé*. The respondent urged that the language used in delimiting the tract is equivocal and that the intention of the parties must be gathered from the surrounding circumstances.

There was a long and tedious *enquête*; many witnesses were examined, and each party employed a surveyor to make a plan of the locality.

In my opinion the intention of the parties is to be gathered from the plain meaning of the words used by them in the document set up by the appellant and effect must be given to these words if possible.

The description of the property within the limits of which the wood is to be cut is:

borné au sud à la rivière Sault à la Puce, à l'ouest à M. Octave Gravel, à l'est à M. Amédée Lefrançois, et au nord au trait quarré, avec droit de passage jusqu'à chez M. Lapointe.

In my opinion this wording is clear and plainly describes the complete boundaries. There is no doubt on the evidence that Amédée Lefrançois is the proprietor of the land to the east—Octave Gravel of that to the west, and that the property extends to the *trait quarré* on the north has never been denied. What is the reason of the difficulty with respect to the southern boundary which is said to be a river? Does that river not exist, and is it not easily traceable on the ground? Is there not a part of the property of which it is the southern boundary; and were not both parties, at the time they made their agreement, aware of its existence and exact position? All these questions must be answered in the affirmative.

By the plans of both surveyors it appears that the River Sault à la Puce enters the land of the plaintiff at and recrosses its eastern boundary without touching its western limit and, after crossing the eastern boundary, again enters the plaintiff's land and traverses it in a westerly direction to the westerly boundary. The tract bounded on the south by that portion of the river intercepted between the eastern and western boundaries (and having the other boundaries described in the document in question) obviously answers the description we have to apply. If there

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is any doubt with respect to the description and designation of the premises sold it will be found on reference to the authorities cited in the judgment of Mr. Justice Andrews, in the Superior Court, that doubts in the circumstances of this case should be held against the respondent.

I agree with the three judges in review and the minority in appeal that there is no ambiguity in the language of the deed; that the respondent was entitled to rely on the literal construction of the words used; that the description does not bear more than one necessarily exclusive meaning; and that the appellant did not cut any timber beyond the limits of the tract covered by the agreement with Vézina.

The action should be dismissed and the appeal allowed with costs.

Appeal allowed with costs.

Solicitors for the appellant; *Dorion & Marchand.*

Solicitors for the respondent: *Drouin, Pelletier,
Baillargeon & St.
Laurent.*
