Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Canadian Pacific Railway Company v. Roy, from the Court of King's Bench for Lower Canada, Province of Quebec; delivered 18th December 1901.

Present at the Hearing:

THE LORD CHANCELLOR.
LORD MACNAGHTEN.
LORD SHAND.
LORD DAVEY.
LORD ROBERTSON.
~~LORD LINDLEY.~~
SIR FORD NORTH.

[*Delivered by the Lord Chancellor.*]

This is an Appeal by the Canadian Pacific Railway Company against a judgment of the Court of Queen's Bench for Lower Canada affirming a judgment of the Superior Court of Quebec whereby that Company were held to be liable to damages to the extent of $300 for injuries to the Plaintiff's property alleged to be caused and now admitted to have been caused by sparks escaping from one of their locomotive engines while employed in the ordinary use of its railway.

Some questions were raised in the Courts below and to some extent referred to here whether the judgment could be supported upon the ground of the Appellants having been guilty of negligence in their management of the engine or its appliances being defective. No such question is now before their Lordships. By

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arrangement that question has been withdrawn and their Lordships are not to be taken as giving any opinion whether there was any evidence of negligence or if there was how that issue ought to be determined.

The serious and important question sought to be raised in this Appeal is whether the Railway Company authorised by statute to carry on their railway undertaking in the place and by the means that they do carry it on are responsible in damages for injury not caused by negligence but by the ordinary and normal use of their railway.

Both Courts below have held that in the Province of Quebec the Railway Company is so responsible and the question is whether that is the law.

The argument appears to be founded on the suggestion that Quebec has a civil law of its own and that in that province all corporations like all other persons are responsible for causing damage to their neighbours by a fault that is to say any actionable wrong whether imprudence or want of skill and another article of the Code provides that Civil Corporations constituting by the fact of their incorporation ideal or artificial persons are as such governed by the laws affecting individuals saving the privileges they enjoy and the disabilities they are subjected to.

If the immunity claimed for the Appellants were simply claimed upon the ground that they were a Corporation without reference to what they are authorised to do in that capacity the argument would be well founded but the fallacy of the suggestion lies in supposing that that immunity is claimed because they are a Corporation. If it were so there would be no difference between the law of England and the law as so expounded in the Province of Quebec but the ground upon which the immunity of a railway

company for injury caused by the normal use of their line is based is that the Legislature which is supreme has authorized the particular thing so done in the place and by the means contemplated by the Legislature and that cannot constitute an actionable wrong in England any more that it can constitute a fault by the Quebec Code. The principle has been lucidly expounded by Lord Hatherley in the case of *Geddis* v. *Proprietors of Bann Reservoir*, L. R. Appeal Cases, Vol. 3, page 438, thus :

" If a Company, in the position of the " Defendants there,* has done nothing but that " which the Act authorised—nay, may in a " sense be said to have directed—and if the " damage which arises therefrom, is not owing " to any negligence on the part of the Company " in the mode of executing or carrying into " effect the powers given by the Act, then the " person who is injuriously affected by that " which has been done, must either find in the " Act of Parliament something which gives him " compensation, or he must be content to be " deprived of that compensation, because there " has been nothing done which is inconsistent " with the powers conferred by the Act, and " with the proper execution of those powers.

" My Lords, I say the proper mode of exe- " cuting those powers, because it appears to me " that it is very neatly and appositely put by " Mr. Baron FitzGerald, in giving his judgment " in the Court of Exchequer Chamber, in this " form. Mr. Baron FitzGerald says :—

" The substantial question raised on the " pleadings in the first and second counts of the " declaration, appears to me to be whether these " acts of the Defendants were done in a due " exercise of their authority, under the local " and personal statute which has been mentioned, " without negligence."

* *Cracknell* v. *The Corporation of Thetford*, L.R. 4 C.P., 629.

And Lord Cairns in the case of *The Hammersmith Railway Company* v. *Brand*, L.R., 4 English and Irish Appeals, page 215, points out that it would be a repugnant and absurd piece of legislation to authorise by statute a thing to be done and at the same time leave it to be restrained by injunction from doing the very thing which the Legislature has expressly permitted to be done.

Lord Cairns said :—

"It appears to me that the effect of the "legislation on this subject is to take away any "right of action on the part of the landowner "against the Railway Company for damage that "the landowner has sustained. It must be "taken, I think, from the statements in this "case that the railway could not be used for the "purpose for which it was intended without "vibration. It is clear to demonstration that "the intention of Parliament was, that the "railway should be used. If, therefore, it could "not be used without vibration, and if vibration "necessarily caused damage to the adjacent "landowner, and if it was intended to preserve "to the adjacent landowner his right of action, "the consequences would be that action after "action would be maintainable against the "Railway Company for the damage which the "landowner sustained; and after some actions "had been brought, and had succeeded, the "Court of Chancery would interfere by injunc-"tion, and would prevent the railway being "worked—which, of course, is a *reductio ad* "*absurdum*, and would defeat the intention of "the Legislature. I have, therefore, no hesi-"tation in arriving at the conclusion that no "action would be maintainable against the "Railway Company."

This permission of course does not authorise the thing to be done negligently or even un-

necessarily to cause damage to others. Much was argued by the learned Counsel for the Respondent as to the peculiar jurisprudence of Quebec but in truth there is no such difference between the law of England and the law of Quebec in this respect as he seemed to suppose. The law of England equally with the law of the Province in question affirms the maxim *Sic utere tuo ut alienum non lædas* but the previous state of the law whether in Quebec or France or England cannot render inoperative the positive enactment of a statute and the whole case turns not upon what *was* the common law of either country but what is the true construction of plain words authorising the doing of the very thing complained of.

The Legislature is supreme and if it has enacted that a thing is lawful such a thing cannot be a fault or an actionable wrong. The thing to be done is a privilege as well as a right and duty and it seems to their Lordships it comes within the express language of the Code (Article 356).

But it is said that the Dominion Railway Act itself expressly maintains the liability of railway companies under Provincial law for damages caused by their operation and Section 92 is referred to. This may be disposed of in a sentence. That section refers to compensation under the Act and not to damages in an action at all which is what the question is here.

Section 288 is more plausibly argued to have maintained the liability of the Company notwithstanding the statutory permission to use the railway; but if one looks at the heading under which that section is placed and the great variety of provisions which give ample materials for the operation of that section it would be straining the words unduly to give it a construction which would make it repugnant and

authorise in one part of the Statute what it made an actionable wrong in another. It would reduce the legislation to an absurdity and their Lordships are of opinion that it cannot be so construed.

Mr. Blake for the Appellants having waived their right to recover damages or costs awarded in Canada to the Respondent their Lordships will humbly advise His Majesty that the judgment of the King's Bench affirming the judgment of the Superior Court ought to be reversed except as to costs. In the exercise of the discretion expressly reserved to their Lordships by the Order in Council granting leave to appeal their Lordships direct the Appellants to pay the Respondent's costs of this Appeal.