

*Reasons for the Report of the Lords of the Judicial Committee of the Privy Council on the Appeal of William Price v. The Chicoutimi Pulp Company and The Attorney-General of the Province of Quebec, from the Court of King's Bench for the Province of Quebec (Appeal Side); delivered the 29th June, 1909.*

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Present at the Hearing :

LORD ATKINSON.

LORD COLLINS.

SIR ARTHUR WILSON.

[*Delivered by Sir Arthur Wilson.*]

This is an Appeal from a Judgment of the Court of King's Bench of Quebec (Appeal Side), dated the 6th February, 1907, which reversed a Judgment of Gagné J., sitting in the Superior Court for Quebec, District of Chicoutimi, and dismissed the Plaintiff's Action.

The Action was brought by the Appellant against the Respondent Company to establish his right of ownership in certain lands, and the wharves built thereon, on the bank of what is known as the Basin of Chicoutimi, through which the Chicoutimi River runs into the Saguenay River.

The main question in the Action and the main question upon the present Appeal was

[25] P.C.J. 77. L. & M.—20/5/09. 100—Wt. 98.

whether the Appellant had established his title to the lands in question.

The Plaintiff's title as stated in his Case on this Appeal is as follows:—

In the year 1845 the Government of the then Province of Canada caused a certain part of the township of Chicoutimi to be surveyed into village lots, with streets and public places. A plan of this subdivision was prepared by Surveyor Ballantyne, which he called "Plan of the Projected Town of Chicoutimi." On the 21st October, 1848, the township of Chicoutimi was erected by proclamation, and became subject to the municipal control of the County Council of the County of Saguenay, and it continued to form part of the township until the year 1863, when, by the Act 26 Victoria, cap. 54, it was incorporated as a village. It continued as a village until the year 1879, when, by the Statute 42-43 Victoria, Quebec, it was erected into a town municipality under the name of the Town of Chicoutimi. Among the lots laid down in the original survey by Ballantyne are lots Nos. 25, 48, 49, 72 and 83, all of which are separated from the Basin of Chicoutimi by a strip of land running along the Basin, called "road allowance or reserve for a street, numbered Street 13." On the 13th March, 1860, Letters Patent were issued for the lots Nos. 25, 48, 49, 72 and 83 in favour of David Edward Price, and of William Price in his quality of curator to the vacant estate of the late Peter MacLeod. On the 4th October, 1861, these lots and others were sold by a judicial sale in licitation and adjudged to David Edward Price. By virtue of this sale David Edward Price became sole owner of the lots. The Plaintiff, by himself and his predecessors in title, since the 13th March, 1860, and for more than ten years prior thereto until the 25th April, 1866, owned, possessed and enjoyed all the said lots with the land adjacent thereto, openly, publicly, as proprietor, save and except a strip of land 36 feet wide used as a public road. On the 25th April, 1866, David Edward Price sold these and other lots to one Roger Savard, reserving, however, to himself the lands bordering on the Basin of Chicoutimi, to which Savard was to have no right or privilege as riparian proprietor. From this date Savard took possession of the lands sold him,

and possessed them up to the road then existing, while David Edward Price possessed the lands situated to the west of the road, that is to say, the banks of the Basin of Chicoutimi opposite the said lots, and always continued to possess them up to the time of his death, which took place on the 22nd August, 1883. By his will, the Honourable David Edward Price constituted his brother, Evan John Price, his universal legatee. The Honourable Evan John Price accepted the bequest, and entered into possession of the estate of David Edward Price, including the lands in question, and possessed them as proprietor up to the time of his death, which took place on the 31st August, 1899. By his will, the Honourable Evan John Price constituted the Appellant his universal legatee. The Appellant entered into possession of the estate of the Honourable Evan John Price and continued the possession and enjoyment of the lands in question until dispossessed thereof by the Chicoutimi Pulp Company in the year 1900.

As a result of the action of the waters and of the frost, the lands bordering the Basin of Chicoutimi gradually fell in during the time that the several predecessors in title of the Appellant owned and possessed the land bordering on the said Basin, until in or about the year 1870 it became necessary to remove the highway towards the east, whereupon Roger Savard gave, out of the land purchased by him from the said Honourable David Edward Price, a sufficient quantity to make a new road, the former road having partly disappeared and become dangerous. After the road had been removed, Savard and Price each continued their possession of the lands in question, that of Savard to the east of the road, and that of Price to the west, until about the year 1876 or 1877, when the land having been again washed away, the road was closed to the public by the village of Chicoutimi, and on the 20th December, 1880, the village of Chicoutimi passed a bye-law closing the road, after which Price and Savard respectively continued their possession of the lands occupied by each.

About 1881 a new road was established on Savard's property as a result of an understanding between Savard, Price and the town of Chicoutimi, which road replaced that which had been washed away by the waters, and such road is the present

existing street, known as Montcalm Avenue, stretching from Racine Street on the north to Price Street on the south, since which time Savard continued his possession of his remaining lands to the east, and Price those to the west of the new road. As part of the agreement under which Savard gave to the town land for the site of the existing road, Price undertook to build, and did build, wharves along the front of the Basin for the purpose of protecting the land from further erosion by the waters, and such wharves were built upon the lands upon which the road originally passed, and which had been temporarily covered by the waters of the Basin. These wharves were built on land possessed by the Appellant and his predecessors in title, and upon which the road as originally laid down by the municipal authorities was built, and the Appellant and his predecessors in title had, and continued to have, possession of the lands upon which the wharves were built until illegally dispossessed about the year 1900 by the Respondents, The Chicoutimi Pulp Company.

Savard having furnished the land necessary for the new road, was entitled to receive in compensation that upon which the old road had passed, and the town of Chicoutimi abandoned, and transferred to Savard and his successors in title, the site of the old road. The Appellant acquired from Savard's heirs all their right, title and interest in and to the lands in question.

On the other hand, the Defendant Company denied the material allegations of the Plaintiff and maintained that the property in question had always formed part of a beach lot and had always belonged to the Crown; and that the Company had acquired the rights of the Crown by grant under Letters Patent confirmed by Statute.

On the 25th March, 1905, the Attorney-General intervened in the cause for the purpose of protecting the title granted by the Crown under its Letters Patent.

It is unnecessary to examine further the formal proceedings ; it is enough to say that the whole case was tried together, including the intervention of the Attorney-General, and the real question at the trial was whether the Plaintiff-Appellant had proved his title to the lands in dispute. The trial Judge decided in his favour, and passed a Decree accordingly. The Court of King's Bench (Blanchet J. dissenting) reversed that Judgment, and dismissed the Plaintiff's Action. Against that decision the present Appeal has been brought.

The case on the part of the Appellant involves three different lines of title. The first of these starts with the Letters Patent granted by the Crown to the two Prices on the 13th March, 1860, followed up by various devolutions of title, which are said to have vested the title of the Prices in the present Appellant. With regard to this title, their Lordships feel no doubt that the Court of King's Bench dealt with it rightly. The Letters Patent, in describing the property granted by them, gave as its boundary on one side a road allowance reserved by the Crown, and there is no doubt that the land now in dispute fell within the road allowance, and not within the limits conveyed by the Crown grant.

The second ground of title relied upon by the Appellant is an alleged thirty years' prescription. With regard to this, their Lordships are of opinion that the Judgment of the Court of King's Bench is right. The question is purely one of fact, and their Lordships see no reason to dissent from the Judgment appealed against.

The third question raised is as to an alleged tripartite arrangement, dated in or about 1880, by which it was said that the Council of Chicoutimi and Price and Savard had arranged terms

the effect of which was to vest in Price the property now in controversy. Their Lordships are of opinion that on this question the Judgment appealed against is right.

For these reasons their Lordships, on the 25th May last, agreed humbly to advise His Majesty that the Appeal should be dismissed.

The costs of the Respondents will be paid by the Appellant, and will be taxed on the footing that they were represented in the Appeal by the same Solicitors.