

1926  
 May 11.

O'BRIEN ET AL.....SUPPLIANTS;

v.

HIS MAJESTY THE KING.....RESPONDENT.

*Crown lands—Timber limits—License—Expiration—Duration—Damages  
 —Rights of holders*

Suppliants were grantees from the Crown, in the right of the province of Quebec, of a license to cut timber on certain ungranted lands of the Crown, which license expired on the 30th April, 1919. They did not receive their license for the season of 1919-20 until December, 1919. Such a license could only be granted, under the Statute, for a period of 12 months. In June, 1919, a fire took place on the limit covered by the license in question, destroying some of the timber thereon, and the present action was taken to recover from the Crown the loss alleged to have been caused to the suppliants by reason of such fire, as due to the negligence of its servants and employees, as owners of the Canadian Government Railway.

*Held*, on the above facts, that as such a license could only be granted for 12 months, with no absolute right of renewal, and as suppliants were not the holders of any license when the fire occurred, they had no right of action to recover from the Crown for the damages claimed.

ACTION on behalf of suppliants to recover from the Crown for damages alleged to have been caused to a timber limit, by reason of a fire which, it was alleged, was due to the negligence of its servants and employees, employed by the Canadian Government Railway.

The action herein came on for trial before the Honourable Mr. Justice Audette at Three Rivers on March 9, 10 and 11, 1926, and again on March 19, 1926, at Montreal. It again came on for final hearing at Montreal on May 11, 1926, when judgment was delivered.

*George Campbell, K.C.*, and *M. Bigué* for suppliants.

*F. Lajoie, K.C.*, for respondent.

AUDETTE J., after hearing the argument, on the same day, delivered judgment (1).

I have listened to the argument herein with interest, and as the facts of the case are now present in my memory I will give judgment at once. While the facts will to some

(1) This judgment was affirmed by the Supreme Court of Canada, April 20, 1927.

extent govern the conclusion I have arrived at, the case resolves itself into a narrow question of law.

I cannot get over the statute.

By section 1598 R.S.Q. (1909), it is provided that no license shall be granted for longer than twelve months from the date thereof.

Then the Court of Appeal for the province of Quebec has decided, in the case of *Edwards v. D'Halewyn* (1), que si elle (une license) est le renouvellement d'une license antérieure, (elle) ne prend effet qu'à la date qu'elle porte et n'a pas d'effet rétroactif au premier mai précédent. . . . Par suite, le concessionnaire des coupes de bois dont la license expire le 30 avril, et est renouvelée le 10 décembre, ne peut prétendre que ses droits remontent au premier mai précédent, . . .

Then there is a long chain of cases that have established it as a settled principle that these licenses cover a period of twelve months only.

There is the case of *Booth v. The King* (2). That case, above all others, establishes that these licenses to cut timber are by the statute made annual licenses, and that a license holder who has complied with the Regulations has no absolute right thereunder to a renewal, as a Regulation making perpetual renewal obligatory would be inconsistent with the statutory limitations of 12 months, and therefore a perpetual license, as mentioned by counsel, must necessarily be inoperative.

The last license that was in existence in this case was one which had expired on the 30th April, 1919. The fire took place in June, 1919, and the next license to cut timber for 1919-1920 only issued in December, 1919.

Therefore there is no other conclusion to be arrived at than that as the fire occurred in June, 1919, the suppliants had, at that time, no license whatsoever. There was no license in existence when the fire occurred and in respect of which damages are now sought, and as the timber, whilst standing belonged to the Crown, the Crown had the fee in it when there was no license in existence. Any right to cut was only during the term of the respective licenses, and there being no license the suppliants cannot recover.

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(1) [1919] Q.O.R. 18 K.B. 49

(2) [1914] 51 S.C.R. 20.

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There is also the case of *Gillies Bros. Co. v. Temiskaming and Northern Ontario Railway Commission* (1), which absolutely decides the point in question, the license for the year of the fire only issuing also in December.

Therefore there will be judgment declaring that the suppliants are not entitled to any portion of the relief sought by their Petition of Right. The whole is dismissed with costs.

*Judgment accordingly.*

Solicitors for suppliants: *Bureau, Bigué et Gariépy.*

Solicitors for respondent: *Lajoie et Lajoie.*