

3, 1938

No. 34 of 1937.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

BETWEEN :—

HIS MAJESTY THE KING, represented by
the Attorney-General of Canada (Respondent)
Appellant

— AND —

10 HENRI JALBERT (Suppliant) - *Respondent*

— AND —

THE ATTORNEY-GENERAL FOR THE
PROVINCE OF QUEBEC acting for HIS
MAJESTY THE KING, in his right of the
Province of Quebec (Intervenant)
Intervenant.

AND BETWEEN :—

20 THE ATTORNEY-GENERAL FOR THE
PROVINCE OF QUEBEC acting for HIS
MAJESTY THE KING, in his right of the
Province of Quebec (Intervenant)
Appellant

— AND --

HIS MAJESTY THE KING, represented by
the Attorney-General of Canada (Respondent)
Respondent

— AND —

HENRI JALBERT (Suppliant) - *Respondent*
(Consolidated Appeals).

30 CASE FOR THE ATTORNEY-GENERAL OF QUEBEC.

RECORD.

1. This is an appeal from a judgment of the Supreme Court of Canada dated the 2nd of February 1937, in respect to two independent appeals taken simultaneously by the Intervenant-Appellant

Vol. II, p. 2.
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270.

CASE FOR THE ATTORNEY-GENERAL OF QUEBEC

Vol. I, p. 268. and the Suppliant-Respondent, from the judgment of the Exchequer Court of Canada dated the 12th day of June, 1935, whereby the Supreme Court of Canada, while allowing the appeal of the Suppliant Henri Jalbert, made no order with respect to the appeal of the Intervenant, the Attorney-General for Quebec.

Vol. I, pp. 2-5. **2.** The proceedings in this case were initiated in the Exchequer Court by a Petition of Right by the Suppliant-Respondent Henri Jalbert, dated the 24th day of December, 1932, in which he alleged amongst other things :—

Vol. I, pp. 2, 3. (a) that he was the owner of a beach lot at Chicoutimi on the River Saguenay having acquired the same from the Government of the Province of Quebec by Letters Patent dated the 16th July, 1907;

Vol. I, p. 3. (b) that His Majesty in right of the Dominion of Canada, acting through his statutory mandatories the Chicoutimi Harbour Commissioners had taken possession of the major part of his beach lot which they had filled in.

Vol. I, pp. 6, 7. **3.** To this part of the Petition of Right, the Respondent, in his Defence, dated the 8th day of June, 1933, pleaded in substance :

Vol. I, p. 6. That the Letters Patent of the Government of the Province of Quebec granting the beach lot were invalid because the land granted was at the time of Confederation part of a public Harbour and accordingly under the provisions of The British North America Act vested in His Majesty in right of the Dominion of Canada.

4. The Government of the Province of Quebec, who was the *garant* (warrantor) of Jalbert's title, asked for permission to intervene in the case and to be made a party thereto, which permission was granted by Honorable Justice Angers of the Exchequer Court on the 18th day of September, 1933.

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Vol. I, pp. 8, 9. **5.** The Attorney-General for the Province of Quebec did intervene, and pleaded in substance :—

Vol. I, p. 8. (a) that, at the time of Confederation, at the particular spot granted to Jalbert, neither the waters nor the shore were part of a Public Harbour;

Vol. I, pp. 8, 9. (b) that, in 1907, the beach lot granted to Jalbert was the property of the Crown in right of the Province of Quebec who could rightfully convey it;

(c) that the Letters Patent granted to Jalbert were consequently legal, valid and operative. Vol. I, p. 9

6. The Appellant joined issue on the Intervention made by the Attorney-General for Quebec, without questioning the jurisdiction of the Court to receive the Intervention or to pass upon its merits. Vol. I, p. 10.

7. On the sole finding that there was a Public Harbour at Chicoutimi in 1867, the Exchequer Court of Canada, by judgment dated the 12th day of June, 1935, dismissed the Petition of Right and the Intervention with costs but did neither question the right to the Intervention nor revoke the permission given to the Intervenant. Vol. I, p. 267
Vol. I, p. 268.

8. As above stated both the Suppliant Henri Jalbert and the Intervenant the Attorney-General of the Province of Quebec, took independent appeals to the Supreme Court of Canada from the judgment of the Exchequer Court but, while the Appeal of the Suppliant Henri Jalbert was allowed and the judgment of the Exchequer Court was reversed and set aside, the Supreme Court refused to make any order in respect to the Appeal of the Intervenant the Attorney-General for Quebec. Vol. I, pp. 269, 270.
Vol. II, p. 1.
Vol. II, pp. 83, 84.

9. Davis, J., while giving the reasons for this judgment of the Supreme Court, said in substance that in view of Section 31 of the Exchequer Court Act, the Exchequer Court had no power to give relief to the Province of Quebec, as the said Province had not passed the agreeing legislation contemplated by said Section 31. Vol. II, pp. 83, 84.

10. The Exchequer Court Act is Chapter 34 of the Revised Statutes of Canada 1927, as amended by 18-19 Geo. V., ch. 23; 20-21 Geo. V., ch. 17; and 23-24 Geo. V., ch. 13.

11. The Town of Chicoutimi, which at Confederation was the Village of Chicoutimi, is built on the south side of the Saguenay River at a point where the Chicoutimi River empties into it; at this juncture a bay is formed which is known as "Le Bassin". There the Messrs. Price who were pioneers in the lumbering business in that part of the Province of Quebec, had established themselves and built a private wharf in no way accessible to the public. Vol. I, p. 267.
Vol. II, pp. 58, 59.

12. From the Bassin, approximately half a mile down stream, the Rivière aux Rats, a very much smaller stream empties in the Saguenay River. It appears that one Johnny Guay had established himself, at the mouth of the Rivière aux Rats: it would seem that he Vol. II, pp. 58, 59.

Vol. I, p. 146.

Vol. I, p. 154.

was an important merchant and that in order to land his wares he had built a private quay where the public did not have access though some witnesses have said that Johnny Guay was of an accommodating disposition and at times did allow schooners belonging to others to load and unload at his quay.

Vol. II, p. 58.

13. One mile and a third below is the outlet of Rivière du Moulin, a much more important water course where there was also another quay which was also private property having belonged to one Pitre McLeod who sold it to the Messrs. Price.

14. The property of Jalbert is not situated in the mouth of any 10 of the three above mentioned rivers, but is situated on the Saguenay shore proper, between the Bassin and the mouth of Rivière aux Rats.

15. The evidence does not disclose that the property of Jalbert was, before and at the time of Confederation, a public Harbour, was used as such by the public, or was a part of a public Harbour; and there is no evidence whatever of any use for purpose of navigation of the foreshore of the River Saguenay at Jalbert's place before and up to the time of Confederation.

The Attorney-General for the Province of Quebec will urge 20 amongst others the following contentions:—

(a) that the said Order of the Supreme Court of Canada, in the judgment appealed from and by which the appeal of the Respondent Henri Jalbert was and is allowed, should be confirmed with costs; and that the said judgment of the Exchequer Court, reversed and set aside by the said Order, should remain reversed and set aside with costs;

(b) that the Order of the said Supreme Court of Canada, in the judgment appealed from and by which it was ordered and adjudged that no order should be made with respect to the 30 intervention and appeal of the Attorney-General for Quebec, should be reversed and set aside; and that the said Intervention of the Attorney-General for the Province of Quebec, should be maintained with costs; and that accordingly the Order of the Exchequer Court which had dismissed with costs the Intervention of the Attorney-General for the Province of Quebec should also be reversed and set aside with costs;

(c) and that the other Orders of the Supreme Court of Canada mentioned in the judgment appealed from should, inasmuch as

the Intervenant is concerned, be confirmed with costs; for the following, amongst other

REASONS.

1. Because the jurisdiction given to the Exchequer Court under Sections 18 and 19 of the Exchequer Court Act (Canada), though limited as to the subject-matters of the claims therein mentioned, is unlimited as to the persons who might be interested in the claims therein mentioned;
- 10 2. Because Section 31 of the said Act has not the effect of limiting, as to persons, the jurisdiction given under Sections 18 and 19 to the Exchequer Court with regard to the subject-matters mentioned in the said Sections 18 and 19; but it has the effect of enlarging with regard to the persons therein mentioned (that is to the Provinces), the jurisdiction *ratione materiae* of the Court by extending it in an unlimited way to all subject-matters that may become of controversy between the said Provinces, or between any of them and the Dominion of Canada;
- 20 3. Because under said Sections 18 and 19, jurisdiction is implied, in all claims therein mentioned, to pass on the titles of the properties involved in such claims and with regard to any person interested;
4. Because in the present case, the Province of Quebec is the *garant* (warrantor) of the title involved in the issue as given by the Province to Jalbert;
5. Because under Section 36 of the said Act, the practice and procedure before the Court shall, so far as they are applicable, and unless it is otherwise provided in the Act or by general rules made under the Act, be regulated by the practice and procedure in similar suits, actions and matters in His Majesty's High Court of Justice in England, as on the 1st day of October, 1887;
- 30 6. Because at the said date, it formed part of the practice and procedure of His Majesty's High Court of Justice in England to grant relief, relating to the subject-matter, with regard to any third person not already a party in a suit, by bringing such person before the Court for the purpose of becoming a party to the suit;
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7. Because consistently with such practice and procedure, the Exchequer Court passed under Section 87 of the Exchequer Court Act general rules and orders to the same effect about third party procedure, and which are contained in Chapter XX of the said general rules and which include rules 234, 235, 236, 237, 238, 239, 240 and 241;
8. Because the above rules are also completed for the Province of Quebec by rule 2 of the said Exchequer Court general rules, which has the effect to embody also, in the Exchequer Court practice and procedure, the practice and procedure at the time in force in similar suits, actions and matters in His Majesty's Superior Court for the Province of Quebec;
9. Because Articles 220, 221, 222, 223 and 224 of the Code of Civil Procedure for the Province of Quebec, relating to the said Superior Court and in force ever since Confederation time, provided for the right and procedure of Intervention of a third person so as to intervene in a case already formed between others and in which such third person has an interest;
10. Because Articles 186 and 188 of the said Code of Civil Procedure give particularly to the *garant* (warrantor) the right to intervene in any case where the position of the *garanti* (warrantee) is questioned;
11. Because the evidence does not establish that the property of the Respondent was a public Harbour or part of a public Harbour at the time of Confederation;
12. Because the evidence does not establish that there was at the time of Confederation a public Harbour at Chicoutimi;
13. Because documents were improperly admitted in evidence.
14. Because the trial Judge had proceeded on an erroneous basis when, after having found that there was a public Harbour at Chicoutimi at Confederation, he did not proceed to ascertain the extent of that Harbour and particularly to consider whether the property of Jalbert was part of that Harbour.

ANTONIO TALBOT.
GUSTAVE MONETTE.

In the Privy Council.

ON APPEAL

FROM THE SUPREME COURT OF CANADA.

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**HIS MAJESTY THE KING, represented by the
Attorney-General of Canada (Respondent)**
Appellant

— AND —

HENRI JALBERT (Suppliant) - Respondent

— AND —

**THE ATTORNEY - GENERAL FOR THE
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— AND —

HENRI JALBERT (Suppliant) - Respondent.

(CONSOLIDATED APPEALS).

CASE

— FOR THE —

ATTORNEY - GENERAL OF QUEBEC.

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