Queen v. *Sylvain:*

The Meaning of Damage

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Article 1053 of the civil code of Quebec provides that,

> Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

Inherent in this article are the three fundamental elements which render a person civilly responsible for his behaviour: fault, damage, and a causal relationship between the two.

It will be the purpose of this note to critically examine the second of these three elements, in the light of the recent jurisprudence. At the outset, it should be mentioned that we are concerned, not with the evaluation of damages, or pecuniary loss, but rather with that kind of loss, however great it be, which the courts presently recognize as coming within the purview of article 1053 C.C.

The recent decision of the Supreme Court of Canada in the *Queen* v. *Sylvain* [1] relates directly to the problems under consideration. In that case, a car belonging to Doctor J. L. Sylvain and driven by his son Guy collided with a car driven by Corporal L. P. E. Leblanc. One of the consequences of this accident was that Leblanc and his four passengers, all members of the Canadian armed forces, were injured.

More than two years ofter this accident, the appellant sued the respondent in the Exchequer Court,[2] alleging that the accident was the result of respondent's negligence. A claim for damages was made as follows: $3,145.05 for disbursements which the Crown was obligated to make to these soldiers for medical care, and $1,516.23 representing their pay for the period during which they were indisposed. Mr. Justice Dumoulin dismissed the action in the Exchequer Court, from which decision an appeal was made to the Supreme Court.

It is important to note that the Crown did not assert its rights by invoking either conventional or legal subrogation. Nor did it

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1 [1965] S.C.R. 164.

2 [1965] Ex. C.R. 261.

base its action on any special subrogatory legislation, such as the Government Employees Compensation Act.[3] Finally, the appellant did not rely on the equitable principle, which is the basis of the action *de in rem verso*, that no person should enrich himself to the detriment of another. The appellant, rather, based its action for damages exclusively on article 1053, claiming that the pecuniary loss it suffered arose directly from the fault of the respondent.

Mr. Justice Fauteux summed up the plaintiff's position,

> ...comme étant une action directe dirigée par le maître contre le responsable d'un quasi-délit causant des lésions ou blessures corporelles à son serviteur, pour être remboursé des sommes qu'il a déboursées à cette occasion au bénéfice du serviteur.[4]

In his words, the real issue at bar was the validity of such a claim,

> ...lorsque ses déboursés sont faits en satisfaction d'une obligation contractuelle ou statutaire, dont le maître devient alors le débiteur et l'employé le créancier.[5]

In rejecting the action the learned judge decided that,

> ...les sommes ainsi versées par l'employeur ne représentent pas de dommage au sens de ce mot suivant l'article 1053 du Code civil...[6]

Fauteux, J. based his reasoning on an article by L. de la Morandière,[7] the most relevant parts of which are reproduced below.

> En effet, celui qui acquitte une obligation en vertu d'un contrat qu'il a conclu, ou d'un statut règlementaire qui organise son fonctionnement, ne subit pas de dommages, parce qu'il ne subit pas de lésion, ni dans ses droits (ce qui est évident), ni dans ses intérêts.
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> En d'autres termes, il ne s'agit pas là d'un dommage au sens de l'article 1382 C.N. parce que le paiement trouve sa cause dans l'ensemble des stipulations du contrat ou du statut...
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> Quand un individu s'engage par contrat ou par statut à payer une certaine somme, il ne le fait pas contrairement à ses intérêts, mais, bien au contraire, en vue de donner satisfaction à ceux-ci. Comment peut-on soutenir qu'en payant ce à quoi il est ainsi tenu, il subit un dommage dont il peut demander à d'autres réparation ?[7a]

It is respectfully submitted that this reasoning, cited with approval by Fauteux, J. and constituting the basis of his decision, is subject to criticism on a number of grounds. Firstly, it fails to recognize important differences between those obligations having their source in a contract, and those which emanate from the law

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[3] R.S.C. 1952, c. 134.

[4] [1965] S.C.R. at p. 170.

[5] *Ibid.*, at p. 170.

[6] *Ibid.*, at p. 172.

[7] *De l'action des administrations contre le tiers responsable de l'accident survenu survenu à un membre de leur personnel*, D.C. 1958.179.

[7a] *Ibid.*, at p. 185.

itself. Thus one may validly argue that the fulfillment of a contractual obligation made exigible by the negligence of a third party does not constitute damages in law because the debtor has voluntarily run the risk, and has, in return, received consideration for this risk. The same reasoning does not, however, apply to an obligation which the law imposes upon an individual, and for which he receives nothing in return. When a person involuntarily assumes an obligation, should the law not recognize that his rights have been prejudicially affected when it is rendered exigible by the negligence of a third party? Has he not suffered a pecuniary loss sanctionable in law?

The writer emphasizes that, in his opinion the legal damages lie, not in the creation of the obligation (which has its true source in a statute), but rather in the fact that an obligation must now be fulfilled which might otherwise have never been exigible. It is submitted that to hold otherwise is to give a most restrictive and artificial meaning to the concept of damages under the civil law.

This decision may also be criticized on policy grounds. While it is true that the civil law is primarily concerned with compensating the victim rather than punishing the wrongdoer, there is no reason why a punitive element cannot be retained, providing the rights of the victim are not thereby impinged upon. In the case under consideration, however, the Supreme Court chose to allow the negligent conduct of Mr. Sylvain to go unsanctioned, even though the victim had already been compensated for the injuries he suffered.

The Legal Implications

The *Queen* v. *Sylvain* sets forth the principle that whenever a statutory or contractual obligation is rendered exigible by the negligence of a third person, the pecuniary loss thereby suffered does not constitute damages in law. Keeping in mind the fact that the civil code is a statute, the implications of this principle become obvious, for it follows that wherever the code places a legal responsibility upon someone, that person has no right of action under article 1053 C.C. to recover his losses, even when his obligation is made exigible by the negligence of a third person. Hence when an employer is condemned under article 1054 C.C. to pay for the damage caused by his servant's negligence, he has no recourse against the latter on the grounds that he has suffered damages. Although this situation is easily distinguishable from the facts of the Sylvain case, the principle established in that decision is so broad that our example would fall squarely within it.

Applying the same reasoning to the vicarious liability imposed upon the mandator, it follows that he too, has no recourse against his negligent mandatary under similar circumstances. Nor, in a partnership, would one partner have a recourse against another for the loss which he suffers under articles 1856 C.C.

The same reasoning applies to article 1055, for here too a legal responsibility is imposed upon certain classes of persons. A case relevant in this context is that of *Marcotte* v. *Desourdy et Corporation de la Paroisse de St-Siboire,*[8] where the principal defendant was condemned to pay for the damages caused by his sheep, in accordance with article 1055. He impleaded the defendant municipality on the grounds that it was due to its negligence that the animals had gained access to the public road where the damage was caused. The court held that,

> Considérant que le défendant principal ayant été condamné à payer à titre de dommages, une somme de $213.65, son action en garantie doit être accueillie concurremment pour un égal montant, et la défenderesse en garantie doit à son tour indemniser son garant, suivant l'application des principes qui régissent la garantie simple.[9]

Thus in allowing the action in warranty, the court was recognizing that the loss suffered by the principle defendant constituted damage in law, even though he was condemned under the legal rule of article 1055. The writer submits that, unless the principle established in the *Queen* v. *Sylvain* is rigidly confined to the fact pattern from which it arose, a decision of this nature could no longer be rendered.

It should also be noted that, as a result of the Sylvain decision the word "another" in article 1053 C.C. can now only refer to the immediate victim of a delict or quasi-delict, and hence no longer include a third party who compensates the victim: if the payment is made *ex gratia,* then the requisite causality is lacking between the negligent act and the damage; and if it is made in satisfaction of a contractual or statutory obligation, then it does not constitute damages in law. In this respect, then, the *Queen* v. *Sylvain* has in fact overruled the celebrated decision of the Supreme Court in the case of *Regent Taxi and Transport Co.* v. *Maristes Frères,*[10] where the word "another" was not given so restricted a meaning.[11]

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[8] (1937) 75 C.S. 439.
[9] *Ibid.,* at p. 441-442.
[10] [1929] S.C.R. 650.
[11] Anglin, J., at p. 657; Lamont, J., at p. 707.