

Samson v. Holden, [1963] S.C.R. 373

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Commentary

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C. CONFLICTS OF LAW

Samson v. Holden, [1963] S.C.R. 373.

On October 20, 1952, a Quebec man while driving his car in the State of Maine crashed into another car being driven by a resident of that state. As a result of the accident, the Maine driver died and thereupon his wife and sons instituted an action for damages against the Quebec driver in the Province of Quebec. By the law of Maine, because the victim of the accident died intestate, the action had to be taken in the name of an administrator. However, the widow and her sons neglected to do this, though one of the sons, in fact, had been appointed administrator.

In *Samson v. Holden*¹ the Supreme Court of Canada upon these facts affirmed the Court of Appeal in Quebec and held the defendant Samson liable.

The main issue before the Court was whether the action was enforceable by the plaintiffs from Maine in Quebec. This depended on two subsidiary problems.

First, how was the court to characterize the law of Maine which required the administrator to bring the action in his own name? Fauteux J. who wrote the majority judgment came to the conclusion that it was a matter of procedure and not capacity.

Je dirais que la prépondérance de la preuve sur la loi du Maine établit que cette disposition de l'article 10 prescivant que l'action doit être postée par et au non du 'personal representative' en est une de procédure.²

Taschereau J. who dissented stated it was a matter of capacity, governed by the law of Maine. The learned judge in his judgment adopted the view of Taschereau J. who likewise dissented in the Court of Appeal of Quebec. Both judges chose to believe the expert witnesses for the defendant who testified that the requirement of an administrator was fundamental to the bringing of the action. The majority of

¹ [1963] S.C.R. 373.

² *Ibid.*, at p. 380.

the court on the other hand felt that they should not disturb these findings of fact made in reference to the foreign law by the trial judge. One is inevitably led to the conclusion that the foreign law was characterized by the *lex loci delicti*.

The second question in relation to the main issue before the Court was what rule of law applied to the case where the tort was committed in the State of Maine but the action brought in the Province of Quebec. Fauteux J. relied on the English common law rule that in such a situation the tort must be actionable in Quebec and unjustified in Maine where the action arose. The learned judge cited the authority of *McLean v. Pettigrew*³ as an application of this principle in the Province of Quebec. Whether this principle is applicable in Quebec has been subject to much criticism by the text writers and has been the result of frequent litigation. It has been argued that the English principle does not apply in Quebec because of *Civil Code*, Article 6(3), which has been interpreted to mean that the *lex loci delicti* applies exclusively in a case of a tort occurring in one state and action taken in another.⁴

Samson v. Holden thus reaffirms the view expressed by the Supreme Court of Canada on previous occasions that the English principle operates in Quebec as well as the other Provinces.

J.G.W.