

1925
Apr. 11.

QUEBEC ADMIRALTY DISTRICT

UNITED STATES STEEL PRODUCTS COMPANY	}	PLAINTIFF;
vs.		
SINCENNES McNAUGHTON LINES, LIMITED	}	DEFENDANT.

Shipping—Collision—Canal navigation—Preliminary act—Rule 13 of Canal Regulations—Duty of tug master.

The *S.M.*, was proceeding down the Soulanges Canal when she sighted a tug with tow coming up. When over half a mile apart the *S.M.* sounded one blast of the whistle which was answered by the tug. The *S.M.* started to port her helm when about a ship's length from the tug proceeding slowly to the south side of the centre. The tug continued her course in the centre of the canal until after the *S.M.* had sounded the danger signal, and when about 125 feet from the steamer started to port her helm, with increased speed, to go across to the north side. The effect of this sudden movement by the tug swung the barges to port into the water of the *S.M.*, and both barges came into contact with the *S.M.*, crowding her until she struck the south bank damaging her starboard bilge.

(1) [1881] 6 A.C. 217, at p. 226. (2) [1884] 9 A.C. 873.
(3) 1924 A.C. 406; 93 L.J. P.C. 182.

Held: That the *S.M.* in no way contributed to the collision and that the collision was solely due to the unseamanlike manoeuvre of the tug (1) in waiting too long to turn out; (2) By her master failing to instruct the captains of the barges of the manoeuvres to be adopted; (3) By his breach of Rule 13 as to the length of tow.

2. That the *S.M.* had the right of way and it was the duty of the tug and tow, after passing signals had been given and understood, to have gone to her own side of the canal in proper time and allowed the other half to be free and unobstructed for the passage of the *S.M.*
3. That a statement in a Preliminary Act is evidence against the party making it. (*The Seacombe*, 81 L.J. Adm. 36 referred to).

ACTION *in personam* for damages sustained by the plaintiff ship by reason of a collision with tug and tow in the Soulanges Canal.

April 1, 1925.

Case now heard before the Honourable Mr. Justice MacLennan at Montreal.

A. R. Holden, K.C. and *A. H. Elder, K.C.* for plaintiff.

F. Germain, K.C. and *E. Languedoc, K.C.* for defendant.

The facts are stated in the reasons for judgment.

MACLENNAN L.J.A., now this 11th day of April, A.D. 1925, delivered judgment.

This is an action *in personam* for damage alleged to have been sustained by plaintiff's motor ship the *Steel Motor* from a collision with the barges *Melrose* and *Dunmore* in tow of the tug *Virginia* in the Soulanges Canal on 9th November, 1923.

[His Lordship here gives the pretensions of the parties and proceeds.]

The *Steel Motor*, of 1,695 tons gross and 973 tons net register, had a length of 258 feet, her beam was 42 feet 9 inches and her draft at the time of the accident was 13½ feet forward and 13 feet 4 inches aft. On the afternoon of 9th November, 1923, according to the evidence of her master who was on the bridge, she was coming down the Soulanges Canal with the current when she met the tug *Virginia* having in tow the barges *Melrose* and *Dunmore*. A passing signal of one blast was given and answered at a distance of over half a mile. Both the steamer and the tug and barges were then in the middle of the canal and when they got to between 200 and 300 feet of each other the steamer's helm was ported to bring her to the south

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side of the canal. The tug still kept in the middle and when approximately 150 feet from the tug the master of the steamer blew the danger signal and checked his speed to double slow and, when at a distance of about 125 feet, the tug started to port, increased her speed and the barges began to swing over to the south side in the steamer's water, the stern of the rear barge coming to about 25 feet from the south bank. Under the port helm the *Steel Motor* approached to about within 25 or 30 feet from the bank when her engines were put full speed ahead and her wheel hard-a-starboard, but before she had time to swing both barges collided with her port side and her starboard side came against the south bank of the canal and her engines were immediately stopped. This is substantially the evidence of the master of the *Steel Motor*, which in its essential features is corroborated by the wheelsman, mate, watchman and other members of the crew.

It is established that the canal at the place where this accident happened is 96 feet wide at the bottom; that the banks slope outward one in two; that the depth of the water was about 16 or 17 feet, which would give the width of the canal at the surface of the water 160 to 165 feet. The tug was 90 feet long and 23 feet wide; the *Melrose* was 183 feet long by 36 feet 5 inches beam, and the *Dunmore* 183 feet long with a beam of 35 feet. The tow lines between the tug and the *Melrose* and between the *Melrose* and the *Dunmore* were about 6 feet, so that the total length of the tug and tow was 468 feet. The length of the canal locks is 280 feet between the gates, but they cannot accommodate vessels of more than 255 feet in length.

The evidence on behalf of defendant is very lengthy and very contradictory.

[His Lordship here discusses this evidence and proceeds.]

There is a marked difference between the evidence on behalf of the plaintiff and defendant, and it is for the court to decide which is to be accepted. It is quite impossible to reconcile the varying statements of the different witnesses. Plaintiff's case is supported by an apparently consistent story by the master and crew of the steamer, free from serious contradictions, while the evidence on behalf of the defendant is a mass of contradictory, inconsistent and improbable statements by members of the crews of the tug

and barges. The outstanding allegations of the pleaded defence are, first, that at a suitable distance the tug and tow moved over to the north side of the canal and remained there while passing the steamer, and second, that the steamer delayed too long in the centre of the canal until as she passed the first barge she put her helm hard-a-port which swung her head towards the south bank, and before the effect of this port helm could be checked she took ground against the bank. The wheelsman of the *Dunmore*, the second barge, admitted that the steamer went on the bank opposite his barge when within six feet of her. This, when taken in conjunction with the plaintiff's evidence, destroys the assertion that while passing the steamer the *Dunmore* with the tug and the other barge was close to the north bank, and confirms the evidence of the plaintiff's witnesses that the *Dunmore* came over into the water of the steamer and crowded her to the bank when her starboard bilge was damaged. It is stated in defendant's Preliminary Act

that the *Steel Motor* when just about to meet the tug and tow . . . suddenly put her helm hard-a-port, throwing her head to starboard, etc. and the mate of the tug swore that the steamer sheered towards the south bank when passing the tug. Any statement in a Preliminary Act is evidence against the party making it. In *The Seacombe, The Devonshire* (1), Fletcher Moulton L.J., at page 60, in speaking of statements in the Preliminary Act, said:—

They are not mere pleading allegations. They are statements of fact made under such circumstances that they rank as formal admissions of fact, binding the party making them, perhaps, as strongly as any admissions of fact can do.

These admissions by the tug's mate and in the Preliminary Act show that the steamer did not remain in the centre of the canal until she was opposite the first barge as alleged in the defence, and it is reasonable corroboration of the evidence of the steamer's witnesses that her helm was ported about a ship's length from the tug when she began to move to the south side of the canal.

Having heard some of the witnesses at the trial and having examined very carefully the other evidence previously taken, I have come to the conclusion that the evidence on behalf of plaintiff should be accepted and I

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find as findings of fact, (1) that the *Steel Motor* started to port her helm when about a ship's length from the tug and proceeded slowly over to the south side of the centre of the canal; (2) that the tug continued her course in the centre of the canal until after the *Steel Motor* had sounded the danger signal and when at a distance of about 125 feet from the steamer started on her port helm with increased speed to go across to the north side of the canal; (3) that the effect of this sudden movement swung the barges over to port into the water of the *Steel Motor*; (4) that both barges came into contact with the *Steel Motor* and crowded her until she fetched up on the south bank damaging her starboard bilge.

Among the questions which I submitted to my assessors with their answers are the following:—

Q. Was there anything wrong with the helm movements of the *Steel Motor* as she approached and tried to pass the tug and tow?

Ans. No. It would appear that the *Steel Motor* was navigated with every appearance of good seamanship. Porting her helm at about a ship's length apart, considering the passing signals had been understood was consistent with good seamanship.

Q. If the tug and tow continued in the middle of the canal until about 125 to 150 feet from the *Steel Motor*, did they delay too long and, if so, when should they have started to move over the north side of the canal?

Ans. It would have been good policy to have taken the north side of the canal much sooner than they did, especially in view of the shallow draft of the vessels and the light wind on the starboard side not interfering with their movements.

I find also that the master of the tug gave no instructions whatever to the captains on the barges as to what manoeuvres should be adopted when meeting the down bound steamer. The master of the tug was the only certificated officer. The men on the barges from the evidence appeared to have had a very confused idea of what they should do from the different movements of porting, starboarding, hard-a-porting and hard-a-starboarding, which they adopted. I am advised by my assessors that there being only one navigator on any tow, namely the master of the tug, it follows that the captains of the barges look to the master of the tug for orders, and that the master of the tug in this case should by some method of signals have directed the movements of the two barges. He admits he did nothing in that connection and left the men on the barges to their own devices. This, in my opinion,

was a neglect of a precaution required by the ordinary practice of seamen which contributed to the accident.

The master of the tug also broke Rule 13 of the Canal Regulations in having a tug and tow of the combined length of 468 feet without the necessary permission. The part of the Rule applicable states:—

Except with the special permission, in writing, of the Superintending Engineer, or Superintendent, no steamer shall tow more barges on the canals of the River St. Lawrence and the Welland Canal than she can lock with.

The limit of the locks is proved by one of the engineers of the Department of Railways and Canals to have been 255 feet. In addition, the length of the tow made it more difficult to handle. I asked my assessors what effect the combined length of the tug and tow had on their navigation, and they say:—

Being of such length it would be very awkward of handling and on any alteration of the tug's helm the barges would naturally follow in a snake-like fashion and not in a straight line. It would have been much easier to have kept control of a shorter tow.

There can be no doubt that the length of the tow contributed to the collision and the crowding of the steamer to the bank. The Canal Regulations are to be accepted by all parties navigating the canals as the conditions under which the canals are to be used and masters of tugs engaged in the towage business, in the crowded and narrow waters of the canals, must understand that these Regulations as well as the Rules of the Road are made to be observed and that their deliberate violation may result in serious liability.

The defendant was the owner of the tug and both barges and is responsible for their negligent and improper navigation. The *Steel Motor* coming down with the current had the right of way and it was the duty of the tug and tow, after the passing signals had been given and understood, to have gone to the north side of the canal in proper time and allowed the southern half of the canal to be free and unobstructed for the passage of the *Steel Motor*. The tug and tow broke Rules 25, 31, 37 and 38 of the Rules of the Road for the Great Lakes. There is no blame imputable to the *Steel Motor* or those in charge of her, etc.

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Judgment accordingly.

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