
QUEBEC ADMIRALTY DISTRICT

KEYSTONE TRANSPORTS LIMITED. . . . PLAINTIFF;

1924
April 12.

AGAINST

THE BARGE *BERNON L.*

Shipping—Collision—Practice of seamen—Canal navigation—Negligence—Tug and tow.

A collision occurred on the Welland Canal, just below the Airline Bridge between the barge *B.L.* in tow of the tug *B.* coming down the current and the *K.* going up. The bridge swings on a pier in the centre of the canal, leaving a gap on the east and west sides for boats to pass, being respectively 45 feet 6 inches and 43 feet 6 inches wide. When a considerable distance above the bridge the tug gave a one-blast signal which was answered by the *K.* with a similar signal. The *K.* was a steel vessel, 42 feet 6 inches beam and 250 feet long, and the barge was 40 feet wide, being loaded with grain. When between 625 and 650 feet from the bridge, the *K.* put her bow against the west bank, her engines just turning to hold her, her stern being 10 or 15 feet out, intending to let tug and tow pass and then go through the east gap. The tug and tow came through the east gap slowly, and then, as happens to all vessels at this place, she took a sheer to port. All possible manœuvres were taken to minimize and counteract the effects

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of the sheer, and she was on her side of mid-channel at time of collision. There was a west wind of 22 miles an hour blowing, and the *K.* being light and drawing forward only 2 feet and being 34 feet above water, was exposed to the influence of wind, and her bow was forced away from the bank towards the centre, causing her to drift and the collision occurred. The *B.L.* had right of way.

Held, on the facts, that the collision was caused by the *K*'s sheer to port due to want of care and seamanship on her part in selecting a place too near the bridge, and in attempting to keep stationary with her bow against the bank. That she should have either stopped further down to enable the tug to recover from an inevitable sheer, or placed her bow in the west gap until the tow had passed, and that in consequence the *K.* was wholly to blame for the collision.

Held further, that a tug with barge in tow has not the same facility of movement as if she were unencumbered, and that a vessel meeting them should make allowance therefor, and take additional care.

ACTION *in rem* and counter-claim for damage resulting from collision.

March 31, 1924.

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

A. R. Holden K.C. for plaintiff.

Errol Languedoc K.C. for defendant.

The facts are stated in the reasons for judgment.

MACLENNAN, L.J.A., now this 12th day of April, 1924, delivered judgment.

This is an action *in rem* and counter-claim for damages resulting from a collision between plaintiff's steel steamer *Keynor* and the Wooden barge *Bernon L.* which occurred in the Welland Canal on the 30th June, 1923.

[His Lordship here gives a summary of the plaintiff's and defendant's case as set out by them in their pleadings and preliminary acts, and proceeds.]

The *Keynor* was a steel vessel of 1,806 gross tonnage, 250 feet long and 42 feet 6 inches wide, drawing at the time of the accident two feet forward and 12 feet 6 inches aft. The wooden barge *Bernon L.* of 982 gross tonnage, 196 feet long by 40 feet wide, drawing 14 feet 2 inches and carrying 41,000 bushels of wheat, was in tow of the tug *Brant*, a vessel 58 feet long and 16 or 17 feet wide. The tug and tow were going down the canal with the current of about

two miles an hour and had the right of way. The *Keynor* was going up. The Airline Bridge crossing the canal has a pier in the centre of the canal and a draw or gap on either side, the east draw being 45 feet 6 inches wide and the west draw 43 feet 6 inches. When the tug and tow were some distance above the bridge a one-blast signal was given by the tug, to which the *Keynor* responded by a similar signal. The tug and tow reduced their speed to dead slow, headed for the starboard or east draw of the bridge and passed through with very little speed. The *Keynor* had been going at half speed and after the passing signals were given reduced to dead slow, continued up the canal and was brought over to her starboard side with her bow up to the bank and her stern ten or fifteen feet out in the canal. She was seen hugging the bank by the master of the tug when the tug was above the bridge. When the tug and tow came through the draw, the barge, as happens to all vessels coming down there, took a sheer to port. The master of the tow put her wheel over to counteract the sheer, and the master of the tug ported his helm and went full speed ahead in order to keep the bow of the tow from going too far to port.

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The evidence of what happened after the tug and tow had come through the bridge up to the time of the collision is most contradictory. According to the master and mate of the *Keynor*, that vessel had her bow against the west bank, her stern out ten or fifteen feet, with her engines just turning and holding her against the current for from four to five minutes at a point said to be 625 or 650 feet below the bridge, when the tow sheared to port and the vessels collided. The bluff of the barge's port bow, about three feet abaft the stem, came into contact with the bluff of the *Keynor's* port bow fifteen or eighteen feet from her stem. That was the story told by the master and mate of the *Keynor*. One of the bridge men on the Airline Bridge has testified that, just before the collision, the *Keynor* was not lying against the canal bank but was thirty feet out parallel to the bank and that the barge sheered into her when in that position; while the evidence of all the witnesses who were on board the tug and tow is, that the tow never passed the centre line of the canal and that the *Keynor*

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took a sheer to port out into the canal until she came into collision with the tow. The accident happened about 2.30 p.m. June 30, 1923, about sixteen miles west of Buffalo, N.Y., where the official record of the Weather Bureau of the U.S. Department of Agriculture shows that at 2 p.m. on that day the wind was blowing from the west at the rate of 22 miles per hour. There is evidence that the wind would be about the same where the accident happened as at Buffalo, and the master of the tug has testified that the wind was a fresh breeze on his port quarter and as the canal, there, runs practically north and south, the wind would be on the starboard bow or side of the *Keynor*. As she was light and drawing only two feet forward, she would have about 34 feet above the water line, and was quite exposed to the influence of the wind. The *Keynor's* intention was, after the tug and tow had passed down, to go through the east draw of the bridge, as it was a little wider than the west draw and would afford easier passage, and, in order to allow the tug and tow to pass down, the master of the *Keynor* brought her within about 650 feet of the bridge intending to remain there until the tug and tow had passed.

Among the questions which I asked my assessors, with their answers, are the following:—

(1) Was it in accordance with the ordinary practice of seamen and good navigation to attempt to keep the *Keynor* stationary with her bow against the bank and her stern out ten or fifteen feet while the tug and tow were approaching, having regard to current and wind conditions?

Ans. No. It was not good policy or good navigation to attempt this. From such position any tendency to sheer on the part of the *Keynor* would be—with the wind on the starboard bow and the current on the port-quarter—to send her bow out towards the centre of the canal, and this sheer would be difficult to overcome.

(2) Was the place which the master of the *Keynor* selected to meet the downbound tug and tow too close to the Airline Bridge?

Ans. Yes. It would appear that he was in such position as to lay himself open to damage, because of the known sheer all vessels take when coming down through the Airline Bridge. He could have remained below or, as an alternative, placed the bow of the *Keynor* in the west draw and waited until the tow had passed clear.

(3) Was the *Keynor* brought too soon to the starboard bank of the canal?

Ans. Yes. It is a better and safer practice to keep the centre of the canal until about a ship's length, or less, then to take his right side of the canal.

It will be seen that the gentlemen who advised me are of opinion that the place where the master of the *Keynor* selected to meet the tug and tow was dangerous and was too close to the bridge and that the master of the *Keynor* should either have stopped further down the canal at a greater distance from the bridge, which would have enabled the tug and tow to recover from the sheer which all vessels take after passing through the draw, or he might have proceeded up to the bridge and placed the bow of the *Keynor* in the west draw and waited there until the tug and tow had passed, and then by going astern a short distance could have safely passed through the east draw, if he considered the west draw too narrow for his vessel. The master of the tug expected the *Keynor* would have adopted the latter course, but instead of doing so the master of the *Keynor*, contrary to the ordinary practice of seamen and good navigation, in the opinion of my assessors, and contrary to the usual practice in the canal, according to the evidence of some of the witnesses, attempted to keep his vessel against the west bank stationary for several minutes while the tug and tow were coming through the bridge, hoping to remain in that position until they had passed. If it had not been for the wind, it is possible that the *Keynor* could have been kept in that position until the tug and tow had passed, but placed as she was, she had the current against her port-quarter and the wind on her starboard bow, which apparently forced her bow away from the bank towards the centre of the canal just as the tug and tow were passing, with the result that she drifted over and the collision took place. If the *Keynor* had waited further down, the tug and tow would have had time and opportunity to recover from the inevitable sheer after passing the bridge, and the *Keynor* when a ship length or less from the tug, could have gone to starboard and safely passed. This is the advice of my assessors. In my opinion, it was bad seamanship on the part of the master of the *Keynor* not to have remained further down the canal, say half a mile below the bridge, and there met the tug and tow, or equally bad seamanship,—and he had ample time so to do,—not to have taken his vessel up to the bridge and placed her bow in the west draw until the tug and tow had

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passed down. Instead of taking either one of these alternatives, he chose a dangerous and unseamanlike manœuvre in attempting to keep his vessel stationary, with her bow against the bank and her stern out about ten or fifteen feet for several minutes while exposed to a wind strong enough to carry his vessel away from the bank until she came into collision with the tow. The tug and tow had the right of way and it was the duty of the *Keynor* to keep clear and give them a safe passage. A tug with a barge in tow has not the same facility of movement as if she were unencumbered, and the *Keynor* should have made allowance for this and taken additional care in meeting them. On the evidence I find that the collision did not take place in the manner described by the master and mate of the *Keynor*; that the sheer of the tow was inevitable; that it was known to all the navigators of the canal that every vessel coming down through the east draw of the bridge would sheer more or less to port; that those on board the tug and tow did everything possible to minimize and counteract the effect of the tow's sheer and that the tow did not pass mid-channel of the canal at the time of the collision, which was caused by the *Keynor's* sheer to port until the bluffs of the bows came in contact in a glancing blow which did some damage to both the *Keynor* and the *Bernon L.*

I find that the collision was caused by the failure of the *Keynor* to keep to the starboard side of the canal, and that her sheer to port until she collided with the *Bernon L.* was due to want of care and seamanship on the part of her officers in charge of her navigation. I also find that there is no blame imputable to those in charge of the *Bernon L.* or the tug *Brant*.

There will therefore be judgment dismissing the action against the *Bernon L.* with costs, and the counter-claim of the defendant for damages caused to the *Bernon L.* is maintained with costs, with a reference to the Deputy District Registrar, with the assistance of merchants, to assess such damages.

Judgment accordingly.