

QUEBEC ADMIRALTY DISTRICT.

1918
Oct. 24.

*SINCENNES—McNAUGHTON LINE LTD.,
PLAINTIFF;

v.

ROBERT McCORMICK, OWNER OF BARGE
“MIDDLESEX”,
AND
THE UNION LUMBER COMPANY, LIMITED.,
REG. OWNER OF THE SCHOONER “ARTHUR”,
DEFENDANTS.

Towage—Loss of tow—Responsibility—Privity of owner—Limitation of liability—Sections 921 and 922 of Canada Shipping Act, R.S.C. ch. 118.

In an action seeking a declaration of limitation of liability for negligence in the performance of a towing contract, the owner of the tugs in question established that his vessels had been inspected according to law and their machinery and equipment were in good condition at the time of the towage. It was, however, proved by defendants that a key-pin had fallen from the steering gear of one of the tugs and that there was some want of reasonable promptitude, foresight and seamanship on the part of the master and crew.

Held, that the dropping out of the key-pin from the steering gear was quite unforeseen and was not due to any neglect or want of supervision on the part of the plaintiff or their superintendent, and the accident having been due to the fault and negligence of the crews on board the tugs constituting the tow and having been caused without plaintiff's actual fault or privity, the plaintiff was entitled to an order limiting its liability.

* Both defendants appealed to the Supreme Court of Canada. Appeals were dismissed.

1918

SINCENNES-
McNAUGHTON
LINEv.
McCORMICK
AND UNION
LUMBER CO.

Statement.

THIS is a case for limitation of liability.

The case was tried before the Honourable Mr. Justice Maclellan, Deputy Local Judge, at Montreal, on September 9, 1918.

The plaintiff by its statement of claim alleges that before and at the time of the grounding hereinafter stated, the plaintiff was the owner of the tug "Myra", registered at Montreal, and of the tug "Long Sault" registered at Sorel, P.Q., the defendant, Robert R. McCormick, was the registered owner of the barge "Middlesex", and the Union Lumber Company, Limited, was the registered owner of the schooner "Arthur". On the morning of August 13, 1917, the barge "Middlesex", schooner "Arthur" and the barge "Stuart H. Dunn", were descending the River St. Lawrence made fast abreast, in tow of the tug "Myra". When in the Rapide Plat, a short distance above Morrisburg, the steam steering gear of the said tug suddenly, and without warning, failed to operate, and the barge "Middlesex" and the schooner "Arthur" grounded in the shoal water on the south side of the channel. The barge "Dunn" struck the rocks, seriously damaging her hull, but did not ground, and subsequently succeeded in reaching the wharf at the foot of the Rapide Plat Canal. The barge "Middlesex" and the schooner "Arthur" with their cargoes, were subsequently salvaged. There was no loss of life or personal injury caused by reason of the said grounding.

At the time of the accident, the tug "Long Sault" was made fast alongside the tug "Myra", but was taking no part in the towing, and was not responsible for same.

On October 3, 1917, the defendant, Robert R. McCormick, as the owner of the barge "Middlesex", and the defendant, Union Lumber Company, Limited, as the owner of the schooner "Arthur", each instituted an action *in personam*, in this Court, against the plaintiff, claiming damages in respect to the said accident. Defendants herein alleged that plaintiff was the owner of the tugs mentioned, and that said vessels were, at the time, in tow of both of said tugs. These actions were tried together, and on the same evidence, on February 20, 1918, and following day; and, on April 5, 1918, judgment was rendered in both cases, condemning the present plaintiff personally, in the amounts to be found due to the defendants, Robert R. McCormick and the Union Lumber Company, Limited, and in costs.¹

The plaintiff admits that the said grounding, and consequent loss and damage, was caused by the improper navigation of the tug "Myra"; but denies that the same was caused by any improper navigation of the tug "Long Sault"; said grounding and consequent loss and damage occurred without the actual fault or privity of the plaintiff; and further says that its liability should, consequently be limited to an aggregate amount not exceeding \$38.92 for each ton of the gross tonnage of the tug "Myra", without deduction on account of engine room according to the provisions of the Act; and that the "Long Sault" should not be charged.

By their defence, the defendants deny most of the allegations of the plaintiff and specially assert that the "Long Sault" was assisting in the towing operations and should be condemned along with the "Myra"; they further say that the damage occurred

1918

SINCENNES-
MCNAUGHTON
LINE

v.

McCORMICK
AND UNION
LUMBER CO.

Statement.

¹ (1918), 18 Can. Ex. 857, 45 D.L.R. 892.

1918

SINCENNES-
MCNAUGHTON
LINE

v.

McCORMICK
AND UNION
LUMBER CO.Reasons for
Judgment.

through the actual fault and privity of the owners and further in substance say that the tiller was improper and was not equipped so as to be capable of being steered by hand; there was no alternative hand steering gear; not supplied with proper spare parts and the tiller was not provided with necessary relieving tackle; and also claim that the "Myra" was improperly manned being without the necessary chief engineer; and was not the suitable size for towing; that they fail to have the tugs in question periodically overhauled and that there was no one on board capable of dealing with emergency.

MACLENNAN, D.L.J. (October 24, 1918) delivered judgment.

On April 5, 1918, the present defendants obtained judgment in this Court against the present plaintiff for damages and costs arising out of the failure of the plaintiff to properly perform a towage contract, as a result of which a barge and schooner belonging to the present defendants went ashore on August 13, 1917, in the St. Lawrence River, near Morrisburg, Ontario.¹

On the occasion in question the tow was in charge of the tugs "Myra" and "Long Sault", owned and operated by the present plaintiff. This action is taken for declaration of limitation of liability of the plaintiff upon the allegation that the accident happened by reason of improper navigation of the tugs without the plaintiff's actual fault or privity.

The defendants deny that the accident happened without plaintiff's actual fault and privity and allege that the tugs were unseaworthy in point of view of steering equipment and crew. On the occa-

¹ 18 Can. Ex. 357, 45 D.L.R. 392.

sion of the accident, the plaintiff's two tugs "Myra" and "Long Sault" were engaged in towing a barge belonging to the defendant McCormick, a schooner belonging to the defendant The Union Lumber Company, Limited, and another barge, when at a short distance above Morrisburg the steam steering gear of the tug "Myra" suddenly and without warning failed to operate owing to the dropping out of a key-pin on shaft of the steering apparatus in the wheel house. The tow lines from the three tows were all attached to the tug "Myra", and the tug "Long Sault" was lashed to the port side of the "Myra".

On the trial of the original actions, out of which present cause arises, the Court held that the accident was caused by the failure of the captain and pilot of the "Long Sault" to assist the tow by taking over the tow lines, and by the failure of the mate of the "Myra" to operate by hand the lever controlling the valves of the small engine which did the steering, and in the Reasons for Judgment the Court held that the grounding of the tow was caused by the want of reasonable promptitude, foresight and seamanship on the part of the master and crew of the two tugs when and after the dangerous situation arose. The owners of the tugs were in no way to blame for the fault and negligence of the two crews. The absence of the chief engineer of the "Myra" in no way contributed to the accident. The steering apparatus on the tug "Myra" at the commencement of the season had passed through the hands of Alphonse Desrochers, the foreman and shore superintendent of the company plaintiff at its shops at Sorel and on May 14, 1917, F. X. Hamelin, inspector of boilers and machinery for the Department of Marine and Fisheries, issued a certificate that the engine,

1918

SINCENNES-
MCNAUGHTON
LINE

v.

McCORMICK
AND UNION
LUMBER CO.Reasons for
Judgment.

1918

SINCENNES-
McNAUGHTON
LINEv.
McCORMICK
AND UNION
LUMBER Co.Reasons for
Judgment.

boiler and machinery of the tug were in conformity with the provisions of the *Canada Shipping Act*. The dropping out of the key-pin was quite unforeseen and was not due to any neglect or want of supervision on the part of the plaintiff's superintendent in charge of the equipment. The accident to the tows having been due to the fault and negligence of the crews on board the tugs and in charge of their navigation, the plaintiff is entitled to limit its liability. Both tugs were involved in the accident and their combined tonnage must be taken into account. The statutory limitation for the combined tonnage of the tugs "Myra" and "Long Sault" amounts to \$5,516.90, and there will be judgment limiting the plaintiff's liability accordingly, and directing the plaintiff to pay into Court the said sum of \$5,516.90, with interest thereon from the date of the accident on August 13, 1917. In accordance with the practice in cases of this kind the plaintiff will have to pay the costs of the two defendants.

The Registrar is also directed to give public notice of the deposit when made calling upon all parties having claims against the fund to file their claims with him.

Judgment accordingly.

Solicitors for defendants: *Meredith, Holden, Hague, Shaughnessy & Heward.*

Solicitors for plaintiff: *Davidson, Wainwright, Alexander & Elder.*