

1920  
 March 16.

IN THE EXCHEQUER COURT OF CANADA

QUEBEC ADMIRALTY DISTRICT.

WILLIAM FRASER,

PLAINTIFF;

AND

S. S. "AZTEC",

DEFENDANT.

*Shipping—Collision—Rules of Canal—Canada Shipping Act, Sec. 916—Evidence—Burden of proof—Presumption.*

On the 15th August, 1919, at 3.14 p.m. the ship "Aztec" arrived at lock 17 in Cornwall Canal, and after the western gate had been opened, entered the lock, making fast to the north wall. The gates were then closed and after the water was partly let out of the lock, water which should have been held back, came in at the upper gates of the lock, by reason of two of the valves having been improperly and negligently left open. This formed an eddy in the lock causing a heavy pressure backward on the ship. The crew let out 6 inches on the bow rope, to try and save it, but the bow line broke and the vessel began to go astern and backed into and broke the rear gates, letting in a rush of water from above which violently threw the steamer against the east gates carrying them away. The water running away left plaintiff's barge and dredge, which were moored at the head of the lock, stranded, causing certain injury to them in respect of which damages are now claimed.

The Steamer "Aztec" was fastened to the north wall of the lock by two ropes, a 5 inch rope leading from the bow and a 7-8 inch wire cable astern, which was sufficient, under ordinary circumstances. Rule 27 requires 2 astern, 1 in bow and 1 abreast but neither the second astern, nor the extra line abreast would have prevented the accident. The crew did everything that could be reasonably expected of them in the emergency. The engines never moved till after the collision. Rule 30 puts all vessels in canals under the control of the superintendent as regards mooring and fastening, and he was satisfied in this case.

*Held*, on the facts stated, that the accident in question was not due to any negligence of the defendant or to the non-observance of the rules by him, but was entirely due to the gross negligence of the lockmen in leaving two of the valves of the upper gate open, for whose acts defendant was not responsible.

2. In as much as, the presumption of fault provided by section 916 of the *Canadian Shipping Act* R. S. C., 1906, ch. 113, does not arise unless it is proved that the collision was occasioned by the non-observance of the rules; and in as much as the non-observance of the rules does not by itself create such presumption, the burden of proof is upon plaintiff to prove that such non-observance contributed to the accident, and further affirmatively to prove that his loss was caused by the negligence of defendant or some one for whose acts he is responsible.

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THIS is an action *in rem* for damages caused to the plaintiff's barge and dredge in the Cornwall Canal.

The facts are stated in the reasons for judgment.

The case was tried before the Honorable Mr. Justice MacLennan, Deputy Local Judge in Admiralty in Montreal, assisted by Captain J. O. Grey and Captain Olivier Patenaude, nautical assessors on the 3rd, 4th and 5th days of March, 1920.

*Aubrey H. Elder*, counsel for plaintiff;

*A. R. Holden*, K. C. counsel for defendant.

MACLENNAN, D. L. J. A. now, (this 16th March, 1920), delivered judgment.

This is an action *in rem* for damages and arose out of an accident which occurred in the afternoon of 15th August, 1919, in Lock No. 17 in the Cornwall Canal.

The plaintiff's case is that his tow barge "Sand King" and his sand dredge "Champion" were lying afloat and moored to the north bank of the Cornwall Canal above Lock No. 17 when the Steamship "Aztec" entered the lock from the west, and after the western gates were closed the steamship backed, carried away the western gates, then moved forward

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and carried away the eastern gates of the lock, with the result that the water above the lock ran away and the barge and the dredge became stranded and sustained damage. Plaintiff alleges there was no proper outlook kept on the "Aztec"; that those on board improperly neglected to take in due time proper measures for avoiding the carrying away of the lock gates; that she was not properly under control and that the damages and losses consequent thereon were occasioned by the neglect and improper navigation of those on board.

The defendant's case is that, if plaintiff's barge and dredge were injured, it was not due to any fault or negligence of the defendant or those in charge thereof; that while the defendant vessel was being locked through the canal, in the usual and proper manner in so far as the defendant is concerned, the water in the lock was suddenly disturbed and moved in such a manner as to cause her to strike the gates in spite of all that could be done by those in charge to prevent it; that the movement and disturbance of the water in the lock were due to the improper condition of the lock gates and equipment, or the improper manipulation and control thereof by the persons in charge or to both these causes, or to other causes, of which the defendant is ignorant and for which it is in no way responsible, and that the striking of the lock gates by the defendant vessel and any results thereof were due to forces or causes beyond her control or those in charge thereof.

The steamer "Aztec", having a length of 180 feet, a beam of 33 feet 3 inches and 13 feet 9 inches moulded depth, registered tonnage of 834 gross and

653 net, and having on board 1,007 tons of coal with a crew of 16 all told, arrived down at Lock No. 17 in the Cornwall Canal at 3.14 p.m. on 15th August, 1919. The lock was in charge of lockman Albert Durocher, assisted by lockman Joseph H. McDonald. Durocher was on the south side of the lock, McDonald on the north, and after the western or upper gates of the lock had been opened the "Aztec" entered the lock, which is 270 feet long and 45 feet wide, and made fast to the north wall with two lines, one a five inch manilla rope leading ahead attached to a post on the north wall of the lock the other end being attached to the capstan, and the other a 7-8 inch wire steel cable leading astern attached to a snub or post on the north wall, the other end being in a machine called a compressor which with the capstan were on the upper deck of the ship forward and between the pilot house and the stem. After the steamer had thus been made fast, the lockman closed the western gates by means of the electrically driven machinery provided for that purpose. Near the bottom of each gate there are two pairs of cast iron valves  $2\frac{1}{2}$  feet by 4 feet which are opened and closed by means of a rod attached to their upper edge and the other end of the rod being connected with a bevel toothed gear on the top of the gate, and this gear is connected with the electric power. To open the valves the rod is forced downward and to close them it is pulled up. This machinery is put in motion by a lever on the top of the gate. Each rod and gear opens and closes one pair of valves. The bottom of the valves are within 12 inches of the bottom of the gates and are 27 or 28 feet under water.

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Durocher and McDonald were the two men in charge of the canal equipment and it is important to examine carefully their account of what they did from the time the "Aztec" entered the lock until she collided with the gates. Durocher swore that after he closed the north gate and McDonald closed the south gate, he closed one valve in the south gate, he cannot say if it was the heel valve or the miter valve, and that McDonald closed one valve in the north gate, that they then waited until a steamer going down had got clear of Lock No. 15, the next lock below, 800 feet away, when he, Durocher, started up the other valve by pushing a lever, and McDonald started the remaining valve on his side and Durocher then started walking down to the other end of the lock, and when he got down a piece he says he turned around and saw that the valves were up and that McDonald put up his hand as a signal that they were closed. Durocher thereupon opened all the valves in the gates at the lower end of the lock and the water ran out of the lock into the reach below until it had gone down about 13 feet of the total drop of 14 feet to the level of the lower reach, when unexpectedly he saw the bow line of the "Aztec" break and the steamer began to go astern and, although the Captain was not in sight, Durocher says he yelled to the Captain to go ahead and told Heppell, another lockman standing near him, to go to the other end of the lock. Durocher does not state why he gave this order to Heppell, but the latter says that Durocher's order was: "Va donc voir aux valves en haut, voir si elles sont ouvertes", that is to say, "go to the upper valves and see if they are open".

The steamer was then moving astern, it had been tied up 15 feet from the upper or western gates of the lock and when it had gone astern 15 feet it collided with the gates letting in a rush of water from the upper reach of the canal, one mile in length, into Lock No. 17, which violently threw the steamer against the eastern gates and carried them away.

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I will now refer to McDonald's evidence, as his version of what occurred up to the time of the collision. He was on duty with Durocher and was on the north wall of the canal when the steamer came into the lock and he states that two lines were put out and attached to the snubbing posts on the north side of the lock. His examination then continues as follows by counsel for plaintiff:

Q. After the two lines which you have mentioned, the compressor line, and the bow line, were attached to the snubbing posts, what were your movements? A. Closed the gates.

Q. What gates? A. The upper gates.

Q. The upper gates of what lock? A. Lock 17.

Q. Which gate did you close? A. I closed the south gate.

Q. That would be the gate on the opposite side from where you were? A. Yes.

Q. What did you do next? A. When the other lock was ready, we let the water out, and put up the valves.

Q. You are referring to the valves of what gate now? A. The upper gate.

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Q. How many valves are there in the upper gates?

A. Four chambers. Eight valves.

Q. In the upper gates? A. Yes, I believe so.

Q. Just think it over, and tell us if that is correct. How many valves are there in each gate?

A. There are supposed to be four in each one.

Q. Two pairs in each gate. A. Yes.

Q. Did you close the valves in the north gate?

*Mr. Holden*—This is a question of fact, and I submit my learned friend should ask the witness what he did.

BY THE COURT—Q. What did you do? A. I closed the valves.

Q. Which valves? A. In the upper gate.

Q. There are two gates in the upper end of the lock? A. Yes.

Q. In which gate were the valves you closed?

A. I generally close them on the north side first.

Q. But, on that day? A. We were waiting for the lock at 15.

Q. Can you tell us what you did at the upper end of Lock 17? A. We closed one valve on each gate.

Q. Just tell us what you did yourself. A. I helped to close them.

By *Mr. Hackett*, continuing: Q. Then, what did you do after helping to close the valves? A. I was walking down to the lower gates.

Q. And what happened? Tell us the story. A. The line separated, going down.

Q. Which line? A. The bow line, and the boat started to go back.

Q. And, then what happened? A. She went into the gates.

Q. Into which gates? A. I should judge about the centre of the upper gate.

This is his evidence on examination in chief as a witness for plaintiff as to what was done at the upper gates up to the time of the collision, and if his evidence in that connection is true only two of the four valves in the upper gates were closed and two of the valves were left open. In cross-examination McDonald swears that after he and Durocher had closed the upper gates they each closed one valve; that Durocher then went to the lower gates and as soon as Durocher started to open the valves in the lower gates, he, McDonald, started to close the remaining two valves in the upper gates; that there were no signals exchanged between him and Durocher after he had closed the valves in the upper gates and that having closed the remaining two valves in the upper gates he locked them and then started to walk down the north bank of the lock in the direction of the lower gates and that when he arrived at a point abreast the midships of the steamer he saw the bow line leading ahead break, he turned around and started to walk back in the direction of the upper gates, but before he arrived there the steamer collided with the gates, the water came through and carried the steamer forward through the lower gates. It will be observed that it is only in cross-examination that McDonald states the remaining two valves in the upper gates had been closed, and his evidence in that connection differs in detail from the story told by Durocher. According to Durocher, he started the machinery to close one of the remaining two

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valves, McDonald at the same time starting the other and that both these valves were closed before Durocher reached the lower gates. McDonald's evidence is that he closed the remaining two valves himself, that Durocher had nothing to do with the closing of them and that they were only closed by him after Durocher had arrived at the lower gates and had started to open the four valves of the lower gates. Durocher swore that McDonald signalled to him that the valves in the upper gates were closed, McDonald is emphatic in saying that no signal was given by him to Durocher.

I will now refer to the evidence of the members of the crew of the "Aztec". Captain John Goode- rich, of Ogdensburg, N.Y., who has held a Master's certificate for 25 or 26 years, was in command and as he approached and entered the lock was on the upper bridge on the roof of the pilot house. His mate, also the holder of first class pilot's papers, with three other men, the wheelman, the watchman and a deck hand were on the fore-castle deck attending to the lines. Two lines were put out, a five inch manilla head line leading forward from the capstan, and a seven-eighth inch wire steel cable leading aft; this cable was attached to the compressor near the capstan on the upper deck which was several feet above the top of the lock wall where the lines were attached to the snubbing posts. As the water was let out of the lock and the steamer gradually came down with the water the slack on the bow line leading ahead was taken in by the watchman and the deck hand. When the steamer had been lowered down pretty nearly ready to go out, the master came down from the bridge to the fore-castle deck and went to his room there, and very

shortly thereafter heavy pressure was noticed on the head line, which was let out about six inches and then held, when it suddenly broke and the steamer went astern and collided with one of the upper gates in about one minute's time. The mate, upon the parting of the head line which broke between the capstan and the ship's rail, attempted to get out another line forward, but was unable to do so before the steamer struck the upper gates. The evidence of the master and the mate is that they tied up the steamer to the wall of the lock in the usual way, both as to the number of lines used and the manner in which they were made fast. The master, the first assistant engineer, the mate, the watchman, the wheelman and the deck hand were all examined at the trial. The steamer's witnesses testified that the force which threw the steamer astern with sufficient force to break the bow line could only have been from the engines or from the water in the lock. It was proved that the engines were not moved from the time the steamer tied up till after the collision. None of the witnesses on board the steamer testified that they saw any commotion in the water. They were attending to their lines on the port side of the steamer next the lock and were not in a position to observe the water, but they all attributed the sudden strain on the head line to the effect of the water, and the deck hand Allison swore that he heard the noise of the water which was stirred up and in confusion. He said: "J'ai entendu le bruit de l'eau qui brouillait comme ça". . . (il cherchait à imiter le bruit de l'eau).

Some light is thrown on the value of the evidence of the lockmen by reference to their actions after the accident. McDonald says that it was the duty

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of Durocher, the senior man in charge of the lock, to make a written report of the accident to the lockmaster.

Durocher was asked:

"Q. As lockman in charge at the time when an accident occurs, to whom do you send a report of the accident? A. To the office.

"Q. What office? A. The Canal Office, right across from the lock, right between the two locks.

"Q. Is that Mr. Sargent's office? A. Mr. Sargent's office.

"Q. Did you report this accident? A. Mr. McDonald did, I was on the other side. I could not get over, I was on an island then."

Durocher swore he made no written report to anyone, that he was not asked or supposed to make any written report and that the only entries he made were in the sheet containing the names of the vessels passing through the lock giving time of arrival and departure, and an entry in a private memorandum book for his own information. The entry on the vessel report shows the time of arrival as 3.14 p.m., time of departure 4.15 p.m., and under the heading "Remarks" he made the following entry: "Aztec of Buffalo, Steamer Aztec bow line broke and she went back into the west gates and put them out and then she came down with the water and took the east gates out." The entry in his private note book reads: "Friday, August 15, 1919, Steamer Aztec carried away 4 gates at Lock 17, 4.15 p.m. Navigation resumed Saturday evening August 16, 1919, 8 p.m."

Durocher says that "Mr. Lally, the superintendent, was right there two minutes after the accident

happened. He asked me all about it and I told him". And on the second day of the trial, when asked if he told Mr. Lally anything about the accident, his answer was: "Of course, he told me what had happened, I just told him she had gone through the gates, just as I explained it to the Court". And when again re-called for further cross-examination, he testified as follows:

"Q. Did you see Mr. Lally on August 15th, after "the accident happened? A. Yes, he came right "down.

"Q. How long after? A. It could not be more "than 10 or 15 minutes, I do not suppose.

"Q. Did you have any conversation with Mr. "Lally. A. Well, he just asked me how it was done, "I cannot just exactly remember what was said."

The evidence with reference to the machinery and appliances for opening and closing the valves is very unsatisfactory. It must be remembered that the valves are entirely under water and out of sight and Durocher swore that when the rod was up the valve is supposed to be closed unless something has gone wrong down below which would uncouple or break. He also swore that the worm gear at the top of the rod is about six inches longer than it should be and that they must be careful not to jam it down too far and break the knuckle where the rod connects with the valves. When the gates were taken out of the canal, about three days after the accident, all the valves in the upper gates were missing with the exception of possibly small pieces of some of the lugs hanging to the bottom of the valve rods. Of course no one could say when they broke or whether the breakage was caused by the rod

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having been jammed down too far or by the impact of the collision.

Another portion of Durocher's evidence is open to the construction that there was something wrong with the upper gates, that they were not mates and were to be changed on the following day. These gates certainly were old, had been in use for a very long time and the appliance for opening and closing the valves required very careful handling.

To enable a plaintiff in a collision action to recover damages, he must prove affirmatively that his loss was caused by the negligence of the defendant or of some person for whose acts he is liable. He must make out that the party against whom he complains was in the wrong and that the loss is to be attributed to the negligence of the opposite party. In this case the question is: "Who is responsible for the "Aztec" colliding with the lock gates?" The plaintiff has endeavoured to establish that the steamer was insufficiently and negligently made fast to the lock wall and improperly and negligently handled after the bow line broke and that the canal equipment—the gates and valves—were properly handled by the lockmen.

This accident happened in Canadian waters and plaintiff very properly cited the *Canadian Shipping Act*, R. S. C., 1906, ch. 113, and the Rules and Regulations for the guidance and observance of those using and operating the canals of the Dominion of Canada made under said Act.

Canal rule 27 provides:

"Every vessel of more than 200 tons shall be provided with four good and sufficient lines or hawsers, two leading astern, one leading ahead and

“one abreast line, which lines when locking, shall  
“be made fast to the snubbing posts on the bank of  
“the canal and lock and each rope shall be attended  
“by one of the boat’s crew to check the speed of the  
“vessel while entering the lock to prevent it from  
“striking against the gates or other parts of the  
“lock, and to keep it in proper position while the  
“lock is being filled or emptied”.

Canal rule 30 provides:

“All vessels in the canals, basins and approaches  
“shall be under the control of the superintending  
“engineer or superintendent as regards their posi-  
“tion, mooring, fastening, etc.”

Section 916 of the *Canada Shipping Act* reads as follows:

“If, in any case of collision, it appears to the  
“court before which the case is tried, that such  
“collision was occasioned by the non-observance of  
“any such regulations, the vessel or raft by which  
“such regulations have been violated shall be deem-  
“ed to be in fault, unless it can be shown to the  
“satisfaction of the court that the circumstances of  
“the case rendered a departure from the said regu-  
“lations necessary”.

The steamer when tied up in the lock did not have four lines as required by rule 27, and the presumption of fault provided by section 916 of the *Canada Shipping Act* would not arise unless the collision was occasioned by the non-observance of the rule. The burden was upon plaintiff to prove that the non-observance of the rule contributed to the accident, as non-observance of the rule by itself created no presumption, and the common law applied, and plaintiff had to prove the cause of the collision.

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See *The Ship "Cuba" v. McMillan*;<sup>1</sup> *The Steamship "Rosalind" v. The Steamship Senlac Co.*;<sup>2</sup> *Harbour Commissioners of Montreal v. The Ship "Albert M. Marshall"*;<sup>3</sup> *Montreal Transportation Co. v. "The Norwalk"*.<sup>4</sup>

In this case the "Aztec" was made fast in the lock by one line leading ahead and one astern, it had no abreast line. A second line leading astern would have been of no use whatever when the bow line leading ahead broke. Plaintiff's counsel submitted that if the ship had had the abreast line out, the accident would have been avoided and the burden of the proof of that was clearly upon plaintiff.

The evidence shows that the "Aztec" was tied up in the usual manner, that two lines, one ahead and one aft was the usual practice. Under Canal rule 30, all vessels in the canal are under the control of the superintendent as regards their moorings and fastening. In this case the superintendent was represented by Durocher, the lockman in charge of the lock. Durocher was satisfied with the manner in which the steamer was made fast; he accepted the two lines before he proceeded to close the upper gates. The function of the abreast line is to hold the vessel close up to the wall of the lock and not to lead forward, as was suggested by the canal superintendent. The pressure which broke the head line would also have carried the abreast line away, as the strain upon it would have been much greater than the strain which broke the head line, as by the

<sup>1</sup> (1896), 26 Can. S. C. R. 651.

<sup>2</sup> (1908), 41 Can. S. C. R. 54 confirmed in Privy Council C. R. [1909] A. C. 441.

<sup>3</sup> (1908), 12 Can. Ex. C. R. 178-183.

<sup>4</sup> (1909), 12 Can. Ex. C. R. 434.

time the strain would have come on the abreast line the steamer would have moved astern some distance under way in its backward movement: I have come to the conclusion that the abreast line would not have saved the situation, I am advised by my Assessors, that the two lines making the "Aztec" fast to the north wall of the lock were sufficient under ordinary circumstances to hold her in proper position while the lock was being emptied to enable the lower gates to be opened and allow her to pass out of the lock, and that when the "Aztec" was suddenly driven astern, the engines not moving, with sufficient force to break the line leading ahead, the absence of an abreast line did not contribute to the collision. I therefore come to the conclusion that the non-observance of Canal rule 27, regarding the number of lines to be used in making the vessel fast in the lock, did not contribute to the accident in any manner whatsoever.

Before the head line broke the master had left the bridge and when the line gave way the mate attempted unsuccessfully to get another line out. I am advised by my Assessors, that it was in accordance with the ordinary practice of seamen for the master to have come down from the bridge on the roof of the pilot house while the water was being let out of the lock and was more than half way down to the level of the reach below, and that as soon as the engines stopped it would have been proper for the master to have left the bridge, and further, that when the head line broke the mate could not by the exercise of reasonable skill and seamanship get out another line forward which would have prevented the collision. The pressure and strain which broke the head line when the steamer was almost ready

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to go out of the lock came on suddenly, unexpectedly and without any warning to the master and crew who did everything that could have been reasonably expected in the emergency, and I exonerate them from all blame.

The evidence in this case shows that water which should have been held back came in at the upper gates of the lock from one of two causes: either one or more of the valves broke, or they were not closed. The deck hand Allison on the steamer heard the noise of the water in confusion. Durocher admitted that if a valve had been left open the water coming through "would draw a boat"; and McDonald admitted that if anything went wrong with the valves or the upper gate equipment, the pressure of thirteen feet difference in level would make a tremendous commotion in the water. I have asked my Assessors the following question:

"If for any reason one or more of the valves  
"in the upper gates of the lock were not closed  
"while the valves in the lower gates were open and  
"the lock was being emptied, would the water com-  
"ing into the lock through the upper gates have any  
"effect on the ship, and if so, would such effect be  
"come more pronounced as the water in the lock  
"approached the level of the reach below?"

Their answer is:

"The water coming into the lock would increase  
"in power as the lock was emptied on account of  
"the increasing head above the upper gates and the  
"water in the lock getting nearer the level of the  
"reach below, and would strike against the lower  
"gates, form an eddy and cause heavy pressure  
"backward on the ship".

The commotion occurred and the boat was drawn back. We have the result which the two lockmen say would be produced if one of the valves in the upper gates had been left open, if the lockmen had been alert and vigilant they would have observed something had gone wrong. They are very much to blame for their carelessness, as they should have seen what was happening and should have averted the accident. I have not come to the conclusion that the valves were broken, although on the evidence there is ground for grave suspicion that something had gone wrong with the canal equipment.

There are many contradictions between Durocher and McDonald. They have not all been referred to. Durocher had been there for nine years and McDonald seven years, and neither of them could inform the Court how many snubbing posts were on the lock bank at Lock No. 17, where they performed their daily duties. Durocher swore that it would not take more than two or three minutes to close a valve; McDonald put it at from five to eight minutes. Neither of these witnesses were satisfactory. McDonald's demeanor in the box was distinctly unfavorable to his credibility; Durocher appeared unwilling to speak of many things with which he should have been conversant, and he admitted that he had been warned by one of his superior officers not to speak about the case or give any information until he was called in Court. When the head line of the steamer broke and she started to go astern, Durocher's first and only order to his fellow lockman Heppell, who was standing near him close to the lower gate, was to go to the upper gates and see if the valves were open. Why give that order if it were true that he, Durocher, had started the ma-

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chinery to close one of the two remaining valves at the upper gates a few minutes before, and if he had seen McDonald at the same instant set the machinery in motion to close the other valve, and he had received a signal from McDonald that everything had been closed. If he had closed one himself and had seen McDonald close the other, he would have known they had been closed and would not have sent Heppell to see if they were open. When Heppell started for the upper gates the steamer was already going astern, gaining speed and momentum every instant, and considering his age, it is improbable that he arrived before the collision. He was a member of the lock gang, there are contradictions in his evidence, he appeared anxious to support his companions' statements, and I cannot accept his evidence that the valves were closed. McDonald when called as a witness on behalf of plaintiff in his examination in chief, clearly stated that after having closed the upper gates he closed one valve, Durocher closed one valve, and he, McDonald, started to walk down towards the other gate and when he had gone about one hundred feet the head line broke and the steamer went right back into the upper gates. If that evidence is true, two of the valves in the upper gates had not been closed. they were left open and it was through them that the water came into the lock which caused the commotion and the back eddy which threw the steamer astern, broke the head line and caused the collision. Taking into account the demeanor of McDonald and Durocher while under examination, the contradictions and inconsistencies in their testimony and their interest in clearing themselves, I have come

to the conclusion that the portions of their evidence wherein they swore that the remaining two valves in the upper gates were closed, is an invention to cover upon their own negligence. I find that two of the valves in the upper gates were improperly and negligently left open, with the result that the water which came through there caused a commotion in the lock and a back eddy which broke the head line and drove the steamer against the upper gates.

The accident was caused by the gross negligence of the lockmen. The "Aztec" and its crew are not to blame. Plaintiff's action fails, and there will be judgment dismissing it with costs.

*Judgment accordingly.*

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

Solicitors for SS. "Aztec": *Messrs. Meredith, Holden, Hague, Shaughnessy & Heward.*

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REASONS FOR  
JUDGMENT.