

1918
 March 2.

QUEBEC ADMIRALTY DISTRICT.

CANADA STEAMSHIP LINES, LIMITED,
 PLAINTIFF;

v.

MONTREAL TRANSPORTATION COMPANY,
 LIMITED,
 DEFENDANT,

Collision—Canal—Passing vessels—Liability—Proximate cause.

Where vessels passing one another in a canal have exchanged the proper signals, and were properly navigated, the fact that one took a starboard course to avoid collision, and in doing so struck the canal banks and was damaged, does not give her a right of action against the other; where the damage was about the bilge or bottom of the vessel it is evidence of its having been caused by an obstruction on the bottom of the canal, and not by the banks.

ACTION *in personam* for damage to a ship.

Tried before the Honourable Mr. Justice MacLennan, Deputy Local Judge of the Quebec Admiralty District, at Montreal, Que., February 21 and March 2, 1918.

Aime Geoffrion, K.C., for plaintiff.

MACLENNAN, Dep. Loc. J. (March 2, 1918) delivered judgment.

This is an action *in personam* in which plaintiff, as the owner of the steamship "Glenellah", seeks to recover damages from the defendant, owner of the steamship "Kinmount".

The plaintiff's case is that on the evening of September 1, 1913, the "Glenellah" was proceeding eastbound down the Soulanges Canal when she met the "Kinmount" going up westbound coming up the canal; that when the two ships were about a quarter of a mile apart the "Glenellah" sounded a passing

signal of one blast on her whistle; that the "Kinmount" immediately answered by one blast on her whistle, and that after exchanging these signals the master of the "Glenellah" ported her helm and the steamer was directed to the southern or starboard side of the canal, which, at the place the steamers met, is about 200 feet in width at the top and 100 feet at the bottom, and about 15 feet deep; that the "Kinmount" failed to direct her course to starboard and in order to avoid a collision the "Glenellah" was forced into the canal bank on her starboard side and was damaged. Plaintiff claims that the striking on the bank by the "Glenellah" and the damages and loss consequent thereon were occasioned by the negligent and improper navigation of those in charge of the "Kinmount".

The defendant denies the material allegations of the plaintiff's statement of claim and alleges that, if plaintiff had any claim against defendant the plaintiff forfeited and lost the same by failure and neglect to present a claim within a reasonable time; that if the "Glenellah" came in contact with the canal bank it was due to her own faulty navigation, and that the "Kinmount" took all usual and proper measures and precautions to avoid a collision.

These steamships were approximately 250 feet long and 43 feet wide and both were loaded to capacity. The proper signals were given just before they met in the canal. The plaintiff's case is that the "Glenellah's" starboard side struck the southern bank of the canal and that she was forced into that position by the "Kinmount" not giving her sufficient room to pass safely. Some temporary repairs were made to the "Glenellah", and she did not go into drydock until some months later, when

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upon examination it was found that the damages which she had sustained were not to her side, but to the plates on her bottom, commencing from about 5 feet from the turn of the starboard bilge towards the keel plate. None of the damaged plates of the bottom was closer than 5 feet to the bilge. Whatever the obstruction was which came into contact with the "Glenellah", it is evident that such obstruction was underneath the steamer. If the point of impact had been between the "Glenellah's" starboard side and the south bank of the canal the damages would have been to the side plates and not to the plates forming the bottom of the steamer. The part of the steamer which suffered damage is conclusive evidence that the obstruction must have been in the bottom of the canal and that the steamer did not strike its starboard side against the canal bank. My assessors advise me that both steamers appear to have been properly navigated.

The plaintiff has not proved the case alleged against the defendant and has not established that the damages to the "Glenellah" were occasioned by any neglect or improper navigation of those in charge of the "Kinmount". Under these circumstances it is not necessary to deal with the question of the delay on the part of the plaintiff in presenting its claim against the defendant.

The plaintiff's action is therefore dismissed with costs.

Action dismissed.

Solicitors for plaintiff, (first): *Cowan, Towers & Cowan*, (afterwards): *Rowell, Reid, Wood & Wright*.

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