

QUEBEC ADMIRALTY DISTRICT.

THE CANADA ATLANTIC RAIL- }
 WAY COMPANY } PLAINTIFF ;

1907
 June 1.

AND

S. S. NICARAGUA AND THE }
 OGDENSBURG COAL AND TOW- }
 ING COMPANY..... } DEFENDANT.

*Maritime law—Shipping—Canal bridge — Collision—Rule 5 of Dominion
 Canals Regulations—Liability.*

The defendant steamer was using the waters of the Soulanges Canal at night. On approaching the plaintiff's bridge over the Canal at or near Coteau Landing, and, when about one mile distant, the steamer gave the proper signal that she intended to pass through the bridge. When she came within view of the bridge, a green light was displayed on the northern abutment, which, according to established custom and usage, indicated that the bridge was open for the passage of ships. Then the steamer repeated the signal that she intended to pass through the bridge; but before she reached the bridge those on board discovered that the bridge was not open. Everything was done by those on board to avert a collision as soon as they became aware that the bridge was not open, but such measures failed to wholly prevent a collision, although largely mitigating the force of the impact. It was proved that the bridge-keeper was asleep when the defendant steamer was approaching the bridge.

Held, that, upon the facts, the defendant steamer had not infringed rule 5 of the Dominion Canals Regulations or any rule of law, and was in no way at fault for the collision.

ACTION for damages for collision.

The facts of the case are sufficiently stated in the reasons for judgment.

E. Lafleur, K.C., for plaintiff,

A. Geoffrion, K. C., for the defendant.

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DUNLOP, L.J. now (June 1st, 1907), delivered judgment.

[After stating the allegations in the pleadings, the learned judge proceeded as follows:]

The evidence discloses that on the night in question, the 12th of September, 1905, at about 1.40 a.m, the steamer *Nicaragua* was approaching the bridge in question, and the weight of evidence shows that the lights were placed on the northern abutment or approach to the bridge, in the place where it is proved they were usually placed, and indicated that the bridge was open. The indication of this was a green light placed against the canal. The master of the *Nicaragua* swears positively to this and he is corroborated by all the other witnesses examined upon this point on behalf of the defendants.

The master, taking it for granted that the channel was clear, approached at a moderate and prudent rate of speed, and finally stopped and reversed on finding the bridge was closed.

It is shown that the following signals were given by him and carried out,—first, three blasts of the big whistle for the bridge, when about a mile off, after rounding the bend. A little while afterwards he saw the green light on the northern abutment of the bridge, and then he gave the signal for the engines of his vessel to check down; after which three blasts of the big whistle were again given for the bridge. A second check signal was then given to the engine room, and a little while afterwards Thibault, the second officer, reported that the bridge was not open. The signal was then given to the engine room to stop, then to reverse. This signal was repeated, and immediately afterwards, the reverse full speed signal was given. The whole time occupied from the “stop” signal to the signal “full speed astern” is sworn to as being from ten to fifteen seconds, or, as they say, as fast as the signals could be pulled.

Unfortunately the bridge was closed, and it is proved that the way of the vessel was so deadened that when the collision took place the shock was hardly felt by the people on the vessel; and the evidence further shows that had the *Nicaragua* been proceeding at anything like the speed contended for by plaintiff, she would have gone right through the bridge into the Lock. No damage was done even to the paint on the vessel's stem.

Plaintiffs contend that the lights indicated that the bridge was closed. I am of opinion however, that the weight of evidence does not support this contention.

The question of lights is important. It is proved that the lights consisted of a lamp placed in a socket on a platform on the northern abutment or approach to the bridge, and that it was the duty of the watchman to place a green light against the canal when the canal was open, and a red light when the canal was closed. It is proved that the bridge in question was taken over by the railway company about eight or ten years ago, and this was just about the time of the opening of the canal, and that the Canada Atlantic Railway Company after that time took charge of the bridge, and appointed the men to look after it, light, maintain and repair it. Donaldson, a witness examined on the part of the Plaintiff, was asked if the acquiring by the Canada Atlantic Railway Company was made under written instrument, and he testified that he could not tell that; it being a matter between the manager and the government, and one that he had no knowledge of at all. At page 93 of his deposition he was interrogated as follows:

Q. But you have no knowledge of this, that under the arrangement, whether it was verbal or in writing by which the Canada Atlantic Railway Company took over that bridge, it was the duty of the railway company to maintain the lights on that bridge? A. Yes, certainly.

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Q. For the safety of navigators and for their own railway trains? A. Yes sir, that is right”

This shows conclusively that it was the duty of the railway company to attend to the lights, and to see that at all times they were properly placed. It may be observed that, unfortunately the lights did not work automatically, but had to be changed by the watchman, whose duty it was to attend to them. Everything, therefore would depend on his vigilance, and it is in evidence that he was anything but vigilant, as it is proved that he was asleep when the *Nicaragua* approached the bridge. He says that he did not hear any of the signals, but that when he heard the *Nicaragua* approaching, he ran to change the light, and could not get back to open the bridge on account of the collision which he saw was inevitable. He also states that the lights were properly placed, and that the red light was against the canal previous to his changing the lamp. As I said before, however, the weight of evidence shows conclusively that the green light was against the canal.

Although the plaintiffs invoke the lights in their favour, they now contend that the *Nicaragua* had no right to rely on the lights alone as indicating that the bridge was open when it unfortunately turned out that it was closed, and that the ship was in default in not stopping in accordance with the rules on which the plaintiffs rely. The captain after careful observation, and satisfying himself that the light indicated that the bridge was open, in my opinion, navigated the *Nicaragua* in a prudent and seamanlike manner.

The question seems to be, was the captain of the *Nicaragua* under the circumstances of this case justified in taking it for granted that the bridge was open? I think that the captain was justified in assuming that the bridge was open, as he relied on the green light which he had seen for a considerable distance, otherwise the

lights would be but a trap to delude and mislead navigators. The duty of the watchman, the employe of the plaintiffs, was to show proper lights, and, if he failed to do so, surely his employers must be liable.

When the captain satisfied himself by careful observation that the green light was against the canal, I do not see that the steamer was bound to stop.

Counsel for plaintiff in his argument relied strongly on the judgments rendered in the case of *Gilmour v. The Bay of Quinte Bridge Company* (1) and the case of the *St. Nicholas* (2). I have carefully examined the report of both cases, and in my opinion they are not applicable to the present case, for the reasons given by Mr. Geoffrion, K.C., in his argument for the defendant. If the green light was shown, as is conclusively proved, in my opinion, in the present case, the two cases cited by plaintiffs counsel are absolutely inapplicable. It will be seen that in the case of *Gilmour v. The Bay of Quinte Bridge Company*, the Honourable Mr. Justice Burton based his decision entirely upon this, that there was no evidence proper to submit to a jury of any negligence on the part of the defendants directly causing the accident or a approximately contributing to it. (See 284 of the report). Can this be said in the present case, where it is proved that an employee of the plaintiff, whose duty it was to attend to the lights, was asleep when the *Nicaragua* was approaching the bridge. If he had not been asleep he would have heard the signals given by the *Nicaragua* and would have had plenty of time after hearing them to have attended to the lights and to have opened the bridge.

Availing myself of the valuable assistance of Captain James J. Riley, nautical assessor, in the present case, I have submitted the following questions to him, which with his answers are here given :

1. Do you consider that under the facts of this case as disclosed in the evidence, the steamship *Nicaragua* early

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(1) 20 Ont. A. R. 281.

(2) 49 Fed R. 671.

1907 in the morning of the 12th September, 1905, was properly
 THE CANADA navigated while proceeding west in the Soulanges Canal
 ATLANTIC and approaching the Railway Swing Bridge over the
 RWAY. CO. said canal at or near Coteau Landing, and that all possible
 v. S. S. precautions were taken by its master and crew to avoid
 NICARAGUA the collision which took place with said bridge If not
 AND THE state fully in what particulars the navigation of the said
 OGDENSBURG steamship was faulty, and what precautions might have
 COAL AND been taken to avoid the collision with said bridge, which is
 TOWING CO. proved to have taken place, which were omitted?

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A. After careful consideration of the testimony in this case, I am of opinion that the steamer *Nicaragua* was properly navigated on the morning of the 12th of September, 1905, when approaching the Canada Atlantic swing bridge over the Soulanges canal on her way to Oswego; and that every possible precaution was taken to avoid the collision which unfortunately took place with said bridge. I find no fault in the navigation of the steamship *Nicaragua*; on the contrary it appears from the evidence that every precaution was taken that could have been taken to avoid the collision.

2. Did the collision between the said steamship and said bridge, on said occasion, arise from unavoidable circumstances, without fault being attributable to the said steamship, or was said collision caused by the fault of said steamship, its master or crew?

A.—I am of opinion that the collision between the said steamship *Nicaragua* and said bridge on the occasion in question did not arise from unavoidable circumstances, and I am further of opinion that no fault can be attributed to the said steamship, its master or crew, on that occasion."

With regard to section 5 of the Rules and Regulations of the Dominion Canals quoted by counsel for plaintiff, which reads as follows: "It shall be the duty of all "masters or persons in charge of any steam boat or other

“ vessel on approaching any lock or bridge to ascertain
 “ for themselves by careful observation whether the lock
 “ or bridge is prepared and ready to receive them, or
 “ allow them to pass through; and to be careful to stop
 “ the speed of any such steamboat or any such vessel
 “ with lines and not with the engine and wheel, in suffi-
 “ cient time to avoid a collision with the lock or its gates,
 “ or the bridges, or other works of the canal and har-
 “ bours etc”, it was the duty of the master to ascer-
 tain by careful observation whether the lock or the
 bridge was prepared to receive his vessel, and having
 ascertained by observing the green light over half a mile
 off that the bridge was open, the master naturally con-
 cluded that he had no need to stop his boat with lines.
 The stopping with lines is only used as a means to help
 him to make careful observation.

If a green light is seen indicating that the bridge is
 open, it surely cannot be contended that the master is to
 ignore that light and not to rely on it at all. If so, what
 is the use of the light? The light is of no use whatever,
 if it cannot be relied on; but on the contrary, as I have
 already said, it would be a trap to the experienced navi-
 gator, and in fact submit him to positive danger. The
 theory advanced by the plaintiff is unsustainable, because
 it would render the lights absolutely useless and make
 them a positive danger. All that the master had to do,
 in my opinion, was to verify as he did by careful obser-
 vation what light was shown on the bridge.

I am therefore of opinion that no fault can be attri-
 buted to the steamship *Nicaragua*, its master or crew or
 to its owners with respect to the collision in question in
 this cause; and consequently, for the reasons given in the
 present judgment, I dismiss plaintiff's action with costs.

Judgment accordingly.

A. E. Beckett, Solicitor for Plaintiff.

R. A. E. Greenshields, Solicitor for Defendant

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