

ON APPEAL FROM THE QUEBEC ADMIRALTY DISTRICT
 BETWEEN:
 THE STEAMER "PHILIP T. }
 DODGE" (DEFENDANT) } APPELLANT;
 AND
 DOMINION BRIDGE COMPANY, }
 LIMITED, DUFRESNE CON- }
 STRUCTION COMPANY, LIM- }
 ITED, AND LA COMPAGNIE DU }
 PONT DE GASPE LIMITEE }
 (PLAINTIFFS) } RESPONDENTS.

1934
 May 22, 23
 June 20.

Shipping—Collision—Excessive speed—Improper navigation.

Action by plaintiffs (respondents) to recover damages suffered by them by reason of defendant ship (appellant) coming into collision with a bridge being erected by plaintiffs (respondents) over the York River at Gaspé, P.Q.

Held: (Affirming the judgment appealed from) that the speed of the *Dodge* in passing through the bridge opening was, in the circumstances, excessive.

2. That since the speed of the *Dodge* was excessive it cannot be maintained that the ship was navigated with reasonable care and that the accident was inevitable.

APPEAL from the decision of the Local Judge in Admiralty for the Quebec Admiralty District, allowing plaintiffs' action.

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The appeal was heard before the Honourable Mr. Justice MacLean, President of the Court, at Ottawa.

L. Beauregard, K.C. and *J. St. Germain* for appellant.
C. R. MacKenzie, K.C. and *L. Faribault, K.C.* for respondents.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, now (June 20, 1934) delivered the following judgment:

This is an appeal from a judgment of Demers, L.J.A., for the Quebec Admiralty District, in which he held the plaintiffs severally entitled to the damages claimed. The cause was heard by the learned trial judge with an experienced assessor.

The important facts, and the chief contentions of the respective parties are to be found in the following excerpt from the reasons for judgment of the learned trial judge.

The Dominion Bridge Company Limited was erecting a bridge across the York River at Gaspé, P.Q., in virtue of a contract with the Dufresne Construction Company Limited, one of the plaintiffs.

On the 6th of July, 1932, when the said bridge was in course of construction and before delivery thereof, the defendant, steamer *Philip T. Dodge*, while proceeding for the first time through the opening or gap in the said bridge, came into collision therewith, causing the north bascule, attachments and gear of the said bridge to be wrenched from their foundations and damaged almost beyond repair.

The plaintiffs contend that these damages were caused by the fault and negligence of those on board the defendant steamer, and by their improper and negligent navigation, and they, in particular, allege:

That the defendant steamer was proceeding at an excessive rate of speed;

That no precautions were taken by those in charge of the said steamer to determine or ascertain local conditions as to proper navigation through the opening of said bridge;

That the said steamer did not take proper or effective engine or helm action to prevent the occurrence of the said collision.

The defendant pleads, in substance, that the said bridge is wrongfully constructed and designed; that it interferes with the navigation of the Harbour of Gaspé more than is necessary for the proper exercise of plaintiffs' statutory powers; that the said bridge was wrongfully and illegally erected and is a public nuisance; and by a second plea, alleges that no blame for the collision can be attributed to the defendant or to any of those on board of her.

The appellant steamship *Philip T. Dodge*, hereinafter to be referred to as the *Dodge*, is a steel ship of slightly over 5,000 gross tons, her length being 400 feet, her

breadth being 57 feet 7 inches, and her speed nine and a half knots. On the occasion in question she was bound for a wharf or pier belonging to the International Paper Company, situated at the head of Gaspé Harbour, and in order to reach this wharf she was obliged to pass through the draw of a bascule bridge being erected by the first named respondent (plaintiff). The bridge was, as I understand it, about completed, except, that the south leaf of the bascule span had not yet been put in place when the accident in question occurred; the north bascule however was then in place and in a fully elevated position. The distance between the two piers upon which the bascules rested was 90 feet, so that if the *Dodge* when passing through the draw was directly in the centre thereof, there would be a free space of 20 feet on each side of her. Directly in front of the draw or opening in the bridge, in proceeding up the Harbour of Gaspé, and at a distance of 800 feet in front of the draw, was a wharf known as Davies wharf, so that when the *Dodge* had fully passed through the draw she would be but 400 feet distant from the Davies wharf, and which of course she had to avoid; the wharf to which she was bound was on her port side after passing through the bridge. She had passed through the draw to the extent of two-thirds of her length, when the overhang of the poop on the starboard side came in contact with the north bascule, which was seven inches inside the face of the pier on which it rested, with serious damage to this leaf of the bascule.

On this aspect of the case the learned trial judge remarked:—

I come down to the second point—was there any negligence to be imputed to the defendant?

On this point, I agree entirely with the finding of the Assessor. As it was the first time that this ship had passed through this bridge, she should have taken great precaution. She had no experienced pilot. The fact is that the captain himself took care of the wheel.

The master, seeing these new works, should have stopped his ship and made himself acquainted with every condition before entering the gap. If he had ascertained these conditions beforehand, he would not have navigated with such speed.

I am of the opinion that he entered the gap in the middle, but for fear of striking Davies wharf, eight hundred feet ahead, he put his helm to starboard, and also to counteract the effect of the current to northward.

The current, striking the bow of a ship to the northward, could not push the stern to the northward, but to the southward.

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I summarize this to mean that the learned trial judge found, in which finding his assessor concurred, that the *Dodge* had not exercised sufficient caution in passing through the bridge; that the master of the *Dodge* should have stopped his ship and acquainted himself with the existing conditions before attempting to pass through the draw of the bridge; that he attempted to navigate the draw at an excessive speed and before fully passing through the draw he put his helm to starboard in order to escape contact with the Davies wharf and also to counteract a current to the northward, which would have the effect of putting his bow to port and his stern to starboard, the latter thus coming in contact with the north bascule; and that the *Dodge* had no experienced pilot. The learned trial judge seems to have been of the opinion that there was a current striking to the north and that the effect of this current on striking the port bow would be to move the stern of the *Dodge* to starboard, north, and not to the south, or port.

I do not agree to the proposition that the master of the *Dodge* should have stopped his ship and examined the situation before attempting to pass through the draw, even on his first trip through the bridge. Neither do I think any blame is to be attached to the *Dodge* for not having on board an experienced pilot. No pilot was there available to the *Dodge*, although, she did take on board an experienced local fisherman who was supposed to know these waters intimately. I am not disposed, upon the evidence, to attach importance to the question as to whether or not there was a current, or that it in any way contributed to the accident. There was a slight current passing directly through the draw, but, even if it struck somewhat to the north I do not think, upon the evidence, that it was itself of such consequence as to create any serious or added difficulty in navigating a ship through the bridge.

There is another point in the case which might conveniently be mentioned here. It was pleaded on behalf of the *Dodge*, and it was suggested on the appeal, that the bridge constituted a public nuisance. I must say it is difficult for me to comprehend why the owners of the bridge were permitted to locate the draw of the bridge precisely where it was located. It appears to be somewhat

out of the course or track theretofore followed by ships in reaching the upper waters of Gaspé Harbour, and to where the *Dodge* was on this occasion bound. In approaching the draw it was more or less necessary, except perhaps to those well acquainted with the locus, to make the approach on a somewhat curved course, and not on a straight course, and then, as I have already pointed out, the draw was located but 800 feet in front of a wharf which was in line with the course through the centre of the draw. The plan of the bridge was approved by the Department of Public Works, and the Department of Marine, at Ottawa, but the plans and drawings do not show the Davies wharf on the upper side of the bridge, or the existence of a shoal on the lower side of the bridge. In any event, the issue as to whether the bridge constitutes a public nuisance was not, I think, tried out, and, in my opinion, no ground work was laid for the determination of so important and serious an issue, and I therefore express no opinion upon it. I understood Mr. Beau-regard so to agree, but he did contend, that the location of the draw was such as to render it difficult and sometimes impossible for shipping to avoid contact with the bridge in passing through the draw, and that on the occasion in question the master of the *Dodge* did everything reasonably to be expected of him, that he was not negligent, and that the accident was unavoidable; and all this constitutes, I think, the real substance of the appellant's case.

It is conceded by the appellant that in passing through the draw the *Dodge* was proceeding at the rate of four miles per hour. Witnesses called by the respondent (plaintiff), at the trial, placed this speed at as much as six miles per hour. I prefer to accept the evidence adduced by the appellant upon this point, although it is possible the speed of the *Dodge* did exceed four miles. The first question for determination therefore is whether a speed of four miles, in passing through the draw, was excessive. The learned trial judge seems to have thought the speed was excessive, without any specific finding as to what the speed was, and it is to be assumed that in this his assessor concurred. In view of the fact that the Davies wharf was directly in front of the *Dodge* when she passed through the

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draw, only 400 feet distant, the ship's length, it does seem to me that a speed of 4 miles per hour was excessive, because, once passing through the draw the *Dodge* was obliged to go to port not only in avoiding the Davies wharf, but also in reaching the wharf to which she was bound. In the same season, the *Dodge* made fifteen additional trips through the bridge without any mishap, and her master stated that in such trips he exercised greater caution, particularly with his "engines," and in this I think he must have had in mind the speed of his ship. I think the speed of the *Dodge* in passing through the bridge opening was, in the circumstances, excessive.

When the *Dodge* was two-thirds through the bridge opening, the master put his helm to starboard, which had the effect of putting the ship's stern to starboard, thus causing, I think, the collision and the damage complained of. This movement, I agree with the learned trial judge, was executed because of fear of coming into collision with the Davies wharf. One can quite understand such a movement, but it was an error, and was, I think, thought to be necessary because of fear, or the imminence, of colliding with the Davies wharf, but that fear or imminence arose, I think, because of the excessive speed of the ship in passing through the bridge draw. Had the speed been reasonably reduced I do not think the liability of contact with the Davies wharf would have been so apparent, and would not have occasioned the fatal order of "helm to starboard," and without this I think the *Dodge* would have passed through the draw without any mishap. And that conclusion as to the speed of the *Dodge* in passing through the bridge contains the answer to the contentions that the master of the *Dodge* navigated his ship with reasonable care, and that the accident was inevitable.

I am of the opinion therefore that the judgment appealed from must stand, and that the appeal should be dismissed with costs.

Judgment accordingly.

Reasons for judgment of Demers, J.:

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On the first point, it appears that this bridge was erected by a company incorporated by the Provincial Statute of Quebec, 20 George V, Ch. 4, navigation being in the province of the Federal Government, it was properly stated in the Statute that the "construction

plans" of the said bridge and of its approaches, after their approval by the Federal Government, "shall be submitted to the Minister of Public Works and Labour and approved by him."

This construction could not be made without the approval of the Governor-in-Council of Canada.

The Federal Government having the control of navigation, I consider that its approbation of the plan of a bridge settles the point as to the proper construction of this bridge.

The defendant, in her contention to the contrary, relies on the case of the *SS. Urama* and on the decision of the Privy Council, reported in 1931, A.C., pages 300 and 308; but in that case, the charter authorizing the building of those works granted by the Federal Government, stated that the permission to build was granted, provided it would not obstruct navigation. The question decided by the Privy Council was that statute was governing the case, and the Privy Council, page 309 of the Reports, insisted that it was interference with navigation amounting to a public nuisance for which the defendant had no authority.

I am, therefore, of opinion that this case does not apply and that in the present case, the Federal authority was the proper authority to decide as to the form of construction of those works.

I come down to the second point—was there any negligence to be imputed to the defendant?

On this point, I agree entirely with the finding of the Assessor. As it was the first time that this ship had passed through this bridge, she should have taken great precaution. She had no experienced pilot. The fact is that the captain himself took care of the wheel.

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The current, striking the bow of a ship to the northward, could not push the stern to the northward, but to the southward.

For these reasons, I arrive at the conclusion that plaintiffs are severally entitled to the damages prayed for; that the defendant steamer *Philip T. Dodge* and her bail should be condemned to the damages claimed, with interest and costs, which damages should be assessed by the Deputy Registrar of this Court, with the assistance of merchants.

 Demers

 L.J.A.
