

QUEBEC ADMIRALTY DISTRICT

THE PINEBAY STEAMSHIP COM-
PANY LIMITED

PLAINTIFF;

1925
Apr. 11.

VS.

THE MOTOR SHIP *STEELMOTOR*.....DEFENDANT.

*Shipping—Canal—Narrow channel—Moored ship—Burden of proof—
Suction—Canal Rule 19*

The *P.* down bound, was moored on the east side of the Welland Canal, at Welland. Observing the *S.* coming up, the *P.* gave three short blasts, as a notice to the *S.* to check her speed. The *P.* was properly

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and well moored and at a safe place, and as the *S.* passed she was drawn by suction from her mooring damaging her "winch." The *S.*'s engines were not stopped.

Held: On the facts, that the *S.* by her breach of Canal Rule 19, without valid excuse, and the failure to stop her engines while passing the *P.*, which increased the suction and the force operating on the *P.*, was the sole cause of the accident, and the *S.* was wholly liable for the damages caused.

2. That the burden rests upon the vessel under way, to exonerate herself from liability for an injury to one which was stationary, to show that it was not in her power to prevent the injury by adopting any practicable precautions, and in shallow waters she is bound to know and guard against the effect of the swell and suction caused by her movement. (The *Rotherfield*, 123, Fed. Rep. 460 referred to.)

Judicial Observation:

"Suction is a force which has been recognized time and again in close navigation in shallow waters, and speed and too close approach are factors which contribute to it."

ACTION *in rem* for damages suffered by plaintiff's steamer *Pinebay* by reason of the alleged negligence of the navigation of the defendant ship.

Montreal, March 25, A.D. 1925.

Case now heard before the Honourable Mr. Justice MacLennan L.J.A.

E. Languedoc, K.C. for the plaintiff.

R. C. Holden for the defendant.

The facts are stated in the reasons for judgment.

MACLENNAN L.J.A., now this 11th day of April, A.D. 1925, delivered judgment.

This is an action *in rem* for damages to plaintiff's steamer *Pinebay* due to the negligent navigation of the SS. *Steelmotor* in the Welland Canal.

Plaintiff's case is that about 10.15 p.m. on 24th October, 1923, the *Pinebay* down bound was moored at Beatty's dock on the east side of the Welland Canal, at the town of Welland, when the *Steelmotor* was observed coming up the canal. Three short blasts were blown by the *Pinebay* to have the *Steelmotor* check her speed. This signal was answered but disregarded and the *Steelmotor* passed the *Pinebay* at an excessive rate of speed, with the result that inordinate surge and suction followed the passage of the *Steelmotor* causing the *Pinebay* to strain outwards so heavily upon her moorings that her after winch was torn

out and damaged; that the *Steelmotor* broke among other rules Canal Rules 14 and 19, and that if she had exercised reasonable care no accident would have occurred and the plaintiff claims for the condemnation of the *Steelmotor* and its bail and in costs and to have an account taken of such damages.

The defence is substantially that the *Steelmotor* passed the *Pinebay* slowly and any damage sustained by the *Pinebay* was not due to any fault or negligence on the part of the *Steelmotor* and those on board her, but was due to the fact that the *Pinebay* was not properly moored, handled or equipped; and defendant prays for the dismissal of the action.

The evidence establishes that the *Pinebay*, which was loaded drawing 13 feet 6 inches, was moored forward with two five-inch manila lines and a three-quarter-inch wire cable, and aft by two similar manila lines and two wire cables, when the *Steelmotor* was seen approaching several hundred feet down the canal a three-blast signal was given by the *Pinebay* and answered by a similar signal by the *Steelmotor*. It is established that this signal is a call for reducing speed. The *Steelmotor's* officers claim that they did reduce her speed before she passed the *Pinebay*. The first mate of the *Pinebay* swore that her speed when passing was very fast and the watchman of the *Pinebay* says that her speed was faster than is usual for steamers passing a moored vessel. The distance between the two steamers as the *Steelmotor* passed up was put by witnesses at from twenty to thirty-five or forty feet. As the *Steelmotor* passed, the *Pinebay* surged and broke some of her aft lines, but not all. These aft mooring lines were made fast to the winch which sustained serious damage. Another steamer had passed up in the early morning of 24th October when the *Pinebay* surged and broke some of her mooring lines, but caused no damage to the winch. The *Pinebay's* log contains an entry that at 10.15 p.m. the *Steelmotor* went by too fast and carried the after winch away, and the evidence at the trial, in my opinion, clearly establishes the plaintiff's claim.

The *Pinebay* surged under a powerful external force; there is no other way for accounting for the damage to her winch. Suction is a force that has been recognized time and

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again in close navigation in shallow waters, and speed and too close approach are factors which contribute to it. Canal Rule 19 provided that "the engines of steamers passing vessels moored to a wharf, pier, or the bank of any canal shall be stopped while so passing." The *Steelmotor* did not stop her engines while passing the *Pinebay* and her speed must have been greater than her witnesses admit. There is no valid excuse for the master of the *Steelmotor* having refused to observe that Rule.

My assessors advise me that the *Pinebay* was properly and well moored and at a safe place; that the *Steelmotor* could have passed with her engines stopped and that the *Pinebay* could not be expected to have had men standing by to ease her lines as other vessels passed up.

The burden rests upon a vessel under way, in order to exonerate herself from liability for an injury to one which was stationary, to show that it was not in her power to prevent the injury by adopting any practicable precautions, and in shallow waters she is bound to know and guard against the effect of the swell and suction caused by her movement; *The Rotherfield* (1).

In my opinion the failure to stop the engines of the *Steelmotor* while passing the *Pinebay* increased the suction and the force which operated on the *Pinebay* and contributed to the accident which damaged her winch. The *Pinebay* was properly moored in a place of safety and the *Steelmotor* should have passed without causing her damage. No blame is imputable to the *Pinebay* or those in charge of her. My assessors concur in all these conclusions.

There will therefore be judgment for the plaintiff against the *Steelmotor* and her bail for the damages to the winch and for costs, with the usual reference to the Deputy Registrar to assess the damages.

Judgment accordingly.