

1927

QUEBEC ADMIRALTY DISTRICT

April 29. GEORGE J. MADDEN.....PLAINTIFF;

v.

THE STEAMER VINMOUNT.....DEFENDANT.

Shipping—Collision—Canal Navigation—Speed—Rules 17, 25, 29, 37 and 38 of the Rules of the Road for the Great Lakes

A collision occurred between the plaintiff's ship, the *Simpson*, and the *Vinmount*, between locks 10 and 11 on the Welland Canal at 8 a.m. in August. This stretch is crossed by a foot bridge, 600 feet from lock

(1) (1889) 41 Ch. D. 1, at p. 23. (2) (1921-2) 2 Can. Bk. R. 468.

11 with two draws of 45 feet each, and a railway construction bridge 1,050 feet lower down. The distance between lock No. 10 and lock No. 11 is 3,500 feet and there is there a current of one mile an hour. The *S.* left lock No. 11 before the *V.* got under way to leave lock 10. The *S.* proceeded down, with the current, at a low speed, of about two and a half miles. Leaving lock 11 she had only 600 feet to the foot bridge where she passed in the port draw; then proceeded down towards the other bridge. The master of the *V.* stated he proposed to meet the *S.* at the foot bridge, but the *S.* had only 600 feet to cover whilst the *V.* had 2,900 feet. The *V.*'s preliminary act stated she intended to meet the *S.* between the two bridges, which was contrary to custom. Both captains saw the ships in the lock. The *V.* saw the *S.* was at an equal distance from the railway construction bridge and he maintained a speed of at least four and half miles, up to the time when he heard the alarm signal and then reversed and dropped anchor, and the collision occurred.

1927
 MADDEN
 v.
 THE
 STEAMER
Vinmount.

Held, on the facts that the determining cause of the accident was the bad seamanship of the *V.* in maintaining the speed she did, and in not slowing up earlier, and in endeavouring to pass the *S.* where she did.

2. That, as the *S.* had the right of way, being with the current, and as the *V.* knew that by going ahead she was bound to meet the *S.* in a stretch between the bridges, contrary to custom, she was required by the ordinary practice of seaman and of good seamanship to have held back and waited below the railway construction bridge until the *S.* had passed clear.

ACTION *in rem* to recover for damages due to collision between the steamship *Jos. W. Simpson* and the *Vinmount*.

The action was tried before the Honourable Mr. Justice Archer, at Montreal.

R. C. Holden for plaintiff.

Francis King for defendant.

The facts are stated in the reasons for judgment.

ARCHER L.J.A., now this 29th day of April, 1927, delivered judgment.

This is an action *in rem*, and counter-claim for damages resulting from a collision between the plaintiff's steamship *Joseph W. Simpson* and the steamer *Vinmount*, which occurred in the Welland Canal at about 8 o'clock a.m., August 9, 1925.

The plaintiff alleges in his Statement of Claim:

[His Lordship here gives the allegations of the plaintiff.]

The defendant, by Statement of Defence and Counter-claim, alleges:

1927
 MADDEN
 v.
 THE
 STEAMER
Vinmount.
 —
 Archer
 L.J.A.
 —

[His Lordship here gives the allegations of the Defense, etc.]

The *Simpson* is a steamer 250 feet 8 inches long, and her beam is 42 feet. She was carrying a cargo of 56,000 bushels of wheat, and was drawing 13 feet 4 inches forward and 13 feet 8 inches aft.

The *Vinmount* is 246 feet 8 inches long, and 38 feet beam. She was light, and was drawing 2 feet 6 inches forward and 12 feet aft.

The distance between lock 10 and lock 11 on the Welland Canal is 3,500 feet. There are two bridges crossing the canal between locks 10 and 11. Both these bridges are nearer to lock 11 than to lock 10. The nearer to lock 11 is the footbridge (also known as bridge No. 8, or the Homer Road Bridge)—the distance being 600 feet. Then there is the railway construction bridge, 1,050 feet lower down. This construction bridge is 50 feet wide, and was erected solely for the construction work of the new canal which is to cross the old canal between said bridge and lock 11. From the railway construction bridge to lock 10 is a distance of 1,800 feet. At the footbridge there are two draws, of 45 feet each. At the railway construction bridge there is only one draw, 53 feet wide. Between the footbridge and the railway construction bridge there was a coffer dam on the port side of the *Simpson*. Below the construction bridge there are posts on each side to tie up if necessary.

Between the railway construction bridge and the foot bridge ships can only manoeuvre between the ends of the abutments of the bridges, that is to say on a length of about 850 feet.

It is proven there is a current of one mile an hour down the canal.

The *Simpson* was in lock No. 11 when the *Vinmount* was in lock No. 10. Both captains saw the ships in the locks.

I may say at the outset that the evidence in this case is very contradictory, but, on the whole, I was more favourably impressed by the evidence produced by the plaintiff. I may say also that some of the evidence on both sides is to be disregarded entirely.

To reach the conclusion I have reached it is not necessary for me to analyze the evidence, as I have reached my

conclusion on the admissions made by Captain Ferguson of the *Vinmount*.

1927
 MADDEN
 v.
 THE
 STEAMER
Vinmount.
 —
 Archer
 L.J.A.
 —

It is proven to my satisfaction that the *Simpson* left lock 11 before the *Vinmount* got under way to leave lock 10. The *Simpson* proceeded down the canal at a slow speed, about 2½ miles an hour. Leaving lock 11 she had only 600 feet to the foot-bridge, where she passed in the port draw; then proceeding down towards the railway construction bridge she had only 1,050 feet to cover. On her way there was a coffer dam on her port side. Moreover, she was drawing 13 feet 4 inches forward and 13 feet 8 inches aft, and she had to pass through a draw of the railway construction bridge which is only 53 feet. It seems obvious she should proceed at slow speed.

My assessors, Captains L. A. Demers, Wreck Commissioner, and Captain J. O. Grey, Shipping Master of the port of Montreal, advise me that in the circumstances it was good seamanship to proceed as the *Simpson* did.

The captain of the *Vinmount* states in his evidence that he proposed to meet the *Simpson* at the foot-bridge. As I say, the *Simpson* had left lock 11 before the *Vinmount* left lock 10. The *Simpson* had only to cover 600 feet, whereas the *Vinmount* had to cover 2,900 feet, to reach the foot-bridge. It does not seem reasonable the captain of the *Simpson* would think of meeting the *Vinmount* at the foot-bridge.

In the counter-claim it is alleged that the *Vinmount* intended to meet the *Simpson* between the two bridges. The same treatment is made in defendant's Preliminary Act (No. 12).

The evidence shows it was not customary for ships to meet between the two bridges, although some witnesses say it had been done on a few occasions, but we do not know the size or tonnage of the ships which met on those occasions.

The distance between the two bridges is 1,050 feet, and from the abutments about 850 feet. My assessors advise me (and I am strongly of the opinion) that it would not have been good and prudent seamanship, but on the contrary it would have been bad seamanship, to try to effect a passing of the ships between the two bridges.

1927
 MADDEN
 v.
 THE
 STEAMER
 Vinmount.
 Archer
 L.J.A.

The only two places the ships could meet were at the foot-bridge, and below the railway construction bridge. The idea of meeting at the footbridge must be discarded entirely. Captain Ferguson admits he abandoned the idea of meeting at the foot-bridge.

[His Lordship here cites Rules 17, 25, 29, 37, and 38 of the Rules of the Road for the Great Lakes, and proceeds.]

It is in evidence there was a current of one mile an hour down the canal. The *Simpson*, as the ship descending with the current, had the right of way, and this is admitted by Captain Ferguson at page 18 of his evidence;

See the case of *George Hall Corporation v. SS. Fifetown*.

In this case of *George Hall Corporation v. SS. Fifetown* (1), MacLennan L.J.A., at p. 14, says:

The *Fifetown* was coming down the canal with the current, and, under rule 25 of the Rules of the Road for the Great Lakes, had the right of way

See also *Bonham v. The Ship Honoreva* (2), judgment of Anglin J. and *George Hall Coal and Shipping Corporation v. SS. Beechbay* (3).

Good seamanship required the *Vinmount* to hold back and wait below the railway bridge. Rule 38 of the Rules of the Road for the Great Lakes. In *The George Hall Coal and Shipping Corporation v. SS. Beechbay*, *ubi supra*, MacLennan L.J.A., held

(2) where if two steamers kept their speed they would meet at a bend in a narrow channel, 300 feet wide, it would be bad seamanship for the one navigating against the stream not to wait until the other had passed clear.

Tucker v. The Tecumseh (4); *The Ezardian* (5) (Bargrave Deane J.); *The Talabot* (6); *Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co.* (7) (Lord Atkinson, at p, 417).

There is no bend between lock No. 10 and lock No. 11 which would oblige the *Vinmount* to hold back under canal Rule 17, but there was a railway bridge which had a draw of only 53 feet, where it was impossible to meet.

My assessors agree with me that the special circumstances of this case should have induced the captain of

(1) (1924) Ex. C.R. 12.

(2) (1916) 54 S.C.R. 51.

(3) (1925) Ex. C.R. 23, at p. 25.

(4) (1905) 10 Ex. C.R. 44.

(5) (1911) P. 92 at p. 98.

(6) (1890) 6 Asp. 602.

(7) (1924) A.C. 406.

the *Vinmount* to slow down before he did, to hold back, and to tie up if necessary, before reaching the railway construction bridge.

Captain Ferguson of the *Vinmount* states in his evidence (page 28) that half way between lock No. 10 and the railway construction bridge he increased the speed of his vessel for a short distance.

[His Lordship cites from the evidence.]

When the captain of the *Vinmount* saw the *Simpson* was at an equal distance from the railway bridge he maintained a speed of at least $4\frac{1}{2}$ miles an hour, up to the time he says he heard the alarm signal, when he reversed and dropped an anchor. In these circumstances the speed was not moderate. Instead of keeping up the speed he should have reduced it; in fact he should have stopped, and tied up if necessary, to allow the *Simpson* to pass through the draw of the railway construction bridge.

The sole and determining cause of the accident was the bad seamanship of the *Vinmount*. The *Simpson* was coming down at a speed of about $2\frac{1}{2}$ miles an hour, and had a right to assume the *Vinmount* would slow up, or tie up, so as to allow her to go through the draw of the railway construction bridge. As soon as the captain of the *Simpson* realized the *Vinmount* intended to attempt passing through the draw, he gave the alarm signal and reversed his engines; but the ships were too close together and collided; the starboard bow of each ship coming together.

It is contended the master of the *Simpson* was to blame for not complying with Rule 25 of the Rules of the Road for the Great Lakes, which requires a vessel descending a narrow channel where there is a current to give a signal indicating which side of the channel he elects to take. No such signal was given, but it does not seem to me this fact contributed in any way to the accident. Moreover, I doubt very much if such a signal should have been given, seeing the positions of the ships and the short distance between them. I may say my assessors are of opinion it was not necessary in the circumstances to give such a signal.

Captain Ferguson's statement is (p. 44):

Q. Do you mean to tell me when you exchange passing signals it is not an invitation to come on, that everything is all right to pass?

A. It is.

1927
MADDEN
v.
THE
STEAMER
Vinmount.
Archer
L.J.A.

1927

And at page 45:

MADDEN
v.
THE
STEAMER
Vinmount.
—
Archer
L.J.A.
—

Q. Supposing he had blown one blast at the time you saw him coming out of the footbridge, just canting over?

A. If he had blown one blast then I would have gone on just the same.

Q. Just the same as you did?

A. Yes.

* * * * *

Q. In any event, you say if he had blown you a passing signal as he was just canting around out of the footbridge you would have answered it, and done what you did?

A. Yes. If he had been straight in the level coming down, I would have waited. If he had the footbridge at his stern, and was coming down, I would have waited below.

Other questions have been submitted in argument, but having reached the conclusion that there was no fault on the part of the *Simpson* which could have contributed to the collision, which was entirely due to the bad seamanship of the *Vinmount*, I do not think it is necessary to discuss those questions.

There will, therefore, be judgment against the *Vinmount* and her bail for the damages proceeded for, and for costs, with the ordinary reference to the Deputy Registrar to assess the amount of damages.

The counter-claim is dismissed with costs.

Judgment accordingly.

Solicitors for plaintiff: *Meredith, Holden, Heward & Holden.*

Solicitors for defendant: *King & Smythe.*