

1918

Dec. 21.

QUEBEC ADMIRALTY DISTRICT.

LAWRENCE C. GIFF,

PLAINTIFF;

v.

SINCENNES-McNAUGHTON LINE, LIMITED,
DEFENDANT.*Collision—Tug and tow—Snowstorm—Inevitable accident.*

In attempting to avoid a collision with a black gas buoy in a channel, which became invisible owing to a snowstorm, the master of a tug, after passing an upbound steamer, starboarded his vessel and ran his tow, composed of several barges, into shallow water, thereby bringing about a collision between them.

Held, it was not an inevitable accident and could have been avoided by the exercise of ordinary caution and maritime skill; that the collision was caused by the improper starboarding of the tug; its failure to take soundings; the failure to anchor.

ACTION for damages resulting from a collision.

Tried before the Honourable Mr. Justice MacLennan, Deputy Local Judge of the Quebec Admiralty District, at Montreal, December 12, 13, 1918.

Peers Davidson, K.C., and *T. Winfield Hackett*, for plaintiff.

Aime Geoffrion, K.C., for defendant.

MACLENNAN, Dep. Loc. J. (December 21, 1918) delivered judgment.

This case arises out of a contract of towage. Plaintiff is the owner of the barge "Lawrence C. Giff", and the defendant is the owner of the tug "Virginia". About 2 a.m. on the morning of November 3, 1917, the defendant's tug "Virginia" left Three Rivers bound for Quebec with a tow consisting of

the barge "Atlasco" at the head of the tow, then the barge "Lawrence C. Giff" and the barge "Mary Giff" fastened abreast, and then the barge "E. H. Lemay" in rear. On leaving Three Rivers the tug pulled out into the stream, turning to head down the river, and, before the tug had succeeded in getting the barges in a straight line behind the tug, the master of the tug saw the headlights and the green light of a steamer up-bound, which passed the tug and tow starboard to starboard opposite the red buoy 56-C. It had been snowing more or less during the night and snow was falling when the tug and tow left Three Rivers, and continued to fall for some time thereafter. The tug passed down 100 feet from the red buoy 56-C, and owing to the snowfall the black gas buoy 55-C, as well as all other lights, became invisible. The black gas buoy 55-C is about 1,700 feet from the red buoy 56-C, where the tug met the up-going steamer, and about 800 feet from shallow water off Ile aux Cochens, on the port side of the channel going up. The deep water channel on the starboard side of the black buoy is about 2,500 feet wide. When the tug passed the up-bound steamer and was unable to see the black gas buoy, the captain of the tug, in order, as he says, to avoid fouling the black gas buoy, starboarded his helm and continued on his course for about 3,500 feet, when the lights of a mill on Ile de la Potherie came in sight on his port bow. He then ported his helm to haul out his tow more into the stream, when the first barge in the tow, which was drawing 14 feet, stranded, and the barge "Lawrence C. Giff", drawing about 6 feet, owing to its momentum, collided with the stern of the "Atlasco", and the barge "E. H. Lemay", owing to its momentum, collided with the

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“Lawrence C. Giff”, and both the “Giff” and “Lemay” sank in a few minutes.

The plaintiff alleges that the collision and the damages and losses consequent thereof were occasioned by the negligent and improper navigation of the tug and by the incompetency of her master and crew, and the defence is that the grounding of the barge “Atlasco” and the sinking of the barge “Lawrence C. Giff”, occurred as a result of an inevitable accident which could not have been anticipated, and there was no fault on the part of the defendant nor of its servants. The tug was in charge of a master, pilot, mate, two engineers, three firemen, three sailors and a cook. After the tug had passed the up-bound steamer and the buoy and rangelights became invisible, the master of the tug changed his course without having consulted his compass. He made no use of his compass whatever and took no soundings at any time, though he doubtless knew that the course on which he had put his tug would bring him very close to Ile aux Cochons. He had two anchors on board ready for use and he had a river over half a mile wide, the only obstacle in it was the black gas buoy 55-C. What happened shows that in attempting to avoid collision with the black gas buoy he ran his tow into shallow water and the foremost barge stranded, bringing about a collision of two of the barges in the after part of the tow.

There is no dispute about the facts, and the questions involved in this case have regard to matters of navigation and seamanship on which I have consulted my nautical assessor, with the following result:

1. After the master of the tug had passed downstream 100 feet off the red buoy 56-C, and had met

the up-bound steamer and the range and the buoy lights had become invisible by reason of the snow-storms, was it good and prudent navigation on his part to have continued his course without regard to his compass and without taking any soundings?

A. No, the compass should have been used. He should not have starboarded, especially—again—with an easterly wind blowing on the starboard side and possibly shearing him to the northward.

2. Was it good navigation on the part of the master of the tug, after he had met the up-bound steamer, to have changed his course by starboarding? If not, what should he have done in the exercise of ordinary care, caution and maritime skill?

A. He should have endeavoured to find gas buoy 55-C, and not having seen it—anchored immediately.

3. Was there anything having regard to the width of the river and the extent of navigable waters at his disposal which prevented the master of the tug taking such precautions as a seaman of ordinary prudence and skill exercising reasonable foresight would use to avert the stranding of the tow, and if not, what should the master have done in this case?

A. In view of the state of the weather, it was imprudent to have left Three Rivers, but having decided to leave he should have proceeded with extreme caution with lead kept going, good look-out and to have anchored upon the lights being shut out by snow. The width of the river is such that he had more than sufficient water to handle his tow to the southward of mid-channel.

The law applicable to the relation between tug and tow was stated by Lord Kingsdown in the Privy

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Council in the case of *The Julia*;¹ it is as follows:

“When the contract was made, the law would im-
“ply an engagement that each vessel would perform
“its duty in completing it; that proper skill and
“diligence would be used on board of each; and that
“neither vessel, by neglect or misconduct, would
“create unnecessary risk to the other, or increase
“any risk which might be incidental to the service
“undertaken. If, in the course of the performance
“of this contract, any inevitable accident happened
“to the one without any default on the part of the
“other, no cause of action could arise. Such an acci-
“dent would be one of the necessary risks of the
“engagement to which each party was subject, and
“could create no liability on the part of the other.
“If, on the other hand, the wrongful act of either
“occasioned any damage to the other, such wrong-
“ful act would create a responsibility on the party
“committing it, if the sufferer had not by any mis-
“conduct or unskilfulness on her part, contributed
“to the accident. These are the plain rules of law
“by which their Lordships think that the case is to
“be governed.”

This statement of the law was subsequently quot-
ed with approval in the Privy Council in the case of
*Smith v. St. Lawrence Tow Boat Co.*² and in the
House of Lords in the case of *Spaight v. Tedcastle.*³

The defence here is inevitable accident, in other
words that the accident could not have been avoided
by the master of the tug by the exercising of ordin-
ary care, caution and maritime skill. What amounts
to inevitable accident was discussed by me recently
in *McCormick v. Sincennes-McNaughton Line, Ante,*

¹ (1861), Lush, 224 at 231.

² (1873), L.R. 5 P.C. 308.

³ (1881), 6 App. Cas. 217, 220.

p. 357, and it is unnecessary that I should repeat what I said on that occasion. Having regard to the advice of my assessor, in which I concur, I find the collision was caused (1) by the improper starboarding of the tug, after passing the up-bound steamer, (2) by the failure to take soundings, *The Altair*,¹ and (3) by the failure to anchor. It is stated in the defence that "a sudden snow flurry obscured the channel lights and the 'Virginia' lost her bearings." Ordinary caution and maritime skill then made it the imperative duty of the master to take repeated soundings, to proceed with extreme caution and to cast anchor until he got his bearings again and could proceed in safety. The negligence of the master of the tug led to the disaster which was clearly avoidable by the exercise of ordinary care, caution and maritimé skill. The defence of inevitable accident therefore fails and there will be judgment for the plaintiff for the damages sustained and for costs, with a reference to the Deputy District Registrar, assisted by merchants, to assess the damages.

Judgment for plaintiff.

Solicitors for plaintiff: *Davidson, Wainwright, Alexander & Elder.*

Solicitors for defendant: *St. Germain, Guerin & Raymond.*

¹ [1897] P. 105.

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