
JOSEPH RINFRET PLAINTIFF;

1928

v.

Feb. 14, 16.
March 1.

CANADA STEAMSHIP LINES LIMITED. DEFENDANT.

Shipping and seamen—Collision—Harbour—Boat leaving dock—Overtaking vessel

The *G. C.* was a ferry boat plying between Montreal and St. Helen Island. She was scheduled to leave Victoria Pier at 1 p.m. every day for the Island. This pier forms the south side of Market Basin in Montreal Harbour and is parallel to section 22 on the north side of the Basin at which the *R. P.* was docked. Every day one of the defendant boats was scheduled to leave their dock at 1 p.m. for the Lachine Canal, as was well known of the captain of the *G. C.* The space between the piers is about 325 feet, and at the end of the piers there is a seven mile current down the St. Lawrence River. On the day in question the *R. P.* gave one long blast and cast off her lines. She went 100 feet ahead and then 300 feet astern and as the current caught her she went full speed ahead upstream intending to pass a short distance from the southeast end of Victoria pier. When abreast of the *G. C.* the latter cast off; the *R. P.* then gave danger signal and immediately after the two-blast, indicating she was going to port. As

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the *G. C.* began to move out, the *R. P.* ordered her engines full speed astern. The *G. C.* paid no attention to signals, started for the Island, and as the current struck her she was borne down unto the *R. P.* which was then going astern, and was struck by the stem of the *R. P.* on her port side. One man only acted as captain, wheelsman and lookout on the *G. C.*

Held, on the facts, that the *G. C.* should not have left her dock without ascertaining exactly the position of the *R. P.* and she was wholly responsible for the collision.

2. That the present case is not one in which the Court should look into the Regulations for preventing collision, but one in which it should simply consider if there was neglect of any precaution under the special circumstances.
3. *Held*, further, that the *R. P.* could not be considered as an overtaking vessel.

Action by plaintiff to recover damages from the defendant for collision in the Montreal Harbour.

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

E. Languedoc, K.C. for plaintiff.

A. R. Holden, K.C., for defendant.

The facts are stated in the reasons for judgment.

ARCHER J., now (March 1, 1928), delivered judgment.

This is an action *in rem* in which the plaintiff claims damages from the defendant for a collision which occurred in the harbour of Montreal on July 1, 1925.

In substance plaintiff's Statement of Claim is as follows:—

[The learned judge here cites the Statement of Claim verbatim.]

The defendant by its Statement of Defence alleges:

[The defence is here given verbatim.]

The *Garden City* is a paddle wheel ferry boat plying between Montreal and St. Helen's Island, a distance of approximately 1,700 to 1,800 feet. She is 180 feet long, 44 feet beam, and draws 5 feet 9 inches to 6 feet.

The *Rapids Prince* is a passenger steamer equipped with twin screw engines. She is of 955 tons register, and is 200 feet long.

On the date in question the *Garden City* was moored to her dock, Victoria Pier, and the *Rapids Prince* was moored at Section 22, in the Market Basin, pointing westward. The distance between Section 22, Market Basin, and Victoria Pier is about 325 feet. The east end of Victoria Pier, where the *Garden City* was moored, measures about 250 feet. During the summer season there is always one of the Canada Steamship Lines' boats scheduled to leave Section 22 at one o'clock p.m., and the *Garden City* is also scheduled to leave at one o'clock p.m. for St. Helen's Island. The Captains of the two vessels knew this, and Captain Rinfret, of the *Garden City*, tells us:

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Q. Est-ce que vous avez souvent l'occasion de vous trouver dans le voisinage des bateaux du Canada Steamship, le *Rapids Prince* en particulier?

R. Tous les jours il y en a un.

Q. Ce sont les bateaux qui descendent les rapides de Lachine?

R. Oui. Une journée c'est le *Rapids Prince*, et l'autre journée le *Rapids Queen*.

Q. Y a-t-il une règle pour passer là et pour se rencontrer? Quelle est l'habitude, s'il y en a une?

R. Quand un part et que l'autre voit qu'il va se trouver dans son chemin, alors il attend; si c'est lui qui doit partir, alors j'attends que ce soit clair pour partir.

See also paragraph 9 of Plaintiff's Preliminary Act.

At one o'clock p.m., her usual time of departure to go up to the Lachine Canal, the *Rapids Prince* gave a signal of one long blast, and her lines were cast off. She then went 100 feet ahead first, and afterwards went astern about 300 feet, and as the current struck her she took her course full speed ahead upstream with the intention of passing a short distance from the southeast end of Victoria Pier. These movements or manoeuvres must have taken about three minutes.

When abreast of the *Garden City* it was noticed on the *Rapids Prince* that the lines of the *Garden City* were being cast off. The Master of the *Rapids Prince* then gave a danger signal of five short blasts on the whistle. Immediately after he gave two blasts, to indicate that he was directing his course to port, and he immediately put his helm hard astarboard. Noticing that the *Garden City* was commencing to move from her dock, the Captain of the *Rapids Prince* ordered the engines full speed astern.

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The *Garden City* not having taken any notice of the signals which had been given, left her dock to cross to St. Helen's Island; and as she reached the current, which runs at about seven miles an hour, she came down towards the *Rapids Prince* and was struck by the stem of the *Rapids Prince* on her port side thirty or forty feet from the stem. The *Rapids Prince* was going full speed astern at the time, had not gathered sternway, but had very little headway.

When the *Garden City* left her pier Captain Rinfret was on the bridge with a passenger, Captain Massicotte. Captain Rinfret acted as Captain, wheelsman and lookout, as there was no other member of the crew with him. After giving the order to cast off the lines he gave the signal for full speed ahead. The engineer informs us that after the first order for full speed ahead he received another full ahead order. Captain Rinfret then went to the wheelhouse and put his helm hard aport.

After the *Garden City* had reached the current Captain Rinfret put his helm amidships with the intention of crossing straight toward St. Helen's Island. Suddenly, he says, he was informed by Captain Massicotte that the *Rapids Prince* was coming up towards him—although Massicotte tells us it was Rinfret who saw the *Rapids Prince* first. According to Captain Rinfret, the bow of the *Garden City* had reached the current then, and knowing that he was being carried down by the current he called out to the *Rapids Prince* to stop. No signals were given by the *Garden City*.

It is clearly proven that the *Rapids Prince* left her dock some few minutes before the *Garden City* left hers. Before leaving the *Rapids Prince* gave a long blast on her whistle, which was an indication to all interested that she was about to depart. As I have said before, the Captain of the *Garden City* knew perfectly well that the *Rapids Prince* would leave at one o'clock, and it was his duty to look out for her. Probably he was busy looking after the crowd which was getting on his boat, and he forgot all about the *Rapids Prince*. It is evidence he was a few minutes late in leaving. He had no proper lookout on his vessel, and that is the reason the *Rapids Prince* was only seen after she had left her dock a few minutes and was so near.

I do not think this is a case in which we have to look to the Regulation For Preventing Collisions but we have simply to consider if there was neglect of any precaution under the special circumstances of the case.

The *Rapids Prince* cannot be considered as an overtaking vessel, and when the *Garden City* left her dock the *Rapids Prince* was abreast of her and was only a very short distance away. (See Marsden, Eighth Edition, page 380).

I agree with my assessor, who advises me that under the special circumstances the *Garden City* should not have left her dock without ascertaining exactly the position of the *Rapids Prince*. When the *Rapids Prince* took the current her Master had a right to assume that the *Garden City* would not leave her dock before the *Rapids Prince* had passed the Victoria Pier. If the *Garden City* had had a proper lookout, surely the *Rapids Prince* would have been seen, and the *Garden City* would not have left her dock at the time she did, especially when her Captain knew the effect of the strong current.

I am advised by my assessor that when the *Garden City* got into the current her Captain should, under the circumstances, have kept his helm hard aport instead of putting it amidships, so as to stem the current and decrease her speed. I am also advised by my assessor that under the circumstances the *Garden City* could have reversed immediately after casting off her lines, without any danger to her safety. I am further advised by my assessor that the *Rapids Prince* was navigated in accordance with the rules of good seamanship, and nothing else could have been done by her to avoid the collision. I agree with my assessor.

I am, therefore, of opinion the *Garden City* is alone to blame, and the action is dismissed with costs.

Judgment accordingly.

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