

1928
Feb. 20 & 21.
March 6.

THE SS. *WENCHITA*..... PLAINTIFF;

v.

THE STEAMER *BEECHBAY*..... DEFENDANT.

AND

THE BEECHBAY STEAMSHIP COM- } PLAINTIFF;
PANY, LIMITED

v.

THE SS. *WENCHITA*..... DEFENDANT.

*Shipping and seamen—Collision—Canal navigation—Right of way—
Lookout*

The *W.* was proceeding down the Lachine Canal, with the current, and before reaching Wellington Bridge and the railway bridge, she blew the usual whistle signals, which were heard by the first officer of the *B.* The *W.* then went through the north draw of the railway bridge. At that time the *B.* was backing out of Wellington basin, where she had been moored, on the east side, heading in. At this time the *B.*'s stern had reached a certain distance out of the dock, and there was still one line out. Instead of going ahead the *B.* continued to go astern, and answered with a danger signal, followed by two short

blasts. The *W.* gave a second danger signal and reversed her engines, but the *B.* came across the *W.*'s. course and the collision occurred, about 350 feet from point where *W.*'s. first danger signal was given. The *B.*'s. captain was in the wheelhouse and no lookout was on the *B.*, and the *W.*'s. bridge signals though heard on the *B.* were not reported to her Captain. The *W.* could not pass astern of the *B.* because of the *B.*'s. continued backing.

Held, that the *B.* was negligent in leaving her dock before making sure that there were no ships within reasonable distance; in backing out and across the *W.*'s. course; in failing to respect the *W.*'s. right of way; in not having a proper lookout, and in her lack of reasonable care and prudence, which was the sole cause of the collision, and that she was alone to blame therefor.

Actions *in rem* to recover for damages due to a collision in Lachine Canal near Wellington Basin.

The actions were tried before the Honourable Mr. Justice Archer at Montreal, assisted by L. R. Demers and A. Barrette as assessors.

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

E. Languedoc, K.C., for defendant.

The facts are stated in the reasons for judgment.

ARCHER L.J.A., now (March 6, 1928), delivered judgment.

These two actions *in rem* were joined for the purpose of trial and judgment.

About 5 p.m. July 14, 1927, the SS. *Wenchita* and the SS. *Beechbay* came into collision in Basin No. 2 of the Lachine Canal, opposite Wellington Basin, and just below the railway bridge at Wellington street.

The *Wenchita's* tonnage is 1,276 gross and 731 net; her length is 235 feet, and her beam is 36 feet. She was fully loaded and was drawing 13 feet 11 inches forward and 14 feet aft. At the time of the collision Captain Ugelstad was on the bridge, with the pilot, Captain Lacroix.

The *Beechbay* is 218 feet 9 inches long, 34 feet beam. Her tonnage is 1,219 gross, 658 net. She was light. At the time of the collision Captain Hornsby was alone in the wheelhouse.

The *Wenchita* in her Statement of Claim alleges:

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

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The *Beechbay* by her Statement of Claim alleges:

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It is proven that the *Wenchita* was proceeding down the canal with a current of about one to two miles an hour. Before reaching the Wellington Bridge and the railway bridge she blew the usual whistle signals for those bridges. Those signals were heard by the First Officer of the *Beechbay* who was on the main deck at the bow. The two bridges having been opened, the *Wenchita* proceeded down through the north draw of the railway bridge, and the *Beechbay* at that time was backing out from the Wellington Basin where she had been moored.

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The *Wenchita* then passing through the railway bridge blew a danger signal of five or six blasts. The *Beechbay* continued to back out of the dock and answered with a danger signal, which was followed by two short blasts. The *Beechbay* having continued to back across the canal came across the *Wenchita's* course and the collision occurred.

The *Wenchita* was coming down with the current, and had the right-of-way. My assessors and I agree that it was negligent for the *Beechbay* to leave her dock, situated as it is, and come across the canal without making sure before casting off her lines, that there were no ships within a reasonable distance.

There was no proper lookout on the *Beechbay*. The Captain was alone in the wheelhouse; and there was no one on the bridge. It was only when Captain Hornsby heard the danger signal that he discovered the *Wenchita* was coming down the canal in the north draw of the railway bridge. Had there been a proper lookout the signal given by the *Wenchita* for the bridge would have been heard, and the opening of the bridges would have attracted the attention of the lookout and the *Wenchita* would have been seen coming through the Wellington Bridge.

True it is the bridge signal was heard by the first officer of the *Beechbay*, but this fact was not reported to the Captain. When the *Wenchita* was at the railway bridge and gave the first danger signal the *Beechbay* was backing out of the Hall Coal Company's dock. This is even ad-

mitted in the *Beechbay's* Preliminary Act. It is in proof that at that time her stern had reached a certain distance out of the dock. There was still one line out on the port side of the bow. Instead of putting her engines ahead the *Beechbay* continued to back with the result we know.

The *Wenchita* seeing that the *Beechbay* continued to back after the first danger signal, gave a second danger signal, reversed her engines, which had at least the effect of reducing her speed to some extent, and lessened the impact.

There are two draws at the railway bridge, the north draw through which the *Wenchita* came down being about 75 feet wide. The width of the canal from the Hall Coal Company's docks to the north side is about 375 feet.

Just before casting off her last line the *Beechbay* was moving out into the channel, and at the time the first danger signal was given by the *Wenchita*, the *Beechbay's* stern was some distance out of the dock, reducing the distance to the place of the collision by a certain number of feet.

The distance covered by the *Wenchita* from the time the first danger signal was given to the approximate place of the collision would be about 350 feet.

It is claimed by the *Beechbay* that it was impossible for her to get across the canal in such a short space of time. It must be remembered, however, that when the first danger signal was given the *Beechbay* had sternway on, and her stern was several feet out of the dock. Moreover, the *Wenchita* was coming down at a slow speed, and her engines were reversed before the collision.

My assessors advise me that the *Beechbay* could under the circumstances come across the canal from where she was, while the *Wenchita* covered about 340 to 350 feet from where she was when she gave the danger signal to the place of the collision.

The weight of evidence is in favour of the *Wenchita*, and my assessors and I agree that the *Beechbay* negligently and improperly backed out of the Wellington Basin across the course of the *Wenchita*, that the *Beechbay* failed and neglected to respect the right of way of the *Wenchita*, that the *Beechbay* had no proper lookout, that if the *Beechbay*

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had exercised ordinary and reasonable care and prudence no collision would have occurred.

The *Wenchita* was going at a slow rate of speed.

It is claimed by the *Beechbay* that the *Wenchita* having answered her two-blast signals by two blasts had agreed to pass to starboard and astern of her. This may be true but the *Wenchita*, though she wanted to pass astern of the *Beechbay*, could not do so as the latter persisted in going farther astern across the *Wenchita's* course on the north side of the canal.

I am also advised by my assessors, and I agree with them, that the *Wenchita* did all that could be done to avoid the collision and she was handled in a good seamanlike way.

I find the *Beechbay* alone to blame, and there will, therefore, be judgment against the SS. *Beechbay* 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 action of the Beechbay Steamship Company, Limited, is dismissed with costs.

Judgment accordingly.