

Suppliant's ship the *Ruth Lake* while proceeding heavily laden on a voyage from Sept Iles, Quebec, to Contrecoeur, Quebec, struck a submerged object when rounding Nicolet Curve on entering Lake St. Peter and suffered considerable damage, to recover which, suppliant brings this action against the respondent. In its petition of right suppliant alleges that the *Ruth Lake* was drawing less than the limiting depth of 35 feet when she left Sept Iles laden with ore and that the respondent's officers and servants are guilty of tort in not maintaining the channel in the condition described in official publications and charts and that suppliant was misled concerning the depth of water in the channel and further that the St. Lawrence Ship Channel constitutes a public work and the respondent committed a breach of duty under s. 3(1)(b) of the *Crown Liability Act* 1-2 Eliz. II, c. 30 since it failed to ascertain the presence of any obstruction in the channel or if it had knowledge of any obstruction it failed to give warning of its presence to the crew of the *Ruth Lake*. The Court found that the damage to the *Ruth Lake* was due to faulty navigation on the part of her officers in that she was proceeding off course with too much speed when so heavily laden.

1960
 IRON ORE
 TRANSPORT
 CO. LTD.
 v.
 THE QUEEN

Held: That "tort" as defined in the *Crown Liability Act* must be read in the light of articles 1053 and 1054 of the Civil Code of the Province of Quebec.

2. That the Crown's liability, if any, was light and vicarious.
3. That the *Ruth Lake* was drawing more than the limiting channel depth of 35 feet at the time of the accident and was therefore proceeding at her own risk.

PETITION OF RIGHT to recover from the Crown damages sustained by suppliant's ship striking a submerged object in St. Lawrence River.

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

F. O. Gerity and *A. S. Hyndman* for suppliant.

R. Lafontaine, Q.C. and *P. M. Troop* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

KEARNEY J. now (August 19, 1960) delivered the following judgment:

The suppliant is a company duly incorporated under the laws of Canada and is the owner of the diesel ship *Ruth Lake*, a bulk carrier being of the following dimensions: weight, 21,156 gross registered tons, 661' in length and 87' of beam.

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 Kearney J.

On October 14, 1956, the *Ruth Lake*, heavily laden with iron ore, ship and cargo weighing 42,000 tons, proceeded up the St. Lawrence River from the port of Sept Iles in the Gulf of St. Lawrence, bound for Contrecoeur, near Montreal. At about 6:30 p.m., upon entering lake St. Peter and while rounding what has been called the Nicolet Curve, she struck very violently some submerged object in the vicinity of buoy 12L. As a result the ship suffered damages allegedly amounting to \$146,511.15 for which the suppliant seeks to hold the respondent responsible.

This is an action in tort and the law applicable to it is contained in ss. 3(1)(a), as qualified by s. 4(2), and 3(1)(b) of the *Crown Liability Act*, 1-2 Eliz. II, c. 30. The word "tort" as contained in s. 3(1)(a) is defined in s. 2(d) as follows:

In this Act

"tort" in respect of any matter arising in the Province of Quebec, means delict or quasi-delict.

Since the cause of action arose in Quebec and Arts. 1053 and 1054 C.C. deal with delicts and quasi-delicts, I think the above-mentioned sections must be read in the light of these two articles. The texts of the foregoing provisions read as follows:

3(1) The Crown is liable in tort for the damage for which, if it were a private person of full age and capacity, it would be liable

(a) in respect of a tort committed by a servant of the Crown, or

(b) in respect of a breach of duty attaching to the ownership, occupation, possession or control of property.

4(2) No proceedings lie against the Crown by virtue of paragraph (a) of subsection (1) of section 3 in respect of any act or omission of a servant of the Crown unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in tort against that servant or his personal representative.

Art. 1053. Every person capable of discerning right from wrong is responsible for the damage caused by his fault to another, whether by positive act, imprudence, neglect or want of skill.

Art. 1054. He is responsible not only for the damage caused by his own fault, but also for that caused by the fault of persons under his control and by things which he has under his care; . . .

The responsibility attaches in the above cases only when the person subject to it fails to establish that he was unable to prevent the act which has caused the damage.

Masters and employers are responsible for the damage caused by their servants and workmen in the performance of the work for which they are employed.

The suppliant alleges that, within the meaning of s. 3(1)(a), the officers and servants of Her Majesty acting within the scope of their employment are guilty of tort in that they failed to inspect the said channel and to maintain it in the condition described in official publications and charts; in that they allowed a less depth of water to exist than that advertised by permitting an obstruction to remain in the channel and did not notify the mariners accordingly; and in that these omissions by the said officers and servants misled ship owners in general, and the suppliant in particular, into navigating the said channel in vessels drawing less than 35 feet of water. It alleges that the Crown in any case, with respect to its ownership, occupation, possession or control of the St. Lawrence Ship Channel, which constitutes a public work, committed a breach of duty under s. 3(1)(b) because it failed to ascertain the presence of any obstruction in the channel; or because, if it had knowledge of any obstruction, it failed to give warning of its presence to the crew of the *Ruth Lake*, and issued misleading information concerning the depth of the channel.

The respondent denies responsibility both in fact and in law and claims that the damages suffered were attributable to the negligence of the servants of the suppliant acting in the course of their employment in that at the time in question they permitted the draught of the *Ruth Lake* to be excessive, did not steer a usual and safe course and failed to keep within the limits of the channel.

In endeavouring to determine the true cause of the grounding, counsel for the suppliant attributed the accident to any one of several possible causes which, I think, are for the most part mutually exclusive. There were no witnesses apart from the officers and crew of the *Ruth Lake* who were in a position to establish the ship's location, and at the trial they placed the point of impact at dead center of the channel and about midway between buoys 12L and 11L which mark its north and south limits. The evidence shows the existence of two obstructions, neither of which was located at the point of impact as above described. One of them was an anchor some 10' in length and of the same width, weighing over 3,000 pounds; and the other, a boulder 7' long, 6' high and 6' wide.

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 ———
 Kearney J.
 ———

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 Kearney J.

Before dealing in more detail with the potential causes of the grounding, I think it appropriate to indicate a few of the surrounding circumstances and add a few explanatory notes concerning certain exhibits.

The *Ruth Lake* was a brand new ship. She had been built in Great Britain and was registered in London and had arrived in Canada on her maiden voyage in June 1956. When the ship left Sept Iles on October 13, according to the suppliant she was drawing 34'01" fore and aft, but this draught had been gauged while she was moored in salt water. Roger Laliberté, a fully qualified pilot, during the summer had piloted the *Ruth Lake* on her previous trips from Sept Iles to Contrecoeur. On the trip in question the same pilot was navigating the ship and giving steering directions to able seaman Thomas Sutherland who was at the helm. With them on the bridge were Captain J. Smith, master of the ship, and P. James, first mate, whose task it was to take the ship's bearings by landmarks at the time of the accident. This important witness was not heard at the trial because he had left the employ of the company and was said to be in Australia.

The master had in his possession a small scale map of lake St. Peter region numbered 1337 (Ex. 1) which had been filed on discovery as exhibit S-1, but the scene of the accident is more clearly shown on a blown-up map of the area which was filed as exhibit 3, on which have been superimposed in red markings most of which, being descriptive of various objects pertinent to the issue, speak for themselves. In navigating around what is called the Nicolet Curve, the *Ruth Lake* was following the line of what appears as the Port St. Francis Range which joins up with the Nicolet Traverse Range which she later followed. The pilot testified that the *Ruth Lake* left the Port St. Francis Range opposite buoy 8L. He apparently kept somewhat to the north of buoy 9L, so as to avoid coming close to a sunken dredge located outside the southern limit of the channel and which, to the knowledge of the ship's officers, crews were attempting to raise.

Beginning at buoy 10L and continuing past buoy 14L the north side of the channel was in process of being widened but, although the dredges had been removed, the widened

portion of the channel had not yet been cleared of boulders and had not been declared open for traffic. Prior to the accident red gas buoy 12L had been moved 600' farther east to a position which it occupied on October 14, 1956. Between buoys 12L and 11L appear three positions of the *Ruth Lake* as drawn in court by the master of the vessel. The first sketched in blue and marked J.S.I. is where the master thought the *Ruth Lake* was when she hit. The second position sketched in red and marked 2 is where the master thought the ship was a moment or two following the initial shock and after he had swung her somewhat to starboard. The master on discovery had stated that at the time of contact the flashing green buoy had cleared the port quarter of the *Ruth Lake*, and the flashing red buoy 12L was just forward of the starboard beam, and counsel for the Crown asked him to sketch the ship's position giving effect to these bearings. The result is seen in the blue outline marked III.

Pilot Laliberté indicated on exhibit 7 the location of the *Ruth Lake* at the instant of striking and shortly thereafter, and these positions are marked with his initials and numbered 1 and 2. He places the ship slightly north of mid-channel and Captain Smith puts her slightly south of it. Both place her in midchannel, much nearer to the boulder than to the anchor.

The extent of the damage suffered which is not contested was so heavy that a forward air tank on the port side was bilged and over 800 tons of water rushed into it, the ship began to list and her head rested on the bed of the channel until the master adroitly opened an air tank near the starboard quarter and took in water which brought the ship on an even keel and allowed her to proceed on her journey. Although she touched bottom en route she arrived safely at her destination which was Contrecoeur.

I will first consider to what extent, if any, the anchor may be regarded as the obstacle which caused the damage. Following is an account of the circumstances surrounding its discovery:

On the night of October 16 Paul H. Kuhring, who was then chief engineer of the St. Lawrence Ship Channel and in the employ of the Department of Transport, learned from the signalling service of the Department of Transport that

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 Kearney J.

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 Kearney J.

the *Ruth Lake* had touched near the central channel line, opposite the sunken dredge *De Rome*; and on October 18 he caused a sweep about 700' in length and about 300' wide to be made in the locality indicated, but no obstruction was found.

On October 22 pilot Laliberté filed with the Department of Transport a pilot's casualty report (Ex. D), wherein he purported to describe the exact spot where the accident took place as opposite the wreck *Délorme* (should read *De Rome*), about 500' east of buoy 12L. On receipt of this information Mr. Kuhring on October 24 caused a more extensive sweep to be made in the area as indicated by the pilot's report, with the result that the anchor already described was located at about 1,800' downstream from the point of contact, as later described by the master and the pilot on exhibits 3 and 7, and about 800' north of the sunken dredge. See exhibit R entitled "Sketch Showing Proving Done in View of Finding an Obstruction to Navigation at Nicolet Traverse."

Before the location of the anchor had been established it was thought by two of the ship's chief officers that it, or something like it, had become detached from the wrecked dredge and had caused the damage. The master in reporting to the ship's owners under date of October 19, 1956, stated:

... our pilot is of the opinion that some part of the wreckage has become detached and fallen into the channel. This would appear to be quite a sound hypothesis for we have a sharp heavy indent about 3 feet above the keel plate which could not have been caused by contact with the bottom.

The later discovery of the anchor belonging to the sunken dredge for a long time appeared to have settled the identity of the obstruction, but in April 1959 when Mr. Hector L. Land of the Department of Transport, and chief engineer of the St. Lawrence Ship Channel, was examined on discovery, counsel for the suppliant for the first time learned that in July 1956 what later turned out to be a large boulder with a red smudge on it had been found by Mr. T. M. Tardif, also of the Department of Transport and district engineer in charge of sweeping, 130' upstream from the charted position and 750' from the actual position as of

October 14, 1956 of the red gas buoy 12L, and approximately 15' south from the northern extremity of the channel. I will have occasion to refer to the boulder after I have concluded dealing with the anchor and other potential causes.

According to the expert testimony of Mr. Buchanan, a naval architect, ship surveyor and senior steamship inspector of the Department of Transport, who examined both the ship and the anchor which was unbent and bore no traces of contact. He stated that the ship likely struck a shelf, hard rock or hard shell, or a series of rocks and rammed them into the bottom as she went over them; or struck a risen object and rolled it under the port bow. This evidence was in keeping with a description given by the master and the pilot who testified that the sensation on contact indicated that the object struck rolled along the bottom of the ship. Counsel for the suppliant conceded that there was little likelihood that the anchor constituted the cause of the accident, and I think there is considerable evidence to justify such conclusion.

Counsel for the suppliant also submitted that the *Ruth Lake*, while in midstream, might have come in contact with some unidentified object and the force and weight of the ship in rolling over it caused it to disappear in a cavity in the bed of the river. This submission has the merit of being consistent with the testimony given by the witness called by the suppliant as to the whereabouts of the ship, but I consider there is little, if any other, evidence to justify it. Every spring lines are run to ascertain the state of the channel, as frequently winter debris finds its way into it. According to the evidence, Mr. Tardif had made more than one sweep in 1956 in the vicinity of buoy 12L, and the *Ruth Lake* and her sister ship had previously steered the same course which was followed on October 14, 1956; and, although the St. Lawrence is a busy highway, at no time prior to the hearing is there any suggestion of the existence of a large boulder or similar obstruction being found where it is claimed the *Ruth Lake* struck.

Another alternative equally consistent with such testimony was suggested, namely, that the boulder with the red smudge became dislodged by ice and was in midchannel at

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 ———
 Kearney J.
 ———

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 Kearney J.

the time of the accident. There was some evidence that ice had caused the sunken dredge to move from where it sank. Several witnesses stated that it was possible, though highly improbable, that an ice flow could dislodge such a boulder, but such possibility can be disregarded since, as appears later, the boulder was discovered in July and removed in November of the same year and evidence was led to prove that no ice had formed on lake St. Peter in the interval.

An additional aspect of cause arises if the *Ruth Lake* can be brought to the position of the boulder. The likelihood and consequences of such occurrence require consideration. The pilot testified emphatically that the ship could not possibly have been where the boulder was said to have been found; and counsel for the suppliant stated in argument that this could occur only if the *Ruth Lake* practically grazed buoy 12L in rounding the Nicolet Curve, which was also an impossibility. Nevertheless, assuming that a boulder was in the position stated by the respondent, it was less than 300' from the supposed point of impact, and counsel for the suppliant intimated that the confusion of the moment might account for inaccuracies in the evidence of the ship's officers as to her situs. In pursuing such a suggestion it is important to examine the evidence establishing the position of the boulder. In 1956 dredge widening operations on both sides of the channel at the Nicolet Curve were being carried out, but we are here not concerned with what occurred on the south side. As to the position of the boulder, Mr. Tardif testified that, when dredging had ceased on the north side, on instructions received he carried out a sweep in July 1956 in the dredged sector and along the edge of the channel in search of obstructions. The cross bar of his sweeper was set 2' below chart datum point, and when it strikes something or makes what is called a touch, the obstacle touched causes the bar to rise and a measuring device registers the height of such rise and this determines the extent to which the obstacle is above or below the datum point. Mr. Tardif stated that, according to the angle and the force with which the bar strikes the obstacle, it may tilt or bounce in such a way that the height of the obstruction may be less than appears on the gauge. Once an obstacle is found, its exact location is accurately recorded by taking a three-point

fix with two sextant angles on triangled points ashore. Exhibit Q dated July 26, 1956, and signed by Mr. Tardif, shows the height and location of the obstacles remaining after dredging and which, as might be expected, consisted of stones or boulders of varying sizes, some of which protruded above datum point. The 2½' touch, sometimes referred to as the 34 foot touch (meaning that there were 34' of water covering the object), located 15' inside the channel, is the boulder which according to later evidence bore a red smudge on it. Mr. Tardif, speaking of this boulder, said: "We disregarded that (the boulder) on account of it was so close to the edge of the channel, and when there is a dredging operation and steep bank, there is always some stuff falling into the channel. That is why when we do sweeping of the area, we run a line on the edge." It was lifted in the autumn general clean-up when other boulders in the newly dredged area were removed.

Mr. Houde, a foreman employed by the Department of Transport overseeing soundings and rock removal, stated that on November 8, 1956, he was furnished with exhibit Q or a duplicate thereof and on that day he found the boulder on the edge of the channel strip within 20' of where he expected to find it. He was careful, he stated, not to allow it to turn while being lifted. Apart from giving the measurements of the boulder, 7' x 6' x 6', Mr. Houde added that on its southern side it had a red smudge 2' long by 1½' wide. It will be recalled that the *Ruth Lake* was moving upstream and suffered damage only on her port side and, at first sight, since the red smudge was on the left-hand or southern side of the boulder, one might be led to infer it could not have been this boulder which came in contact with the ship. Such a presumption would clearly prevail if it could be said that the boulder, when found on November 8, had not budged from the position it occupied prior to the accident. I think, taking into account the evidence of both the master and the pilot and the weight and momentum of the *Ruth Lake* at the time of the accident, if she struck the boulder she likely caused it to roll over.

In cross-examination Mr. Houde declared that he was not familiar with the use of sextants and maps and that some superior officer on board his lifter, with the aid of exhibit Q,

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 Kearney J.

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 Kearney J.

directed him to the anticipated location of the boulder. The superior officer referred to was not called as a witness and Mr. Houde's evidence in respect of the exact location of the stone leaves a lot to be desired. Nevertheless, in the absence of any evidence to the contrary, I think the boulder when first found was 15' inside the northern limit of the channel and that if the *Ruth Lake* struck it she was off course. Whether the dredge salvage operations had diverted the attention of the ship's officers, as suggested by Mr. Kuhring, or for some other unknown cause the *Ruth Lake* with her 87 foot beam struck the boulder on her port side, I think, as Mr. Kuhring speaking from long experience said, the *Ruth Lake* must have been outside the channel when she struck and may well then have grounded on other boulders. This would explain the multiple scorings 100' long and 8' wide on the ship's bottom. I do not think such markings should be ascribed only to the boulder, because if it rolled for 100' under the ship, one would expect to find more than a single relatively small red smudge on it. Mr. Kuhring expressed the opinion that paint from tugs or other vessels in the course of dredging could have caused the smudge on the stone.

The only remaining theory as to the cause which would be consistent with the *Ruth Lake* striking the boulder while remaining in the channel is to assume that neither she nor the boulder was located at the places indicated by the evidence but were both somewhere in between. I think that to make such an assumption in the face of all the evidence to the contrary, one would have to resort to conjecture. In the case of *Montreal Tramways Co. v. Léveillé*¹ Lamont J., in speaking about the facts upon which the court may draw conclusions from the known facts to the fact proved, said:

These facts must be consistent one with the other and must furnish data from which the presumption can be reasonably drawn. It is not sufficient that the evidence affords material for a conjecture that the child's deformity may have been due to the consequences of the mother's accident. It must go further and be sufficient to justify a reasonable man, in concluding, not as a mere guess or conjecture, but as a deduction from the evidence, that there is a reasonable probability that the deformity was due to such accident.

¹[1933] S.C.R. 456, 466.

Lord MacMillan in *Jones v. Great Western Railway Co.*¹ observed:

The dividing line between conjecture and inference is often a very difficult one to draw. A conjecture may be plausible but it is of no legal value, for its essence is that it is a mere guess. An inference in the legal sense, on the other hand, is a deduction from the evidence, and if it is a reasonable deduction it may have the validity of legal proof. The attribution of an occurrence to a cause is, I take it, always a matter of inference. The cogency of a legal inference of causation may vary in degree between practical certainty and reasonable probability. Where the coincidence of cause and effect is not a matter of actual observation there is necessarily a hiatus in the direct evidence, but this may be legitimately bridged by an inference *from the facts actually observed and proved.* (Emphasis mine)

Also in the case of *The King v. Moreau*², Rinfret C.J., speaking of the quality required of presumptions, said:

La doctrine et la jurisprudence sont bien arrêtées sur ce point et ne souffrent plus de discussion. Elles exigent que les présomptions sur lesquelles peut valablement se fonder une conclusion de ce genre soient graves, précises et concordantes. Il m'est impossible de trouver ici une situation qui rencontre ces exigences.

It was said on behalf of the suppliant that the respondent did not make a sufficiently thorough sweep of the channel following the grounding. In accident cases involving an obstruction on a city street or on the runway of an airport, unquestionably the burden of proving the existence of any object alleged to have caused the damages in issue rests on the complainant. We are here concerned with a river channel which constitutes a public highway and, although it is more difficult to do so and might necessitate the employment of sweeping apparatus and divers, I think the burden of locating the obstruction complained of rested on the suppliant, as did the onus of showing that its presence was imputable to a breach of duty for which the respondent was in law responsible.

Speaking of the burden of proof Taschereau J. in *Palmer et al. v. Miron & Frère*³ stated:

The action is based on section 1053 of the *Civil Code* of the Province of Quebec, and the plaintiffs have therefore to show that a delict or a quasi-delict was committed, that it was imputable to the defendants and that as a result of their wrongful act, the appellants suffered damages.

¹47 T.L.R. 39, 45.

²[1950] S.C.R. 18, 23.

³[1959] S.C.R. 397, 399.

1960
 IRON ORE
 TRANSPORT
 CO. LTD.
 v.
 THE QUEEN
 ———
 Kearney J.
 ———

I think that the above clear statement of the law is applicable in the circumstances of the present case, particularly in view of the draught of the ship at the moment of impact.

As mentioned previously it was stated by the master that the *Ruth Lake* while moored in salt water was drawing 34'01" fore and aft. The loading and dead weight form (Ex. 11) shows that the ship was carrying 184 tons in excess of dead weight which, according to Mr. Buchanan, added a further small amount of 1½", making her draught 34'01½" when she left Sept Iles. It is conceded that, standing still, she would draw 9¾" more in fresh water than in salt water and her draught would increase proportionately to the increase in her speed. Mr. Buchanan, assuming as stated by Pilot Laliberté that the *Ruth Lake* was travelling at 10 knots, declared that in his opinion, when she grounded in the restricted fresh water channel of lake St. Peter, she was drawing 38'03". In the opinion of Alexander Doag, a naval architect called on behalf of the suppliant, the lake St. Peter channel was not so restricted as Mr. Buchanan supposed and the *Ruth Lake* on arriving in lake St. Peter was drawing 34'11½" and that at the estimated speed of 8 knots she would be drawing 35'07½"; and if she were travelling at 10 knots her draught would be 2" greater. An entry in the log book (Ex. 6) made by the second mate who was on watch indicates that the *Ruth Lake* apparently touched bottom while passing Deschailions, about 35 miles from lake St. Peter, some three hours before the grounding with which we are concerned occurred.

Although opinions may vary somewhat as to the amount of water the *Ruth Lake* was drawing at the time of impact, it is indisputably clear that her draught exceeded the limiting depth of 35' mentioned on exhibit 1.

The master and the pilot declared that on the information obtained from the Marine Signal Service they expected to find 37' of water in lake St. Peter. It was proved that the depth gauges indicated 37'06". I do not think that in the circumstances such information has much bearing on the Crown's liability. There are local variations in the water level, but it might have been quite different if, as sometimes occurs, the general level had been one or two feet below

the 35' limitation depth and, knowing this, the respondent had failed to inform shipping interests of such lack of depth. Undoubtedly the heavier the ship is laden, the more profitable will the voyage be, and in the absence of instructions to the contrary the master may have felt justified in taking the calculated risk of loading his ship so heavily, since according to the evidence the *Ruth Lake* and her sister ship had previously carried without incident heavier cargoes than on the voyage in question. Nevertheless I think the ship thus laden was proceeding at her own risk.

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 —
 Kearney J.
 —

A person's responsibility will be heavier or lighter in proportion to the duty which rests upon him. In the *Canadian National Railways Co. v. Lepage*¹ Rinfret J., as he then was observed:

It is a familiar principle that negligence may, in law, be considered a fault only if it corresponds with a duty to act.

In my opinion it would be difficult to visualize a relationship such as prevails between the suppliant and the Crown in the present case, existing between two private citizens, or to find a situation wherein a lighter duty or a more vicarious responsibility might be said to rest on the respondent. The dredging and maintenance of the St. Lawrence Ship Channel, a tremendous undertaking, is carried out by the respondent with public funds and the improvement inures particularly to the benefit of those engaged in shipping which of course includes the suppliant. Nevertheless it is true, as observed by Trudel in *Traité de Droit Civil du Québec*, vol. 8, p. 45, No. 64, that the slightest derogation from average or normal prudence may constitute a quasi-delict entailing legal responsibility in the Province of Quebec. Speaking of the test of negligence, Rinfret C.J. in *Eaton v. Moore*² referred with approval to the dissenting opinion of McDougall J. in the court below that—

Reduced to its simplest form and in its present connotation, the test of negligence is not whether greater precautions might have been taken and the loss avoided, but whether ordinary precautions, those usual in the circumstances, were taken.

Because of the conclusion I have reached upon the facts, I think it is unnecessary to deal with the question of degree of fault, or to decide whether under the circumstances

¹ (1927) S.C.R. 575, 578.

² [1951] S.C.R. 470, 474.

1960
 IRON ORE
 TRANSPORT
 Co. LTD.
 v.
 THE QUEEN
 Kearney J.

described by Mr. Tardif, he or his senior officer, Mr. Kuhring, owed it as a duty to the suppliant not to wait until the general clean-up to remove the boulder but to do it immediately or give warning of its presence; or whether their failure to do so made them personally liable and so engaged the responsibility of the Crown under s. 3(1)(a).

On the evidence I have little hesitancy in concluding that the damage was not caused by the anchor, I am convinced that the boulder was on the edge of the channel and I am not satisfied that the damage suffered is attributable to its presence there. Furthermore I think, if the *Ruth Lake* struck it, she went outside the channel; and because of the presence of numerous boulders beyond the northern limit of the channel, likely as not she would have suffered damages in any case and the fault would lie not on the presence of the stone but in the position and speed of the ship when navigating so heavily laden.

Among further submissions counsel for the suppliant stated that s. 3(1)(b) of the *Crown Liability Act* applied if for no other reason than because the St. Lawrence Ship Channel constituted a public work under the control of the Crown. As he also observed, this is the first occasion on which s. 3(1)(b) has been invoked. In the *Cleveland-Cliffs SS. Co. et al. v. The Queen*¹ the question of its applicability did not arise because its date of promulgation was subsequent to the date on which the cause of action arose.

It was held in *The Hamburg American Packet Company v. The King*² that—

... it cannot be doubted that the ship channel between Montreal and Quebec is a work for improving the navigation of the St. Lawrence River; and that while the work was in the course of construction or under repair it was a public work under the management, charge and direction of the Minister of Public Works. The same may be said of any work of dredging or excavation to deepen or widen the channel of any navigable water in Canada.

Being of the opinion that on the facts the suppliant has failed to discharge the burden of proving that a quasi-deliect was committed which was imputable to the respondent and that the damages claimed resulted therefrom, I do not see

¹[1957] S.C.R. 810.

²(1901) 7 Can. Ex. C.R. 150, 177.

the necessity of determining whether or not the dredging
of the channel in the present case constituted a public work.
It follows that I would dismiss the suppliant's claim with
costs.

1960
IRON ORE
TRANSPORT
Co. LTD.
v.
THE QUEEN
Kearney J.

Judgment accordingly.