

1930
*May 12.
*June 10.

THE SS. "KINGDOC" (DEFENDANT)... APPELLANT;

AND

CANADA STEAMSHIP LINES, LTD. }
(PLAINTIFF) } RESPONDENT

PATERSON STEAMSHIPS, LIMITED }
(PLAINTIFF) } APPELLANT;

AND

THE SS. "OXFORD" (DEFENDANT)... RESPONDENT

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA,
QUEBEC ADMIRALTY DISTRICT

*Shipping—Collision—Canal navigation—Right of way—Liability—Cause
of the damage*

A collision occurred between the K., which was ascending the Lachine Canal at its western exit and the O. which had just begun her descent from Lake St. Louis, about 3.30 a.m., on 5th June, 1927. The K., being light, had moored previously to the south revetment wall of the canal near the place of collision on account of wind and rain, the night being also dark. When the O., approaching the entrance to the canal, came into relation with the K., the weather had cleared so far as to enable the K. safely, in the judgment of her master and pilot, to proceed upon her voyage; and, accordingly, her master gave the order to cast off. The K. then gave two blasts of her whistle, signalling her desire to pass on the starboard side of the O., a signal which the latter promptly answered in like manner, the two ships thus agreeing that they should pass green to green. The K. was shouldering her way along the canal wall and the O. was coming down on the opposite side, when suddenly the O. gave an alarm or danger signal of five or six blasts and reversed her engine at full speed astern. There was then, according to the findings, ample room, in canal navigation, between the starboard side of the K. and the blocks marking the northern side of the channel for the O. to pass. The result of the manoeuvre of the O. was that her stern struck the K's starboard bow, forcing the K. against the south wall, where her stern struck. Both ships sustained damage and there was an action and a cross-action, which were tried together. The Local Judge in Admiralty at Montreal found the O. solely to blame. This judgment was reversed by the Exchequer Court of Canada, Audette J., who held that the K. was "at fault for a collision which would not have happened had she lain fast at her berth and delayed casting off but a few minutes, * * * with the knowledge (she had) of a downbound vessel coming in at the time with the current, having thereby the right of way."

*PRESENT:—Duff, Newcombe, Lamont, Smith and Cannon JJ.

Held (reversing the judgment of the Exchequer Court of Canada, [1930] Ex. C.R. 1) that the judgment of the Local Judge in Admiralty, holding the O. solely to blame, should be restored. Upon the facts, the Local Judge rightly held that the collision, having taken place on the south side of the canal, resulted from the faulty navigation of the O., by an abrupt and inconsistent manoeuvre, after exchange of the passing signals, a manoeuvre intervening between the time when the K. got under way and the collision; and, therefore, it was not the untimely casting off of the K. to which the collision can be attributed.—Although the action of those in charge of the K's. navigation was inconsiderate, in leaving her moorings and proceeding outward in the face of the incoming O., the K. should not be held responsible for such an error because it was not the cause of the damage which ensued. *Tuff v. Warman* (2 C.B.n.s. 740) and *Radley v. London and Northwestern Ry. Co.* (1 App. Cas. 754) followed.

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APPEAL from the judgment of the Exchequer Court of Canada, Audette J. (1), allowing with costs an appeal of Canada Steamship Lines, Ltd., owners of the SS. *Oxford*, and dismissing with costs a cross-appeal of the Paterson Steamships Ltd., owners of the SS. *Kingdoc*, from the judgment of the Honourable Mr. Justice Philippe Demers, Local Judge in Admiralty for the Quebec Admiralty District, in cross-actions brought and tried together on the same evidence, for damage sustained by the respective vessels of the parties as a result of a collision between the said vessels at the upper end of the Lachine canal, near Montreal, on 5th June, 1927.

E. Languedoc, K.C., for the appellant.

A. R. Holden, K.C., for the respondent.

The judgment of the court was delivered by

NEWCOMBE J.—The SS. *Kingdoc*, while ascending the Lachine canal at its western exit, came into collision with the SS. *Oxford*, which had just begun her descent from Lake St. Louis. The accident occurred during the latter part of the middle watch, on 5th June, 1927. Both ships sustained damage, and there is an action and a cross-action. These were tried together before the local judge at Montreal, who sat with two assessors, and he found the *Oxford* solely to blame. Upon appeal to the Exchequer Court, Audette J., the learned judge who presided, and who also had an assessor, reversed the decision of the learned local judge, and now the owners of the *Kingdoc* appeal to this court.

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There is some conflict of fact, and the learned counsel for the respondent very judiciously bases his argument upon the passages which he maintains are not in dispute, realizing, no doubt, the "great and almost insuperable difficulty" with which an appellant is apt to encounter adverse findings of fact upon contradictory testimony. (Per Lord Kingsdown in *The Julia* (1); per Lord Sumner in *The Hontestroom v. The Sagaporack* (2).

The material facts may thus be stated in short space and I extract the narrative from the respondent's factum:

The respondent Steamship *Oxford* had come down with the current through Lake St. Louis and when the *Oxford* reached the entrance of the Lachine Canal the appellant Steamship *Kingdoc* was still moored to the canal wall where she had remained since making fast there about an hour earlier. While the *Oxford* was coming down the narrow canal entrance between certain piers on the north side and the canal wall on the south side of the entrance, the *Kingdoc* cast off from her moorings and commenced to manoeuvre so as to get under way on her proposed voyage up the canal entrance to the lake. The wind was blowing from the southwest across the canal entrance and when the *Oxford* was trying to meet and pass the *Kingdoc* the latter's starboard side came into collision with the stem of the *Oxford*. The *Kingdoc* was light and the *Oxford* was fully loaded.

It should be observed that the navigation in this case is governed by the rules of the road for the Great Lakes, which include the St. Lawrence river as far east as the lower exit of the Lachine canal and the Victoria bridge at Montreal; they differ in several particulars from the international rules.

The learned Judge of Exchequer Court at the conclusion of his reasons for judgment, which are fully stated, proposes the following maxim, as governing his conclusion:

Moored at the revetment wall of the Canal, the *Kingdoc*, a light ship of 250 feet in length, with a fresh breeze blowing strong enough to affect her, on a dark night, casting off and getting unnecessarily under way, in a canal of 275 feet in width, with the knowledge of a downbound vessel coming in at the time with the current, having thereby the right of way, (Rule 25) will be held at fault for a collision which would not have happened had she lain fast at her berth and delayed casting off but a few minutes.

Now while I agree that, in the circumstances of this case, the action of those in charge of the *Kingdoc's* navigation was inconsiderate, in leaving her moorings and proceeding outward in the face of the incoming *Oxford*, which was close at hand and exhibiting both side lights; nevertheless, the learned's judge's statement requires qualifica-

(1) (1860) 14 Moore's P.C. 210.

(2) [1927] A.C. 37, at 47.

tion, for the offending ship should not be held responsible for such an error unless it be the cause of the damage which ensued, and we have here another instance of the application of the rule which was laid down in the well-known case of *Tuff v. Warman* (1), and restated by the House of Lords in *Radley v. London and Northwestern Railway Company* (2).

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It is an undisputed fact that when the *Oxford*, approaching the entrance to the canal, came into relations with the *Kingdoc*, the weather had cleared so far as to enable the *Kingdoc* safely, in the judgment of her master and pilot, to proceed upon her voyage; and, accordingly, her master gave the order to cast off. The following passage occurs in Captain Redfearn's cross-examination:

Q. At page 67 of the transcription of your evidence taken before the Wreck Commissioner I find the Commissioner said:

"Q. And in that case there, with a strong breeze blowing—a fresh wind blowing—and a light ship, it takes some time before you leave, and you cannot help getting an angle obliquely from the wharf, because your stern went away in the first place and all the movements of the helm and engines would only accentuate the position because you cannot fight against a wind?"

to which you answered:

A. Yes, sir.

Q. Would it have been better for you to wait long enough for the *Oxford* to pass?—A. Yes, sir.

Q. You realize that now?—A. Yes, sir. If I had known what was going to happen I would never have left the pier.

The *Kingdoc* then gave two blasts of her whistle, signalling her desire to pass on the starboard side of the *Oxford*, a signal which the latter promptly answered in like manner; thus the two ships agreed that they should pass green to green. When this interchange of signals took place the *Oxford* was, of course, aware that the *Kingdoc* was no longer moored, and was outward bound; the situation was perfectly apparent; neither ship anticipated any unavoidable danger or obstruction in making the passage for which they had mutually stipulated. The narrow channel rule applied, subject to the understanding that each ship should keep to the side which she had elected to take; and the ships were very close to each other. The *Kingdoc* was shouldering her way along the canal wall, at a distance from her stem of about 30 feet, and from her stern of about 60 feet;

(1) (1857) 2 C.B. N.S. 740; (1858) 5 C.B. N.S. 573. (2) (1876) 1 App. Cas. 754.

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the *Oxford* was coming down on the opposite side; when suddenly the *Oxford* gave an alarm or danger signal of five or six blasts and reversed her engine at full speed astern. The reason for this manoeuvre was not apparent to the *Kingdoc*; for, according to the findings, she was navigating as closely to the southern bank as she could safely go, and there was ample room, in canal navigation, between her starboard side and the blocks which mark the northern side of the channel, for the *Oxford* to pass.

The danger signal is explained by Mr. Austen, the first officer of the *Oxford*, who says:

A. A short while after the *Kingdoc* appeared to have been blown across the canal, and I did not see where we were going to pass him starboard to starboard, so I blew the danger signal.

Q. Five or six blasts?—A. Yes.

Q. How far apart do you think the vessels were when you blew the danger signal?—A. Roughly a couple of boat lengths.

Q. That would be about 500 feet?—A. Yes.

Q. Did they answer that danger signal?—A. No, sir.

Q. When you saw there was no room to pass was anything done with your engines?—A. When I got no answer to the danger signal I put my ship full speed astern.

Q. You gave that order on the telegraph?—A. Yes.

Q. Did they obey it down below?—A. Immediately.

The *Oxford's* stem struck the *Kingdoc's* starboard bow, at no. 2 hatch, 68 feet from the stem, forcing the *Kingdoc* against the south wall, where her stem struck. Evidently it was considered at the trial that the collision took place on the south side of the canal, and resulted from the faulty navigation of the *Oxford*, by an abrupt and inconsistent manoeuvre, after exchange of the passing signals. I am not convinced that the local judge reached an erroneous conclusion; certainly there was a cause intervening between the time when the *Kingdoc* got under way, and the collision; and if the accident was due to the cause found at the trial, it was not the untimely casting off of the *Kingdoc*, to which the collision can be attributed.

For these reasons, I think, with great respect, that the findings and judgment at the trial should be restored, and I would allow the appeal in each case with costs. The appellant should also have the costs of the appeal in the Exchequer Court.

Appeals allowed with costs.

Solicitor for the appellants: *Errol Languedoc*.

Solicitors for the respondents: *Meredith, Holden, Heward & Holden*.