

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Richelieu and Ontario Navigation Company, Owners of the Steamer "Prescott" v. G. B. Taylor, Owner of the Steamer "Havana," from the Supreme Court of Canada; delivered the 29th October, 1909.

Present at the Hearing:

LORD MACNAGHTEN.

LORD COLLINS.

LORD GORELL.

SIR ARTHUR WILSON.

Nautical Assessors:

ADMIRAL SIR ARCHIBALD L. DOUGLAS,
G.C.V.O., K.C.B.

COMMANDER W. F. CABORNE, C.B., R.N.R.

[*Delivered by Lord Macnaghten.*]

This is an Appeal from the Supreme Court of Canada.

The action which has given rise to the Appeal was brought by the owner of the S.S. "Havana," a Lake freight steamboat, or "coarse freighter," as such boats are called in the Upper Lakes, to recover damages for injuries sustained in a collision with a passenger steamer called the "Prescott." The action was tried before the

[51] P.C.J. 150. L. & M.—100—12/10/09. Wt. 98.

Deputy Local Judge for the Admiralty District of Quebec, assisted by a nautical assessor.

The Trial Judge, concurring with the assessor, found the "Prescott" solely to blame, and gave judgment on all points in favour of the "Havana."

The collision occurred at the entrance of the Lachine canal, in the harbour of Montreal, on the 2nd of July, 1907, about 7 p.m., while it was yet daylight.

The "Havana," bound from Quebec to Erie with a cargo of pulp wood, was just about to enter the canal. Her bow had reached the north wing wall of the entrance to the south lock (No. 1), and she had landed two of her men on the wall for the purpose of making fast her lines, when the acting lock-master ordered her to keep back and let the "Prescott" pass in first. The "Prescott" was coming up immediately behind the "Havana," but her approach had not been noticed by those on board the "Havana." She was entitled to priority of passage, ranking as a vessel of the "first class," under the definition contained in the "Canal Regulations of 1st of May, 1895," made by the Governor-General in Council.

In obedience to the order of the lock-master, the "Havana" reversed her engines and was going astern. The "Prescott," without waiting for the "Havana" to get clear out of the way, "crushed past," as some of the witnesses expressed it, between the pier and the "Havana," scraping hard against the fenders on the side of the pier and jamming the "Havana" against a lumber barge lying up against the south wing wall. She entered the lock at great speed. Some of the witnesses—lock-men who had been employed at the lock for ten years or so—

deposed to the effect that they had never before seen a vessel going in so fast. And then, by some accident, owing to defects in equipment and to unskilful management, her speed was actually increased. She went on without stopping and crashed through the upper gates, bringing down the contents of the basin above. The rush of water swept her out of the lock and dashed her against the "Havana," which had begun to move across to her former position as soon as the "Prescott" was clear of the lower gates.

On the Appeal to the Supreme Court, the learned Judges were all of opinion that the "Prescott" was in fault. On that point they did not call upon the Counsel for the "Havana." But they were divided equally—three to three—on the question whether the "Havana" was also to blame. And so the judgment of the Trial Judge was affirmed, and affirmed with costs.

The leading judgment in support of the decision of the Trial Judge was delivered by Davies, J., with whom Idington and Duff, JJ., agreed. There are no notes of the opinions of the learned Judges who took the opposite view. The judgment of Davies, J., is clear and concise, and their Lordships agree with it entirely.

On the Appeal before this Board it was, of course, hopeless for the learned Counsel for the Appellants to contend that the "Prescott" was not in fault. Their argument was that under the Canal Regulations it was the duty of the "Havana," when passed by the "Prescott," to move to some point not less than three hundred feet from the entrance to the lock. They said, what was very true, that, if the "Havana" had not been there in the way, she would not have been involved in the catastrophe.

The regulation on which they relied is subsection (*d*) of Section 19. It is in these words:—

When several boats or vessels are lying by or are waiting to enter any lock or canal, they shall lie in single tier and at a distance of not less than three hundred feet from such lock or entrance, except where local conditions may otherwise require, and each boat or vessel for the purpose of passing through shall advance in the order in which it may be lying in such tier, except in the case of vessels of the first class to which priority of passage is granted as above.

Assuming that under the circumstances the Appellants could shelter themselves under such a defence or countercharge, the answer to their contention is very simple, as Davies, J., points out.

In the first place, the conditions under which the regulation comes into operation were not present on this occasion. There were not several boats or vessels lying by or waiting to enter the lock. The lumber barge, which might have claimed to enter before the "Havana," had waived her turn and was not going forward at the time. The only vessel then about to enter the lock was the "Havana." In the next place the local conditions do not require that vessels waiting to enter should lie by at the distance prescribed so long as there is accommodation at the wing walls. There are snubbing posts along both walls, and it was proved that it was the recognized practice for vessels waiting to enter the lock to lie up there. The south wall was occupied by barges, but there was room against the north wall, and that was the proper place for the "Havana" to wait for her turn. The regulation in question was intended to preserve order among vessels competing for entrance. It was not designed to secure space and room for

the erratic and dangerous movements of a vessel over which those in charge lose all control.

The conduct of the "Havana" seems to have been proper in every respect, and such is the opinion of the nautical assessors.

Their Lordships will therefore humbly advise His Majesty that the Appeal must be dismissed.

The Appellants will pay the costs of the Appeal.
