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March 19.

ON APPEAL FROM THE QUEBEC ADMIRALTY DISTRICT.

WILLIAM FRASER. (PLAINTIFF)..:APPELLANT;

AND

S.S. *AZTEC* (DEFENDANT).....RESPONDENT.

Shipping—Exchequer Court in Admiralty—Appeal—Questions of fact—Advisability of a Court of Appeal to interfere on facts.

Held, (affirming the judgment appealed from) that where the local judge in admiralty has seen and heard the witnesses and was assisted by two assessors, the Exchequer Court of Canada sitting as a Court of Appeal from the judgment of the said judge should not interfere with the decision of the judge of first instance as regards pure questions of fact, unless he is firmly of the opinion that such decision is clearly erroneous.

APPEAL from the Deputy Local Judge, Quebec Admiralty District, in action *in rem* for damages.

March 10th, 1921.

Appeal heard before the Honourable Mr. Justice Audette at Ottawa.

R. A. Pringle K.C. for appellant.

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

The facts are stated in the reasons for judgment.

AUDETTE J. now (this 19th March, 1921) delivered judgment.

NOTE.—The judgment appealed from and which is affirmed is reported in 19 Ex. C.R. 454 and 20 Ex. C. R. 29.

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FRASER
v.
S.S. AZTEC.

Reasons for Judgment.

Audette J.

This is an appeal from the Deputy Local Judge of the Quebec Admiralty District, sitting at Montreal, with assessors, in an action *in rem* for damages arising out of an accident which occurred, in day time, on the 15th August, 1919, in lock No. 17 of the Cornwall canal.

The details of the accident are clearly set out in the reasons for judgment of the learned trial judge and I am therefore relieved from the necessity of repeating them here on appeal. The case, in the result, resolves itself into a very small compass.

After reading the evidence, it is impossible to find that the respondent ship had anything to do with the cause of the accident, which was absolutely beyond its control. The surging astern, the sudden disturbance of the water and the unexpected current occurring in the lock, which caused the accident, were all foreign to the doings of the respondent. Had there been an additional line at the stern and a "breast-line," it would not be unreasonable to entertain the view that they—like the bow-line—would have snapped or been pulled out like the steel cable, as found by the trial judge under the special advice of his assessors, acting in the same capacity as the Elder Brethren do in England. Had there been two lines at the stern, it is self-evident they would have been of no use, since the sudden current originating in the lock, took the vessel immediately to the west or astern, the water surging in that direction. Had there been a breast-line, it is manifest that having to withstand the tremendous strain of the loaded craft, it would also have broken like the manilla hauser or been pulled out like the steel cable. There was no false or wrong manoeuvre on behalf of the *Aztec*, while moored at the pier or bank of the canal. There was no want of care or skill exhibited on her part.

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Reasons for Judgment.

Audette J.

Sitting as a single judge, in an Admiralty Appeal from the judgment of a judge of first instance assisted by two assessors, while I might, with diffidence, feel obliged to differ in matter of law and practice, yet as regards pure questions of fact, I would not be disposed to interfere with the judge below, unless I came to the conclusion that it was clearly erroneous.

Indeed, as said by Lord Langdale, in *Ward* vs. *Painter* (1): "A solemn decision of a competent judge is by no means to be disregarded, and I ought not to overrule without being clearly satisfied in my own mind that the decision is erroneous." See also *The Queen* vs. *Armour* (2); *Montreal Gas Co.* vs. *St. Laurent* (3); *Weller* vs. *McDonald-McMullen Co.* (4); *McGreevy* vs. *The Queen* (5); *Arpin* vs. *The Queen* (6).

The Supreme Court of Canada held that when a disputed fact involving nautical questions (as the one raised in this case) with respect to what action should have been taken immediately before the accident, is raised on appeal, the decree of the court below should not be reversed merely upon a balance of testimony. *The Picton* (7).

Moreover, it cannot be overlooked that the learned trial judge has had an opportunity of hearing and seeing the witnesses and testing their credit by their demeanour under examination. *Riekman* vs. *Thierry* (8). And in the present case, there is more—there is a finding by the trial judge disregarding the testimony of some of the witnesses whom he disbelieved. *Dominion Trust Co.* vs. *New York Life Ins. Co.* (9).

(1) [1839] 2 Beav. 85.
(2) 31 S.C.R. 499.
(3) 26 S.C.R. 176.
(4) 43 S.C.R. 85.
(5) 14 S.C.R. 735.
(6) 14 S.C.R. 736. Coutlee's Digest S.C.R., p. 93 et seq.
(7) 4 S.C.R. 648.
(8) 14 R.P.C. 105.
(9) [1919] A.C. 254.

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Reasons for Judgment.

Audette J.

Apart from the controversy raised on appeal there is ample evidence for the court below to arrive on this question of fact at the conclusion above referred to and to justify the decree, and in such a case the appellate tribunal ought not to interfere.

The appeal will be dismissed with costs.

Judgement accordingly.

Solicitors for appellant: *Davidson, Wainwright, Elder & Hackett.*

Solicitors for respondent: *Meredith, Holden, Hague, Shaughnessy & Co.*