QUEBEC ADMIRALTY DISTRICT.

1908
May 22.

GEORGE B. TAYLOR, owner of the steamship *"HAVANA"*.....PLAINTIFF;

AGAINST

THE STEAMSHIP *"PRESCOTT."*

Shipping—Collision between two steamers in Canal—Negligence—Breaking of bell-spring in agony of collision—"Inevitable accident."

Held,—that if at a critical moment in the agony of collision, or immediately before it takes place, a vital or material part of the machinery, or of the steering-gear, or equipment, of a ship fails or breaks and cannot possibly be remedied, and the command of the movement of the ship by those in charge of her is lost and cannot be regained, and a collision then occurs without any antecedent negligence on the part of the disabled ship, and is unavoidable as far as she is concerned, the accident is inevitable; but, if, as in the present case, a bell-spring, a mere accessory of the equipment of the vessel, breaks, but the command of the vessel is not necessarily thereby lost by those in charge of her, and antecedent fault on her part is proved, this cannot be deemed to be an "inevitable accident".

ACTION *in rem* for damages arising out of a collision in the Lachine canal.

The facts are stated in the reasons for judgment.

October 28th and 29th and November 4th and 6th, 1907.

The case was now heard at Montreal.

A. R. Holden, for the plaintiff;

The Honourable A. R. Angers, K. C., for the ship.

DUNLOP, D. L. J. now (May 22nd, 1908) delivered judgment.

[Having stated the respective allegations of the parties as appearing upon the pleadings His Lordship proceeded as follows:—]

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It is admitted that George B. Taylor is the owner of the steamer *Havana*, and that the *Prescott* is owned by the Richelieu and Ontario Navigation Company.

The facts under which the accident in question occurred, and by reason of which damages were caused, are clear, and they can be disposed of in a few words.

On the evening of the 2nd of July, 1907, the plaintiffs' ship, *Havana*, on her way from the City of Quebec to Erie in the State of Pennsylvania, came to the down-stream entrance of the Lachine Canal. The wind at that time was from the north or north-west, the weather was clear and fine, it being still daylight. It was the intention of the *Havana* to take the lower or south lock, lock number one. The *Havana* approached the entrance to that lock, ran alongside of the north-west wall of the south lock and put two of her crew ashore to manage the lines in locking the *Havana*, in conformity with the canal regulations. When the *Havana* was alongside of the north wing-wall, the authorities in charge of the lock notified her that she could not pass through the lock until the passenger steamer that was coming up astern had passed through; in other words, that the steamer *Prescott* should take precedence, and the *Prescott* thereupon pushed her way through, and became jammed between the *Havana* and the lock for a short time, and then hurried into the lock. She went through the south lock number one, struck the upper gates, broke them, and was carried swiftly back by the rush of water, and in doing so came into collision with the *Havana* and damaged her to such an extent that she had to be beached in order to save her.

The *Havana* after receiving the orders from the canal authorities that the *Prescott* was to have precedence, backed up towards the south side of the entrance to

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the lock, as far as was necessary to allow the *Prescott* to pass in ahead of her, and while she was lying on the south side of the entrance, her bow was slightly in front of a pinflat loaded with a deck-load of timber that was moored to the south wall, near the down-stream end.

After the *Prescott* had passed the *Havana*, the *Havana* worked her way slowly across the entrance to the lock in order to make fast to the north wing-wall, until the *Prescott* had been locked through. This she did, because it was evidently considered by those in charge of her that she was in the only place at the entrance of the lock free and clear and available for that purpose; but before this manoeuvre could be carried out the collision took place, and the *Havana* was seriously damaged.

The substantial defence of the defendant in this case is that the accident was inevitable owing to the breaking of the spring of the bell in the engine-room of the *Prescott*; and, subsidiarly, that if the *Havana* had been carefully and skilfully navigated by those in charge of her at the time the accident and collision could have been avoided

Before referring to the facts as proved, it might be well to consider the authorities bearing upon the question of inevitable accident

Marsden on Collisions, at p. 6 explains:—"Inevitable accident in Admiralty is commonly used to describe a collision which could not have been prevented by ordinary care; in other words, a collision which occurs without negligence in either ship."

A little further on he says: "It is evident that to sustain the plea of inevitable accident it is not enough to show merely that the collision was inevitable at the moment of or for some moments before its occurence."

Further on he says: "It is not enough for a ship to show that as soon as the necessity for taking measures to avoid collision was perceived, all that could be done was done. The question remains whether precautions could not have been taken earlier."

At page 24 he lays down the principle in these words:—

"If a ship is negligently allowed to be at sea in a defective or inefficient state as regard her hull or equipment, and a collision occurs which probably would not have occurred but for the defective condition, the collision will be held to have been caused by the negligence of her owners".

Kay in his well known work, "*On Ships-masters and Seamen,*" 2nd edition, at page 517, puts it in these words: "An accident is not inevitable merely because it could not be prevented at the very moment at which it occurred. Where it might have been prevented if proper and reasonable measures had been adopted in due time, it is not inevitable."

In the American and English Enc. of Law, Vol. 25, title Ships and Shipper, page 906, the principle is laid down in these words:—

"A collision is said to be inevitable accident when it could not have been prevented by the exercise of ordinary care, caution and nautical skill, but it is not sufficient that the collision could not have been prevented after realization of the dangerous position of the vessels, if they were negligently brought into that position."

Reference might also be made to two cases decided in Lower Canada, which I think have a direct bearing upon the question, and which were decided by two very eminent Judges in Admiralty, Judges Black and Stuart. I refer to the case of the *Cumberland*

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which is a judgment of Judge Black in 1836. (1) This was a case of two brigs at anchor The claim of inevitable accident was based upon the fact that a serious storm arose. That was the inevitable danger in that case. Mr. Justice Black at page 78 said:—

"If the collision be preceded by a fault, (the fault in that case as he found being wrongful anchoring). which is its principal or indirect cause of offending vessel cannot claim exemption from liability on the ground of the damage proceeding from inevitable accident the rule being *quando culpa praecessit casum tunc casus fortuitus non excusat.*"

The other Canadian case is the case of the *Agamemnon,* decided by Judge Stuart in 1876 (2). In this case of the *Agamemnon,* one vessel struck another as a result of its anchor chains giving way in some manner. At page 334 Judge Stuart said: "To support a plea of inevitable accident, the burden of proof rests upon the party pleading it, and in this instance it was for the respondent to shew before he could derive any benefit from it, first, that the damage was caused immediately by the irresistible force of the wind and waves; second, that it was not preceded by any fault, act, or omission on his part as the principal or indirect cause; and third that no effect to counteract the influence of the force was wanting. If the persons in charge of the *Agamemnon* failed, in any one of the above particulars, she is liable for the consequences of this collision."

In cases of collision the jurisprudence of the highest courts in England is of very great importance, and reference might be made to some of the leading cases.

The first I would refer to is the case of the *Marpesia,*

(1) 1 Stu. 75.

(2) 1 Q.L.R., 333.

decided by the Privy Council in 1872. (1) This is a case of two sailing vessels in a fog. Sir James W. Colville, at page 336, after citing and approving of a very old decision of Dr. Lushington, in the case of the *Virgil* which is found in 2 W. Rob. 205, says:—

"An inevitable accident in point of law is this: viz., that which the party charged with the offence could not possibly prevent by the exercise of ordinary care, caution and maritime skill. If a vessel charged with having occasioned a collision should be sailing at the rate of eight or nine miles an hour when she ought to have proceeded at the speed of three or four, it will be no valid excuse for the master to aver, that he could not prevent the accident at the moment it occurred, if he could use measures of precaution that would have rendered the accident less probable".

Sir James Colville goes on to say:—

"Here we have to satisfy ourselves that something was done or omitted to be done which a person exercising ordinary care and caution and maritime skill in the circumstances either would not have done, or would not have left undone as the case may be."

The next English case is the case of the *Merchant Prince*, decided by the Court of Appeal in England in 1892 (2).

This was a case between two steamships, one being at anchor, and a collision occurred from the steering gear of the other going wrong. The trial Judge found that the accident was inevitable, and the Court of Appeal reversed his judgment. The trial Judge said it was an inevitable accident. The Court of Appeal held it was not inevitable.

At page 253 of this report Lord Esher, the Master of the Rolls, says: "The only way a man can get rid

(1) 26 L.T., N.S. 333.

(2) 67 L.T., N.S. 251.

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of liability for the accident, the circumstances of which prove negligence against him is to shew that it occurred by an accident which was unavoidable by him, that is an accident the cause of which was such that he could not, by any act of his, avoid the result." A little further on, he continues:—

"The defendants have shewn a probable cause, and have shewn that if that was the cause there were means of which its result could without difficulty have been avoided."

The next case I would refer to is the case of the *Lochlibo* (1). This case was decided by the High Court of Admiralty in England in 1850. This is a case of two ships under sail, and the collision occurred on a dark hazy night. Dr. Lushington, at page 317 puts it in this way:—

"If either of the two vessels was to blame in any particular, whether from the default of the crew, or of the pilot, or from the joint misconduct of both, then of course the collision could not be the result of inevitable accident."

At page 318 of the same report, he says:—

"By 'inevitableaccident' I must be understood as meaning a collision which occurs when both parties have endeavoured by every means in their power, with due care and caution, and a proper display of nautical skill, to prevent the occurrence of the accident".

I shall now make a few references to the jurisprudence in the United States, and will refer to *Spencer on Marine Collisions*. At page 350, section 195, he says:—

"Where inevitable accident is shown, the loss must remain where it falls, on the principle that no one should be held to be in fault for the results produced

(1) 3 W. Rob. 310.

by causes over which human agency can exercise no control. Where it appears that either party or both are at fault, that everything was not done that could have been done, that the collision might have been prevented by the use of known and proper precautions, by the display of proper nautical skill and judgment, it no longer becomes inevitable accident, but one for which one or both vessels are responsible."

I would also refer to a case of the *Michigan*, (1) decided by the Circuit Court of Michigan on appeal from the District Court, in 1891.

This was a collision between two schooners at the entrance of St. Mary Falls' Canal. One, the *Delaware*, was moored waiting for a tug and she was struck by the *Michigan* entering the canal. The *Michigan* pleaded that the collision was inevitable because of the inevitable cause, which was a strong wind which apparently blew from twenty-five to thirty miles an hour. The Judge in appeal, Mr. Justice Jackson, says at page 506:—"The *Michigan* sent out but the one forward line. That line was too short, was sent out too late, and it failed to reach the dock".

Then at page 507, he goes on to say:—

"To call an injury resulting from such conduct and mismanagement an 'inevitable accident' is a misnomer. A collision is said to occur by inevitable accident when both parties have endeavoured by every means in their power with due care and caution and a proper display of nautical skill to prevent the occurrence of the accident."

Then there is the case of the *Olympia* which is also a judgment of the Circuit Court of Appeal (2) decided in 1894. This was a collision due to the breaking of

(1) 52 Fed. Rep. 501.

(2) 61 Fed. Rep. 120.

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the tiller rope on ship. At page 127 the Court of Appeal puts the question of proof in this way:—

"If a ship damages another ship in consequence of the giving away or inefficiency of her gear or equipment a *primâ facie* case of neglect arises."

On the general principle of inevitable accident, Mr. Justice Lurton speaking for the Circuit Court in Appeal at page 127 says:—

"It is not meant by the expression 'inevitable accident,' one which it was physically impossible from the nature of things for the defendant to have prevented. We only mean that it was an occurrence which could not be avoided by that degree of prudence, foresight, care and caution which the law requires of everyone under the circumstances of the particular case."

Before leaving what I think is a fair exposition of the jurisprudence on inevitable accident, reference might be made to the case of the *Europa*, decided by the Admiralty Court in England, (1). The *Europa* struck a barque in a fog. Dr. Lushington at page 628 says:—

"The import of the words 'inevitable accident' in my view is this, where a man is pursuing his lawful avocation in a lawful manner and something occurs which no ordinary skill or caution could prevent, and as the consequence of that occurrence an accident takes place....." And he goes on to say: "Was there a sufficient arrangement as to the engines? The safety of the *Europa* herself and of vessels which are likely to meet her mainly depends upon the expedition with which the orders are executed, and the means which are adopted to execute them with great expedition. As a landsman I may say that if it is necessary to stop a vessel, the arrangement should be best to effect it in the shortest time."

(1) 14 Jur. Part 1, at p. 627.

There is also the case of the *Warkworth*, decided by the English Court of Appeals in 1884 (1). The *Warkworth* had, as it turned out, a defect in her steam-steering gear, and in this connection Lord Justice Fry, at page 148, speaking for the Court of Appeal, said:—

"Skilful mariners, if the ship is not supplied with proper instruments necessary for her locomotion cannot efficiently and properly conduct her. So also all proper instruments are useless without skilful sailors. If either of these is wanting and a collision happens, then we have a case of improper navigation."

Lord Justice Bowen in the same case at page 148 said: "A person who uses his ship which is not in a condition to be so employed, does in reality improperly navigate her."

The last case I shall at present refer to is the *Turret Court*, a case decided by the Admiralty Court in England in 1900 (2). Sir F. H. Jeune, speaking for the court in that case, which was another accident from steam-steering gear, said, at page 118:—

"Where you have steam-gear, which is necessarily a delicate instrument liable to accidents of various kinds, and a vessel going up a narrow stream in a place of difficulty, then I venture to say, after very careful consideration with the Elder Brethren, that it is the duty of the captain of that vessel not to neglect the means of safety which he has at his command, in other words, to have his hand-steering gear available for use."

Reference might be made for the sake of illustration to Articles 1071 and 1072 of the Civil Code of Lower Canada. These two articles are the counterpart of each other, and mean precisely the same thing. One

(1) 9 P. D., 145.

(2) 69 L. J. Pr. 117.

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says when a person is liable to pay damages and the other when he is not liable to pay damages. The principle involved is necessarily the same. Article 1072 says he is not liable to pay damages when the inexecution of the obligation is caused by fortuitous event, or by irresistible force.

Sub-section 24 of Article 17 of the Civil Code defines a fortuitous event as one which is unforseen, and caused by superior force, which it was impossible to resist.

To constitute *force majeure* the obligation must become absolutely impossible, and not merely more onerous or more difficult, and the plea of *force majeure* must be accompanied by proof that the accident was neither preceded nor followed by any fault on the part of the defendant. See *Alexander vs. Hutchinson*, (1).

Reference might also be made to some of the authorities cited by the counsel for the defendants.

I shall first refer to the American and English Encyclopedia of Law, Vol. 25, pages 904 to 906—

"Inevitable accident, disablement : When a vessel is disabled without any negligence on her part, she is not liable for collision with another vessel when she took all the means in her power to avoid it."

"In case of inevitable accident, neither party is liable, and each bears its own loss if neither is guilty of antecedent negligence on its part. A collision is said to be inevitable accident when it could not have been prevented by the exercise of ordinary care and nautical skill."

I would also refer to the Federal Reporter, Volume 91, page 803.

"Collision, breakdown, accident without fault."

This is the case of the *Transfer Number 3*. The tug *Mould* overtook and passed *Transfer Number 3* with her

(1) M. L. R., 3 S. C. 283.

heavy tow coming down the East River. The *Mould*, after passing ahead of *Transfer Number 3* and when 500 feet in advance of her, broke her valve-stem, so that she became disabled. When, soon afterwards, the break was discovered, danger signals were given, and the *Mould* turned to go into the docks, but her way was gone, and collision ensued with *Transfer Number 3*. The *Mould* brought action. It was held that *TransferNumber 3* had no notice that the *Mould* was disabled until the boats were too near to avoid collision in the flood tide, and that the collision was an inevitable accident without fault, and the libel was dismissed. The *Mould* was uncontrollable. *Transfer Number 3* was in a course which she had a right to adopt, and could not alter in time to avoid the accident. The collision was held inevitable, the loss remaining where it fell."

"The *May Queen*, a barquetine, running into New Haven in a southeast gale, let go her anchor when about 150 yards off a ketch at anchor. There was a spring flood tide running, and the gale was right into the harbour. The port cable parted, and before the starboard anchor, which was let go, brought her up, the barquetine fouled the ketch."

It was held to be an inevitable accident due either to a latent defect in the cable or to stress of weather. No latent defect was visible in the broken link of the chain which was produced in court, and the chain was sufficient in point of size. The accident was held to be inevitable owing to stress of weather.

See also the case of the *Virgo* (1).

When a collision occurred in consequence of the breaking of the steering-gear, there being a latent defect in the metal, it was held to be inevitable accident when the same was properly cared for.

(1) 3 Asp. M.L.C. 295.

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See also the case of the *Java* (1).

In the case of the *Olympia* (2), the collision, having resulted from the breaking of the steamer's tiller rope, it was shewn in her behalf that the rope was of a charcoal iron wire of suitable size of the usual kind, and externally sound; and that it had been bought of a reputable outfitter and used less than two seasons, while the minimum life of such a rope is about three years, and that it had been inspected a few hours before the accident. Witnesses who saw the broken ends of the wires testified that there were no indications of defects. The steering-gear was worked by steam engines, capable of putting severe strain on the rope, but the evidence shewed that the wheel was not suddenly handled.

Held: That the collision was due to inevitable accident and not to the steamer's fault.

Defendant's counsel contends that the breaking of the spring of the hammer on the *Prescott* was caused by a defect, without antecedent negligence, and that the collision which followed was inevitable.

In order to assist me in arriving at a decision in this case, I had availed myself of the power which this court has to refer to some gentlemen conversant with nautical affairs. I have obtained the assistance of Captain James J. Riley, a mariner of experience, holding a certificate of competency as master from the British Board of Trade, number 82599, now engaged in important public service as Superintendent of Pilots and Examiner of Masters and Mates, and a Director of the Nautical College, upon whose judgment and opinion I shall find it my duty to rely and to whom I have submitted the following questions, and whose answers are appended thereto:—

(1) 14 Wall. 189.

(2) 61 Fed. Rep. 120.

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"Q. 1 Do you consider that under the facts of this case as proved, the steamer *Prescott* was properly manned, equipped and navigated, and that a proper lookout was kept, and that all possible precautions were taken by her master and crew to avoid collision with the *Havana*, which took place as has been proved at the time and placed in the pleadings in this cause mentioned? If not, state in what particulars, the manning, equipment, navigation and lookout of the *Prescott* were at fault, and what precautions should have been taken to avoid the collision in question, that were not taken?"

"A. In my opinion the *Prescott* was at fault in the following particulars: She was not properly equipped. There was no arrangement to repeat back signals from the engine room to the wheel-house. There was no proper officer in charge of the vessel. The master was at supper when the collision took place. The mate, whose duty it was to take the *Prescott* through the canal, was on the main deck, a place from which, after he had ordered the men to go on deck with the ropes, he could not take any part in the management of the vessel while she was going through the canal. Ouellette, the Rapids Pilot, was pilot of the vessel from Victoria Pier up to the time of the collision. In my opinion he navigated the vessel improperly. He was proceeding too fast when he entered the canal, and approached and entered lock number one too fast, without having any lines ashore. When about 50 feet inside of the lock, a line was got ashore, but the one man of the crew who jumped ashore did not put the line over the snubbing post until the vessel was about the middle of the lock and it could not be made fast on board the the vessel, as she was going too fast. There was no proper lookout."

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"I am further of the opinion that the collision could have been avoided if reasonable skill and care had been exercised by the officers and crew of the *Prescott* up to the time of the collision."

"Q. 2 Do you consider that under the facts of this case as proved, the steamer *Havana* was properly manned, equiped and navigated, and that a proper lookout was kept, and that all possible precautions were taken by her master and crew to avoid the collision which took place, as has been proved, with the *Prescott*, at the time and place in the pleadings in this cause mentioned. If not, state in what particulars the manning, equipment and navigation of the *Havana* were faulty, and what precautions should have been taken to avoid the collision in question that were not taken?"

"A. With respect to the *Havana* the evidence shews that she approached the lock in a proper manner. The mate was on the forecastle head, on the lookout, and two men were put ashore to handle the lines on the north wing-wall of the approach to the lower gates. She gave the right-of-way to the *Prescott* as ordered by the lockman. After she was released from the jam, caused by the *Prescott* forcing past her, she proceeded to retake her position alongside of the north wing-wall of the approach to the canal, which was the only thing she could do owing to local conditions and canal regulations.

"I am of opinion that the *Havana* was properly manned, equipped and navigated, and that everything that was possible was done by those in charge of her to avoid the collision, and to get out of the way of the *Prescott*, and that all reasonable skill and care were exercised by those in charge of the *Havana* at the time of the collision."

I concur in the foregoing opinion of the Assessor.

No arrangement existed to repeat back from the engine-room the signals given from the bridge as required by law.

The Canadian Shipping Act, chapter 113, R.S.C., 1906, section 621, enacts and requires as follows:—

"Every passenger steamboat shall be provided with wire tiller ropes or iron rods or chains correctly and properly laid with suitable rollers for the purpose of steering and navigating the vessel, and shall use wire bell-pulls for signalling the engineer from the pilot house where bell-pulls are used, together with tubes of proper size so arranged as to transmit the sound of the engine-bells to the pilot house, or other arrangement approved by the Inspector to repeat back the signal."

Ouellette, in his evidence, in answer to a question asking if any mechanism of any kind existed to repeat back orders given by the officers on the bridge to the engine room, answered, "There is none. Well, there is a speaking tube, but it was out of order."

The evidence of Hull Inspector Duclos, is unsatisfactory regarding the sound being repeated back to the bridge through the opening in the dome. In answer to a question asking what he understood as being required by law with reference to the communication or the repeating back of an order from the bridge to the engine, he said: "Whatever the Inspector deems necessary, or if he approves it." The law does not so read, but even from his own interpretation of it his evidence is unsatisfactory, for he seems to approve what he did not test because in answer to the question: "Did you ring the bells in making use of the handles on the bridge this spring in 1907?" he said, "No, I do not remember having done so. I cannot say that

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I rang them this spring. I heard them rung but I cannot say that I rung them myself." It is questionable whether the statement that he heard them rung is correct, because he says that he was alone at the time of completing his examination of this vessel at Sorel.

What the Inspector of Hulls approved of was no arrangement at all. He simply seems to have been of opinion that the signal could have been repeated through an aperture of the dome,—part of the structure of the vessel. The owners of the vessel were bound to see that the provisions of the law were carried out, and that there was some arrangement approved of by the Inspector to repeat back the signal. Here there was no arrangement. This, in my opinion was a violation of the law. Any lack in the enforcing of this very important provision of the law might, and would undoubtedly lead to disastrous results.

It might be noted as to the bells that the plural is used in the Act. It is admitted that the *Prescott* had only one gong or bell. (See evidence of Joseph Langlois, plumber and steamfitter, also the evidence of Chief Engineer Crepeau.) Langlois says that a second bell or gong was placed on the *Prescott* after the accident; and Crepeau says that the other vessels of the Richelieu & Ontario Navigation Company on which he had served had two bells or gongs. He also says that they had speaking tubes from the bridge to the engine room, and that they were in good order.

Now, in the present case it is admitted that the speaking tube on the *Prescott* was not in good order.

The master of the *Prescott*, Andrew Dunlop, was below taking his supper at the time of the accident. The mate, Edmond Robineau, was on the lower deck, where, after the men were sent by him to the promenade

deck to attend to the ropes, he could not be of any use in the management of the vessel. The second mate was not on board the *Prescott* at the time of the accident. Alfred Ouellette who assumed charge of the *Prescott* from Victoria Pier to Shed No. 2, and was on the bridge as navigating officer in charge at the time of the accident, seems to have been engaged as pilot for the rapids between Cornwall and Montreal, and his assertion that he was engaged as captain and pilot for the canals going up as far as the second shed of the Lachine Canal is not in agreement with his testimony, where he says, "Well, I don't belong to the boat, you know," nor is it substantiated by Captain Dunlop who swears that he (the captain) was the master of the *Prescott* in every sense of the word, and answers the question as to who decides whether the mate or the pilot shall take charge when the captain goes off watch by saying, "Well, if Ouellette wants to go ashore there, he can go," thus making it optional with Ouellette or at his convenience, whether to get off at the Victoria Pier or go with the vessel.

Again, the captain does not seem to have appointed any one in particular to take charge that evening, for when he is asked what he said to Ouellette when appointing him to the charge of the vessel, he answered: "Nothing, he simply comes up and takes charge."

Edmond Robineau says in answer to the question: "Did you ever handle the bells during that time?" (referring to the time of his services on the boat), answered, "Yes, sir, I handled the boat through the canal. That was my job." In answer to a question, "When you came on the ship as first mate a month before the accident, how did you know that it was your job to take the ship through the canal?" He stated, "Well, I was hired for that."

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The evidence of the master shews a lack of system in the navigation of the *Prescott* from Victoria Pier to Shed No. 2. He says that he sometimes took charge of her, and that sometimes the mate took her, and sometimes the pilot. It is in evidence that on the night in question no instructions were given regarding who should be the navigating officer when Captain Dunlop went below.

That the sound of the gong or bell in the engine room should be heard on the bridge, when attention was paid, seems to have been accidental or opportune, but not by arrangement, but when heard on the bridge it seems to have come through an aperture or opening in the dome, part of the structure of the vessel.

Ouellette does not seem to have paid attention to whatever sound may have come from the engine-room through the dome to the bridge.

At the critical moment Ouellette failed in judgment and skill in not earlier communicating by word of mouth to the engine-room. He admits that after pulling the starboard bell for the reverse order, that he knew something was wrong with the bells; yet he ran from bell to bell and wasted more time by giving two blasts on the steam-whistle which did not convey any meaning to the engineer, instead of which he could have sent Coutu immediately to notify the engineer to reverse, as easily as he could have asked Coutu if the walking-beam was moving.

It appears to me that the Chief Engineer Crepeau was negligent in not examining the gong when he heard the signal to go ahead at the time when he expected the signal to reverse. The bell that was used to signal to the engine-room was as much under his care as any part of the machinery.

In my opinion there was no lookout. The evidence of Coutu where he states that he was employed as lookout is unreliable, and is contradicted by himself in his examination before Commander Spain in the investigation held by him shortly after the collision took place, at which investigation Coutu swore that he was not acting as lookout.

The men who were placed on the promenade deck to handle the lines were without control or guidance, and it is in evidence that the ship was going too fast for the the men on the promenade deck to handle the line that it is said was thrown ashore.

The *Prescott* entered the canal improperly. She did not keep out of the way of the *Havana* which she was overtaking. Section 5 of the Regulations for the Dominion Canals reads as follows:

"It shall be the duty of all masters or persons in charge of any steamboat or other vessel on approaching any lock, to ascertain for themselves whether the lock is prepared to receive them, and to be careful to stop the speed of any such steamboat or other vessel with lines and not with the engine and wheel in sufficient time to avoid a collision with the lock or its gates."

We will not review the evidence as to the manner in which the *Prescott* entered the canal. The evidence of Ouellette on this subject is not as clear as that given by Chief Engineer Crepeau but generally agrees with it. Crepeau states clearly that when the *Prescott* reached the entrance of the canal he got an order to stop, and then an order to go ahead, and after, making, he supposes, three or four revolutions, he got another order to stop and after that, but without saying how many revolutions he went on it, he got one bell. This one bell it is evident was the half of the reverse signal that the navigating officer intended to send to

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the engine-room when the spring broke. Thus, until the time that her stern was a few feet inside of the lock gates; that is to say, between the time of approaching the entrance of the canal and the breaking of the spring, he got two orders to stop and one to go ahead. The weight of the evidence is that her way was not stopped, but that she entered the lock at great speed, and without having a line or lines ashore (see Sections 5 and 26 of the Regulations for Dominion Canals). Section 5 has just been quoted. Section 26 reads as follows:—

"Every vessel, boat, or craft of two hundred tons and under navigating the canals shall be provided with at least two good or sufficient lines or hawsers, one at the bow, and one at the quarter, and every vessel, boat or craft of more than 200 tons shall be provided with four good and sufficient lines or hawsers, two leading astern, one leading ahead and one breast line, which when locking shall be made fast to the snubbing posts on the bank of the canal and lock, and each rope shall be attended by one of the boat's crew, to check the speed of the vessel while entering the lock, and to prevent it from striking against the gates or other parts of the lock, and to keep it from moving about in the lock, while the lock is being filled or emptied; and the master or owner of any vessel or boat who shall neglect to comply with this section shall be liable to a fine not exceeding fifty dollars and the vessel or boat shall not be permtitted to pass if in the opinion of the superintending engineer the lines are considered insufficient."

The first stop ordered on the *Prescott* is said to have been given when she was about twenty feet from the outer end of the north wing-wall, but her way seems to have carried her so that she jammed between the wing-wall and the steamer *Havana*. To free herself from

this jam, there seems to have been a go-ahead order given when Ouellette says he let his boat go. She proceeded on this go-ahead order, it is stated, until about sixty feet from the lock-gates, when the second order to stop was given, but her great headway carried her inside the lock gates. Her speed could not have been a mile or "about half a mile," as stated by Ouelette in his evidence or "almost not moving" as stated by him, because at such rate of speed no difficulty would have been experienced in getting the lines ashore, or of stopping the vessel with lines. Nor would there have been any need for an order to reverse, as the vessel at half a mile an hour, would have taken a little over four minutes to go inside the lower gates, and in space of time, her way would have been lost when she got inside the gates of the lock. Ouellette says that the engines reversed when the boat was going nine miles an hour. Now, from the upper gates; and he says that when she struck the upper gates, her speed was about fifteen miles an hour, but on the same page of his evidence he reduced his estimate of her speed to about nine miles an hour. Now, from the time her bow was three feet inside the lower gates (when it is stated the spring broke) until it was forty feet from the upper gates, there was only a distance of about forty feet in excess of the ship's own length. In view of this fact it is not credible that with the engines working as described by Chief Engineer Crepeau, when on his own initiative he made her engines turn as slowly as possible, that she could have approached the lower gates slowly, as is stated. The facts and the evidence are overwhelming against the plea that the vessel was going slowly through the gates until the breaking of the spring caused the ship to forge ahead at undue speed.

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To sum up briefly, the way in which the steamer *Prescott* approached the lock was as follows: She approached the lock improperly, and in violation of the Regulations (Sections 5 and 26 of the Regulations for the Dominion Canals). She approached, and even entered the lock with her engine and wheel and without lines. Had the regulation lines been out, on her approach to the lock, they would at the speed as stated by the witnesses for the *Prescott* have held her, even when her way was increased by the breaking of the spring, if not altogether, at least sufficiently long for a navigator of good judgment to have communicated with the engine room verbally before harm could be done to the gates. The attempt to put even the one line out was made too late, and it was useless when got out.

Now, let us see what is said about the lines. Ouellette in answer to Mr. Holden's question: "Had the bow of the *Prescott* reached the lower gates of the lock when the man went off," says "Yes," and further, he says: "We were opposite the gates, perhaps we had passed a little," and it was at that moment that he tried to give two bells to reverse.

He says he intended to put two men off with the cables, but his intention was not carried out, and had the ship not been going at great speed it could have been carried out; because the ship, in passing through the lock gates, could not have been more than six inches from the side of the lock at any time. Ouellette states that the vessel's beam including the fenders, was 44 feet 6 inches, and the width of the lock 45 feet. Robineau says that after she entered the lock she was rubbing the walls, and Gibeau says: "I could even touch the wall," and on the same page he says that when they threw the line ashore the ship was just

passing the first gate. Robineau says that he supposes the vessel was in the lock about 50 or 60 feet before the man jumped ashore to handle the line; but his testimony is rather unreliable on this point on account of his being on the main deck, and without an opportunity of seeing or directing the movements of the men on the lines. Ouellette says the cable was given to the man a couple of seconds after he pulled the starboard bell that broke the spring, and that it was put on the post about the middle of the lock, but his testimony is vague, as he says "I know they placed it on the post, but I did not see them doing it." McLeod says that the vessel was half way between the lower and upper gates when they got the snubbing line out and that the boat had such headway that they could not handle the line—that they could not take the turns and hold it. McLean says they got a line out between the upper and lower gates, but she was going so fast that they could not stop her.

The statement of Ouellette's intention to put two men ashore is not quite in keeping with this evidence. He says: "The man specially appointed for that purpose jumped off on to the wharf, and he took the cables in his hands," and he says "Yes, when the man does not jump off on to the wharf I give him orders to go and put the cable around the post." The singular is used by Ouellette in these instances.

The men in charge of the lines on the night in question were without guidance or control. Ouellette says only one man jumped on the wharves to handle the lines, and that first mate Robineau was in charge of the men with the lines on that night.

I concur fully in and accept the advice given me by the Nautical Assessor as to the management of the ship *Havana* by those in charge of her, as set forth in

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his answer to the second question submitted by me to him.

The defendant contended at the argument that the *Havana* had no authorized officers and the certificates of the master and mate did not extend to local Canadian waters, where the collision occurred; and Sections 96 and 97 of the Canadian Shipping Act were cited. But these sections do not appear to have any bearing on the case, as the requirements referred to are for officers navigating Canadian registered vessels, and not United States vessels as in the present case. In any event, the nature of the certificates held by the officers of the *Havana* had nothing whatever to do with the collision, as I find, and concur in the opinion of the Nautical Assessor to the same effect, that the *Havana* was properly navigated on the occasion in question.

Again, the defendant invokes Section 19, sub-section (d) of the Regulations for the Dominion Canals which reads as follows:—

"(d). When several boats or vessels are lying by or waiting to enter any lock or canal, they shall lie in single tier, and at a distance of not less than 300 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."

Defendant contends that the *Havana* violated the provisions of this sub-section, but I concur in the advice given me by the Assessor, and am of opinion that there was no violation of the section, because after the *Havana* was released from the jam caused by the *Prescott* forcing her way past her, she proceeded to

retake her position along the north wing-wall of the canal, which was the only thing she could do under the circumstances, as owing to the local conditions, there was not the length of wall to permit of her going further back than she did, and she was prohibited by law from anchoring at the entrance of the canal. But before the *Havana* could retake her position, the collision occurred, and she was so seriously damaged that she had to be beached, as above mentioned. Everything possible was done by those in charge of the *Havana* to get out of the way of the *Prescott*, and to avoid the collision that unfortunately occurred, but without avail.

I have cited at considerable length many of the most important decisions and authorities on the question of inevitable accident. The spirit of the jurisprudence seems to me to be this: That if at a critical moment in the agony of a collision, or immediately before it takes place, a vital or material part of the machinery or of the steering gear or equipment of a vessel fails or breaks and cannot possibly be remedied, and the command of the movements of the vessel by those in charge of her is lost and cannot possibly be regained, and a collision then occurs without any antecedent negligence on the part of the disabled ship, and is unavoidable as far as she is concerned, the accident is inevitable. But, if, as in the present case, a bell-spring breaks, a mere accessory of the equipment of the vessel, and the command of the vessel is not thereby necessarily lost by those in charge of her, and antecedent fault on her part is proved, this cannot be deemed to be an inevitable accident.

There was no need for the pilot, Ouellette, running about the deck as he did. A prompt verbal order given by him at once without leaving his post could have

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been immediately transmitted to the engineer and the accident could have been avoided, and was in no sense inevitable. This order might have been transmitted through the speaking tube, if it had been in order, which it was proved it was not. There was no reason why the pilot should have been *in extremis*, as admitted by one of the learned counsel for the defendant, if he had kept his place and acted promptly. Had he done so the collision, in my opinion, could have been avoided.

Having carefully considered all the authorities and the evidence of record and the advice given me by the Nautical Assessor, which I accept and in which I concur, I am of opinion that the collision in question could have been avoided if reasonable care and skill had been exercised by the master, officers and crew of the ship *Prescott*, and that the defendant the ship *Prescott* and her owners, the Richelieu and Ontario Navigation Company, are solely responsible for all damages caused by and resulting from the collision in question.

I consequently find and pronounce in favour of the plaintiff, as owner of the ship *Havana*, and maintain plaintiff's claim and action with costs; and do further order and adjudge that an account be taken, and I refer the same to the Deputy Registrar, assisted by merchants, to report the amount due; and order that all accounts and vouchers with the report in support thereof be filed within six months.

I am much indebted to the counsel for the numerous authorities cited and for their able arguments in this case, and to the Nautical Assessor for his valuable assisstance in this important case, wherein plaintiff claims $25,000 for damages in the collision in question,

this being the amount endorsed on the writ in this cause issued.

*Judgment accordingly**

* Affirmed by judgment of Supreme Court of Canada (unreported) on December 15th, 1908; and by the Judicial Committee of the Privy Council, see (1910) A.C. 170.