

## THE QUEBEC ADMIRALTY DISTRICT (MONTREAL).

1906  
Dec. 1.

THE HARBOUR COMMISSIONERS } PLAINTIFF;  
OF MONTREAL..... }

v.

THE S.S. "UNIVERSE," THE SS } DEFENDANTS.  
"BAY STATE," THE BARGE }  
"BERKSHIRE," THE BARGE }  
"BATH" .....

THE BOUTELL STEEL BARGE } PLAINTIFF;  
COMPANY .....

v.

THE OWNERS OF THE S.S. } DEFENDANTS.  
"UNIVERSE" .....

THE UNIVERSE JOINT STOCK } PLAINTIFFS.  
COMPANY (LIMITED)..... }

v.

THE OWNERS THE STEAMSHIP } DEFENDANTS.  
"BAY STATE," THE BARGE }  
"BERKSHIRE," AND THE }  
BARGE "BATH"..... }

*Shipping—Collision—Tug and tow—Lookout—Absence of proper signals.*

*Held*, under the circumstances of this case that the *Bay State* and tow were in fault upon the following grounds: (1st) Because the barge *Bath* had no pilot, and no proper look-out was kept on the *Bay State* or her tow; (2ndly) Those in charge of the *Bay State* and her tow neglected to take the precautions required under the special circumstances of the case, the tow ropes being too long, and no attempt having been made to shorten them. The *Bay State* had no look-out, and she made no signals to the tow

or to the SS. *Universe* which she appears to have sighted before the *Universe* saw her; (3rdly) There was no additional tug to control the tow, more particularly the last barge, the *Bath*; (4thly) Neither the steam barge *Bay State* nor the barges in tow exhibited proper regulation lights, though they had got under way and the collision occurred before sunrise; (5thly) The steam barge *Bay State* and tow should not have taken the St. Mary's current, as they did, with the tow in such condition as it was proved to be, more particularly in view of the position of the dredges of the Harbour Commissioners, and the place where they were moored, of which the pilots on board the *Bay State* and *Berkshire* were well aware; (6thly) After the collision occurred the steam barge *Bay State* and her tow continued down to Quebec without stopping to enquire what damage had been done.

*Held*, further, that the screw steamer *Universe* and the dredges of the Harbour Commissioners were not at fault, and that the Boutell Steel Barge Company, the owners of the steam barge *Bay State*, and of the barges *Berkshire* and *Bath*, and the said steam barges *Bay State* and *Bath* are liable for all the damages resulting from the collision.

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### ACTIONS for damages arising from a collision.

May 21st, 22nd, 23rd, 25th, and 28th, 1906.

The cases were now heard:

*A. Geoffrion, K.C.*, and *V. Cusson* for the Harbour Commissioners;

*C. A. Pentland, K.C.*, for S.S. *Bay State*, the barge *Berkshire* and the barge *Bath* and the Boutell Steel Barge Company;

*F. E. Meredith, K.C.*, and *A. C. Holden*, for the Universe Joint Stock Company.

DUNLOP, D. L. J., now (December 1st, 1906) delivered judgment.

The question involved in these cases, which have been consolidated, is to fix the responsibility for heavy damages caused by the collision between the S.S. *Universe* and the barge *Bath*, which took place in the harbour of Montreal on the 29th of September, 1905, before sunrise. As a result of this collision the steamship *Universe*, and the barge *Bath* were seriously damaged,

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and two dredges, the property of the Harbour Commissioners of Montreal, were much damaged, one having been sunk and the other having been injured to a large amount.

Damages to a large amount resulting from the said collision are claimed :

(1st) By the Harbour Commissioners of Montreal, who have taken four actions *in rem*, to wit case No. 157 against the steamship *Universe*, case No. 158 against the steam barge *Bay State*, case No. 159 against the barge *Berkshire* and case No. 160 against the barge *Bath* ;

(2ndly) An action *in personam* in warranty case No. 165 taken by The Boutell Steel Barge Company against the owners of the steamship *Universe* ;

(3rdly) Another action *in personam* in warranty under No. 166 taken by The Universe Joint Stock Company against the owners of the steamship *Bay State*, the barge *Berkshire* and the barge *Bath*.

It may be stated that the barges *Berkshire* and *Bath* were in tow of the steam barge *Bay State* when the collision took place.

The Harbour Commissioners of Montreal, in their actions, allege in effect, that on the 29th of September, 1905, between 5 and 6 in the morning, two dredges belonging to plaintiffs, numbers 2 and 3, were at anchor near each other in the harbour of Montreal, to the north of the main channel, about opposite the division line between sections 25 and 26 of the city wharves, at a distance of between 200 and 250 feet from the edge of such wharves ; that they had been there for some days previously, and had been at work for the improvement of the harbour of Montreal, under the control of plaintiffs, and were about, on the date of the collision, to resume the same work for which they were making the necessary preparations ; that the dredges were at the time each in

charge of one watchman, and were carrying the regulation anchor lights; that it was daylight at the time; that the weather was clear, and that the current at the place and in the vicinity had a speed varying between four and six miles an hour.

That at the time in question the steamer *Universe* was seen proceeding up stream, and the steam barge *Bay State*, towing the barges *Berkshire* and *Bath*, all three in line, were proceeding down stream; that the *Universe* gave one blast of her whistle, to which the *Bay State* answered by one blast. Shortly afterwards, a collision took place between the *Universe* and the *Bath*, and the *Universe* as a result of this collision, and of its own improper manoeuvring subsequent thereto, collided with the dredges, striking one, and damaging the other considerably; that the said collision, and the damage and losses to plaintiff consequent thereon, were occasioned by the negligent and improper navigation of those on board the *Universe*.

That the faults attributed to the *Universe* are the following: She had no proper lookout; she violated rule 29 of the regulations preventing collisions, and rule 81 of the regulations for the Port of Montreal; she should have reversed, stopped or slackened her speed sooner; she should have recognized the right of way of the down-coming ships; she should have signalled and ported sooner, and she should have ported more than she did; she improperly manoeuvred after the collision with the barge *Bath*; she did not give any assistance to the plaintiffs' dredges.

The plaintiffs claim:

1. A declaration that they are entitled to the damage proceeded for;
2. The condemnation of the defendant and its bail, in such damage and in costs;
3. To have an account taken of such damage with the assistance of merchants;

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4. Such further and other relief as the nature of the case may require.

The steamer *Universe* pleads to action No. 157 taken by the Harbour Commissioners against her in effect, as follows :

They admit that before sunrise on the 29th September, 1905, two dredges were near each other in the ship channel on the north side of St. Mary's current about opposite the end of Papineau avenue in the City of Montreal, being held in position by means of their spuds, and that the captain and crew of the said dredges were absent, and that there was nobody but a watchman on board.

That the weather was cloudy at the time, with very little, if any, wind.

That the current ran at about six knots per hour in a north-westerly direction ; that the steamship *Universe* was coming up on her starboard side of the channel in the St. Lawrence river, at a speed of about eight and a half knots per hour when she first saw the two dredges in question, which were in the St. Mary's current on the north side ; that when the *Universe* got about opposite the dredges she first saw the steam barge *Bay State*. The *Universe* was on her starboard side of the mid-channel, but allowing a safe distance between her and the dredges. She was carrying the regulation mast-head light, and green and red side-lights. As soon as the steam barge *Bay State* was seen, a one blast signal was given from the *Universe* with her whistle, and her helm ported. This signal was immediately answered by a consenting signal of one blast from the steam barge *Bay State*, which also ported, and bore to her starboard, disclosing first the barge *Berkshire*, which followed the *Bay State* to starboard at the same time moving somewhat to the north, and then disclosing the barge *Bath*, which moved or drifted quickly towards the north and crossed the course of the *Universe*. From that time on,

the *Universe* kept her helm to port, and bore to her starboard as much as was possible under the circumstances, in view of the position of the dredges in the channel and the neighbourhood of the wharves and shoals, as well as the speed of the currents. Immediately after the barge *Bath* struck the *Universe* the ship let go both anchors, but owing to the strength of the current and the additional sheer to starboard that had been given to the *Universe* by the barge *Bath* coming into collision with her, the *Universe* was driven against the wharf, and struck one of the dredges. The defendant admits that as a result of the said collision with the barge *Bath*, and as a result of the improper position of the said dredges in the ship channel at the place in question, the *Universe* collided with one of the dredges; but the defendant denies that the said collision was in any way due to any improper manoeuvring on the part of those in charge of the *Universe* at any time; and the defendant alleges that as soon as the steam barge *Bath* came into view for those on board the *Universe*, everything possible was done by the *Universe* to avoid a collision with the dredges, or with any of the barges, and that those in charge of the *Universe* did everything possible for the protection and assistance of the dredges, under the circumstances; that said steamship *Universe* had passed through the greater and the swifter part of that portion of the channel known as St. Mary's current when she approached and commenced to pass the dredges, and the steam barge *Bay State* came into view, and owing to the position of the dredges in the channel, the direction and force of the current, and the neighbourhood of the wharves and shoals, she could not go any slower, or bear any further to her starboard side than she did; that she had a good and sufficient lookout, and those in charge of her complied with all the requirements and regulations, and navigated and manoeuvred the *Universe* properly in every respect.

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That the dredges in question were improperly left in the channel near the head of St. Mary's current; that the dredges in question were improperly held in position by means of their spuds, and were not in charge of any competent person, and did not exhibit the proper lights and had no lookouts; that the said dredges had not a sufficient number of men on board or on watch, and were not provided with means of any kind to enable them to avoid a collision; that the said dredges failed to loose their anchor chains or to do anything to remove the spuds.

The steam barge *Bay State*, in case No. 158 taken by the Harbour Commissioners of Montreal against her, pleads in effect as follows:

That between 5.30 a.m., and 6 a.m., on the 29th of September, 1905, the steam barge *Bay State* of which The Boutell Steel Barge Company are owners, of 1,245 gross tonnage, 1,200 horse-power, and manned by 20 hands, left Windmill Point in the harbour of Montreal, with the whaleback barges *Berkshire* and *Bath* in tow, bound to Newport News. The *Berkshire* was fastened to the *Bay State* by a hawser 400 feet long, and the *Bath* to the *Berkshire* by a hawser 300 feet long.

That on said date, about six in the morning, the *Bay State* was passing the eastern end of Victoria Pier; the weather was then fine, with very little wind; it was broad daylight. A four to six mile current was running down the river. A good lookout was being kept on board the *Bay State*, and the two barges were being navigated with great care. Those on board the *Bay State* saw a steamship which proved to be the Norwegian steamship *Universe*, coming up the river between three quarters of a mile and a mile off, ahead and a little off the starboard bow. Shortly after she came into sight, the *Universe* sounded one blast of her whistle, indicating to the *Bay State* that she was directing her course to starboard.

The *Bay State* immediately answered this signal by one blast of her whistle, and ported her helm to direct her course as dictated to her by the *Universe*, the two barges following her on that course as closely as was possible, which was directed to the south side of the river so as to cross the current at an angle. The *Universe* was seen to come up rapidly and pass the *Bay State* and *Berkshire*, port side to port side, but when opposite the *Bath*, she was observed by those on board of that vessel to be coming off towards her as if under a starboard helm, and continuing to do so, struck the *Bath* with the bluff of her port bow on her port quarter, doing great damage. The *Universe* then sheered off to starboard and ran foul of the plaintiffs' dredges which were improperly and carelessly anchored by spuds in the ship channel, without any watch on board to adopt the necessary steps to avoid a collision with a passing vessel.

That the said barge *Bay State* by its plea denies that their vessel caused or contributed to the collision in question, and they say that it was caused by the *Universe* and the plaintiffs' dredges, that the *Universe* improperly neglected to keep clear of the *Bath*, that she improperly attempted to pass the *Bay State* and her tows, when she could have stopped very easily below the dredges until the *Bay State* and her tow had passed. The *Universe* could also have avoided the said steamer and her tow, by passing up inside the dredges of the plaintiffs. The *Universe* was on the south side of the mid-channel when she should have been on the north side. That said collision was occasioned by the improper and careless navigation of the *Universe*, as well as by the plaintiffs' dredges, which were anchored in mid-channel by spuds, in consequence of which it was impossible to move or sheer them so as to avoid collision with passing vessels.

That the *Universe* should have stopped below the plaintiffs' dredges, and reversed if necessary instead of con-

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tinuing to proceed up the river with undiminished speed from the time she had the *Bay State* and her tow in sight.

That the *Universe* broke the 81st regulation of the port of Montreal; that the collision was caused by some or all of the matters and things alleged in the defence of the *Bay State* to the present action, or otherwise by the default of the *Universe* or those on board of her, as well as by the dredges of the plaintiffs, as stated in this defence.

That the defence in case No. 159 wherein The Harbour Commissioners of Montreal are plaintiffs against the barge *Berkshire*, and in case No. 160 wherein the said Harbour Commissioners are plaintiffs and the barge *Bath* defendant, is virtually the same as the defence filed in case No. 158.

In case No. 165 wherein The Boutell Steel Barge Company is plaintiff against the owners of the steamship *Universe*, the plaintiffs by their statement of claim allege in effect as follows:

That on the morning of the accident in question between 5.30 a.m., and 6 a.m., the steamer *Bay State* left Windmill Point in the harbour of Montreal with the whaleback barges *Berkshire* and *Bath* in tow, and stating the tonnage and other particulars of the said steamship *Bay State*, and of the said barges, and that the barges were without motive power, and were of about 1,192 gross tonnage, each manned by eight men. The *Berkshire* was fastened to the *Bay State* by a hawser of about 400 feet and the *Bath* to the *Berkshire* by a hawser of about 300 feet, and that all three vessels were the property of the plaintiff.

That about 6 a.m., on the morning in question, the *Berkshire* with her tow was passing the eastern end of the Victoria Pier in the harbour of Montreal; the weather was fine with very little wind; it was broad daylight. The current was running down between four and six

knots an hour. A good lookout was being kept on the *Bay State* and on each one of the barges, and all were being navigated with great care and skill. That those on board the *Bay State* and barges saw a steamship which proved to be the *Universe* coming up the river, between three-quarters of a mile and a mile off. Shortly after she came in sight, she sounded one blast of her whistle indicating to the *Bay State* that she was directing her course to starboard. The *Bay State* immediately answered this signal by one blast of her whistle, and ported her helm to direct her course, as dictated to her by the *Universe*, the two barges following her on that course as closely as possible, which was directed to the south side of the river, so as to cross the current at an angle.

The *Universe* was seen to come up rapidly and passed the *Bay State* and *Berkshire* port side to port side, but when opposite the *Bath* was observed by those on board that vessel to be coming off towards her as if under a starboard helm, and continuing to do so, struck the *Bath* with the bluff of her port bow on her port quarter, doing her great damage.

That the *Universe* then sheered off to the starboard and ran foul of two dredges belonging to the Harbour Commissioners of Montreal, which were at the time anchored in the ship channel. The *Bay State* and her tow proceeded down the river.

That the said collision was caused by the fault, neglect and bad navigation of the *Universe* and those in charge of her. She neglected to keep a proper look-out; she did not keep to that side of the fairway of mid-channel lying on her starboard side, but was improperly on the other side of mid-channel or fairway, although she directed the course to the *Bay State* which this vessel was following with her tow, at the time of the collision. She did not slacken her speed or stop or reverse when

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she saw that the *Bay State* had the barges in tow, and that it was impossible for the *Bay State* to do so, that she did not stop and reverse when risk of collision was imminent; that the *Universe* acted improperly in view of the currents of the river in not recognizing the *Bay State's* right of way under the circumstances, more particularly when she must have perceived that the *Bay State* had adopted the course which she had dictated by her one blast of the whistle, and was coming off under that course, to her starboard side of the channel. The *Universe* instead of following the course indicated by her signal, failed and neglected to do so, and failed and neglected to make way for the *Bay State* and her tow, as provided for by the 81st regulation of the port of Montreal, and thereby the *Universe* broke the said regulation.

That the plaintiffs, as the owners of the said steamer *Bay State* and barges *Berkshire* and *Bath* claim:

1st. The sum of \$60,000 against the owners of the said steamship for damages occasioned by the said collision, and for warranty; to wit, \$10,000 for damages to said barges, and the plaintiffs, and \$50,000 by way of warranty in the event of the said steamship *Bay State* and barges *Berkshire* and *Bath*, or the plaintiffs, to wit, the owners of the said vessels and any of them, being held liable to the Harbour Commissioners of Montreal under the actions instituted in the present court against the said vessels in respect to the said collision;

2nd. And declare that they are entitled to damages proceeded for, and the condemnation of the defendants and their bail in such damages, with costs;

3rd. To have an account taken of such damage with the assistance of merchants;

4th. Such further and other relief as the nature of the case may require.

That whereas the Universe Joint Stock Company, Limited, plaintiffs in the case No. 166 instituted by them against the owners of the steam barge *Bay State*, the barges *Berkshire* and *Bath*, by their statement of claim in this action in person and warranty practically allege the same faults against the defendants as alleged in their defence in case No. 165, and allege that the Harbour Commissioners of Montreal have instituted actions at law in connection with said collision against the present plaintiffs and defendants for damages alleged to have been caused to the dredges of the Harbour Commissioners, one of which had been struck by the *Universe* after the barge *Bath* had run into the *Universe*; that the action so taken against the *Universe* was taken by the Harbour Commissioners of Montreal for \$50,000 for damages to the dredges, said suit bearing No 157, and that if the Harbour Commissioners' dredges, or either of them, suffered damage as the result of said collision, such damage was caused solely by reason of the fault, negligence and improper navigation of those on board the steam barge *Bay State* and her tow; and that if the said *Universe* or the present plaintiffs, its owners, be condemned to pay to the Harbour Commissioners of Montreal any amount of damages or costs in connection with the said action No. 157, the present plaintiffs are entitled to have and recover the same from the present defendants who are responsible in warranty therefor, and that the plaintiffs claim, first, a declaration that they are entitled to the damages proceeded for, including the warranty by defendants, covering any condemnation against plaintiffs in favour of the Harbour Commissioners of Montreal as aforesaid; (2nd) the condemnation of the defendants and their bail in such damages and in costs; (3rd) to have an account taken of such damages with the assistance of merchants; (4th) such further and other relief as the nature of the case might require.

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The defendants in this case plead in effect the same facts as they have pleaded in the other cases respecting said collision, and in effect allege, that no blame in respect of the collision was attributable to the barge *Bay State*, the barges *Bath* and *Berkshire* or any of them, for the reasons in their pleadings at length recited.

On the 17th March, 1906, the parties to the six pending cases respecting said collision agreed to and consented that the six actions should be tried at the same time and on the same evidence.

It is agreed and consented to by the parties to the present causes, that the evidence adduced at the investigation held by the Wreck Commissioner, Commander O. G. V. Spain, assisted by Captain Reid and Pilot Gauthier, as taken down and transcribed by official stenographers Alexandre Bélinge and J. Tierney, should be accepted by this court as the sworn evidence of the several witnesses then and there examined, the whole as detailed in said consent of date 23rd March, 1906.

The evidence discloses that the steamer *Bay State*, with the barges *Berkshire* and *Bath*, left Windmill Point in the Harbour of Montreal at about 5.15 a.m., on the morning of Friday, the 29th of September, 1905, with Pilot N. Belisle in charge of the steamer *Bay State*, and Pilot J. S. Labranche in charge of the barge *Berkshire*, but no pilot on the barge *Bath*. There were no regulation lights on the *Bay State* or its tow, although the sun had not risen. The steamship *Bay State* and tow continued down the harbour and passed very close to the east end of the Victoria Pier. Certain witnesses examined testify that they feared that the *Bay State* and its tow would collide with the Harbour Commissioners dredges stationed for work north of the main ship channel near sections numbers 25 and 26 of the Harbour of Montreal.

The steamship *Bay State* endeavoured to haul over to the south of the channel, her tow following, but she does

not appear to have succeeded very well, as, from the evidence adduced by eye witnesses who gave an intelligent description of what they saw, the last barge of the tow was drifting broadside down the river up to and at the time of the collision which occurred about three hundred feet to the west of dredge number two, which was moored midway between sections 25 and 26, nearly 200 feet from the northern edge of the ship channel.

After the collision occurred, the steamship *Bay State*, with barges in tow, continued on to Quebec without stopping to enquire what damage had been done.

The steamship *Universe* was at anchor at Longueuil on the night of Thursday the 28th of September, 1905. At daybreak on Friday morning the 29th of September, she got under way to proceed to the harbour of Montreal to go to her usual berth at Windmill Point. She had proper regulation lights burning, and a seaman was on the look-out. She proceeded on her usual course, passing the Longueuil ferry boat with all her lights burning bright, and kept to the north side of the main channel, to pass the dredges which were moored for work at sections 25 and 26 at a safe distance on her starboard hand. All went well till they were passing the dredges. A vessel was then sighted coming down the river, and just emerging from behind the Victoria Pier. She had no lights burning to indicate that she had a tow, and appeared to those on board the *Universe* to be a steam barge coming down the harbour. Shortly afterwards, first one barge was sighted, and then a second barge, in tow of the steamer. One blast of the whistle was blown from the *Universe* to indicate her course was being directed to starboard, which was answered by the steam barge *Bay State* also by one blast. The *Universe* then ported her helm and slowed her engines as much as it was considered safe to do in the current.

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The last barge of the tow was so far to the north side of the chanel, and drifted down so quickly that the *Universe* came into collision with her, striking the barge *Bath* a glancing blow just aft the midships on the port side with her port bow. The combined force of the collision with the *Bath* and the current striking the *Universe* on her port bow, forced her over to starboard and across the current, notwithstanding that every effort was made to hold her up by letting go both anchors and going ahead full speed with the helm hard to starboard, striking the Harbour Commissioners dredges numbers 2 and 3 with her starboard quarter. The steamer *Universe* tore them from their moorings and drifted with them down stream, her bow striking the wharf. Dredge number 2 was badly damaged, and dredge number 3 was capsized and sunk near section 27. The anchors of the steamship *Universe* became entangled with the moorings of the dredges.

The Harbour Commissioners' dredges were moored in the usual way at the place where it was intended they should continue to work. They had the usual moorings, viz., anchors with wire cables, three spuds 60 feet long; the proper lights were burning, and a tug was in attendance. The dredges were moored sufficiently far from the main ship channel on the north side to enable vessels to pass in safety.

The question in the present cases is to determine the responsibility for the heavy damages caused by the collision. It has been well said that in case of a collision "the circumstances of confusion, darkness and danger under which such disasters commonly happen, and the strong feelings of the witnesses, all tend to place cases of collision among the most difficult which can be brought before a judicial tribunal. It is a great relief therefore to the court to be assisted by an able gentleman whose professional experience and skill enable him to draw con-

clusions from facts and evidence which unprofessional persons would but imperfectly appreciate." The *Leonidas* (1).

It is also a relief to the court in the present case to be assisted by a nautical gentleman whose professional experience and skill must be of material assistance to the court in determining the present case.

Availing myself of the power which this court has to refer to some gentleman 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, namely, 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.

"Q.—Do you consider that under the facts of this case as disclosed in the evidence the S.S. *Universe* was properly navigated and that all possible precautions were taken by its Master and crew to avoid this collision?"

"A. I consider that the evidence discloses the *Universe* to have been properly navigated, and that every precaution was taken by the Master and crew to avoid a collision, and that she had entered and was well up into St. Mary's current before the barge *Bay State* was seen, and that she had her regulation lights exhibited as required by law."

"Q.—If not, state in what particulars the navigation of the *Universe* was faulty, and what precautions should have been taken to avoid a collision that were not taken?"

"A. Every precaution seems to have been taken in this case, and in my opinion the *Universe* was not in fault."

(1) 1 Stuart's Adm. R. at p. 230.

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“Q.—State if, in your opinion, the barge *Bay State* and its tow were properly manned, equipped and navigated, considering the locality and the circumstances of the present case, and were all due precautions taken to avoid a collision; if not, state in what respects, if any, the tow was improperly manned and equipped, and what precautions should have been taken to avoid a collision, that were omitted?”

“A. The steam barge *Bay State* was, in my opinion, responsible for the safe conduct of herself and tow. The length, 1,4<sup>0</sup>5 feet, between the bow of the towing barge and the stern of the last barge in the tow was altogether too long in the St. Mary’s current.

“No allowance seems to have been made for the set and strength of the current, as is evidenced by the fact that the *Bay State* first saw the starboard side of the *Universe* indicating that the *Bay State* was too far to the north of the deep water channel, and that the barge *Bath* was practically going down nearly broadside to the current, and was considered by some reliable witnesses to have been in danger of striking the dredges, and I calculate that the barge *Bath* would have struck one of the dredges if the steamer *Universe* had not intervened.

“No attempt seems to have made to shorten up the hawsers of the tow, notwithstanding the fact that they had automatic apparatus, when it was seen that a collision was imminent, nor was the helm of the *Bath*, the last barge of the tow, ported with sufficient promptness.

“A pilot would have been of more service on the last barge of the tow than on the *Berkshire* which was the middle barge.

“I am of opinion that if there had been a tug to the last barge, the collision in all probability would have been averted.

There were no regulation lights on the *Bay State* to indicate that she had barges in tow although the sun had

not yet risen. The presence of the lights required by law up to sunrise would have indicated to the *Universe* that there was a tow of unusual length coming down the river, and the *Universe* would then have been enabled to take the out-of-the-ordinary measure of starboarding, and thus in all probability have avoided the collision.

“It is my opinion that the evidence discloses the fact that there was not a proper lookout man on the barge *Bath* or the steamer *Bay State*.”

“Q. Were the dredges where they had a right to be and were they properly moored, and manned for the purpose for which they were engaged, and were they properly managed at and previous to the collision?”

“A. The dredges numbers 2 and 3 belonging to the Harbour Commissioners of Montreal were engaged at that time in digging out a new deep water cut in the St. Mary’s current, and the outer side; that is to say, the southern side of the southernmost dredge was about 175 feet to the north of the line then known to navigators as the deep water cut through the St. Mary’s current, so that both dredges were practically out of the deep water cut, and were moored as had been the custom for years—a custom well known to all pilots and ship masters frequenting the port.”

“Q. Did the collision in question arise from unavoidable circumstances, without fault being attributable to the S.S. *Universe*, the steam barge *Bay State* or its tow, or without fault being attributable to the dredges or their respective masters and crew, or was it caused from the fault of the said ships, barges, dredges, or their masters, crews or persons in charge? If so, from which of them?”

“A. In my opinion, the *Universe* was not in any wise to blame. The barge *Bath* although actually in collision with the *Universe* was technically and actually under the command of the master of the steam barge *Bay State*. It is therefore my opinion that the fault of the collision

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entirely lay with the steam barge *Bay State* and its tow, and not with the *Universe* nor with the dredges.”

It is satisfactory to notice that the questions submitted to the nautical assessor were answered by him on the 30th of October, 1906, and virtually agreed with the finding of the Wreck Commissioner as set forth in his judgment rendered on the 6th day of November, 1906.

After carefully considering the evidence and the answer to the Nautical Assessor to the questions submitted to him I have arrived at the following conclusions :

The *Bay State* and tow were in fault (a) because the barge *Bath* had no pilot, and no proper look-out was kept on the *Bay State* or her tow ; (b) Those in charge of the *Bay State* and her tow neglected to take the precautions required under the special circumstances of the case, tow ropes being too long, and no attempt having been made to shorten them ; The *Bay State* had no look-out, and she made no signals to the tow or to the SS. *Universe* which she appears to have sighted before the *Universe* saw her ; (c) There was no additional tug to control the tow, more particularly the last barge, the *Bath* ; (d) Neither the steam barge *Bay State*, nor the barges in tow exhibited proper regulation lights, though they had got under way and the collision occurred before sunrise ; (e) The steam barge *Bay State* and tow should not have taken the St. Mary’s current as they did with the tow in such condition as it was proved to be, more particularly in view of the position of the dredges of the Harbour Commissioners, and the places where they were moored, and of which the pilots on board the *Bay State* and *Berkshire* were well aware ; (f) After the collision occurred the steam barge *Bay State* and her tow continued down to Quebec without stopping to enquire what damage had been done.

The nautical assessor in his answers to the questions submitted to him has explained fully the faults committed by the *Bay State* and her tow, and his answers, as I view the case, are fully supported by the evidence taken.

The evidence of independent and disinterested witnesses, more particularly those on board the steamer *Quebec*, who had every opportunity of seeing the position of the vessels and of judging, say that the *Universe* was properly navigated, that the tow ropes of the tow were too long, that the barges in tow were across the channel, that the three barges were coming down crosswise, and that the steam barge trying to draw them to the south, blocked the *Universe's* channel. Bedard, a watchman, who happened to be on the middle of Victoria Pier, at page 3 of his deposition, states in effect that he saw that the barges were coming in towards the city side, with the current, going crosswise, the last barge on the bias. Altimus, a policeman, who was opposite Panet street, between Victoria Pier and the place where the collision took place, states at page 3 of his deposition, in effect, that the steam barge passed towards the south, and then the next one cleared all right, but the third swung right around, side on to the current, and came straight up against the bow of the *Universe*. A. Belisle, pilot of the *Universe*, at pages 4 and 5 of his deposition, in effect, states, that the barges made a curve, and the last was thrown across the stream towards the north. The Captain of the *Universe* says: "The last barge went towards the north. I was afraid of a collision." The first mate of the *Universe* states at page 5 of his deposition, that the last barge was going across the current, going broadside down, at an angle to the rest of the tow. And at page 18 he states: "If both had followed the *Bay State* it would have been all right." The second mate of the *Universe* states that the last barge blocked the channel.

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I think it is fully made out that the *Bay State* and her tow were on the wrong side of the channel and were not steered sufficiently towards the south side of the river, and that under the circumstances with the *Universe* in view, the *Bay State* and her tow should not have taken the current. The evidence of N. Belisle, pilot of the steam barge *Bay State*, is important. Reference might be made to pages 18, 19 and 20 of his deposition wherein in effect he states that he was in charge of the *Bay State*, that there was another pilot for the barges, S. Labranche, who was on the first barge, the *Berkshire*, and that he did not know who was in charge of the second. He states that he would not have taken them down (referring to the *Bay State* and her tow) and been responsible for all three. It would be dangerous to go down without pilots to each vessel and that it would have been better to get another tug, which would have prevented the accident.

It will be seen in the present case that the tow was under the control of the steam barge *Bay State*. Brown, captain of the *Bay State*, at page 47 of his deposition, states, "There is a captain in each barge. I am in charge of the whole outfit. The captains of the barges get their orders from me; that is, they are subject to my order when I am towing them." And further on in his deposition he states that he had not made enquiries as to the current, and as to bringing her tow down in it. He says, "I left it to the pilot, but did not consult him in making up the tow."

"The doctrine that the tug is servant of the tow is inapplicable when not only the motive power, but also the command is with the tug."(1)

This doctrine is inapplicable in the present case, as not only the motive power, but the command, lay with the *Bay State*. In the present case it was the duty of those

(1) *Marsden on Collisions*, 4th ed. p. 176.

on board the *Bay State* to keep both tug and tow clear of other ships, without waiting for orders from the tow.

Mr. Pentland, K.C., one of the counsel for the *Bay State* and her tow, at page 9 of his written argument states: "As this is a case in which two vessels in tow of a steamer is in question, it might be as well to allude also to the principles which govern vessels under those circumstances. In England and on this side, a distinction has always been made between a vessel in tow of a tug, and having on board of her a pilot, that is to say on deep water ships particularly, the pilot is as a rule on board the ship, and he controls the movements of the tug; that is to say the motive power is on the tug, and the governing power is on the ship; but where the vessels are vessels of the same description as these whaleback barges, and which correspond to all intents and purposes with the dumb barges of the Thames, which are boats without any motive power at all, boats that simply drift when they cannot do anything else, that is to say, when they are not at anchor, and without a tug—in cases of that kind, the principle of law is, and particularly where there is a pilot on board the tug, that not only is the motive power on the tug, but the controlling power as well."

I concur in this view of the case.

*Marsden on Collisions at Sea* (1), says "Where both tug and tow are in fault for a collision with a third ship, judgment goes against both ships in admiralty, as it would at law go against the owners, for the whole of the damage, jointly and severally."

This, I think, should be the rule in the present case. In any event I am of opinion that judgment should go against the barge *Bay State* and the barge *Bath*, and the owners, the Boutell Steel Barge Company.

The question of lights is important, because if the *Bay State* had had the regulation lights, the *Universe* would

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have been warned that she had a tow of more than ordinary length, and it is possible that the accident might not have occurred. As to the necessity of lights and their usefulness on the morning in question, it may be mentioned that it is proved that the Longueuil ferry boat, when she passed, had all her lights burning.

I do not find the S.S. *Universe* in fault. Those in charge of the S.S. *Universe*, of which the Universe Joint Stock Company, Limited, is owner, committed no faults which, in my opinion, contributed in any way to the cause of the accident, more particularly as far as the collision in question is concerned. The *Universe* (a) had a proper lookout; (b) carried the proper lights, and gave proper signals; (c) was on the proper side or the fair-way; (d) did not violate by-law number 81 of the by-laws of the Harbour Commissioners of Montreal; (e) did not neglect any precaution required by the ordinary practice of seamen under the special circumstances, and was properly navigated throughout.

By-law 81 of the Harbour Commissioners of Montreal reads as follows:

“ 81. All upcoming vessels on each occasion, before meeting downward bound vessels at sharp turns, narrow passages, or where the navigation is intricate, shall stop, and, if necessary, come to a position of safety, below the point of danger, and there remain until the channel is clear. These directions shall apply to the following points \* \* \* St. Mary's current.”

The evidence shows that when the *Universe* entered the St. Mary's current, the channel was clear, and that the *Bay State* and tow were not observed until the *Universe* was well up the current.

I do not find the dredges at fault. They were moored as had been the custom for years and as was well known to the mariners frequenting the port of Montreal. They were engaged in carrying out necessary improve-

ments of the harbour in a proper and workmanlike manner, and I would not think of in any way interfering with such works unless it had been clearly demonstrated that they had violated the law, or some regulation of the harbour which tended in any way to cause the collision in question, and which, as I view the case, has not been shown. I am therefore of opinion that the dredges were not in any way to blame for the collision.

The barge *Bath*, though actually in collision with the SS. *Universe* was technically and actually under the command and control of the master of the *Bay State*. In my opinion the collision was occasioned entirely by the fault of the steam barge *Bay State* and her tow, and not by any fault of the SS. *Universe* or of the dredges, and that therefore the Boutell Steel Barge Company, the owners of the steam barge *Bay State* and of the barges *Berkshire* and *Bath*, and the said steam barge *Bay State* and barge *Bath* are liable for all damages resulting from this unfortunate collision.

I am much indebted to the counsel for the able manner in which their respective contentions were presented to the court, and for the elaborate memoranda of authorities cited in support of such contentions, and which are of record in the present case. It is unnecessary for me to refer at greater length to these authorities beyond saying that the conclusions arrived at by the court in this important case appear to be amply sustained by the authorities submitted by counsel for the S.S. *Universe*.

The nautical assessor has rendered me every assistance, and I am fortunate in having been able to avail myself of his nautical knowledge and experience in the present case.

Judgment consequently is rendered in favour of the Harbour Commissioners of Montreal in the actions *in rem*, numbers 158 and 160, taken by them against the steam barge *Bay State* and barge *Bath*, with all costs except

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one half the costs of *enquête*, which are ordered to be paid by the said Harbour Commissioners of Montreal.

The action *in rem*, number 159, taken by the Harbour Commissioners of Montreal against the barge *Berkshire* is dismissed without costs, because, as I view the case, the liability was reasonably in doubt when this action was instituted.

The action taken by the Harbour Commissioners against the S.S. *Universe*, number 157, is dismissed with costs, with the exception of half the costs of *enquête* which are ordered to be paid by the Boutell Steel Barge Company, as hereinafter mentioned.

The action number 165, taken by the Boutell Steel Barge Company against the owners of the S.S. *Universe* is dismissed with costs, save one half the costs of *enquête* which have been ordered to be paid by the Harbour Commissioners as hereinbefore mentioned.

Action number 166, wherein the Universe Joint Stock Company Limited is plaintiff, and the owners of the S.S. *Bay State* and the barge *Berkshire* and the barge *Bath* are defendants, is sustained, in so far only as damages are claimed, and the conclusions in warranty are dismissed with costs against defendants, save one-half of the costs of *enquête* which are ordered to be paid by the Harbour Commissioners of Montreal as hereinabove mentioned.

As only one *enquête* has been taken, applicable to all the cases, I have ordered that the costs of *enquête* should be paid half by the Harbour Commissioners of Montreal, as they failed in their action against the steamship *Universe*, and the other half by the Boutell Steel Barge Company, as they have failed in their action against the owners of the S.S. *Universe*.

I order that an account should be taken in the actions maintained by the present judgment, and refer the same to the Deputy Registrar, assisted by merchants, to report the amounts due, and that all accounts and vouchers

with the proof in support thereof be filed within six months.

*Judgment accordingly.*

*Geoffrion, Geoffrion & Cusson*, solicitors for Harbour Commissioners.

*Campbell, Meredith, Macpherson & Hague*, solicitors for S.S. *Univêre*.

*Carter, Goldstein & Beullac*, solicitors for S.S. *Bay State*, barge *Berkshire* and barge *Bath*, and the Boutell Steel Barge Company.

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