

(QUEBEC ADMIRALTY DISTRICT)

1932

June 14.

RED BARGE LINE LIMITED.....PLAINTIFF;

VS.

THE SS. "POPLARBAY".....DEFENDANT;

AND

POPLARBAY STEAMSHIP COMPANY LIMITED,
COUNTER-CLAIMANT.*Shipping—Collision—Fog—Boat at anchor—Tug and tow—Responsibility
—Improper lights on tow—Cause of accident*

Plaintiff's barge, the *R.* with her tug attached was on September 1, 1931, forced to anchor about 1,400 feet below Glengarry Point on the St. Lawrence, on account of heavy fog. Another ship the *S.M.* was also anchored near her. The *P.* knew these vessels were ahead but notwithstanding the fog came on without slowing, until her captain came on the bridge at Glengarry Point when he decided to anchor his vessel, and in manoeuvring to do so the collision in question occurred. The *S.M.* and the tug regularly sounded their bells, and the *R.* also carried her two mooring lights, but not quite disposed according to the rules, being on the same level. The *R.* did not sound her bell.

Held, that in the circumstances, and in view of the heavy fog, the *P.* should have stopped sooner, and that the collision was solely the result of her negligence.

2. That the *R.* being attached to her tug, which was her servant, was not required by the rules of the road to ring her bell; and that the ringing of the bell by the tug was sufficient compliance with the rules; and moreover, the fact that the lights on the *R.* were not placed in accordance with the rules, having had no bearing on the accident; the *R.* in no way contributed to the collision.

ACTION by the owners of the *Redcloud* to recover damages from the SS. *Poplarbay*, due to collision between the two vessels.

The action was tried before the Honourable Mr. Justice Demers at Montreal.

Lucien Beauregard, K.C., for plaintiff.

Errol Languedoc, K.C., for defendant.

The facts are stated in the reasons for judgment.

DEMERS L.J.A., now (June 14, 1932), delivered the following judgment.

These claims in damages are the result of a collision between the barge *Redcloud* and the *Poplarbay*, which occurred on the 1st of September, 1931, in the River St. Lawrence near a place known as Glengarry Point, at about

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3.51 a.m. daylight saving. There was no wind at the time of the accident. The state of the weather was foggy. There was a downstream current of about one mile and a half.

It appears by the evidence that the *Redcloud*, with her tug attached, had been obliged to anchor about fourteen hundred feet below Glengarry Point.

Another ship, the *Steel Motor*, was also at anchor a little below the *Redcloud*.

It is proved that the bell of the tug and the bell of the *Steel Motor* were regularly sounded. It is also proved that there were two lights on the *Redcloud*, though they do not seem to have been disposed according to the rules, they being on the same level.

The *Poplarbay* knew that those ships were ahead of her. It also appears that when the *Poplarbay* was at a distance of about one mile and a half from the place of collision, she could not see buoy No. 87.

The fact is that it was so foggy that she could not see her bow. About ten minutes seemed to have elapsed from the time she entered the fog and the time of the collision, and as her speed was seven and a half miles per hour, with a current of one and a half miles, it is the belief of the Assessor J. P. Dufour, and it is my own belief, that she did not moderate her speed until Captain Daneau came on the bridge at Glengarry Point.

It is not contended that anything prevented the ship from stopping sooner, as she should have done.

Marsden, 8th Edition, p. 357, says: In a fog so dense that it is not possible for a ship to see others in time to avoid them, she is not justified in being under way at all, except from necessity.

It is only after the Master of the *Poplarbay* was on the bridge that he decided to moor his vessel, and in the necessary movements, he struck the *Redcloud* which was anchored at fourteen hundred feet or more from buoy 80-F. It is proved that another vessel which was coming behind had been wiser and had anchored above Glengarry Point.

I have no doubt that this accident occurred through the neglect of the *Poplarbay*.

There rests the question—if the *Redcloud* had not contributed to this accident. She did not ring the bell but the tug, which was her servant, did it, and even gave occasional blasts.

I am inclined to think that the tug and the barge are not to be considered, under the circumstances, as separate vessels. See *The Sargasso* (1).

It has been contended in the Preliminary Act, that the *Redcloud* carried no lights, or if any, that they were undistinguishable. It is not alleged that they were not well placed. The lights on the barge were the ordinary lights.

I have put the Assessor the following question—

Could the lights on the barge be seen at a distance of one mile on a dark night with a clear atmosphere?

To that question, he has answered:

Those lights should be seen for one mile or more; for one good reason they have a bigger wick than an ordinary oil anchor light.

As a second question to the Assessor, I asked:

If the lights on the *Redcloud* had been placed according to the rules, is it likely that there would have been no collision?

To this he answered:

No. In this case the light had no bearing on the accident on account of thick fog at night and witnesses on the *Poplarbay* proved to the Court that the fog was so thick that it was impossible for them to see the bow of their own vessel.

As a third question to the Assessor, I have asked:

Was the bell on the tug farther from the *Poplarbay* than a bell on the barge would have been.

and he has answered:

No. The tug *Rival's* bell was nearer to the *Poplarbay* than that of the *Redcloud*.

(Explanation)—The tug *Rival's* bell is placed on fore part of the wheelhouse or bridge and it is only about 20 feet from the bow. The wheelhouse of the *Redcloud* is placed on the after end or the stern of the barge, about fifty feet from the stern. As the tug was tied up on the starboard side of the *Redcloud*, the bridge of the tug *Rival* must have been at least fifty feet ahead of the bridge on the *Redcloud*, as shown on the attached diagram 100' inch.

Being of the same opinion as the Assessor on these three points, I arrived at the conclusion that the *Redcloud* did not contribute to the accident, and, therefore, the action in damage against the *Poplarbay* and her bail shall be maintained, the amount of damages to be estimated by the Deputy Registrar of this Court assisted by merchants, and the counter-claim of the *Poplarbay Steamship Company Limited* is dismissed: the whole with costs.

Judgment accordingly.

(1) (1912) 12 Asp. R. 202, at p. 205.

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