IN THE MATTER of the Petition of Right of

WILLIAM PAUL, JR.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

1904
Nov. 7.

Shipping—Collision—King's ship—Negligence—Liability—Public Work.

Where a collision occurs between a ship belonging to a subject and one belonging to the King, the King's ship is not liable to arrest for damages; and, in the absence of statutory provision therefor, no action will lie against the King for the negligence of his officers or servants on board of the ship.

2. In this case the steamship *Préfontaine*, belonging to the suppliant, was damaged in a collision with a loaded scow which was fastened to the starboard side of the steam tug *Champlain*, and which the latter was towing from the dredge *Lady Minto* then working in the Contrecœur Channel of the River St. Lawrence. The dredge, steam-tug and scow were the property of His Majesty:—

Held, that the facts did not disclose a case of negligence by the officers or servants of the Crown on a public work for which the Crown would be liable under clause (*c*) of section 16 of *The Exchequer Court Act*, 50-51 Vict. ch. 16.

PETITION OF RIGHT for damages arising out of a collision in the river St. Lawrence.

The facts of the case are stated in the report of the Registrar, acting as Referee.

October 27th, 1903.

The case came on for hearing at Montreal, and was referred to the Registrar for the purpose of enquiry and report.

March 12th, 1904.

The Registrar filed his report, which was as follows:—

"Whereas this action came on for trial, at the City of Montreal, P.Q., on the 27th day of October, A.D., 1903,

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and by an order of this court then made, it was ordered that it be referred to Louis Arthur Audette, Registrar of the Exchequer Court of Canada, to take evidence and report on the questions of fact, reserving the argument upon the questions of law to take place before this court, as well as any dispute as to facts;"

"And whereas the reference was proceeded with, at Montreal, before the undersigned, on the 27th, 28th and 29th days of October, and on the 10th and 11th days of November A. D., 1903, in presence of the Honourable L. Gouin, K.C., Attorney-General for the Province of Quebec and R. Lemieux, Esq., K.C., both of counsel for the suppliant; and J. L. Decarie, Esq. and A. Decary, Esq., of counsel for His Majesty the King, when evidence was adduced by both parties, respectively, whereupon and upon hearing the same, and what was alleged by counsel aforesaid, the undersigned, on the 31st day of December, A.D. 1903, made a preliminary report, and the matter therein mentioned having come on before this court, at Montreal, on the 22nd day of January, A.D. 1904, in presence of counsel for both parties, and upon hearing what was by them alleged, the matter, upon motion on behalf of the suppliant, was referred back for report to the undersigned, who now begs humbly to submit as follows:—

The suppliant presents and files his petition of right to recover damages for injuries sustained by his steamer, the *Préfontaine*, in a collision with the Government steam-tug, the *Champlain*. The collision took place in the River St. Lawrence, in the ship channel, the property of the Dominion Government (p. 4), between Montreal and Quebec, at the place commonly known as the Contrecœur Channel, where, on the night in question, the Government dredge *Lady Minto* was working, after having been placed in the said channel

by the proper authority acting in behalf of the respondent (p. 2) (*).

The *Préfontaine*, a steam barge, drawing 15 feet under cargo (p. 18), propelled by twin screws, duly registered at the port of Montreal, and appearing by its certificate of registry of May, 1903, (exhibit No. 14), to be 202 feet in length, but only 141·6 feet in length at the time of the accident in question herein, as appears by exhibit No. 9, in charge of Captain William Paul, sr., left Montreal at six o'clock in the evening on the 6th day of October, 1902, destined for Quebec, and stopping at other ports on her way thereto.

Sailing down the River St. Lawrence with the current at her usual speed of 15 knots an hour, having all her regulation lights, she reached Vercheres light, at the point marked "A" on the plan, exhibit No. 8, filed of record herein, at a little after 8 o'clock. The night was dark; there was no moon, and the vessel was travelling exclusively on the beacon lights, keeping as much as possible to the centre of the channel, on the alignment of the land lights. She followed the Vercheres lights from "A" to "B," where she described a curve to the north in order to remain within the channel, and, seeing the dredge a little to the south of the centre of the channel, she directed her course to the point marked "D" between the dredge, the *Lady Minto*, and the south bank of the channel, touching, as she passed, the black buoy shewn at that point, bearing in mind to remain some distance from the dredge on account of her two chains. The evidence also discloses that the current in the Contrecœur channel throws to the south and is of two to two and one-half miles an hour (p. 292). The dredge was about 60 feet from the south of the centre of the

*. REPORTER'S NOTE.—This and subsequent like references in this report relate to the evidence, which is not printed here.

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channel. When the *Préfontaine* left the Vercheres lights to take the Contrecœur lights her momentum pushed her to the south, and the current also bore her in that direction. Then she had to right herself, and by that time she was near the ware and could not pass to the north of the *Minto* (pp. 74, 103, 169, 201).

Pursuing her course from point "D" the *Préfontaine* pointed a little to the north, with the idea of falling into the centre of the channel by aligning the lights as soon as she would have passed the dredge. It was when passing the dredge, her stern being still opposite it, a distance of about 1,200 to 1,500 feet from the point "E," where Toupin, the pilot at the wheel at the time, places the tug, that the latter says he for the first time saw a red light and two white lights, which afterwards turned out to be those of the Government tug, the *Champlain* (p. 144). No green light could be seen, and the conclusion arrived at was that the tug was in position for crossing the channel at almost right angles. She appeared to Toupin as being stationary and to the south, outside of the channel, and in that he is corroborated by respondent's witness. E. Perrault, on board the tug at the time of the accident (pp. 398, 403, 408, 411, 144, 171). Other witnesses contend the tug was in the channel but on the south side thereof and close to the south bank. At that time the *Préfontaine* heard one blast from the tug, which she did not answer, because the tug was out of her course, appearing then out of the channel (pp. 26 and 141), and the captain says they thought it was an exchange of signals between the tug and the dredge. In that sense he is corroborated by respondent's witness Perrault (p. 406) as to that being a possible occurrence. Hamelin, the head pilot, says he did not hear the first blast (pp. 187, 295). They pursued their course, and the tug blew another blast, and

the *Préfontaine* then answered it with two blasts. The one blast from the tug was asking the *Préfontaine* to pass to the right or south, and the two blasts from the *Préfontaine* meant she was keeping (p. 26) her course to the north with the object of getting into the alignment of her lights, the only way to be guided at night. The captain says he was in the channel, and he took the tug to be then outside the channel and stationary. Had he then tried to pass to the right of the *Champlain* it would have taken him away from his lights and necessarily outside of the channel.

Let us now follow the different movements of the tug up to this time:—The tug *Champlain*, ninety feet in length, was acting as tender to the dredge *Lady Minto*, (p. 5). When not required she would lay tied to a scow which is used as a wharf on the south bank of the channel, at the place marked on plan Exhibit No. 3 *Chaland quai*, about 150 to 200 feet lower down than the dredge, and at about 50 feet outside the south bank of the channel (pp. 448, 449).

Labrecque, the night captain of the *Champlain*, says (p. 450), that at about 8.05 P.M., on the night of the accident, he was called by the dredge blowing one blast to go and change the scow. He left the wharf in question with an empty scow and on his way to the dredge, as was his habit, he looked to see if there were any vessels coming down or going up the river, and as he was reaching the dredge he saw one vessel coming down in the Vercheres lights. He gave the dredge the empty scow and let his tug drift down to the stern of the dredge, where he tied the loaded scow on to his starboard side to take her to dump her contents on the north bank of the channel. He gave his order to let go the ropes that were tying them to the dredge and to wait as there was a vessel coming down; that they had not time to cross before she would pass

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(p. 451). Then they waited and the *Préfontaine* passed in front of the dredge. By waiting the witness means that he did not put the tug under steam. He waited, he said, expecting that the *Préfontaine* would pass to the north of the dredge. All that time the tug was drifting down with the current, which, as has already been said, at that place drifts towards the south bank.

When the *Préfontaine* was opposite the south corner of the dredge, the *Champlain* blew one blast for the right, but received no answer. Labrecque says he then rang giving orders for the machinery headways and blew one blast a second time, with the idea of going north and making the *Préfontaine* pass to the south. To this last blast the *Préfontaine* answered by two blasts, as already mentioned, meaning she retained her course to the north, because as Toupin says (p. 141) the tug was on the south bank. During that time the *Préfontaine* was going towards the centre of the channel with the object of aligning her lights, and the tug was keeping advancing across the channel in front and towards the *Préfontaine*. Hamelin, the first pilot, who was in the wheel-house at the time, addressing Toupin the second pilot who was at the wheel then said, speaking of the tug:—"She is always advancing, I believe we will not clear her as it is going; we must clear her;" whereupon Toupin rang the bell giving orders to the engineer to stop the left screw in order to turn and go about to the north. The *Préfontaine* went to the left as quickly as possible to avoid the collision, because she saw the *Champlain* coming upon them as the latter was coming across the channel (pp. 129, 142). The collision then took place and the *Préfontaine* struck the northern corner of the scow which, without any light thereon, was overlapping the tug by 25 to 30 feet.

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The *Champlain*, we are told, reversed her engine a moment before the collision. Brook, a sailor on board the *Champlain* and on the scow at the time in question, a witness heard by the respondent, says it was long after the two blasts were given by the *Préfontaine* that the tug reversed her engine (p. 387). At the time of the collision he heard some one from the *Préfontaine* screaming to the tug "Are you reversing"? and at that time the tug was just reversing and the two vessels were then very close to each other (p. 389). The undersigned finds that the tug, with a heavy laden scow tied to her side, had not likely, under the circumstances, stopped her forward impetus before the collision took place (pp. 442).

The respondent's witness Euclide Perrault, a sailor on board the tug at the time of the accident, says (pp. 397, 399) that when the tug reversed her engine, the scow which was to her right and overlapping by 25 to 30 feet sheered or swung (decanté) to the left and the *Préfontaine* hooked her. Indeed, while the *Préfontaine* at the time of the agony of the accident was turning to the left to avoid the collision, the tug on the contrary was coming with an impetus headways and turned, by her manœuvre, the scow right into the *Préfontaine*. The scow having no light on board, (art. 5) could not, on a dark night, as the one in question, be reasonably expected to be seen by the *Préfontaine*. The witness thinks if the scow had not been overlapping there would have been no accident.

After the collision Labrecque took his scow to the south bank and dumped it there. Why had he not followed that course from the time he left the dredge, and more especially when he saw the *Préfontaine* coming down on the south side of the channel? Had he done so, there would have been no collision.

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The first question to discuss is perhaps to know, if under the evidence, the *Préfontaine* was justifiable to pass to the south of the dredge, to keep her course, blowing two blasts in answer to the one blast of the tug.

Indeed, a question upon which a deal of evidence has been adduced is as to whether or not the *Préfontaine* was manœuvred with skill and seamanship in passing to the south of the dredge under the circumstances. Perhaps more stress than necessary was laid upon this point by the defence. There is no reason why the *Préfontaine* should not go down on the south side of the dredge, and the *Champlain* cannot to-day make facts to meet an adversary case by saying that a great number of ships passed to the north.

All the expert witnesses heard by the suppliant, when that question was put to them, answered that they would have followed the same course as that followed by the *Préfontaine*. N. Perreault (p. 102), C. Auger, pilot, went as far as to say that for a vessel coming down at night it was not prudent to pass on the north of the dredge, (pp. 282, 283). Even Cadeaux, the captain of the tug answered to the same effect (p. 67).

True the pilot of the Richelieu boats, one of the respondents witnesses, said he always passed to the north of the dredge, but his vessels only draw 8 or 9 feet (p. 543) while the *Préfontaine* draws 15 feet. In day time the question could not have arisen as there is always a red flag placed upon the dredge on the side they wish the vessels to pass. At night there is nothing to direct the vessels except the beacon lights (p. 291).

The *Préfontaine* passed to the south of the dredge, and looking at plan, Exhibit No. 3, it would appear to have been but the natural course to follow at night on leaving the Verchères lights, when a vessel has neces-

sarily to keep close to her lights. Indeed, arrived at point "B" she sees the dredge at point "C" and at point "G" (pp. 336, 290), about 300 feet ahead of the dredge, she also sees a scow with a light thereon holding the ware of the dredge. Had she attempted to go to the north, looking from point "B", "G" was in her way.

Moreover, there exists no law of navigation, of which the undersigned is aware, which could bind or direct the *Préfontaine* to pass either to the north or the south of the dredge. Both ways were quite good. She passed to the right of the dredge, as if meeting another ship. Could the *Préfontaine* go more to the south when she was called upon to do so by the *Champlain*? In day time she might perhaps have done it, but at night it would have been imprudent to get away from her lights, as the moment she left them she could not know where she was going. It is in evidence that there was enough water outside the channel to allow of her to do so; but in view of the fact that she was aware there were, on the south bank, at that place, buoys at every 250 feet, indicating the side of the channel, one buoy at each chain of the dredge, as shewn upon the plan, a scow used as a wharf and a barge loaded with coal (p. 491), it would certainly have been very imprudent for her to leave the channel and get away from her beacon lights, where at night these lights are the only means by which she could steer her course. The tug herself on previous occasions got caught in the ropes of one of these buoys, although she was daily travelling among them (pp. 88, 355).

Then should the *Préfontaine* have answered the first blast of the *Champlain*, and to the second blast should she have acquiesced and passed to the south?

This last question is partly answered by what has just been said. Pilot C. Auger goes further and says

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that, by seeing the red light and the two white lights he would have thought it was the Government tug and he would not have changed his course (p. 283), and he would have paid no attention to her; it is the habit, because these tugs which ply around the dredge are always supposed to keep outside of the channel and to keep it clear (p. 294). In this he is corroborated by Mr. J. Howden, Superintendent of Dredging in the St. Lawrence for the Dominion Government, who says (p. 7) the general instructions in running these works is to leave the channel as clear of obstructions as possible. When he is asked when vessels are coming up or going down the channel the tugs are not to cross from one side of the channel to the other he answers: No, certainly not; because the channel is so wide, there is 450 feet for the dredged channel, which is the navigation channel, and there is over 1,000 feet on one side and 500 feet on the other side, making a very large space for the tugs within which to move at that place.

Then among the officers on board the *Préfontaine* some contend they did not hear the first blast and others say they took it as a signal between the tug and the dredge. It is in evidence that the dredge and the tugs sometimes exchange signals with one another (pp. 355, 374), and on that occasion on which the tug was caught in the ropes she called the attention of the dredge by blowing one blast, to which the dredge answered by only one blast (p. 355).

Cadieux, the captain of the tug, blames his night captain for the accident. He says he was not competent, had no license and no certificate to act as captain, had not enough nautical knowledge, and he would never have selected him for such a position. He blamed him for having left the dredge when he saw the *Prefontaine* coming down. He should not have

left the dredge only until after the *Préfontaine* had passed. That is what they ordinarily do. It was assuming a risk to start when he saw the *Préfontaine* coming. Had he been in charge he said he would not have left the dredge, and had he left it, and had he found himself at the point "E" seeing the *Préfontaine* coming down, he would not have tried to cross the channel. It was not prudent to cross; he would not have done so. Boulé, heard by the respondent, said he would have waited at the dredge until the *Prefontaine* had passed (p. 552).

One of the respondent's witnesses thought both vessels should have stopped after the *Préfontaine* blew two blasts. But that would not have prevented the collision. Its results might only have been more serious, because the *Préfontaine*, going down with the current at the speed of (p. 480) 15 knots an hour, would have retained her impetus for a long distance, and, the current helping, could not have been stopped within that space, and the collision, instead of being between the scow and the *Préfontaine*, would have probably been between the latter and the tug, with perhaps fatal results for the crew of the tug. It seems that the *Préfontaine* by stopping her left screw and turning to the left has performed the proper seamanship manœuvre. The results also might have been quite different had there been a light at the bow of the scow, which it was quite impossible for the *Préfontaine* to see.

Now the *Champlain* is certainly, under the circumstances, chargeable with want of ordinary prudence, skill and seamanship. She should not have left the dredge until the *Préfontaine* had passed her; she should not have moved headways after blowing one blast for the second time. She should have waited at least until the down vessel had passed (p. 284). Had she waited

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for an answer before steaming ahead, probably the accident would not have taken place. She should have known the *Préfontaine* would hardly pay any heed to her demand according to the expert evidence on record, and further because she was not coming up stream, she was not a meeting ship, she was crossing the channel. Had she steamed backwards when the *Prefontaine* blew the two blasts, again no accident would have happened.

What can have been the advantage gained, with the view of avoiding a collision, by letting the tug and scow drift after leaving the *Minto* to a point on the south bank,—if not outside of the channel,—when at the critical moment, when the *Préfontaine* is at between 1,200 to 1,500 feet from the tug, for the latter to blow a blast interfering with the course of the *Préfontaine*? And with much more wonder one is prompted to ask what justification can there be for the tug to blow that blast, go under steam and forge ahead, crossing the channel at almost right angles in front of the on-coming *Préfontaine*, before having received answer from her as to whether she intended to continue or alter her course. The tug knowing she was a crossing vessel travelling from point "E" to "F" on the plan, the *Prfontaine* had the right of way, she should have at least waited until the *Préfontaine* had answered before ordering the engine ahead. The night captain even admits that he knew when a vessel was coming down he was not to try and cross (p. 468). By this unskilful manœuvre she came and placed herself in front of the *Préfontaine*, a going down vessel and more especially in the Contrecœur channel, in a place where navigation is intricate, and in respect of which the Corporation of the Harbour Commissioners of Montreal have passed and made special by-laws. Indeed, by-law No. 77 distinguishes vessels drawing eight feet of water or less from those

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drawing more water, because it says specifically that such vessels as first-mentioned, except in cases of accident, or stress of weather, or force of current, are not to use the deep water channel at the portion through which the Contrecœur channel passes. This place is identified by witness at page 284 of the evidence.

Section 81 also directs that "All up-coming 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." And these directions apply to the "black and white buoys on the upper part of the Contrecœur channel".

Then Art. 18 of section 2, chap. 79, R.S.C, *An Act respecting the Navigation of Canadian Waters*, enacts that it is only when each of the two steam-vessels are meeting end on, or nearly end on to the other, and they are to pass one another on the port side, *and this applies by night to cases in which each vessel is in such a position as to see both the side lights of the other. Further this rule does not apply by night to cases where a red light without a green light is seen ahead.*

The tug never exhibited her green light; the *Préfontaine* saw her red and white lights only. That is proved beyond controversy.

Then Art. 22 directs that "every vessel which is "directed by these Rules to keep out of the way of "another vessel, shall, if the circumstances of the case "admit, avoid crossing ahead of the other;" and Art. 23 provides that "every steam-vessel which is directed "by these Rules to keep out of the way of another "vessel, shall, on approaching her, if necessary, slacken her speed, or stop or reverse".

While the above rules of navigation are very clear, the *Champlain* has ignored them all entirely, and seems

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to have done exactly the contrary to what they direct She lets herself drift in the deep water channel and waits there until the *Préfontaine* is approaching her at a distance of about 1,200 to 1,500 feet and then steams ahead across her way, giving her a signal to go to the right, notwithstanding she is not end on. (Art. 18).

The tug being crossing ahead of a steam-vessel was guilty of a very unskilful manœuvre in attempting, as stated, under the circumstances, to cross ahead of the *Préfontaine*. The breach by the *Champlain* of the statutory rule that a crossing vessel has to give way to the one going up or down the river is the proximate cause of the accident.

There is on the one side positive evidence that the *Champlain* was the cause of the accident, while on the other side there is only conjecture alleged by the respondent.

Under the circumstances of the case the undersigned has come to the conclusion that the collision was occasioned by the non-observance by the *Champlain* of the rules above cited, and that she is clearly chargeable with want of ordinary prudence, skill and seamanship, and that she is in fault.

The suppliant claims as follows for the damages arising out of the collision, viz:—

(*a.*) Cost of repairs to the *Préfontaine*.....	$ 5,230 00
(*b.*) Loss of 15 trips between Montreal and Quebec and profit, as well upon freight as upon passengers, at the rate of $650 per trip	9,750 00
(*c.*) For damages suffered by the line of steamers through the opposition made by other lines, resulting from the	

discontinuance of the service of the *Préfontaine* (loss of customers).....	3,000 00
In all.....	$17,980 00

The suppliant was formerly proprietor of a steam vessel called the *Victoria*, which is valued at $8,500.00, and he gave her in exchange for the *Préfontaine*, upon which there were mortgages to the amount of 87,500 and which he assumed (p. 253). This is the way he became proprietor of the *Préfontaine*. However, under Exhibit No. 10, a certificate under Notary Desy's hand, it appears that the *Victoria* was sold by him at that time for $6,000.

Before the accident, the *Préfontaine* had what they called a roundish or a rounded bow and the vessel was of double planking. Such a bow has to be of hard wood, and it takes, it appears, a deal of work and time to turn the wood into such a shape. So before starting the repairs they decided to rebuilt the bow in a pointed shape, lengthening it thus by 25 feet or more. They also decided to lengthen the stern by 22 to 25 feet. The vessel appears under the Bill of Sale dated January 1900, filed as Exhibit No. 9, to be 141.6 feet in length, while in the Register of May 1903, she appears of 202 feet in length, the necessary conclusion being that at the time the repairs were made she was lengthened by the difference, viz. 60.4 feet.

When the repairs were going on, no separate account of the work done upon the bow and upon the stern was kept, and in this respect the suppliant is decidedly at fault. He was quite aware then of his intention of making a claim against the respondent for the repairs occasioned by the collision. The keeping of such an account would have shown on his behalf a distinct intention of getting just what he was entitled to. The

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evidence as to the amount actually spent, with respect to the bow only, is unsatisfactory, indefinite and vague; and while large sums of money are mentioned by some witnesses as being expended, the undersigned cannot reckon with some of them when they say, contrary to other evidence in that behalf, that the lengthening of the vessel at the bow by so many feet has cost no more than if the repairs had been made to it retaining its old and former shape.

For the repairs to the bow occasioned by the collision the sum of $3,000.00 will be allowed, and having in view that the vessel originally cost between $6,000 and $7,000, the amount seems even large..... $3,000 00

Then with respect to consequential loss occasioned under clause (b), the undersigned will allow twelve trips, which would bring the suppliant to the 18th day of November, being a very fair average as to the yearly closing of navigation between Montreal and Quebec.

It is in evidence that the average of gross moneys collected on each trip in 1901, when one trip per week was being made and thus necessarily allowing accumulation of freight was $684.31, but only $650.00 is claimed; while the average in 1902, when two trips a week were being made, was $583.00

(p. 159). The latter would be the better criterion

However while $583 could have been the gross amount collected on each voyage, provided everything went on satisfactorily, in assessing such damages consideration must also be given to the ordinary contingencies a vessel of that kind is necessarily subjected to; such as accidents, which might vary the return in a very large measure. Had indeed the *Préfontaine* been running to the end of the season, a time of the year always less favourable to the navigation, she might have been the victim of a number of accidents, as too often happens to ships, as well through *vis major*, the Act of God or otherwise. And would the cargo or freight and passengers have also been always plentiful? In view of these elements of uncertainty the average of gross receipts per voyage will be fixed at $530.00 (*Grenier* v. The *Queen*, 6 Ex. C. R. 304.)

Twelve trips allowed at $530.00 per trip. $6,360.00

from which should be deducted the amount representing the quantity of

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coal which would have been used during these twelve trips, allowing however a certain quantity consumed for pumping the vessel at Sorel.

Deducting also expenses for wharfage where the payment was made upon a percentage.

Deducting also charges for light, lubricating oil, etc. etc., (The *Normanton*, 3 Q. L. R. 303). In all the sum of..... $1,200 00

— $5,160 00

Then with respect to the wages paid to the sailors and the men at the several wharves, the evidence of the suppliant is to the effect that the full wages were paid them, because they were engaged for the full season of navigation, and at so much per month.

Now in endeavouring to arrive at a just compensation one must bear in mind that we are not here seeking a penal retribution. What we have to find is the real damage and loss to the suppliant, compensate that

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and the real justice and honest policy will be satisfied. (The *Elizabeth*, 2 Dod. Ad.R. 403; The *Normanton*, 3 Q.L.R. 303; The *City of London*, 1 Wm., Rob. 92).

The evidence of the suppliant that he has continued to pay his men after the collision is not satisfactory, unless it is shewn until what date he has paid them, and whether he paid more than a month's wages from the 6th of October, 1902, to the end of that season. He should also have produced at the same time the articles of agreement with his men. However, leave will hereby be given him to do so at any time before or on moving for judgment if he sees fit. Only one month is hereby allowed from the 6th of October to the 6th

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of November, 1902, inclusive, deducting herefrom that portion of wages between the 6th November and the time of the last trip allowed as above, viz. the sum of..... $340 00

$4,820 00

Then there is the sum of $400.00 which has been paid to the suppliant by the Western Assurance Co. in satisfaction of all damages resulting from the collision in question herein (p. 630). In this respect the undersigned cannot follow the argument of suppliant's counsel, who contended at the hearing that this amount should not be deducted, and that if it were to be so deducted, at least it should be after deducting therefrom the amount of the premium. But in answer one must bear in mind that had there been no collision the suppliant would have paid his premium just the same and he should not be made better off at the expense of the respondent

Under the circumstances the amount

of $400 will be deducted	$400 00	
	$4,420 00	

(*Grenier* v. *The Queen*, 6 Ex. C. R. at p. 303).

With respect to the damages asked under clause (c) of the claim of the petition of right herein for loss of customers, etc., it is found these damages are too remote, not capable of precise calculation, not ascertainable by the application of any rule of law, and accordingly not recoverable (*Gibbon* v. *The Queen*, 6 Ex. C. R. 430; *Paradis* v. *The Queen*, 1 Ex. C. R. 191; *McPherson* v. *The Queen*, 1 Ex. C. R. 65; *The Clarence* 7 Notes of Cases, 582; *Gingras* v. *Desilets*, Coutlee's Dig. 65.		
This will leave the total sum of.	$4,420 00	4,420 00
which added to the amount allowed for repairs will make the total sum of.....		$7,420 00

Therefore, the undersigned, has the honour humbly to report that, under the circumstances of the case as above mentioned, the collision was occasioned by the non-observance by the tug *Champlain* of the rules of navigation aforesaid, and that she is chargeable with want of ordinary prudence, skill and seamanship and in fault. Further, that the suppliant is entitled to recover from His Majesty the King, as damages arising from such collision, the sum of $7,420 and costs.

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Argument of Counsel.

In witness whereof, the undersigned has hereunto set his hand at Ottawa, this 12th day of March, A.D., 1904.

(Sgd.) L. A. AUDETTE,
Registrar and Referee.

June 29th, 1904.

The argument of motions to confirm the report of the Registrar, and by way of appeal from such report, was now heard at Ottawa.

L. Gouin, K. C., for the suppliant, moved that the report of the Registrar be confirmed.

J. L. Decarie, for the respondent, contended that the Registrar's report finding negligence for which the Crown was liable was not in accordance with the evidence, and ought to be set aside. He argued that the *Préfontaine* was wholly to blame by going out of the line of lights indicating a safe channel for ships. The statement of claim in the suppliant's petition is defective because it does not set up a case of negligence, giving the court jurisdiction within the terms of sec. 16 (*c*) of *The Exchequer Court Act*. It is not charged that the accident happened on a public work. (*Hamburg American Packet Co.* v. *The King* (1) *Larose* v. *The Queen* (2) *City of Quebec* v. *The Queen* (3) *The Queen* v. *McLeod* (4) *The Queen* v. *McFarlane*. (5)

The *Préfontaine* is wholly to blame for the collision. The tug *Champlain* was where she had a right to be. (*Heminger* v. *The Ship Porter* (6) *Cuba* v. *McMillan* (7). The tug gave the proper signal as to the course she would take. *Robertson V. Wigle The St. Magnus* (8).

L. Gouin, K. C., replied, contending that the one blast given by the tug was interpreted by those on board of the *Préfontaine* as a signal between the tug

(1) 7 Ex. C. R. 150.
(2) 6 Ex. C. R. 425.
(3) 24 S. C. R. 420.
(4) 8 S. C. R. 1.
(5) 7 S. C. R. 216.
(6) 6 Ex. C. R. 154.
(7) 26 S. C. R. 651.
(8) 16 S. C. R. 720.

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and the dredge. The tug had no business to obstruct the channel and those on board of her were thus proximately liable for the accident. The Registrar has found for us on the facts, and his report ought not to be interfered with.

As to the question of jurisdiction, the facts show negligence on the part of the Crown's servants, and the suppliant asks for damages for the collision in his petition. It is not necessary to set out the exact words of the statute in framing the petition in such a case. The petition states grounds sufficient to entitle the suppliant to the relief sought, if they have been proved. The Registrar finds that the suppliant has made out a case.

THE JUDGE OF THE EXCHEQUER COURT now (November 7th, 1904) delivered judgment.

The petition is brought to recover damages sustained by the steamship *Préfontaine* in a collision with a loaded scow which was fastened to the starboard side of the steam-tug *Champlain*, and which the latter was towing from the dredge *Lady Minto* then working in the Contrecœur channel of the River St. Lawrence. The dredge, steam-tug and scow were the property of His Majesty.

The questions of fact in issue having been referred to the Registrar of the court for enquiry and report, he has found that the *Préfontaine* was not to blame for the collision, and that the *Champlain* was at fault in a number of particulars mentioned in his report.

I do not propose to discuss the findings of fact, for, in the view I take of the case, the petition cannot be maintained, even assuming that all such findings are to be accepted as correct. I wish, however, to intimate that it does not seem to me that the learned Registrar gave sufficient consideration to the sixth paragraph of

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the statement of defence, in which it is alleged that the steamer *Préfontaine* had the tug *Champlain* on her own starboard side before the collision, and it was the duty of the *Préfontaine* to keep out of the way of the *Champlain* which she negligently failed to do, and so caused the collision complained of. That defence is based upon Article 19 of the regulations for preventing collisions in Canadian waters, by which it is provided that when two steam-vessels are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other. Then by Article 21 it is provided that where by any of these rules one of two vessels is to keep out of the way of the other, the other shall keep her course and speed. By Article 22 it is provided that every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other; and by Article 23 it is further provided that every steam-vessel which is directed by these rules to keep out of the way of another vessel, shall, on approaching her, if necessary, slacken her speed or stop or reverse. It seems clear that before the collision these two vessels were crossing so as to involve risk of collision, and that at this time the *Préfontaine* had the *Champlain* on her own starboard side, and that she failed to take any of the precautions mentioned in the rules cited. So if the case turned upon a question of negligence there would, it seems to me, be some considerable difficulty in coming to the conclusion that the *Préfontaine* was not in fault in the particulars mentioned, whatever conclusion one might come to in respect of other matters dealt with in the report.

But assuming that the *Préfontaine* was not in any way to blame for the collision and that it was occasioned wholly by the fault and negligence of those in charge

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of the *Champlain*, what is the result? On what ground is the Crown to be held liable for damages resulting from such negligence.

First, if the matter be considered from the standpoint of a collision between a subject's ship and a ship belonging to the King, it is well settled law that in such a case the King's ship is not liable to arrest and that no action will lie against the King for the negligence of his officers or servants on board of the ship. There are, it is true, cases in which proceedings having been instituted in the Admiralty Court for damages occasioned by collision with a King's ship, the Lords of the Admiralty have directed an appearance to be entered by the Proctor for the Admiralty, and that having been done the case has proceeded to judgment. But that was a voluntary submission on their part to the jurisdiction of the court, and such cases do not in any way affect the general rule or principle that the King is not legally liable to answer for the negligence of his officers or servants, and that a petition of right will not lie for damages resulting from such negligence. The *Mentor* (1), the *Lord Hobart* (2), the *Athol* (3), the *Volcano* (4), the *Birkenhead* (5), the *Swallow* (6), the *Inflexible* (7), the *Siren* (8), the *Fidelity* (9).

The exceptions to that rule or principle are in Canada to be looked for in the Acts of the Parliament of Canada. Apart from statute there is no liability.

That brings us to the enquiry as to whether or not this case is within the provisions of clause (*c*) of the 16th section of *The Exchequer Court Act*, which provides, among other things, that the court shall have exclusive original jurisdiction to hear and determine

(1) 1 C. Rob, 179.
(2) 2 Dod. 100.
(3) 1 Wm. Rob. 374.
(4) 2 Wm. Rob. 337.
(5) 3 Wm. Rob. 75.
(6) 1 Swab, 30.
(7) 1 Swab. 32.
(8) 7 Wall. 152.
(9) 16 Blatch. 569.

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any claim against the Crown arising out of any injury to property on a public work resulting from the negligence of any officer or servant of the Crown while acting within the scope of his duties or employment.

The dredge *Lady Minto* was at the time working in the Contrecoeur channel of the St. Lawrence River. That she was engaged in a public work must, I think, be conceded. And the steam-tug *Champlain* was assisting in that work by removing the loaded scows, towing them to the place where the excavated material was being wasted; and bringing back the empty scows. But when absent from the dredge, as was the case here, the steam-tug was not, it seems to me, on a public work. Whether she could be said to be on a public work when she was alongside of, or attached to, the dredge, is a question that need not be decided or considered in this case. At the time the collision occurred she was at some considerable distance from the dredge. I have never thought that a too literal or narrow meaning should be given to the words "*On any public work*" in the provision cited. I have been inclined to the view that it is sufficient to bring a case within the statute if the injury was occasioned by something done on the public work. But that is not this case. The injury here did not occur on a public work; neither was it occasioned by anything done on the public work. It is a case of collision happening between a vessel and the tow attached to another vessel, both of which were navigating a public river. The fact that the steam-tug was at the time employed in assisting with the work that the dredge was doing does not appear to me to be material, or to create any liability that would not otherwise arise. If in such a case a proceeding were instituted on the Admiralty side of this court, and the Minister of Justice, on being informed thereof, should cause an appearance to be

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entered and should voluntarily submit the matter to the judgment of the court, the case would come on for decision in conformity with the rules in force in Admiralty proceedings, and damages, if awarded, would be assessed in accordance with such rules. There is, no doubt, precedent for such a proceeding as that, though probably in such a case the court would act rather as an arbitrator than as a court; for if there is in fact no jurisdiction to determine the case it is difficult to see how such jurisdiction could be given by consent of parties.

The judgment of the court will be that in this proceeding the suppliant is not entitled to any portion of the relief prayed for in his petition.

Judgment accordingly.

Solicitors for the suppliant: *Gouin & Brassard.*

Solicitor for the respondent: *E. L. Newcombe.*

REPORTER'S NOTE:—The following authorities illustrate the position of the Crown in relation to Admiralty proceedings in salvage cases for services rendered to a Government ship:—Williams & Bruce Adm. Prac. 3rd ed. p. 179, citing *The Marquis of Huntley*, 3 Hagg. 246; *The Lulan*, Mitchell's Maritime Register, 1883, p. 209; *The Comus*, cited in the *Prins Frederick*, 2 Dods. 464; *The Lord Hobart*, 2 Dods. 100; *The Athol*, 1 Wm. Rob. 374; *The Volcano*, 3 No. of Cas. 210; *Lipson* v. *Harrison*, 22 L. T. 83; *Wadsworth* v. *The Queen of Spain*, 17 Q. B. 171, 196; *The Parlement Belge*, L. R. 5 P. D. 197; *The Schooner Exchange*, 7 Cranch 116; *The Thomas A. Scott*, 10 L. T. N. S. 726; *Briggs* v. *Light Boat Upper Cedar Point*, 11 Allen 157; *Couette* v. *The Queen*, 3 Ex. C. R. 82; *Young* v. *The Scotia* (1903) A. C. 501.