

BETWEEN:

1945

Oct. 11

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THE CANADIAN PACIFIC RAILWAY } SUPPLIANT;
COMPANY, }

AND

HIS MAJESTY THE KING, RESPONDENT

*Shipping—Petition of Right—Collision in Vancouver Harbour between
suppliant's tug boat and respondent's vessel—Liability of respondent
—Negligent operation of respondent's vessel—Suppliant entitled to
repair its boat.*

Held: That where suppliant's boat was damaged by the negligent oper-
ation of respondent's vessel suppliant was justified in having its tug
boat repaired in order to get it back at work as soon as possible,
and respondent is liable to suppliant for the cost of such repairs.

PETITION OF RIGHT by suppliant to recover from the Crown damages suffered by suppliant because of a collision in Vancouver Harbour between suppliant's tug boat and respondent's vessel due to negligence of officers and servants of the Crown.

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The action was tried before the Honourable Mr. Justice Sidney Smith, Deputy Judge of the Court, at Vancouver.

J. E. McMullen, K.C. for suppliant.

D. McK. Brown for respondent.

The facts are stated in the reasons for judgment.

SIDNEY SMITH D.J. now (October 11, 1945) delivered the following judgment:

I am obliged to counsel for their assistance in this matter. I have in my own mind arrived at a conclusion, and therefore it will not be necessary in this case to reserve my judgment.

It is quite clear that the issues before me are very largely issues of fact; that I have to make up my mind as to which of the two conflicting versions I must accept. I feel bound to say at once that I find myself quite unable to accept the view which has been placed before me by the witnesses for the respondent. I do not find the evidence which they have given, to my mind at least, tenable; and I think that Sergeant Moodie is simply mistaken in his conception of the events that happened.

There can be no doubt that this small tug, the *Green Jade*, with a small tow, was circling the car ferry pier, and that if a proper lookout had been kept by those on board the other vessel, they would have appreciated this; and that they would have seen that the *Green Jade* never at any moment was on a steady settled course. It seems to me significant that Sergeant Moodie did not at any time discern that this vessel had a tow of logs; and I think it significant too that the collision happened at what I might call the change of watch; that is when Corporal Olson handed over charge of the vessel to Sergeant Moodie I think Sergeant Moodie in some way which I need not determine became confused, and I think his confusion was such as to render the collision inevitable.

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I wish to say quite clearly that I was impressed by the evidence of the Master of the *Green Jade*. I think he told me exactly what happened, and that he told me the sequence of events accurately as he observed them.

It follows that I am bound to give judgment for the suppliant and I do so for the damages that have been proved. On the question of damages there can be no doubt that the owner was entitled to repair his vessel. The motor car case referred to is not helpful in a case of this kind. The owner had every right to repair his vessel in order to get her back at work, particularly in these recent times when ships of every kind were in great demand. There will be judgment for the suppliant as I have said with costs.

Judgment accordingly