

QUEBEC ADMIRALTY DISTRICT

1941  
June 25.

BETWEEN:

THE OWNERS OF THE STEAM-SHIP PANAGIOTIS TH. COUMANTAROS (Coumantaros Bros. of Piraeus, Greece) ..... PLAINTIFFS;

AND

NATIONAL HARBOURS BOARD.....DEFENDANT.

*Shipping—Vessel damaged by striking obstruction in harbour—Extent of obligation of National Harbours Board in assuring safety of harbours under its jurisdiction.*

Plaintiffs' vessel, while clearing from the port of Montreal, P.Q., struck a submerged obstruction on the bed of the channel in Montreal harbour and was damaged. The Court found that the Harbour Commissioners had no knowledge of the existence of any danger to navigation in the channel nor could they foresee the existence of any such danger.

*Held:* That the National Harbours Board does not warrant that a harbour, under its jurisdiction, is safe for ships invited to use it.

2. That the National Harbours Board must use reasonable care to ensure that the harbours under its control are reasonably safe for vessels invited to use them.

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ACTION by the plaintiffs to recover damages from defendant for injuries sustained by their vessel allegedly due to negligence of defendant.

The action was tried before the Honourable Mr. Justice Cannon, District Judge in Admiralty for the Quebec Admiralty District, at Montreal, P.Q.

*R. C. Holden, K.C.* for plaintiffs.

*Bernard Bourdon, K.C.* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

CANNON, D.J.A., now (June 25, 1941) delivered the following judgment:

Whereas the plaintiffs represent by their statement of claim:

The steamer *Panagiotis Th. Coumantaros* is a steel screw steamship of Greek registry of 5,839 tons gross and 3,699 tons net register, 424.4 feet in length and 53 feet in beam, which belongs to the plaintiffs and which belonged to the plaintiffs on the 19th August, 1936, when the said ship received damage through striking a submerged obstruction or obstructions in the Harbour of Montreal;

At the time the damage was so received the Harbour of Montreal was under the jurisdiction, control and management of The Harbour Commissioners of Montreal, a body corporate which had its head office and principal place of business in the City of Montreal in the Quebec Admiralty District of this Court;

In virtue of their statutory powers the said The Harbour Commissioners of Montreal levied rates on goods landed from or shipped on vessels in the Harbour, and for the services of the Commissioners Grain Elevator System, and other rates on or in respect of vessels in the Harbour and permitted and invited the *Panagiotis Th. Coumantaros* and other vessels to use the harbour;

Between August 14th, 1936, and August 19th, 1936, the *Panagiotis Th. Coumantaros* loaded 315,808.10 bushels of wheat from the said Harbour Commissioners said Grain

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Elevator System in the Harbour of Montreal, and rates amounting to \$1,263.23 were paid by the plaintiffs to the said Commissioners in that connection, the whole as appears by the four receipted accounts which are produced herewith as plaintiffs' Exhibit P-1;

That in addition, wharfage rates amounting to \$568.45 were paid to the said Commissioners in respect of the said grain loaded by the *Panagiotis Th. Coumantaros*;

The *Panagiotis Th. Coumantaros* loaded her grain cargo at the berths in the Harbour designated by the said Commissioners or their representatives and in accordance with their instructions, and with the permission of the Harbour Master and with a licensed Canadian Pilot on Board she left her berth at the Marine Tower Jetty in the upper harbour at or about 1 p.m. on the 19th August, 1936, for the purpose of proceeding to sea;

Her draft, at the time of her departure, was less than the draft permitted on that date for vessels navigating the Harbour, and she had been granted a proper clearance, as appears by a copy of the certificate issued by the Deputy Port Warden of Montreal which is produced herewith to form part hereof as Exhibit P-2;

After backing out from the said Marine Tower Jetty and turning with the assistance of tugs the *Panagiotis Th. Coumantaros* proceeded down the channel in the Harbour in the usual and proper manner;

When about abreast of the Victoria Pier the said ship struck a submerged obstruction or obstructions on the bed of the channel in the Harbour of which those on board her had no knowledge and had received no warning;

As a result, the vessel sustained severe bottom damage and commenced to leak, and it was necessary for her to discharge and store part of her cargo at Quebec, and to enter drydock at Lauzon and to effect repairs there;

The plaintiffs suffered serious loss and damage as a result of the casualty;

The said loss and damage were due to the fault and negligence and lack of care and breach of duty of the Harbour Commissioners of Montreal as herein alleged, and the said Harbour Commissioners were liable to the plaintiffs therefor;

As the Harbour authority having jurisdiction over and having the control and management of the said Harbour

of Montreal and levying rates in respect thereof as aforesaid, the said Harbour Commissioners were obliged to keep the Harbour in a safe condition for navigation;

Without waiver of the foregoing, the plaintiffs allege that the said Harbour Commissioners were obliged in any event to take reasonable care to see that the said Harbour was free from obstruction and in such a state that the *Panagiotis Th. Coumantaros* and other vessels could navigate the same without danger, and/or were obliged to warn those on the *Panagiotis Th. Coumantaros* and other vessels that such care had not been taken;

The part of the Harbour where the *Panagiotis Th. Coumantaros* struck was not in a fit and safe condition;

The said Harbour Commissioners improperly failed to take reasonable care to see that the part of the Harbour where the *Panagiotis Th. Coumantaros* struck was free from obstruction and in a safe condition for navigation;

They improperly failed to warn those on the *Panagiotis Th. Coumantaros* that such care had not been taken;

Without limiting the generality of the foregoing the plaintiffs allege that to the knowledge of the said Commissioners dredges had been operating in this part of the Harbour, and that they knew or should have known that these dredges were likely to dislodge boulders and otherwise create dangerous underwater obstructions;

After the *Panagiotis Th. Coumantaros* casualty was reported to the Commissioners boulders were found in the channel at a depth which created danger;

Subsequently other vessels which were ready to sail were refused clearance until steps had been taken by sweeping or otherwise to determine whether the channel in the Harbour was safe;

The said Commissioners could and should have closed the channel where dredging was done and, as they did subsequently, should have refused to permit vessels to sail until steps had been taken to see that there were no dangerous obstructions in the channel;

It was negligent and improper of the said Commissioners to have permitted the *Panagiotis Th. Coumantaros* to leave her berth and to proceed down the Harbour, without first ascertaining that the part of the channel where dredging had been done was safe;

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In virtue of the statute 1 Edward VIII, chapter 42, whereby the defendant National Harbours Board was created, the said Board has jurisdiction over the Harbour of Montreal, and has administration, management and control of all works and property which at the date of the coming into force of the said Act were administered, managed and controlled by the said The Harbour Commissioners of Montreal;

By section 37 of the said statute it is further provided as follows:

37. (1) The Board shall possess and be vested with all the powers, rights and privileges belonging to and possessed by or vested in each of the corporations at or before the coming into force of this Act, or to which they, or any of them, may be or become entitled, and shall be liable for all lawful claims against, and obligations of the said corporations.

(2) Nothing in this Act contained shall prejudice or affect the rights of any person which may have existed at or before the coming into force of this Act against any of the corporations or any action or legal proceeding taken to enforce such rights and such rights may be enforced by action against the Board and any action or legal proceeding instituted before the coming into force of this Act may be continued against the Board.

The defendant National Harbours Board is liable to the plaintiffs for the loss and damage claimed;

Payment of the said loss and damage has been duly demanded, but the defendant refuses and neglects to pay the same;

Whereas the defendant has pleaded that:

Il ignore le paragraphe 1 de la déclaration;

Il nie, tels que rédigés, les paragraphes 2 et 3 de la déclaration;

Les documents produits par les demandeurs, comme pièce P-1 et allégués au paragraphe 4 de la déclaration font foi de leur contenu, et le défendeur nie tout ce qui est allégué audit paragraphe 4 et non conforme aux susdits documents;

Le défendeur nie, tels que rédigés, les paragraphes 5 et 6 de la déclaration;

Il nie la première partie du paragraphe 7 de la déclaration et ajoute que l'exhibit allégué audit paragraphe fait foi de son contenu;

Il nie les paragraphes 8, 9, 11, 12, 13, 14, 15, 16, 17 de la déclaration;

Il ignore le paragraphe 10 de la déclaration;

Il nie les paragraphes 18, 19, 20, 21, 22 de la déclaration, comme mal fondés en droit, et il demande acte des admissions contenues auxdits paragraphes, à l'effet que l'accident aurait été causé à la suite des opérations de creusage dans le chenal qui s'exécutaient alors à cet endroit;

Le statut allégué aux paragraphes 23 et 24 de la déclaration parle par lui-même et le défendeur nie tout ce qui est allégué auxdits paragraphes et qui n'est pas conforme à la loi y alléguée;

Le défendeur nie les paragraphes 25 et 26 de la déclaration;

De plus, le défendeur plaide expressément que la présente action est illégale, mal fondée, nulle et de nul effet, et devrait être renvoyée, pour les raisons suivantes;

(a) Au moment du prétendu accident, les travaux de creusage s'effectuant dans le chenal du fleuve St-Laurent, et qui furent la cause du susdit accident, comme l'admettent les demandeurs, n'étaient pas sous le contrôle, l'administration, la gestion, la construction et l'exécution du défendeur, mais étaient sous le contrôle et l'administration exclusive du Ministre de la Marine, en vertu d'un contrat intervenu le 14ème jour d'août, 1935, entre Sa Majesté le Roi, alors représentée par l'honorable Ministre de la Marine du Canada, et "The General Dredging Contractors Limited", suivant tous les termes, clauses, et conditions mentionnés audit contrat . . . . . dont copie est produite avec les présentes comme exhibit D-1 du défendeur;

(b) En vertu des dispositions de la Loi intitulée "Loi sur la Construction d'Ouvrages Publics Supplémentaires 1935", le gouverneur en conseil est autorisé à placer l'administration, la gestion, la construction et l'exécution de l'un quelconque des ouvrages mentionnés dans l'annexe "A" de ladite Loi sous l'autorité du Ministre, ou du Département du gouvernement qui peut être considéré comme le plus approprié, dans l'intérêt public;

(c) Les travaux de creusage ci-haut mentionnés étaient compris dans l'annexe alléguée dans la Loi susdite, et étaient exécutés en vertu de ses prescriptions;

(d) Effectivement, suivant les prescriptions de l'article 5 de la Loi ci-haut allégué, le gouverneur en conseil a le 11 juillet 1935, transporté au Ministre de la Marine toute l'administration, la gestion, la construction et l'exé-

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cution desdits travaux de creusage, tel qu'il appert plus amplement à copie de l'arrêté en conseil produit au soutien des présentes, comme pièce D-2 du défendeur;

e) En conformité de la Loi et de l'arrêté en conseil ci-haut allégués, le gouverneur en conseil, en vertu d'un autre arrêté en date du 10 août, 1935, a autorisé le Ministre de la Marine à prendre charge de l'exécution et de l'administration des susdits travaux et à confier ces travaux à "The General Dredging Contractors Ltd."; tel qu'il appert à copie de l'arrêté en conseil susdit, produite au soutien des présentes, comme pièce D-3 du défendeur;

f) Il n'y a aucun lien de droit entre les demandeurs et le défendeur et tous prétendus recours que pourraient exercer les demandeurs ne pourraient l'être que contre Sa Majesté le Roi, représentée actuellement par le Ministre des Transports, et, ce, devant la Cour de l'Échiquier du Canada, au moyen de pétition de droit;

De plus, sous réserve de ce que ci-dessus allégué, le défendeur plaide ce qui suit;

Même si la partie du chenal où l'accident serait arrivé était sous la juridiction et le contrôle du défendeur, ce qui est formellement nié, ce dernier ne peut être tenu responsable des prétendus dommages réclamés par les demandeurs parce que, à raison des circonstances particulières se rapportant au creusage du chenal, il ne pouvait prévoir un accident de la sorte; il lui était impossible d'apporter à l'entretien du chenal plus de précautions qu'il n'en a prises; à ce moment, ni le défendeur, ses employés, préposés ou mandataires ne pouvaient agir avec plus de prudence qu'ils n'en ont apportée au bon maintien et à l'entretien du chenal, et si l'obstacle qui a causé les dommages allégués résulte du fait des opérations de creusage à cet endroit, comme l'allèguent les demandeurs eux-mêmes, le défendeur ne peut en être tenu responsable et il invoque spécialement le cas fortuit et la force majeure;

Les demandeurs, leurs préposés, employés et mandataires connaissaient les opérations de creusage qui se faisaient à cet endroit, ainsi que les dangers en découlant, et ils ont imprudemment, négligemment et contrairement aux règles les plus élémentaires de la prudence, manœuvré leur navire trop près des travaux en cours d'opération de cette zone, pour la bonne conduite du navire dont ils avaient la charge;

De plus, sous réserve de ce que ci-haut allégué le défendeur plaide expressément que la présente action est illégale, mal fondée, nulle et de nul effet, et devrait être renvoyée, pour les raisons suivantes;

a) Le défendeur est un corps constitué et politique, ayant juridiction sur le port de Montréal, qu'il administre, gère et contrôle, suivant les prescriptions de la Loi;

b) Le défendeur est un corps constitué et politique, et, dans l'exercice de ses fonctions, il est censé être le mandataire de Sa Majesté le Roi, pour le compte du Dominion du Canada et, à ce titre, il est en droit de jouir de tous les privilèges et de l'immunité appartenant à la Couronne;

c) Les demandeurs ne peuvent exercer contre le défendeur aucun des recours qu'ils prétendent exercer par la présente action, sauf au moyen de la pétition de droit devant la Cour de l'Echiquier du Canada;

d) La présente Cour n'a aucune juridiction dans l'occurrence et aucun bref de sommation ne peut être émis contre la Couronne, ses agents ou ses mandataires et, conséquemment, contre le présent défendeur;

Whereas the plaintiffs deny all the allegations contained in the Statement of Defense except in so far as the same are in accordance with the plaintiffs' Statement of Claim, and the plaintiffs join issue upon the whole.

Considering that the facts, as disclosed at the trial, show that:

The *Panagiotis Th. Coumantaros* came light to Montreal on August 13th, 1936, and loaded a cargo of grain on August 17th, 18th, 19th at the Harbour Commissioners Grain Elevator System at Jetty No. 2;

The usual rates were levied and collected in respect to the ship herself and to her outward cargo by the Harbour Commissioners;

In order to reach her berth and later to proceed to sea, the *Panagiotis Th. Coumantaros* used the ship channel abreast of Victoria Pier, followed the rules of good seamanship and complied with the instructions and regulations of the Harbour Commissioners;

On August 19th, 1936, when about abreast of the lower end of shed 18 and the upper end of shed 19, and about the middle of the channel, well within the limits of the Harbour, the *Panagiotis Th. Coumantaros* hit a hidden

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obstruction; her bottom was damaged, she proceeded to Quebec but had to be repaired and drydocked at Lauzon before resuming her ocean trip;

The submerged obstruction was a boulder which had been turned up during the course and on account of the dredging operations which were then carried on in that vicinity;

These dredging operations were undertaken under the provisions of a special Act of Parliament, 25-26 George V, Chapter 34, and of several implementing orders in council P.C. 1932 and P.C. 2120;

On August 14th, 1935, under the authority of the said legislation and Orders in Council, a contract was signed between the Minister of Marine and the General Dredging Contractors Limited for the purpose of dredging and deepening the ship channel in the Harbour of Montreal;

The contract clearly shows that the Minister of Marine and his departmental officials had the full and exclusive control, management, administration and supervision of these public works;

The agreement contains a great number of precautionary provisions in relation to navigation and is most definite as to the protection of ships and shipping in the Harbour;

The Dredging Company had an excellent reputation for efficiency, its material and equipment were fully adequate and up-to-date, its personnel was experienced and competent;

Prior to August, 1935, when these dredging operations were begun by the Marine department, the Harbour of Montreal was in a safe condition for navigation and the channel was free of any obstruction;

While the Marine department was carrying on the dredging operations, during 1935 and 1936, the Harbour Commissioners exercised,—within their limited authority,—proper and reasonable care in relation to navigation; and as a result of the extra precautions taken by their officials, 12,000 ships passed through the channel without any trouble;

On the 19th of August, 1936, the Harbour Commissioners did not know of the existence of any danger to navigation in the channel opposite Victoria Pier, nor could they foresee the existence of any such danger;

On the contrary, the Harbour Commissioners had every reason to believe that the channel, at that point, was safe as it was open to a width of 630 feet and as it was free and clear of any dredge;

Considering that the Harbour authorities do not warrant that the Harbour, under their jurisdiction, is safe for ships invited to use it;

Considering that the unanimous jurisprudence, both in England and in Canada is to the effect that the Harbour authorities must use reasonable care to ensure that the harbours under their control are reasonably safe for the vessels which they invite to use them;

Considering that the Harbour Commissioners of Montreal have used such reasonable care to ensure that the Harbour under their control was reasonably safe for the *Panagiotis Th. Coumantaros*;

Considering that the plaintiffs have not proved their claim, either in fact or in law;

Doth dismiss the action with costs.

*Judgment accordingly.*

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