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 April 9, 10
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 Oct. 15
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BETWEEN :

GERARD BEAUCHEMIN, SUPPLIANT,

AND

HIS MAJESTY THE KING RESPONDENT.

Crown—Petition of right—Doctrine res ipsa loquitur applicable where Crown a party—Damage to suppliant's barge caused by respondent's scows breaking their moorings—Negligence of Crown officers in not maintaining watch on respondent's scows—Defence of inevitable accident or superior force—Suppliant entitled to recover.

Suppliant's barge the *Gerard B.*, on November 30, 1944, was securely moored for the winter at a berth ascribed to her by the superintendent of lighthouses and harbour master at Sorel, in the Lanctot basin, part of the harbour of Sorel, Quebec, and on that day was constantly in charge of and under the care of her owner.

Two sounding scows, the property of the Crown, and entirely unattended for the whole day of November 30, 1944, were moored at the same dock some distance away from the *Gerard B.* About eleven o'clock in the morning these scows broke their moorings and struck suppliant's barge. They were hauled back to the place where they had been moored and were again made fast to the dock. In the afternoon they again broke away and collided with suppliant's barge. They were again hauled back to and secured to the dock and one of them broke away a third time. Suppliant's barge was damaged as a result of the collisions.

In an action to recover for such damage the respondent pleaded that the collisions and damage were caused by a storm of extraordinary violence equivalent to inevitable accident and superior force.

Held: That respondent was negligent in leaving the scows not securely moored with proper and sufficient lines and without a watchman or other person in charge.

2. That the doctrine *res ipsa loquitur* applies to cases in which the Crown is a party.

PETITION OF RIGHT by suppliant to recover from the Crown for damage caused to suppliant's barge by two scows the property of the Crown.

The action was tried before the Honourable Mr. Justice Angers at Sorel.

R. C. Holden, K.C. and H. Michaud for suppliant.

W. Morin, K.C. and G. Cournoyer for respondent.

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

1946

BEAUCHEMIN

v.

THE KING

· ANGERS J. now (October 15, 1946) delivered the following judgment:

This is a petition of right by which the suppliant, navigator of the City of Sorel, seeks to recover from His Majesty the King the sum of \$5,150 for damages caused to his barge *Gerard B* in the harbour of Sorel on November 30, 1944, by a sounding scow, property of the Crown in the right of Canada.

The petition alleges in substance:

the suppliant is the owner of the barge *Gerard B*, a wooden barge 120 feet in length and 24.5 feet beam and 197 tons register;

the said barge was built in 1940 and prior to sustaining the damage hereinafter mentioned was in good and seaworthy condition;

on November 30, 1944, the said barge and the barge *Beauchemin* belonging to suppliant's father, Léopold Beauchemin, were lying moored for the winter in the Lanctôt basin in the harbour of Sorel, at a berth allotted to them by an officer or servant of the Crown and for which suppliant and his father had paid to the Crown the usual charges levied for the privilege of so mooring;

the barges *Gerard B* and *Beauchemin* were securely moored and were in charge of competent persons by whom their mooring lines were tended regularly and the said barges remained moored at their allotted berth throughout the occurrences herein referred to;

at about 11.00 a.m. on November 30, 1944, while the said barges were lying moored as aforesaid, *D.P. Sounding Scow No. 1* and *D.P. Sounding Scow No. 2*, property of the Crown in the right of Canada, broke adrift from where they were moored in the basin and came down upon and collided with the barges *Gerard B* and *Beauchemin*, forcing them against the walls of the basin and causing serious damage to them;

the said sounding scows were later removed by officers or servants of the Crown and hauled back to and remoored

1946
 BEAUCHEMIN
 v.
 THE KING
 Angers J.

at their berth, but the said scows again broke adrift and at about 2.00 p.m. again collided with the barges *Gerard B* and *Beauchemin*, causing additional damage to them;

thereafter the said sounding scows were again removed and remoored at their same berth by officers or servants of the Crown but again broke loose and at about 4.30 p.m. collided for a third time with the said barges, again causing additional damage to them;

after so colliding with and damaging the said barges on three occasions the said sounding scows were again hauled back and this time were moored in a safer manner and with additional or stronger lines with the result that their lines held and that the scows caused no further damage;

at about 3.00 p.m. on the same day the derrick scow *Quebec II*, property of the Crown in the right of Canada, also collided with the barge *Beauchemin*, which was moored outside suppliant's barge *Gerard B*, causing damage to the barge *Beauchemin* and also to the barge *Gerard B* through forcing her against the wall of the basin;

the damage occasioned to the suppliant's barge was caused by the negligence of officers or servants of the Crown while acting within the scope of their duties or employment;

if the officers or servants of the Crown responsible for the sounding scows and derrick scow *Quebec II* and the other government craft at Sorel had performed their duties, the suppliant's barge would not have sustained damage;

the fact that the sounding scows and derrick scow *Quebec II* collided with the barges *Gerard B* and *Beauchemin* while these barges were lying properly moored at the berth which had been allotted to them is of itself evidence of negligence on the part of the said officers or servants of the Crown;

the said collisions and damage were caused by the negligence of the said officers or servants of the Crown in that:

a) the said sounding scows were not moored at a proper place or in a proper manner;

b) the said scows were not moored with proper or sufficient lines and such lines as they had out were not properly placed;

c) the anchors of the said scows were not put out to help hold the scows in position;

d) there was no watchman or other person on board or in charge of the said scows;

e) the lines of the scows were not tended;

f) although a storm had been blowing since about 4.00 a.m., no steps were taken prior to when the said sounding scows broke adrift at about 11.00 a.m., either to slack the lines of the scows to prevent them from being broken or to put out additional or sufficient lines or hawsers or to put out the anchors of the scows or to have the said scows removed to some other position where they would not break adrift;

g) no precautions of any kind were taken to prevent the said sounding scows from breaking adrift and damaging the suppliant's barge;

h) although the Crown had powerful tugs available at Sorel which could have removed the scows to the Richelieu river or another place where they would not have caused damage, they were not so removed;

i) after the sounding scows broke adrift the first time and collided with the said barges, they on two subsequent occasions were removed in an improper manner alongside one another at their original berth with insufficient lines, with the result that they again broke adrift twice and caused further damage to the said barges;

j) at about noon the derrick scow *Quebec II* was improperly anchored out in the basin in such a position that she was subjected to the full force of the wind, with the result that she dragged her anchor or anchors and collided with the barge *Beauchemin* and forced the suppliant's barge against the wall of the basin;

k) the derrick scow should not have been anchored where she was and should have been removed from the basin or placed in a position where she would not cause damage;

l) the derrick scow was anchored in an unsafe manner;

m) the C.G.S. *Berthier*, a powerful twin-screw tug belonging to the Crown which was at Sorel at the time, was not used to remove the said derrick scow or the sounding scows to a place of safety;

1946
BEAUCHEMIN
v.
THE KING
Angers J.

1946
 BEAUCHEMIN
 v.
 THE KING
 Angers J.

n) the officers or servants of the Crown whose duty it was to see that the said derrick scow and sounding scows did not cause damage to innocent craft lying moored in the basin, improperly failed to take seamanlike or any precautions to prevent the damage caused to the suppliant's barge;

the cost of towing and hauling out and repairing the suppliant's barge will amount to at least \$3,000 and the suppliant is entitled to recover that sum from the Crown;

the suppliant is also entitled to recover from the Crown the sum of \$500 for further or future repairs and for depreciation in value of his barge as a result of the damage she sustained;

the damage caused the barge *Gerard B* to leak badly and from the 30th of November, 1944, until the ice formed and she became frozen in and also after the ice melted in the spring it was necessary to keep the barge pumped out and the suppliant is entitled to recover from the Crown the sum of \$150 for loss sustained in that connection;

the suppliant was unable to haul out his said barge until the spring of 1945 in order to repair her and it was not possible to commence the repair of her hull damage until June when the high water receded and she was left sufficiently dry and as a result the suppliant has been or will be deprived of the use and earnings of his barge for approximately four months;

through being deprived of the use and earnings of his barge the suppliant has suffered or will suffer loss and damage amounting to \$1,500 and is entitled to recover that sum from the Crown;

the sums of \$3,000, \$500, \$150 and \$1,500 form a total of \$5,150, which the suppliant is entitled to recover from the Crown for loss and damage suffered as aforesaid;

due notice was given to the Department of Transport of the damage occasioned to the suppliant's barge *Gerard B* and of his claims against the Crown and the said damage was examined on behalf of the Crown but after prolonged delay the Department of Transport, on or about April 11, 1945, declined liability for the said claims.

In his statement of defence the respondent says as follows:

he admits that suppliant is the owner of the barge *Gerard B*, ignores when she was built and in what condition she was prior to sustaining the damage complained of, ignores how the barges *Gerard B* and *Beauchemin* were moored and if they were in charge of competent persons by whom their mooring lines were tended and if they remained moored at their allotted berth, admits that at about 11 o'clock a.m. on November 30, 1944, while the barges were lying moored the D.P. sounding scows Nos. 1 and 2, property of the Crown, broke adrift from where they were moored and came down upon and collided with the barges *Gerard B* and *Beauchemin*, forcing them against the wall of the basin and causing serious damage to them, admits that the said scows were removed by officers or servants of the Crown, hauled back to and remoored at their previous berth and that they again broke adrift and at about 2 o'clock p.m. again collided with the said barges causing additional damage to them, admits that the said scows were again removed and remoored at the same berth by officers or servants of the Crown and again broke loose and at about 4.30 o'clock p.m. collided for a third time with the said barges again causing additional damage thereto, admits that after so colliding with and damaging the said barges on these three occasions the sounding scows were again hauled back and this time were secured in a safer manner and with additional or stronger lines, with the result that their lines held and that the scows caused no further damage, admits that at about 3 o'clock p.m. the derrick scow *Quebec II*, property of the Crown, collided with the barge *Beauchemin* (which was moored outside the suppliant's barge), causing damage to the barge *Beauchemin* and also to the suppliant's barge through forcing her against the wall of the basin, admits that notice was given to the Department of Transport of the damage caused to the suppliant's barge and of his claims against the Crown, that the damage was examined on behalf of the Crown and that after prolonged delay the Department of Transport declined liability for the said claims, denies the other allegations of the petition and pleads specifically:

1946
 BEAUCHEMIN
 v.
 THE KING
 Angers J.

1946
 BEAUCHEMIN
 v.
 THE KING
 Angers J.

until such time as the barge *Gerard B* could be moored definitely for the winter, permission had been granted to the suppliant to moor her where she was on November 30, 1944, but at his own risk since navigation was then still active in the basin;

it is exact that the Crown's vessels *D.T. sounding scow No. 1*, *D.T. sounding scow No. 2* and *Quebec II* entered into collision with the suppliant's barge which suffered some damage, but such collision and damage cannot be imputed to the Crown or its officers;

the said collision and damage were caused by a storm of an extraordinary violence, the like never having been experienced in Sorel within the memory of man, equivalent to accident and superior force "cas fortuit et force majeure";

indeed between 11 o'clock a.m. until about 5 o'clock p.m. the wind held an extraordinary velocity, causing waves of about ten feet in height in the basin where the barges were moored, with the result that almost every vessel in the basin broke her moorings and navigation became impossible;

the Crown by its officers committed no fault nor did it become guilty of any negligence, which might make it responsible for the collision and damages;

in particular the barges *D.T. sounding scow No. 1* and *D.T. sounding scow No. 2* and *Quebec II* were moored according to the best marine practice and in such a manner as to withstand any storm which could be humanly anticipated;

during the storm the officers of the Crown did all they could to prevent any damage being caused to the vessels moored in the basin;

although the moorings and cables were multiplied, it was found impossible to make fast the steel vessels in question so long as the wind did not abate, which did not occur until after 5 o'clock p.m.;

in spite of all the efforts made by the officers of the Crown and the crews of the tugs of the Crown, which happened to be on hand, it was found impossible, due to the violence of the storm, to tow the three said steel vessels outside of the basin and the best that could be done was to anchor the *Quebec II* in the centre of the basin and it was done in the best marine practice;

under the circumstances aforesaid neither the Crown nor its officers could be held responsible for any damages suffered by the suppliant;

besides these damages are greatly exaggerated.

In his reply the suppliant says in substance as follows: he prays acte of the admissions in the statement of defence that he is the owner of the barge *Gerard B*, that permission had been granted to suppliant to moor his barge where it was on the 30th of November and that the Crown's vessels *D.T. sounding scow No. 1*, *D.T. sounding scow No. 2* and *Quebec II* entered into collision with suppliant's barge, which suffered damage;

similar storms have occurred on other occasions and the weather was not such as might not reasonably have been anticipated or which could give rise to a defence of inevitable accident;

he denies the other allegations of the statement of defence.

I deem it expedient to recapitulate the evidence as briefly as possible.

[The learned judge here reviews the evidence and continues]:

There is no serious conflict in the evidence relating to material facts; the testimonies on both sides tally fairly well on the essential points.

It follows from the evidence that on November 30, 1944, the barge of the suppliant, the *Gerard B*, was securely moored in the Lanctôt basin, which forms part of the harbour of Sorel, at a berth situate at the southwest end of the basin, with the permission of the superintendent of lighthouses and harbour master of Sorel. The suppliant paid the usual charge for the privilege of so mooring his barge in the basin for the winter, as appears from the receipt of the Department of Transport filed as exhibit 1.

The evidence discloses that two sounding scows belonging to the Department of Transport were moored alongside the same dock, some distance east of the suppliant's barge. In addition to these vessels, there were in the basin on that day a small boat called the *François* used in connection with the buoys, made fast to the same dock a short distance east of the scows, and the stone lifter (No. 4) moored

1946
BEAUCHEMIN
v.
THE KING
Angers J.

1946
BEAUCHEMIN
v.
THE KING
Angers J.

alongside the west wall of another dock adjoining to the east the one already mentioned and barge No. 5 also used in connection with the buoys moored on the north side of this dock. Moreover there were alongside the west wall of an adjoining dock situate further east the barges *Elm Bay* and *Spruce Bay*, opposite shed No. 1. The respective position of these craft is clearly indicated on the sketch exhibit 4.

At five o'clock in the morning on November 30, the wind was blowing from the north-east at a velocity of 21 miles per hour. It increased gradually until, at eleven o'clock, it had reached a velocity of 40 miles per hour. The velocity of the wind started to decrease at about five o'clock in the afternoon; it decreased until seven o'clock when it reached a low for the afternoon of 16 miles per hour according to the Dorval airport records or 24 miles per hour according to the St. Hubert airport records. From that time the wind shifted from northeast to southwest.

On account of the velocity of the wind the suppliant believed that it was safer to put an additional line on his father's barge which was moored alongside his own. This line is shown on the sketch exhibit 4 by the figure 6.

At about eleven o'clock in the morning the respondent's scows broke their moorings and struck the suppliant's barge and that of his father at the rear. The position of the scows, when the collision took place, is indicated on exhibit 4 by red dotted lines. As a result of the collision three lines on his barge, marked 2, 3 and 4 on the sketch exhibit 4, were broken and had to be replaced. Around one o'clock in the afternoon, the Department of Transport sent a tractor which hauled the scows back to the place where they were moored before breaking adrift and they were again made fast at the same place. At about two o'clock, the mooring lines of the scows broke anew and the scows collided with the barges a second time. The evidence shows that the tractor of the Department of Transport came again and hauled the scows back to the dock. This time the scows were hauled back separately, one after the other. When the first scow had been mocrded, the tractor returned to get the other one and, during this operation, the moorings of the first scow broke a third time.

The evidence establishes that the *François*, barge No. 5 and the stone lifter remained in place during the storm. As to the *Elm Bay* and the *Spruce Bay* their lines broke and were replaced and they did not move from where they had been moored.

1946
BEAUCHEMIN
v.
THE KING
Angers J.

Gérard Beauchemin stayed on his barge on November 30 from the time the storm started until it abated. Alcide Beauchemin, his brother, stayed on his father's barge, the *Beauchemin*, during the same period. The proof shows that there was nobody on the scows during the storm.

It was argued on behalf of suppliant that the doctrine *res ipsa loquitur* applies. Its applicability to the Crown was challenged. I have had the occasion to study the question previously and reached the conclusion that the doctrine applies to cases in which the Crown is a party: *Montreal Transportation Company Ltd. v. The King* (1); *Sincennes-McNaughton Lines Ltd. v. The King* (2); *Gauthier & Co. v. The King* (3); *Yukon Southern Air Transport Ltd. et al. v. The King* (4). I see no reason to change my opinion.

The evidence is unanimous that the respondent's scows damaged the barges of the suppliant and of his father. The question to determine is whether the collisions could have been avoided by proper care or whether they were the result of irresistible force (*force majeure*) and were inevitable.

It was submitted by counsel for the respondent, Mr. Cournoyer, that no act of negligence on the part of a servant or officer of the Crown had been established and that the sounding scows had been moored in the usual manner. Counsel noted that no crew or guardian had ever been left on scows since 1908 and suggested that, if there had been men on the scows, the same results would have occurred and the same damages caused. He pointed out that the other vessels in the basin had been made fast at spots which were more protected and that, in spite of this, their mooring lines broke. He observed that, notwithstanding all the precautions taken and the fact that she dropped two anchors, the *Quebec* drifted and struck the barges. He

(1) (1923) Ex. C.R. 139;
(1924) 4 D.L.R. 808;
(1926) 2 D.L.R. 862.

(2) (1926) Ex. C.R. 150;
(1928) S.C.R. 84.
(3) (1945) 2 D.L.R. 48, 60.
(4) (1942) Ex. C.R. 181.

1946
 BEAUCHEMIN
 v.
 THE KING
 Angers J.

submitted that there were eight wire cables on the scows before they first went adrift, all of which broke, and that there were ten wire cables on them after the second collision and that they also broke. He contended that the scows occupied the worst place in the basin and received the whole strength of the wind. He urged that it was not the wind that broke the mooring lines but the high waves caused by a violent wind which lasted during several hours. He remarked that all the witnesses heard on behalf of respondent, Blais, Laforest, Perron, Hector Beauchemin and Vilandr , swore that they had never seen so strong a wind and such high waves in the basin as those which prevailed on November 30.

It was urged by counsel for suppliant that the burden of showing that the accident was inevitable rested on the respondent. In his opinion the accident cannot be considered as the result of irresistible force. He submitted that there was nothing sudden in the wind, that it started in the morning and increased gradually, that at the time of its greater velocity it constituted merely an ordinary fresh gale and that it could and should have been anticipated.

Counsel suggested that the *Spruce Bay* and the *Elm Bay* rode the storm successfully because they had men looking after them. He pointed out that the *Fran ois* was more securely moored than the scows, as appears on exhibit B, and that as a result she did not move. He also observed that the stone lifter and the barge No. 5 had men looking after them and that they stayed stationary.

Counsel pointed out that at eight or nine o'clock in the morning Perron, who was on the *Verch res*, foresaw what was in the offing and consequently doubled his moorings. He intimated that the storm was not a sudden and unexpected event, that everybody knew what was coming and that nevertheless nobody paid the slightest attention to the sounding scows. Counsel drew the attention of the Court to the fact that at eight o'clock in the morning Hector Beauchemin inspected the basin and the boats under his care, viz, the *Fran ois*, the *Verch res* and the barge No. 5, and declared that the other boats in the basin were not under his care. Counsel further pointed out that

at ten o'clock in the morning Hector Beauchemin made another inspection and that there was nobody on board the sounding scows on either occasion.

1946
BEAUCHEMIN
v.
THE KING
Angers J.

Counsel submitted that the three wire cables holding the scows did not break at one and the same time and that it is fair to presume that they broke one after another and that they could have been replaced. He suggested that an additional mooring line should have been fastened to the dock or that the scows could have been moved further east. He noted that Hector Beauchemin declared that it was not the responsibility of the Aid to Navigation Branch of the Department of Transport to look after the scows. He laid stress on the fact that no servant of the Crown took the trouble of finding out whether the moorings should be doubled. He insisted that the three wires holding the scows broke successively and that there was no one on board to replace them.

Counsel pointed out that, after the scows broke adrift the first time, they were made fast to the dock in the same way as they had been the first time. In counsel's opinion the snapping of the lines on the first occasion should have taught the men responsible for the scows to moor them more securely.

It was argued in reply by counsel for the respondent, Mr. Morin, that the suppliant was bound to prove negligence on the part of an officer or servant of the Crown acting within the scope of his duties or employment, under section 19 (c) of the Exchequer Court Act. Reference was made to the decision in *Labelle v. The King* (1). In my opinion, this case is not pertinent. It merely holds that three conditions are required to establish a claim against the Crown: (1) an injury resulting from the negligence of an officer or servant of the Crown, (2) acting within the scope of his duties or employment and (3) upon any public work. The third condition has been set aside by the amendment to clause (c) of paragraph 1 of section 19 of the Exchequer Court Act by 2 George VI, chapter 28, section 1, assented to on June 24, 1938.

It was submitted by counsel that there was nothing in the evidence to link the accident to the negligence of an officer or servant of the Crown acting within the scope of

(1) (1937) Ex. C.R. 170.

1946
 BEAUCHEMIN
 v.
 THE KING
 Angers J.

his duties or employment. He contended that Captain Blais, a navigator of great experience, moored the sounding scows and that the mooring lines indicated on exhibit C seemed quite normal. He concluded that Hector Beauchemin cannot be accused of negligence for not having had these lines replaced.

Counsel pointed out that the *Verchères* had to leave the scow *Quebec* to her fate, that the latter was compelled to cast anchor and that in spite of this she drifted against the barges.

Briefs were filed. Several authorities were cited on both sides. It seems to me convenient to review briefly those which are most relevant.

[The learned judge here reviews the following decisions dealing with collisions of vessels, namely, *Bailey v. Cates* (1) *Lowther Castle v. Risaldar* (2), *Stadion v. C. R. Roby (Karpathios)* (3), *The Telesfora de Larrivaga* (4), *Benwood v. Swan, Hunter and Wigham Richardson Ltd. (Titan)* (5), *Falmouth Docks and Engineering Company v. Lieutenant David Pearson, R.N.R. (The Fir)* (6), *The Branksome Hall* (7), and continues]:

In re the *Merchant Prince* (8), the headnote reads thus:

Where the owners of a ship which in consequence of her steam steering gear failing to act runs into and damages a vessel at anchor, her owners to establish the plea of inevitable accident must show that the cause of the accident was one which could not be avoided, and they do not do so by proving that the gear was a good patent in extensive use, that it was properly overhauled from time to time, and that competent persons subsequently to the collision were unable to discover the cause of its failure to act.

It seems to me appropriate to quote a passage from the judgment of Fry, L.J. (p. 211):

In the case of *The Annot Lyle* (55 L.T. Rep. N.S. 576; 11 P. Div. 114; 6 Asp. Mar. Law Cas. 50) it was laid down by Lord Herschell that in such a case the cause of the collision might be an inevitable accident, but unless the defendants proved it to be so they were liable. The burden rests on the defendants to show inevitable accident. To sustain that the

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| (1) (1904) S.C.R. 293. | (5) (1922) 13 Lloyd's List
Law Reports 428. |
| (2) (1922) 10 Lloyd's List
Law Reports 235. | (6) (1943) 76 Lloyd's List
Law Reports 77. |
| (3) 1922 10 Lloyd's List
Law Reports 14. | (7) (1934) 48 Lloyd's List
Law Reports 43. |
| (4) (1939) 65 Lloyd's List
Law Reports 95. | (8) 7 Asp. N.S. 208. |

defendants must do one or the other of two things: they must either show what was the cause of the accident, and show that the result of that cause was inevitable; or they must show all the possible causes, one or other of which might produce the effect, and must further show with regard to every one of those possible causes that the result could not have been avoided. Unless they show one or other of these two things, it does not appear to me that they have established the plea of inevitable accident . . . But I go a step further. An inevitable accident is, according to the law laid down in the case of *The Marpesia* (26 L.T. Rep. N.S. 333; 1 Asp. Mar. Law Cas. 261; L. Rep. 4 P.C. 212), that which cannot be avoided by the exercise of ordinary care and caution and maritime skill.

1946
 BEAUCHEMIN
 v.
 THE KING
 —
 Angers J.
 —

Reference may also be had beneficially to the following cases: *The Marpesia* (1); *The Neuralia* (2). See also *Marsden's Collisions at Sea*, 9th ed., p. 18.

The only question to determine is whether the collisions which damaged the suppliant's barge, the *Gerard B*, were the result of irresistible force (*force majeure*) or, in other words, constitute an inevitable accident. If so, the respondent must be absolved of responsibility; if not, he must be held liable for the damages caused to the suppliant.

The suppliant's barge, on November 30, 1944, was properly moored for the winter in the Lanctôt basin, in the harbour of Sorel, at a place ascribed to her by the superintendent of lighthouses and harbour master of Sorel. On that day the said barge was constantly in charge and under the care of her owner. I am satisfied that the suppliant and his barge were in no way responsible, wholly or partly, for the collisions.

The storm, blamed by the respondent for the accident, was not unexpected. At one o'clock in the morning, the wind was blowing from the north-east at eleven miles per hour, according to the records kept at the St. Hubert airport, and at fourteen miles per hour, according to the records kept at the Dorval airport. It increased gradually and at nine o'clock it had reached a velocity of twenty-four miles an hour according to the entries made at the St. Hubert airport and of twenty-nine miles an hour according to the entries made at the Dorval airport. At eleven o'clock, when the respondent's sounding scows first broke their moorings and collided with the suppliant's barge and that of his father moored alongside his own, the wind had

(1) (1872) L.R. 4 P.C. 212.

(2) (1946) 79 Lloyd's List
 Law Reports 50.

1946
 BEAUCHEMIN
 v.
 THE KING
 Angers J.

attained a velocity of thirty-nine miles an hour according to the records of the St. Hubert airport and of forty-two miles an hour according to the records of the Dorval airport. At about two o'clock in the afternoon, when the sounding scows again broke their moorings and collided a second time with the *Gerard B*, the wind was still blowing at a velocity of forty miles an hour, as recorded at the St. Hubert airport, and of forty-two miles an hour, as recorded at the Dorval airport. It maintained this velocity until three o'clock in the afternoon when it started to decrease gradually. Between six and seven o'clock the velocity of the wind had gone down to twenty-four miles an hour according to the records of the St. Hubert airport and of sixteen miles an hour according to the records of the Dorval airport.

The evidence discloses positively that no guardian was left on the sounding scows on the day of the accident. There was no one to look after their moorings and replace them if they broke. This, in my opinion, constitutes an element of grave negligence.

It is established, as previously indicated, that there were many other craft, apart from the barges of the suppliant and of his father and the respondent's sounding scows, in the basin on November 30: the *François*, the stone lifter, barge No. 5 and the barges *Elm Bay* and *Spruce Bay*. The moorings of some of them snapped but were promptly replaced; as a result none of these vessels caused damage. The proof shows that all these vessels had one or more watchmen or other men on board during the storm. The contention of counsel for suppliant that all the moorings of the sounding scows did not break at one and the same time but broke separately, one after the other, and that, if there had been a watchman or other person on board, the broken mooring could have been replaced at once seems to me reasonable and logical. The drifting of the sounding scows could thus have been avoided. Why the sounding scows were left totally unattended during the whole storm is for me incomprehensible.

After carefully perusing the evidence, both oral and written, and the able and exhaustive argument of counsel and studying attentively the authorities cited, I have reached the conclusion that the collisions and the damage

resulting therefrom were caused by the negligence of the officers and servants of the Crown who were in charge of and responsible for the sounding scows in question, in that:

1946
 BEAUCHEMIN
 v.
 THE KING
 Angers J.

the said sounding scows were not securely moored with proper and sufficient lines;

there was no watchman or other person in charge of the sounding scows to look after their moorings and to replace them if they snapped;

the anchors of the sounding scows were not dropped to help hold the scows in position;

no steps were taken prior to the time the sounding scows broke adrift either to slacken their lines to prevent them from breaking or to put out additional or sufficient lines;

the twin-screw tug *Berthier* belonging to the Crown, which was at Sorel at the time, was not used to remove the sounding scows to the Richelieu River or another place of safety where they would not have caused damage;

total unpreparedness for such an emergency.

There remains the question of the damages. I have estimated them at the sum of \$4,548.54 as follows:

cost of repairs as per exhibit 5	\$2,598.54
cost of pumping the water to empty the barge pending the repairs	150.00
loss of profits from December 1, 1944, to October 1, 1945, date on which the repairs were completed,	1,500.00
depreciation of the barge as a result of the collisions	300.00
	\$4,548.54

There will be judgment against the respondent in favour of the suppliant for the sum of \$4,548.54 with costs.

Judgment accordingly.