

(ON APPEAL FROM THE QUEBEC ADMIRALTY DISTRICT.)

BETWEEN

THE OGILVIE FLOUR MILLS COMPANY (PLAINTIFFS)..... } APPELLANTS;

1908
Jan. 7.

AND

THE RICHELIEU & ONTARIO NAVIGATION COMPANY (DEFENDANTS)..... } RESPONDENTS;

THE NORTHERN ELEVATOR COMPANY (PLAINTIFFS)..... } APPELLANTS;

AND

THE RICHELIEU & ONTARIO NAVIGATION COMPANY (DEFENDANTS) } RESPONDENTS;

THE CANADA ATLANTIC RAILWAY COMPANY (PLAINTIFFS)..... } APPELLANTS;

AND

THE RICHELIEU AND ONTARIO NAVIGATION COMPANY (DEFENDANTS)..... } RESPONDENTS.

Admiralty law—Shipping—Tug and tow—Damage by overtaking ship—Displacement wave—Presumption as to cause of accident—Finding of trial judge.

Held, (affirming the judgment appealed from, reported *ante*, p. 25), that as the essential question involved in the case was purely one of fact, there being no presumption one way or the other as to how the accident occurred, there was no reason to disturb the finding of the trial judge.

APPEAL from a judgment of the deputy Local Judge of the Quebec Admiralty District.

1908
 THE
 OGLVIE
 FLOUR MILLS
 Co.
 v.
 THE
 RICHELIEU
 AND ONTARIO
 NAVIGATION
 Co.
 ———
 Reasons for
 Judgment

The facts are stated in the report of the judgment at first instance, *ante*, p. 25.

November 5th, 1907.

The argument of the appeals was now heard.

E. Lafleur, K.C., and *C. A. Pope* for appellants.

A. R. Angers, K.C., and *A. E. de Lorimier, K.C.*, for respondents.

THE JUDGE OF THE EXCHEQUER COURT now (January 7th, 1908) delivered judgment.

These are appeals from the decrees entered in the Quebec Admiralty District, on the 31st day of May, 1907, by Mr. Justice Dunlop, whereby he dismissed the plaintiffs' actions with costs. It appears that the barge *Huron* laden with wheat in tow of the tug *Ida* grounded on the south side of the Soulanges Canal and was injured while the steamship *Hamilton* was passing the *Ida* and *Huron*. On a signal from the *Hamilton* which, being a passenger steamer, had a right to pass the tug and tow under proper conditions, the *Ida* with her tow left the fair-way of the Canal and took up a position on the south side thereof, but without stopping. Under the circumstances proved in the case it must, I think, be taken to have been agreed upon between the *Ida* and the *Huron* on the one side and the *Hamilton* on the other, that the *Hamilton* should pass the former in the manner mentioned. That of course made it necessary for the *Hamilton* to pass the *Ida* and the *Huron* at a greater rate of speed than would have been required if the latter had come to a standstill, but that did not relieve either from their proper responsibilities. It was for the *Hamilton* to pass as slowly and as carefully as possible and for the *Ida* and the *Huron* to take all proper precautions against any injury or accident while the *Hamilton* was passing. Now it appears to me that the accident that did happen,

viz.: the grounding of the *Huron* with the result that she was so injured as to founder shortly afterwards, is equally consistent with the view that the *Hamilton* passed too near or at too great a rate of speed and with the view that the *Ida* and the *Huron* were not properly navigated, but that the *Huron* was put upon the south bank of the canal through the inexperience or want of care of the men at her helm. So that in my view of the case there is no presumption one way or the other as to how the accident happened. In so far as the *Hamilton* is concerned it is a pure question of fact to be found upon the evidence as to whether she passed the *Ida* and the *Huron* in a prudent and careful manner.

That fact the learned Judge who heard the case has found in favour of the *Hamilton* and I see no reason why I should disturb his finding. The appeals will be dismissed with costs.

Judgment accordingly.

Solicitor for Appellants: *Lafleur, McDougall and Macfarlane.*

Solicitors for Respondents: *Angers, de Lorimier and Godin.*

1908
 THE
 OGILVIE
 FLOUR MILLS
 Co.
 v.
 THE
 RICHELIEU
 AND ONTARIO
 NAVIGATION
 Co.
 Reasons for
 Judgment.