

CASES

DETERMINED BY THE

SUPREME COURT OF CANADA

ON APPEAL

FROM

THE COURTS OF THE PROVINCES

AND FROM

THE EXCHEQUER COURT OF CANADA.

THE MAYOR, ALDERMEN AND }
COMMONALTY OF THE CITY OF } APPELLANTS ;
SAINT JOHN (DEFENDANTS) }

1886
May 4, 5
June 8

AND

RODERIC MACDONALD (PLAINTIFF) RESPONDENT.

APPEAL FROM THE SUPREME COURT OF NEW BRUNSWICK.

Negligence—Management of ferry—Manner of mooring—Contract to carry—Ferry under control of corporation—Liability of corporation for injury to passenger—Contributory negligence.

The ticket issued to M. a traveller by rail from Boston, Mass., to St. John, N. B., entitled him to cross the St. John harbour by ferry, and a coupon attached to the ticket was accepted in payment of his fare. The ferry was under the control and management of the corporation of St. John.

Held, that an action would lie against the corporation for injuries to M. caused by the negligence of the officers of the boat during the passage.

The approaches of the ferry to the wharf were guarded by a chain

PRESENT—Sir W. J. Ritchie C. J. and Strong, Fournier, Henry and Gwynne J.J.

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extending from side to side of the boat at a distance of about $1\frac{1}{2}$ feet from the end. On approaching the wharf the man whose duty it was to moor the boat unloosed the chain at one side, and when near enough jumped on the floats to bring the mooring chain aboard. A number of the passengers rushed towards the floats, and M., seeing the chain down and thinking it safe to land, followed them and fell through a space between the boat and the wharf and was injured. When this happened the boat was not moored.

Held, affirming the judgment of the court below, that the corporation of the City were liable to M. for the injuries sustained by the negligent manner of mooring the boat, and that he was not guilty of such contributory negligence as would avoid that liability.

APPEAL from a decision of the Supreme Court of New Brunswick (1), refusing to set aside a verdict for the plaintiff or to order a new trial:

The plaintiff MacDonald purchased a ticket in Boston, Mass., for Cape Breton, intending to go by the St. John & Maine Ry. to St. John, N. B., and thence by the Intercolonial. On arriving at St. John he went on board the ferry to cross the harbour, his fare being paid by a coupon attached to his railway ticket. This ferry is the property of the city, and is managed by an officer of the corporation. The boats are open at both ends, and there is a protection for teams and passengers by means of a guard chain at each end, extending from side to side, at a distance of about a foot and a half back. The trip by which the plaintiff passed was what is called the "train trip," when the passengers from the United States cross over on the arrival of the train.

On approaching the opposite side one of the deck hands of the boat took down the guard chain and when near enough leaped from the boat to the floats in order to get the mooring chain and bring it on the boat. When the chain was taken down a number of the passengers rushed forward and jumped on the

floats, and MacDonald; seeing no chain nor anything to intimate that it was not safe to land, followed them and fell down between the boat and the floats and was severely hurt. The boat had not then been moored.

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In an action brought by MacDonald against the City it was contended that if any action would lie it would only be against the company in Boston who sold the ticket; or, if the defendants were liable, that the plaintiff had not exercised proper care and was himself guilty of such negligence that he could not recover. The declaration and the material portions of the evidence will be found in the report of the court below (1).

Certain questions and answers were submitted to the jury, among which were the following:—

2 Q. Was it necessary to let down the guard chain in order to get hold of the mooring chain and to fasten the boat?

A. It was not necessary.

3. Q. Was the guard let down for the purpose of getting hold of the mooring chain, or was it left down as an invitation to the passengers that they might safely land?

A. The guard chain appears to have been let down for the purpose of getting hold of the mooring chain but it is the opinion of the jury that it might be reasonably taken by the passengers to be an invitation that they might safely land.

4. Q. Is the end of the floats so constructed as to receive the end of the boat without leaving a space between them dangerous to passengers to and fro?

A. It is not.

7. Q. Was the taking down the guard chain an intimation to passengers that they might land?

A. It was.

(1) 25 N. B. Rep. 318.

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The plaintiff obtained a verdict for \$3000, which was sustained by the Supreme Court of New Brunswick on motion by the defendants for a new trial. The City then appealed to the Supreme Court of Canada.

Ritchie C.J. *Barker Q.C.* for the appellants cited *Alton v. Midland Railway Co* (1).
 — *Skinner Q.C.* for the respondent.

SIR W. J. RITCHIE C.J.—I think this action was clearly sustainable against the defendants. Mr. Justice Fraser in his exhaustive judgment makes this abundantly clear. The question of contributory negligence, it is admitted, was properly left to the jury, and was, in my opinion, most properly found against the defendants.

The sole question then to be determined is: Was there evidence of negligence on the part of the defendants to go to the jury? I think there was abundant evidence as Mr. Justice Fraser most conclusively demonstrates.

The matter, then, being one unquestionably within the province of the jury it is not possible to say that the jury, viewing the whole evidence reasonably, could not properly have found this verdict, nor can this verdict, in my opinion, be said to be unsatisfactory, still less unreasonable and unjust, and therefore I think the court below was quite right in not disturbing it, and the appeal should be dismissed with costs in this court and in the court below.

STRONG J.—I am of opinion, and was at the close of the argument, that the judgment of the court below was entirely right for the reasons assigned therein.

FOURNIER J.—I am in favor of dismissing the appeal. I think this case very like the case of *G. T. R. Co. v. Boulanger* (2) decided a short time ago from the Bench.

(1) 19 C. B. N. S. 213,

(2) Cass Is's Dig. 441.

HENRY J.—I concur. I have no doubt that the evidence fully sustains the verdict in this case, and that negligence was sufficiently proved to enable the plaintiff to recover.

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GWYNNE J.—The declaration in this case is abundantly sufficient to sustain the present action whether it be regarded as framed in tort for injuries caused to the plaintiff by the negligence of the defendants in breach of a duty arising out of their having a grant of the exclusive right of ferriage and carriage by water of cattle, goods and passengers from one part of the City of St. John, across the river and harbor of St. John, to other parts thereof, or in tort for breach of duty arising out of a contract to carry the plaintiff for hire and reward. The evidence that the plaintiff was only admitted as a passenger upon the defendants' ferry boat upon his producing a through ticket for passage by rail and ferry from Boston to St. John, for which the plaintiff had paid at Boston, and from which the defendants' servants detached a coupon, justified the inference that the defendants had been paid or secured in payment of plaintiff's fare and that they accepted the coupon from the plaintiff in payment of his fare. But the declaration alleges that the plaintiff was lawfully on board the ferry boat as a passenger and that it was the duty of the defendants, as grantees of the ferry and carriers by water of cattle, goods and passengers across the ferry, so to manage their ferry boats, and to fasten them to the landing stage in such a manner, that it would not be dangerous for passengers to pass from the ferry boats to the landing stage, and that it was by breach of this duty that the plaintiff suffered the injury of which he complained, so that the declaration would be good without the allegation of the plaintiff being a passenger, "for certain hire and

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“reward paid to the defendant,” and these words might be expunged from the declaration and the plaintiff’s cause of action be sufficiently stated (1).

Then as to the merits the learned counsel for the defendants admitted that the case was presented to the jury with a charge both upon the question whether the defendants were guilty of any negligence and whether the plaintiff was guilty of contributory negligence, to which no objection was or could have been taken, and that the jury found for the plaintiff. But the contention is that besides submitting the case to the jury with such a charge the learned judge who tried the case submitted certain questions to the jury and that some of their answers are inconsistent with their verdict and others are against the evidence. As to the former—to a question :

Whether there was any unnecessary delay or negligence on the part of the boat hands in running the boat to the landing stage and so securing the boat to the landing stage as to allow passengers safely to pass from the boat to the landing stage ?

the jury answer that :

—there appears to be no unnecessary negligence or delay on the part of the boat hands as far as the construction and appliances of the boat and landing stage would allow.

What the jury meant by this answer appears, from the other answers, to have been that in the construction of and in the absence of proper appliances to fasten the boat safely there was negligence. They found that the guard chain was let down before the boat was fastened to the landing stage, and that although it was so let down for the purpose of getting hold of the mooring chain it was not necessary to be let down for that purpose and that the letting it down might reasonably have been taken by the passengers as an invitation for them to land and that it was an intimation to them that they might land safely—They found also that the

(1) See *Marshall v. York, Newcastle & Berwick Railway Co.*,  
 11 C. B. 664.

landing floats were so constructed that the end of the ferry boat on which the plaintiff was did not fit close in to the landing stage and that a space was left between them which was dangerous to passengers— They found also that the gang plank which was put down before the boat was fastened was an intimation that the boat was secured.

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Now all these findings were expressly upon the points of negligence charged in the declaration, which in substance were that the defendants did not run the ferry boat, on the occasion under consideration, close up to the landing stage, and did not so secure and fasten the said ferry boat and keep the same so secured and fastened to the said landing stage, as not to be dangerous for the plaintiff to step from the boat on the landing stage, and that the landing stage and the end of the ferry boat were so negligently constructed that they would not closely and properly fit the one with the other. And by reason of a space having been left between the boat and landing stage, the plaintiff while carefully going on to the landing stage fell between it and the boat and was very seriously injured. It is impossible, in my opinion, to say that the jury's findings are not supported by the evidence, or that they are at all inconsistent with their verdict for the plaintiff.

The appeal, therefore, must be dismissed with costs.

*Appeal dismissed with costs.*

Solicitor for appellants: *I. Allen Jack.*

Solicitor for respondent: *C. L. Richards.*