

1927

*June 9, 10.
*Oct. 4.

HIS MAJESTY THE KING (DEFENDANT). APPELLANT;

AND

SINCENNES-McNAUGHTON LINE, }
LTD. (SUPPLIANT) } RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Crown—Negligence—Collision—Canal—Probable cause of accident—Exchequer court Act, s. 20.

The J.B.K. was proceeding down the Lachine Canal to Montreal and she had passed through basin no. 1 into lock no. 1 where she was duly moored to the side. While the water in the lock was being lowered to enable her to pass out, the gates between the basin and the lock, being closed, were subjected to increasing pressure as the water below receded and they gave way releasing the water in the basin and causing the steamer to part her moorings and to break through the lower gates. While the J.B.K. was thus out of control, she came into contact with the respondent's tug V., causing damages for the recovery of which action was taken against the Crown. The trial judge held that, as it appeared upon the evidence that the breaking of the gates could only have occurred if they were not properly mitred by the servants of the Crown in charge thereof, the court should draw that inference of fact and find liability of the Crown for negligence under s. 20, subs. c of the *Exchequer Court Act*.

Held that, upon the evidence, there was a preponderance of probability which constituted sufficient ground for the finding of the trial judge: there was ample evidence that a faulty bevel- or mitre-joint would be a not improbable cause of the accident and there was no proof of any competing cause.

Judgment of the Exchequer Court ([1926] Ex. C.R. 150) aff.

APPEAL from the judgment of the Exchequer Court of Canada, Maclean J. (1), maintaining the respondent's petition of right to recover damages for injuries caused to the tug boat *Virginia* by reason of the alleged fault of the servants of the Crown.

The material facts of the case are stated in the above head-note and in the judgment now reported.

A. Geoffrion K.C. for the appellant.

A. R. Holden K.C. and *Lucien Beauregard* for the respondent.

*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.

(1) [1926] Ex. C.R. 150.

The judgment of the court was delivered by

NEWCOMBE J.—The respondent, suppliant by petition of right, seeks to recover damages for injury caused to its tug boat *Virginia*, with which, on 29th August, 1922, the SS. *John B. Ketchum* collided in the harbour of Montreal at the foot of the locks of the Lachine canal. While the *Ketchum* was lying in lock no. 1, moored to the side, and the water was being lowered to enable her to pass out, the gates of the basin above, being closed, were of course subjected to increasing pressure as the water below receded, and unfortunately they gave way, causing a great fall and surge of water, which carried the *Ketchum* from her moorings, through the lower gate, and out into the harbour. It was while the *Ketchum* was thus out of control, being swept along by the flood, that she came into contact with the *Virginia*, and it is admitted that the ensuing damage to the *Virginia* was caused by the breaking of the gates, which were intended on such occasions to hold back the water in the basin.

The canal was a public work of Canada, operated by the officers and servants of the Crown, and the question is whether the action was attributable to their negligence within the meaning of s. 20, clause (c) of the *Exchequer Court Act*, upon which the liability of the Government depends.

The evidence is found to exclude the suggestion of any defect in the construction of the gates, but it is found that they were not well closed, or, as said by the learned trial judge, that "they broke owing to improper mitring." His view was that when, in the process of closing, the gates were swung together by the lockmen under the direction of the lockmaster, they did not meet evenly, and that in consequence the bearing surfaces did not properly articulate. The witnesses who were charged with the work maintained that the gates were safely closed. But the circumstances of the case, the appearance of the gates after the accident, and the injuries which they had received, were consistent with and suggestive of the view that the damage was produced by pressure of the gates upon each other when in contact, but not truly joined; and there was ample evidence that the closing ought to have been effect-

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Newcombe J.
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ed with care in order to avoid such a result, and that a faulty bevel- or mitre-joint would be a potential and not improbable cause of their failure to withstand the great pressure to which they became subject when the level of the water in the lower lock was reduced.

It must be remembered that it was the duty of the lock-master and his men to see that an accident did not happen through lack of reasonable and proper care in the working of the gates, and the fact that such an extraordinary occurrence took place from a cause which, upon the evidence, may probably have consisted in their neglect, affords the basis of a finding, especially when, as in this case, there is no proof of any competing cause. I think there is here a preponderance of probability which constitutes sufficient ground for the finding of the learned trial judge.

In *Cooper v. Slade* (1), Willes J., refers to the proposition as elementary that in civil cases the preponderance of probability may constitute sufficient ground for a verdict, and he says that, so long since as the 14th of Elizabeth, Chief Justice Dyer and a majority of the other Justices of the Common Pleas laid it down that, when the parties are at issue the Justices may, if the matter be doubtful, found their verdict upon that which appears the most probable, and by the same reason that which is most probable shall be good evidence. . . . *Newis v. Lark* (2). I see no reason to doubt that the present case should be governed by that rule, and the appeal therefore fails.

Appeal dismissed with costs.

Solicitor for the appellant: *Aimé Geoffrion.*

Solicitors for the respondent: *Atwater, Bond & Beaugard.*
