



IN THE PRIVY COUNCIL

No. 53 of 1930 15048

ON APPEAL FROM THE SUPREME COURT OF CANADA

10 **BETWEEN:**

S.S. "LEOPOLD L.D.",
(Defendant) Appellant,

—AND—

HOCHELAGA STEAMSHIP COMPANY, LIMITED,
(Plaintiff) Respondent,

—AND—

20 LOUIS DREYFUS & COMPANY,
(Plaintiff) Appellant,

—AND—

S.S. "HOCHELAGA",
(Defendant) Respondent.

30 **CASE ON BEHALF OF THE RESPONDENTS**

(1) This is an appeal from a judgment of the Supreme Court of Canada rendered 26th September, 1929, varying the trial judgment rendered in the Quebec Admiralty District of the Exchequer Court of Canada on the 13th May, 1928, in two actions for damages by a collision between S.S. "Leopold L.D." and S.S. "Hochelaga". The Hochelaga Steamship Company, Limited (owners of the S.S. "Hochelaga") sued S.S. "Leopold L.D." and Louis Dreyfus & Company (owners of S.S. "Leopold L.D.") sued S.S. "Hochelaga". The trial judge dismissed the action of the Hochelaga Steamship Company, Limited, and maintained the action of Louis Dreyfus & Company, but on appeal to the Supreme Court of Canada the latter court allowed the appeal to the extent of declaring that both vessels were equally at fault in bringing about the collision, and that each is liable for one-half of the whole loss.

Record,
p. 347

RESPONDENT'S CASE

(2) These two cross actions were brought in respect of a collision that occurred at about 2.42 o'clock on the morning of the 17th November, 1926, between S.S. "Hochelaga" and S.S. "Leopold L.D." in the river St. Lawrence. S.S. "Hochelaga" was coming up with the rising tide, which tide S.S. "Leopold L.D." was stemming as she came down the river. The stem and port bow of S.S. "Leopold L.D." struck the port side of S.S. "Hochelaga" about the forepart of the latter's bridge and considerable damage was done to both ships.

Record,
p. 13

(3) The two actions were joined for trial and a single judgment was rendered by the trial court and by the Supreme Court of Canada. The trial judge did not see or hear all the numerous witnesses give their evidence. Depositions previously given at the official enquiry by the Dominion Wreck Commissioner were admitted by consent as evidence in the Admiralty Court, and each of the only two witnesses who appeared at the trial (Captain C. D. Kenny and Pilot E. Pouliot) had given a longer deposition before the Wreck Commissioner. It is submitted that under these circumstances the trial judge was in no better position to appreciate the evidence than are their Lordships of the Privy Council or were the judges of the Supreme Court of Canada. 10

Record,
p. 20

Record,
pp. 310 and 311

(4) The contentions of the respondents are that S.S. "Leopold L.D." broke Articles 18, 19, 25, 28 and 29 of the International Rules of the Road (all of which rules are printed in the record of proceedings) and failed to respect and give effect to S.S. "Hochelaga's" right of way as the latter came up with the flood tide. Furthermore, S.S. "Leopold L.D." not only failed to take her own starboard side of the narrow channel (in accordance with Rule 25) but her pilot admitted that he intended to pass on the opposite side, and he did not even give a signal to indicate that intention. In addition to the requirements of Rule 25 it was proved by an independent navigator that the custom was to meet and pass red to red at the place in question, and Pouliot, the pilot of S.S. "Leopold L.D.", himself testified that that was the proper method of meeting and passing there. 20

Record,
p. 105, l. 7

Record,
p. 133, l. 20

Record,
p. 104, l. 30

(5) The respondents further submit:

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(a) That there is evidence that S.S. "Leopold L.D.'s" officer of the watch (Second Officer S. Perrin) was not in a proper condition to perform his duties in that he was not sober a few hours before the collision. A number of the crew of S.S. "Leopold L.D." signed a circular letter (Exhibit L-8) stating that as members of the watch from midnight to four o'clock on the 17th November they desired to disclose what happened

Record,
Exhibit Vol.,
p. 33

“ I would have been disposed, from the reading of the testimony, to place the liability for the collision wholly upon the ‘ S.S. ‘ Leopold L.D.’ But I am not at liberty to disregard this ‘ finding of fact.’ ”

Record,
p. 346, l. 15

Mr. Justice Smith said:

“ I am, like the Chief Justice, in doubt as to whether the ‘ Hochelaga ’ was at fault at all.”

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(9) It is submitted in this connection:

(a) That S.S. “ Hochelaga ” and her owners should succeed in both the actions, or, in the alternative:

(b) That S. S. “ Leopold L.D.” and her owners should bear much more than one-half of the damages, as their fault was so much greater, or, again in the alternative:

(c) That the judgment of the Supreme Court of Canada should be confirmed with costs.

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REASONS

1. That the intention of S.S. “ Leopold L.D.” to meet and pass S.S. “ Hochelaga ” green to green was a breach of Rule No. 25.

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2. That S.S. “ Leopold L.D.’s ” failure to give any signal in accordance with her intention was a breach of Rule No. 28.

3. That S.S. “ Leopold L.D.” should have kept on her starboard side of the narrow channel in accordance with Rules 18 and 25 and the local custom.

4. That S.S. “ Hochelaga ” had the right of way and S.S. “ Leopold L.D.” should have kept clear of her, as S.S. “ Hochelaga ” was running with the tide and S.S. “ Leopold L.D.” was stemming the tide.

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5. That S.S. “ Leopold L.D.” had no proper lookout.

6. That the officer of the watch of S.S. “ Leopold L.D.” was not in a proper condition to perform his duties.

7. That S.S. "Hochelaga" kept to her own side of the channel and did all she could to induce S.S. "Leopold L.D." to navigate properly.

8. That S.S. "Hochelaga" had to keep on without slackening speed in order to avoid falling off too much on the flood tide.

A. R. HOLDEN.

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CASE ON BEHALF OF THE RESPONDENTS

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