

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of Smith  
and others v. The St. Lawrence Tow Boat  
Company, from the Court of Queen's Bench  
for Lower Canada; delivered 21st March  
1873.*

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Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT COLLIER.

THIS is a suit brought by the owners of the "Silver Cloud" against the St. Lawrence Tow Boat Company, who are the owners of the "Hero," a steam tug which was employed for the purpose of towing the "Silver Cloud" upon the River St. Lawrence from Montreal to Quebec. The suit was brought for negligence in running the "Silver Cloud" aground during a dense fog. Chief Justice Meredith (the Chief Justice of the Superior Court) tried the case originally. He analysed the evidence very closely, and he came to the conclusion that the owners of the "Silver Cloud" were not entitled to recover.

It appears to be clear that when no directions are given by the vessel in tow the rule in the case of tug steamers is, that the tug shall direct the course. The tug is the moving power, but it is under the control of the master or pilot on board the ship in tow.

The "Hero" was towing two vessels, but their Lordships are of opinion that that does not make any difference in this case. If it had appeared that contradictory orders were given by the two vessels, and that the orders of one were

obeyed in opposition to those of the other, the case might have been different. The vessels were proceeding in a dense fog : there were no means of seeing the banks of the river, nor of knowing where they were going : and no doubt there was negligence on the part both of those on board the ship and of those on board the "Hero" in proceeding in the way in which they did during the fog. If the "Silver Cloud" had given orders to the "Hero" to stop, and the "Hero" had neglected to obey those orders, then the negligence would have been solely on the part of the "Hero." But if, on the other hand, those on board the "Silver Cloud" did not give proper orders to the "Hero" to stop, then, it appears to their Lordships, that they were consenting to proceed in the fog, and that they contributed to the accident which occurred. The rule was clearly laid down by Lord Kingsdown in the case of "The Julia." Speaking of the duties of a tug steamer, he says "a tug is to use proper skill  
" and diligence, and is liable for any damage  
" by her wrongful act. When the contract to  
" tow was made, the law would imply an engage-  
" ment that each vessel would perform its duty in  
" completing it : that proper skill and diligence  
" would be used on board each : that neither  
" vessel, by neglect or misconduct, would create  
" unnecessary risk to the other or increase any  
" risk which might be incidental to the service  
" undertaken. If in the course of the per-  
" formance of the contract any inevitable accident  
" happened to the one without default on the part  
" of the other, no cause of action would arise.  
" If, on the other hand, the wrongful act of  
" either occasioned damage to the other, such  
" wrongful act would create a responsibility in  
" the party committing it, if the sufferer had  
" not by any misconduct or unskilfulness on his  
" part contributed to the accident." Their Lord-

ships concur in the opinion expressed by the majority of the Judges in the Court of Appeal that those on board the "Silver Cloud" did contribute to the accident.

The case was tried by Chief Justice Meredith in the Superior Court, and after analysing the evidence he came to the conclusion that they did not give such orders to stop as they were bound to do. Upon appeal to the Court of Queen's Bench, three of the Judges of that Court came to a similar conclusion.

Now, their Lordships are asked to reverse the decision of the Superior Court, and the decision of the majority of the Court of Queen's Bench, upon a question of fact. It would not be right for their Lordships to overrule the decision of those Courts upon such a question, unless they came to a clear conclusion that the Judges of those Courts had come to an erroneous decision. In this case, so far from their Lordships coming to that conclusion, their opinion is in accordance with that of the majority of the judges in the Lower Appellate Court, and in accordance with that of the judge who tried the case (Chief Justice Meredith), that the owners of the "Silver Cloud" did contribute to the accident by their negligence in allowing the "Hero" to proceed in the fog without giving that vessel proper orders to stop, when it was dangerous, and dangerous to the knowledge of those on board the "Silver Cloud," to proceed in the state of the weather in which they were going on.

Under those circumstances, their Lordships will humbly recommend Her Majesty to affirm the judgment of the Court of Queen's Bench, with costs.

