

The Niagara, St. Catharines and Toronto Railway Company - - *Appellants*

v.

The Lakes and St. Lawrence Transit Company - - - *Respondents*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 2ND NOVEMBER, 1925.

Present at the Hearing :

THE LORD CHANCELLOR.

VISCOUNT HALDANE.

LORD SHAW.

LORD CARSON.

[*Delivered by* LORD CARSON.]

Mr. Justice Hodgins, the local judge in Admiralty, who tried this action, held that the bridge tender in charge for the appellants of the operation for opening the bridge on the occasion in question was guilty of negligence and want of reasonable forethought from which the entire consequences flowed. He based his judgment largely upon the admissions of the bridge tender himself, called as a witness on behalf of the appellants. "The evidence of the bridge tender," he says "who operated the motor is in effect that while opening the bridge, and when it was about two-thirds open a gust of wind struck the arm of it and stopped its progress ; that it stopped, trembled and then began to go backward. On its stoppage he applied the hand brake and the wheel brake but failed to check the backward movement which had then begun, and when he at once put on the rail brake the momentum prevented it from attaching itself to the rail. The bridge consequently continued to swing back and struck the ship doing considerable damage." The learned judge was of opinion that the use by the bridge tender of the hand brake

resulted in just enough loss of time to miss the effectual stoppage and locking of the bridge by the rail brake. Upon this view of the evidence he formed the conclusion of negligence already stated and gave judgment for the plaintiffs (respondents) for damages and made a reference to the Registrar to assess them.

At the trial before the learned judge it was urged upon behalf of the defendants (appellants), and it was the main contention before this Board, that the damage occurred by reason of the negligence of the master of the ship in attempting to pass through the bridge before the same was fully open, contrary to certain regulations which provided that no vessel should pass through the bridge until the swing or draw was fully open. The learned judge found as a fact that the bridge was not fully open when the ship began to pass it, but he held that assuming the regulation applied (which was contrary to his own view), it was not proved that the breach caused or contributed to the accident.

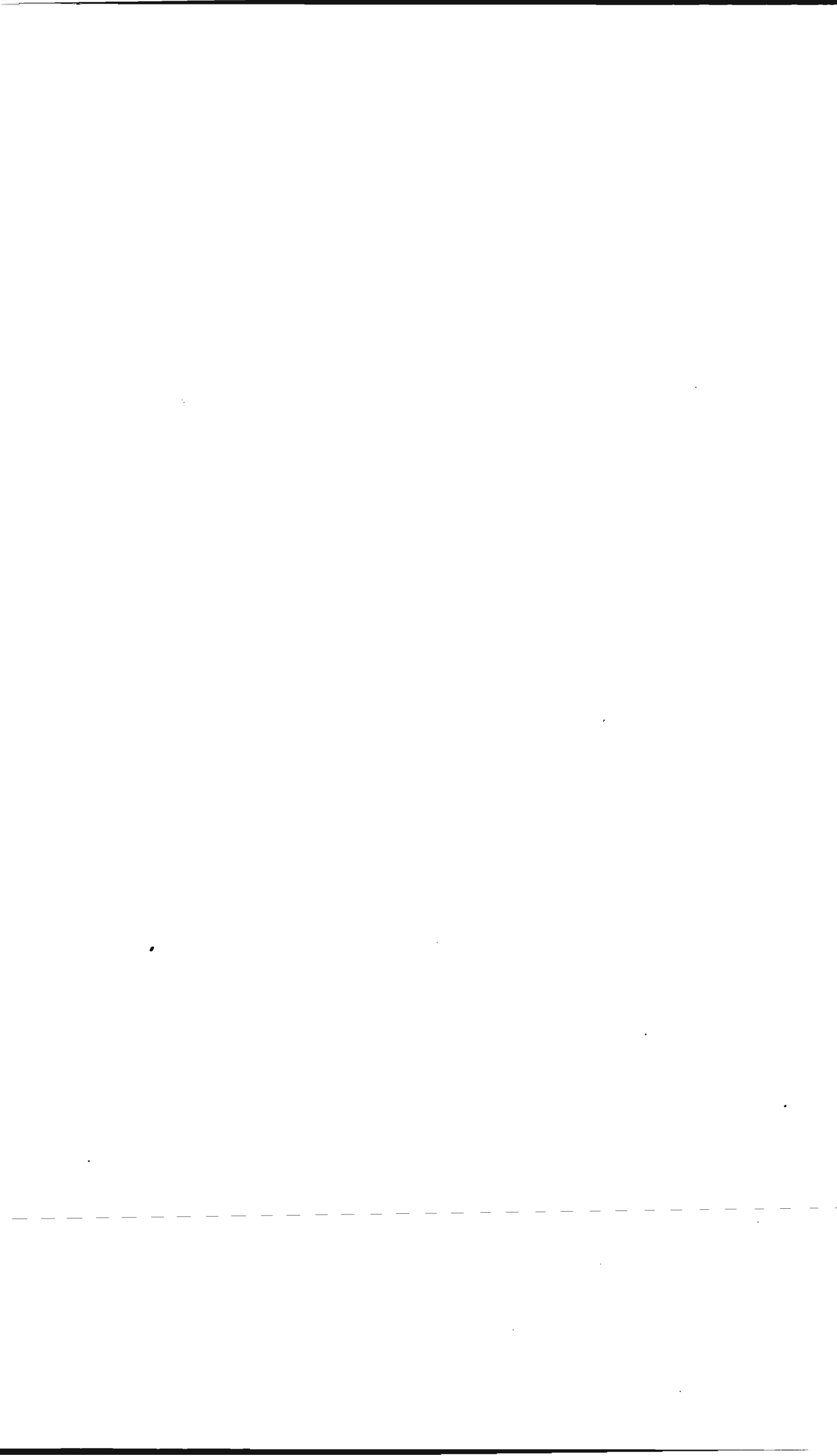
On appeal to the Exchequer Court of Canada the Hon. Mr. Justice Audette reversed the trial judge's decision, holding that, under the regulation already referred to, the onus was on the ship before entering the draw of the bridge to ascertain whether the bridge was fully open and prepared to allow her to pass, and that the action of "The Lakeport" in attempting to pass in what he held to have been an abnormal and gusty wind was the sole cause of the collision.

On appeal the Supreme Court of Canada (Idington Duff and Mignault JJ., Malouin J. dissenting) reversed the decision of the Exchequer Court and restored the judgment of the trial judge.

Their Lordships are of opinion that the conclusions come to by the learned Trial Judge and the Supreme Court are right. They can see no reason for differing from the conclusion come to by the learned Trial Judge and accepted by the majority of the Supreme Court that the collision occurred and the consequent damage accrued through the negligence of the bridge tender as found by the Trial Judge.

As to the contention that the negligence of the bridge tender would not have caused the damage had not the ship come within the gap before the bridge was fully opened their Lordships agree that the determining cause of the accident was not the fact that "The Lakeport" attempted to pass before the bridge was fully opened but that the bridge tender failed to use in time the rail brake, and their Lordships entirely agree with the law as laid down by Mr. Justice Mignault when he says "It is a familiar rule in all negligence cases that notwithstanding the plaintiff's negligence the defendant is liable when by exercising reasonable care he could have prevented the injury. Here the testimony of the respondents' (now appellants') engineer shows that the bridge tender could have averted the accident by using the rail brake when the bridge after wavering a moment began to swing back."

Their Lordships will humbly advise His Majesty that this appeal should be dismissed with costs.



In the Privy Council.

THE NIAGARA, ST. CATHARINES AND TORONTO
RAILWAY COMPANY

v.

THE LAKES AND ST. LAWRENCE TRANSIT
COMPANY.

DELIVERED BY LORD CARSON.

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