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* June 2.
* Oct. 6.

THE OWNERS OF THE STEAMSHIP *PANAGIOTIS TH. COUMANTAROS* (PLAINTIFFS) ..... APPELLANTS;

AND

NATIONAL HARBOURS BOARD (DEFENDANT) ..... RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA, QUEBEC ADMIRALTY DISTRICT

Shipping—Vessel damaged by striking obstruction in harbour—Dredging operations under exclusive control of Department of Marine—Duty and extent of Board in assuring safety of harbour under its jurisdiction—Reasonable care in light of existing circumstances—Knowledge of danger to navigation and lack of warning to interested owners of vessels—Levy of tolls or rates by the Board.

Appellant's vessel, while clearing from the port of Montreal on the 19th of August, 1936, struck an under-water obstruction in the bed of the channel in the harbour and was damaged. During the years of 1935 and 1936, the Government of Canada had undertaken, under statutory authority, to deepen the channel from 30 to 35 feet. By a subsequent Order in Council, the administration, management, construction and execution of such improvement in the Montreal harbour was placed under the exclusive authority of the Department of Marine, and, by a second Order in Council, a contract for dredging was let to a firm of contractors. At the end of June, 1936, that part of the channel abreast of Victoria pier was swept by the respondent, and no dredging was done there up to the 19th of August. On the 12th of that month, some dredging was made above that pier. Dragging at that point by the contractor was observed by an official of this respondent between the 12th and 19th of August; but no sweeping had been done by either the Department of Marine or the respondent

* PRESENT:—Rinfret, Kerwin, Hudson and Taschereau J.J. and Bond J. *ad hoc*.

to test it. After the accident, a boulder of considerable size was found abreast Victoria pier; and it is admitted that that, or a similar one, was the obstruction the appellants' vessel had struck.

Held, Kerwin J. dissenting, that, on the facts disclosed by the evidence, no liability rests upon the respondent.—Although the harbour of Montreal is under the jurisdiction, control and management of the respondent, the execution in 1935 and 1936 of the work of improvement and deepening of the channel was exclusively under the authority of the Department of Marine, a third party over whom the respondent had no control and for whose conduct the respondent cannot be held responsible, respondent's control and administration, so far as such work was concerned, having been interfered with, or superseded by, superior authority.—The respondent's obligation to exercise reasonable care to see that the harbour was safe for navigation still existed; but that duty must be looked at in the light of the existing circumstances. Even assuming that the onus lies upon the respondent, the evidence establishes that reasonable care, under the circumstances, has been exercised by the respondent and that the latter has performed such duty *inter alia* by constant notices to those interested, during the progress of the work. But the respondent was not obliged to drag or sweep in order to ascertain that the work confided to the Department of Marine was being properly done. Only where the respondent knew, or should have known, that danger existed had steps to be taken by it to remove such danger, or suitable warning be given in respect of it.—The levy by the respondent of tolls or rates upon ships using the harbour does not make any difference in principle in respect of its liability of exercising reasonable care.

Per Kerwin J. (dissenting).—The mere fact that the Crown has let a contract for the dredging of the channel has not absolved the Harbour Commissioners, predecessors of the respondent, of all responsibility. Their duty in general is suitably expressed in the words of Lord Phillimore in *Pacific Steam Navigation Co.* v. *Mersey Docks and Harbour Board* (22 Ll. L.R. 383 at 389); and the principles set forth in *The Moorcock* (14 P.D. 64) and in *The Bearn* ([1906] p. 48) should be applied to this case. The Commissioners knew that the dredging operations would throw up obstructions, but, instead of making any examination or warning the appellants of the danger, they did nothing but rely on the sweeping and dragging operations performed by the contractor, which their officers saw proceeding in connection with the dredging. The evidence establishes that, if these operations had been properly performed, the obstruction which caused the damage would have been discovered. In any event, the Commissioners knew of the danger to navigation resulting from probable obstructions and they did nothing to give warning of the danger to the appellants. As a consequence of that breach of duty, the Commissioners, and hence the respondents, are responsible.

Judgment of the Exchequer Court of Canada, Quebec Admiralty District ([1941] Ex. C.R. 188) affirmed, Kerwin J. dissenting.

APPEAL from the judgment of the Exchequer Court of Canada, Quebec Admiralty District, Cannon L.J. (1) dis-

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missing the appellant's action to recover from the respondent damages sustained by their vessel allegedly due to negligence of the respondent.

R. C. Holden K.C. for the appellants.

Bernard Bourdon K.C. for the respondent.

The judgment of the majority of the Court, Rinfret, Hudson and Taschereau JJ. and of Bond J. *ad hoc* was delivered by

BOND J. *ad hoc*.—This is an appeal from a judgment rendered on the 25th June, 1941, by the Hon. Mr. Justice Cannon, District Judge in Admiralty for Quebec, which dismissed the plaintiffs' action, with costs.

The action was one to recover damages sustained by the plaintiffs' steamship *Panagiotis Th. Coumantaros*, through striking an under-water obstruction in the upper part of the Harbour of Montreal, on the 19th August, 1936. The ship in question was a steel screw steamship of Greek registry, 424·4 feet in length, 53 feet beam, 5,839 tons gross, and 3,699 tons net register.

She arrived in the harbour of Montreal on August 13th, 1936, in ballast and, under instructions from the Harbour Commissioners, berthed at the Marine Tower Jetty, to reach which, as also when later she proceeded to sea, she had to pass through the part of the main ship channel of the St. Lawrence river abreast of the Victoria pier in the harbour of Montreal. The ship took on a grain cargo, and paid to the Harbour Commissioners charges against the ship and her cargo totalling $2,787.98. On the 19th August, having completed loading, she was granted a clearance and permission by the harbour master to leave her berth at 2.15 p.m., for the purpose of proceeding on her voyage. She was drawing 26 feet 7½ inches, which was less than the maximum draft of 26 feet 9 inches permitted for that day. The water gauge, showing the depth of water available on that date, registered 29 feet 3 inches, and the clearance exacted by the authorities was 2½ feet for ships under 10,000 tons.

Having backed away from the jetty with the assistance of tugs, and turned her head down the river in about the centre of the channel, or a little to the south of it, she

proceeded down the river, in charge of a qualified pilot, and very shortly after, when abreast of the dividing line between sheds 18 and 19 on Victoria pier, the ship struck an under-water obstruction of a hard nature. She vibrated and slowed down but did not stop, and the obstruction, according to the testimony of the pilot, seemed to roll a little under her as she passed over it. The ship commenced to leak and, by the time Quebec was reached, she was considerably down by the head. Part of the cargo was discharged, and the vessel dry-docked, when an indentation or groove was found in the bottom extending for 190 feet, 14 plates being affected, which damage was, according to the Salvage Association Surveyor, evidently caused by a round or smooth boulder or rock. The cost of the repairs alone amounted to $17,700, besides the loss of earnings, expenses in discharging and reloading the cargo, and other items.

During the year 1935-36, the Government of Canada had undertaken to deepen the channel from 30 to 35 feet under the authority of an Act 25-26 Geo. V, c. 34; (*The Supplementary Public Works Construction Act, 1935*), which Act authorized the Governor in Council to execute and complete the works mentioned in the schedule, and to place the administration, management and execution of such works under such Minister or Department of the Crown as was considered most advisable in the public interest. In pursuance thereof two Orders in Council were passed, the first of which provided that the administration, management, construction and execution of the Montreal Harbour improvement and deepening be placed under the Minister of Marine, subject to the control of the Governor in Council, while the second declared that it was imperative that certain dredging operations be commenced forthwith in the harbour of Montreal, in order to provide for a greater depth of water, and that, as the chief engineer of the river St. Lawrence ship channel reported in favour of the tender of General Dredging Contractors, Limited, authorized the Minister to enter into a contract with that company accordingly, which contract was executed on the 14th August, 1935. The specification attached to this contract provides that the engineer in charge shall be the "Chief Engineer, River St. Lawrence Ship Channel, Department of Marine".

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This specification also includes the following paragraphs:

Navigation.—The contractor must not, under any circumstances, obstruct, inconvenience or delay navigation.

The contractor is hereby warned against the intensive traffic in the port of Montreal, more especially in the upper part of said port. The contractor shall be equipped with drags or other suitable plant to locate and remove immediately all lips or other obstructions caused by dredging or blasting, and shall effect the location and removal of such lips or obstructions prior to the passing of all deep-draft vessels over the area affected by the dredging or blasting, and by the removal of such lips or obstructions, the contractor shall ensure a depth of water in the said area equal to that of the current harbour datum or such depth as indicated by the engineer.

Liability.—The Department will not be responsible for the safety of the contractor's employees, plant or material, nor for any damage which may be sustained by him from any source or cause. The contractor will be responsible for damage done to piers, shipping, or to other property or persons by himself, his agents or servants, as the Department will assume no responsibility in this connection.

In general the contractor is warned that dredging conditions in Montreal harbour present considerable difficulties in the way of very heavy currents, as well as heavy traffic which must be carried at all times.

* * *

The contract itself required the contractor

to perform, complete and finish in every respect * * * all the works required to deepen, dredge out and clear wholly and entirely of all obstructions and materials whatsoever

a 35 feet deep channel in area "A" of the Montreal harbour (which included the deep ship channel abreast the Victoria pier, then 30 feet deep).

The dredging under this contract was started in 1935, and continued in 1936. The work was supervised on behalf of the Department of Marine by Mr. F. S. Jones, presently chief engineer of the St. Lawrence ship channel, but then an assistant engineer, and he had as an assistant Mr. McEwan. They had at their disposal a sounding scow, and the S.S. *Berthier*, to enable them to test the work of the contractors.

From the end of June, 1936, until August 19th, there was no dredging done in the channel abreast of Victoria pier, closer than about 400 feet from the pier. After the June dredging had been completed, that part of the harbour was carefully swept. Mr. Jones testified that, from July 31st to August 7th, these "berms" were constantly being dragged; that it was part of the job, and while the

Department did not do it themselves, they knew it was being done, and had every reason to believe that it was carefully done.

On the 12th August, 1936 (to come down to the approximate time of the occurrence now in question), one of the contractor's dredges started above Victoria pier, on the south bank of the channel, a cut to deepen the channel to 35 feet, and, proceeding downstream, finished that cut on the 19th August, well below the pier. On that day there was an open channel abreast Victoria pier, at least 630 feet wide.

It was well known that dredging was likely to turn up "berm" or ridges, as well as boulders along the edge and at the ends of the cuts. Dragging by the contractor was observed by Mr. Jones between the 12th and 19th of August at this point, but no sweeping had been done by the Department to test it.

The master of the steamship *Panagiotis* advised the agents of the owners of the occurrence on the evening of the 19th by marconigram, and the harbour authorities and Mr. Jones, of the Department of Marine, were also duly advised.

On the following day—the 20th—Mr. Jones swept the berm of the cut in the vicinity of Victoria pier, and found some touches or high spots.

On the 21st August, about 10 a.m., the master of the dredge, working on a second cut abreast Victoria pier, found a boulder lying alongside the cut at about 20 to 25 feet from the dredge. Mr. Jones says it was 430 feet out from Victoria pier. The boulder was one of considerable size, namely, 18 feet long, 10 feet wide and 6 feet high, and weighed about 60 tons. It left a clearance of only $26\frac{1}{2}$ feet. The harbour master was notified, and two Cunard ships about to leave were detained for a couple of hours. The boulder was marked by anchoring the launch belonging to the Department over it, and no further boulders were discovered.

The contractors, under the supervision of the Department, worked at the boulder and, on the evening of the 21st, it was removed or pushed into a depression in the river bed.

There can be little doubt, if indeed any, from the evidence, of which the above is a brief summary, that the

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appellants' ship struck a boulder turned up by the dredging operations in the immediate vicinity, and the learned trial judge so found as a fact.

It is probable that it was another boulder which the vessel rolled along until it also reached a depression in the river bed, leaving ample clearance.

The real question that calls for decision is whether, on the facts disclosed in evidence, any liability rests upon the respondent.

The appellants seek to hold the respondent liable on three principal grounds, namely:

First: The duty and responsibility of the harbour authorities.

Second: The jurisdiction and powers of the Harbour Commissioners of Montreal, and the rates levied.

Third: The failure of the Harbour Commissioners to exercise care.

It will be more convenient to deal with the second ground at the outset.

The *Montreal Harbour Commissioners' Act,* (1894) 57-58 Vic., c. 48, consolidated the earlier Acts on the subject, and defined the boundaries of the harbour, which boundaries, by later amendments, have been varied but it is not disputed that the accident occurred within the boundaries of the harbour.

Section 19 of the Act as replaced by 8-9 Ed. VII, c. 24, provides:

> The harbour of Montreal shall be vested in the corporation, and shall be under its jurisdiction, control and management for the purposes of this Act.

By an amendment (8-9 Ed. VII, c. 24), it was provided as follows:

> Within the limits of the said harbour, the corporation shall have no right in or jurisdiction over the main ship channel of the river St. Lawrence. * * *

But in 1913, by a further amendemnt (3-4 Geo. V, c. 32), the reference to the exclusion of the main ship channel was omitted. Thus it appears that the whole of the harbour, including where the *Panagiotis* struck the boulder, was under the jurisdiction, control and management of the Harbour Commissioners, including the right to control navigation, impose rates for the use of harbour facilities, the whole in virtue of an Act of Parliament.

But, in 1935, as already pointed out, the Parliament of Canada passed the *Supplementary Public Works Construction Act,* the object of which included the improvement and deepening of the harbour of Montreal, and, by Orders-in-Council, under the express authority of that Act, placed the administration, construction and execution of such work specifically under the authority of the Minister of Marine and his Department. The contract with the dredging contractor was signed on behalf of the King by the Acting Minister of Marine, and the official named in the contract and specifications as the engineer in charge of the undertaking was the chief engineer of the river St. Lawrence ship channel, Department of Marine. In other words, for this particular work, the Harbour Commissioners were superseded by superior authority, and their control and administration, so far as concerns this work, was transferred to the Department of Marine and its officials. The respondent could no longer direct how the work was to be performed, but had to adapt itself to these changed conditions.

The respondent was kept advised by the contractors, or the Department, of the progress and location of the work, and the harbour master issued regularly to the shipping interests, pilots and others concerned appropriate notices, and kept them advised.

The contract between the King and the contractor expressly provided that the contractor must not obstruct, inconvenience or delay navigation, and, indeed, about 6,000 vessels entered the harbour in each of the years 1935 and 1936, without any mishap.

But the under-water operations were exclusively controlled by the Department of Marine, a third party over whom the respondent had no control, and for whose conduct, in the execution of the work confided to it, the respondent cannot be held responsible, on this second ground of appeal alone, for the work was done over its head.

The first and third grounds may be considered together. The appellants contend that harbour authorities who invite vessels to use the harbour or harbour facilities for reward, are obliged to exercise reasonable care to see that the harbour is safe for navigation, and if it is not safe, or they have not taken such reasonable care, they are obliged to give warning.

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The appellants also contend that the onus is on the respondent to show that the required care was exercised, and also that the harbour authorities warrant that the harbour under their jurisdiction, management and control is safe for ships invited to use it.

But, as already pointed out, the harbour of Montreal had been placed, for the purposes of this work, under the control of the Department of Marine, and the control by the respondent in this respect was interfered with or superseded. No doubt the respondent was obliged to exercise reasonable care to see that the harbour was safe for navigation, and that duty was performed by constant notices to those interested as to the progress of the work, and the location of the dredges from time to time, as also provision for the removal of such dredges when there was interference with navigation. But the respondent was not obliged to drag or sweep in order to ascertain that the work confided to the Department of Marine was being properly done by the Department's employees. That would be placing the duty of the harbour authorities too high. Where the respondent knew, or should have known that danger existed then, no doubt, steps had to be taken to remove such danger, or to give suitable warning in respect to it. *The Moorcock* (1).

But, in the present instance, there was no reasonable ground for apprehension by the respondent in view of the precautions taken by way of dragging and sweeping by those in charge of the operations. The deputy harbour master, Capt. Perchard, observed the dragging and testing by the contractors being carried out the very morning of the 19th August.

The cases cited on behalf of the appellants establish clearly a duty upon the harbour authorities to take reasonable care that those who choose to navigate the harbour may do so without danger to their lives or property. (*Per* Lord Cranworth, L.C. in *Mersey Docks & Harbour Board Trustees* v. *Gibbs* (2).

But that duty must be looked at in the light of the existing circumstances, as in the present case, where the control of the harbour has been interfered with by a superior authority; and the evidence establishes that

(1) (1889) 6 Asp. M.C. 373. (2) (1864) L.R. 1 E. & I. App. 93, at 122.

reasonable care, under the circumstances, was exercised by the respondent, and this, even assuming that the onus lies upon the respondent. (*The Sound Fisher* (1).)

In the case of *The Orita: Pacific Steam Navigation Co.* v. *Mersey Docks & Harbour Board* (2), in the House of Lords, Lord Phillimore said, at p. 389:

> The duty of the Mersey Docks & Harbour Board to vessels travelling the channel leading to the Mersey has been expressed with accuracy by Bankes, L.J. in his judgment in the Court of Appeal. It is to take reasonable steps to discover from time to time the existence of any wreck or other obstruction in the channel, to remove any such obstruction with reasonable promptitude, and meanwhile to mark it by a buoy or otherwise, so that those in charge of vessels may avoid it. The Harbour Board does not warrant that the channel shall always be free from such an obstruction. But it must provide for frequent inspection so that if any such obstruction should occur it should be promptly discovered, and that the consequential steps should be promptly taken.

The respondent, in the present case, *a fortiori,* cannot be held to a warranty against the work of a third party duly authorized to perform such work.

The fact further relied upon by appellants that the respondent levied tolls or rates upon the ship using the harbour, seems to have little additional bearing upon the matter. The revenue derived by the respondent was not for its own profit, but as a trustee for the benefit of the public. The *Harbour Commissioner's Act* provides explicitly how such revenue shall be applied. But, as Lord Cranworth pointed out, this does not make any difference in principle in respect to the liability (*Mersey Docks & Harbour Board Trustees* v. *Gibbs* (3).) That liability, as already pointed out, is to exercise reasonable care under the circumstances existing at the time, and so far as any control in this respect remained in the respondent over the ship channel in the harbour then being deepened by the Department of Marine, such reasonable care is established.

The present respondent was created by the Act 1 Ed. VIII, c. 42, and succeeded to all the rights and obligations of the former body known as "The Harbour Commissioners of Montreal" prior to the institution of the present action, though at the time of the accident the former body was in existence.

The appeal should be dismissed, with costs.

(1) (1937) 59 Ll. L.R. 123. (2) (1925) 22 Ll. L.R. 383.
(3) (1864) L.R. 1 E. & I. App. 93, at 122.

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KERWIN J. (dissenting).—The appellants are the owners of the steamship *Panagiotis Th. Coumentaros* and the respondents are National Harbours Board. While proceeding to sea from Montreal, the ship struck a hidden obstruction on the bottom of the main ship channel in the St. Lawrence river in the harbour of Montreal. Action was brought by the appellants for a declaration that they were entitled to damages for the injury caused the ship and for a reference to ascertain the amount of such damages. The trial judge found that the obstruction was a boulder which had been turned up in the course and on account of the dredging operations which had been carried on in the vicinity, and that no blame was attributable to the ship. These findings were not seriously challenged before us by the respondents. The trial judge, however, dismissed the action because he considered that, under the circumstances, the predecessors of the National Harbours Board had used reasonable care to insure that the harbour of Montreal, which was under their control at the time of the occurrence, was reasonably safe for the vessels which they had invited to use it.

The predecessors of the respondents were the Montreal Harbour Commissioners and by the *National Harbours Act, 1936,* chapter 42, the present respondents became liable for all lawful claims against and obligations of the Commissioners. The earlier Acts relating to the Commissioners and to the harbour of Montreal were consolidated by *The Montreal Harbour Commissioners Act, 1894* (57-58 Vic., c. 58), which Act defined the boundaries of the harbour and constituted the Commissioners a corporation. It may be assumed, as no question was raised regarding it, that the main ship channel where the accident occurred was part of the harbour of Montreal at Confederation and, therefore, became the property of the Crown in right of the Dominion. In 1909 a new subsection 2 of section 6 of the principal Act was enacted providing that "within the limits of the said harbour the corporation shall have no right in or jurisdiction over the main ship channel of the river St. Lawrence", and subsection 3 stated:

> The Governor in Council may for the purposes of this section define the extent and limits of the main ship channel.

The 1909 Act also repealed section 19 of the 1894 statute and enacted in lieu thereof:

> The harbour of Montreal shall be vested in the corporation and shall be under its jurisdiction, control and management for the purposes of this Act.

In 1913, by 3-4 George 5, chapter 32, subsection 2 of section 6 as enacted in 1909 was repealed in such a way that the exclusion of the Commissioners' jurisdiction over the main ship channel of the river was omitted, and subsection 3 of section 6, which gave the Governor in Council power to define the extent and limits of the ship channel, was also repealed. In 1914, by 4-5 George V, chapter 42, it was provided that notwithstanding anything contained in any of the earlier Acts respecting the harbour, it and all wharves, warehouses, etc., should, subject to the jurisdiction and powers of management and control by law vested in the corporation, be vested in His Majesty in right of His Majesty's Government of Canada and should be deemed to have always been so vested since the first of July, 1867. The corporation was empowered to surrender, transfer and convey to His Majesty the harbour, together with the wharves, warehouses, etc.,

> provided that such surrender, transfer or conveyance shall not be deemed to affect the jurisdiction or powers of control and management of the corporation.

In 1932, by chapter 50, this section was repealed and a new one enacted but so far as this appeal is concerned it is sufficient to note that by it the harbour and all wharves, warehouses, etc., were vested in His Majesty subject to the jurisdiction or powers of control and management of the corporation.

In 1935, by 25-26 George V, chapter 34, entitled *The Supplementary Public Works Construction Act, 1935*, Parliament, for the purpose of stimulating employment, provided that the Governor in Council might authorize the execution and completion of the several public works and undertakings mentioned in schedule A, and for such purposes might authorize the performance of such acts and the execution of such contracts as might be deemed necessary and expedient. By section 5, the Governor in Council might place the administration, management, construction and execution of any of the works under such

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Minister or Department as might be considered most advisable in the public interest. In the schedule, as item 3, appears:

3. Montreal Harbour Improvement and Deepening $3,500,000.

By an Order in Council, the administration, construction and execution of this work was placed under the authority of the Minister of Marine and his department. By a subsequent Order in Council, the tender of General Dredging Contractors Limited for the deepening of the ship channel was accepted and the Minister was authorized to enter into a contract for the purpose, which contract was subsequently executed and operations commenced. By the contract, the engineer in charge of the undertaking was the chief engineer of the St. Lawrence ship channel.

At the time of the accident, therefore, the position appears to be that the Crown in right of the Dominion owned the bed of the channel; that by the Act of 1894 and amendments the management and control of the harbour, which included the bed of the channel at the point where the ship struck the obstruction, rested with the Commissioners; but that, pursuant to the Act of 1935, the Crown as owner undertook to deepen the channel.

No point was made before us that the appellants could not have sued the Commissioners or could not sue the present respondents, and nothing therefore is said with reference to the matter. The question is whether under the circumstances the Commissioners owed any duty to the appellants. The appellants' ship loaded a quantity of wheat from the Commissioners' elevators in the harbour, for which, in accordance with the powers of the Commissioners, the latter levied rates amounting in all to over $1,200. In addition wharfage rates to the extent of more than $500 were also paid by the appellants to the Commissioners. The ship's draft was less than the draft permitted for vessels navigating the harbour and the vessel was granted a clearance certificate. She was in charge of a qualified pilot and she was proceeding in a proper manner when, without any warning and without any knowledge on the part of the pilot or the officers of the appellants, she struck the obstruction.

Does the mere fact that the Crown had let a contract for the dredging of the channel absolve the Commissioners

of all responsibility? Their duty generally could not be better expressed than in the words of Lord Phillimore with reference to the Mersey Docks and Harbour Board in the action brought against it by Pacific Steam Navigation Company (1):

> The duty of the Mersey Docks & Harbour Board to vessels travelling the channel leading to the Mersey has been expressed with accuracy by Bankes L.J., in his judgment in the Court of Appeal. It is to take reasonable steps to discover from time to time the existence of any wreck or other obstruction in the channel, to remove any such obstruction with reasonable promptitude, and meanwhile to mark it by a buoy or otherwise, so that those in charge of vessels may avoid it. The Harbour Board does not warrant that the channel shall always be free from such an obstruction. But it must provide for frequent inspection so that if any such obstruction should occur it should be promptly discovered, and that the consequential steps should be promptly taken.

In *The Moorcock* (2), wharfingers were held liable to the owners of the ship which had grounded after having berthed at the defendants' jetty. The bed of the Thames river adjoining the jetty was vested in the conservators and the defendants had no control over it. They were held liable when the vessel on grounding at low water sustained damage from the uneven condition of the bed of the river, on the ground that they must be deemed to have implicitly represented that they had taken reasonable care to ascertain that the bottom of the river adjoining the jetty was in such a condition as not to cause injury to the vessel.

This decision was followed in *The Bearn* (3), where a railway company, owners of a wharf, were held liable to the owners of a steamship which had been berthed alongside the wharf because, as owners thereof, they had invited the plaintiffs' vessel alongside for profit to themselves and could not rely upon pilots performing a duty cast upon them by their co-defendants, the Shoreham Harbour Trustees, for, in their capacity as wharf owners the railway company had the opportunity of ascertaining the condition of the berth and should, therefore, have either satisfied themselves that it was reasonably fit or warned those in charge of the vessel that they had not done so.

The principles set forth in these two cases should be applied to the present appeal. The Commissioners knew that the dredging operations would throw up obstructions

(1) (1925) 22 Ll. L.R. 383, at 389.
(2) (1889) 14 P.D. 64.
(3) [1906] P.D. 48.

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but, instead of making any examination or warning the appellants of the danger, they did nothing but rely on the sweeping and dragging operations which their officers saw proceeding in connection with the dredging. The evidence dealing with the precautions that were taken by the contractors and the chief engineer of the St. Lawrence ship channel or his assistants indicates that if these operations had been properly performed, the obstruction which caused the damage would have been discovered. In any event the Commissioners knew of the danger to navigation in the channel from obstructions which would undoubtedly be cast up by the dredging and they did nothing to give warning of this danger to any one connected with the appellants either by verbal or written notice or by buoying the limits of the channel within which navigation would be safe. For the consequences for this breach of duty, the Commissioners, and hence the respondents, are responsible.

The appeal should be allowed, the judgment *a quo* set aside and in lieu thereof there should be the declaration and order for reference sought by the appellants. The appellants are entitled to their costs of the action and of this appeal.

Appeal dismissed with costs.

Solicitors for the appellants: *Meredith, Holden, Heward & Holden.*

Solicitor for the respondent: *Bernard Bourdon.*