

QUEBEC ADMIRALTY DISTRICT

1957
Jan. 30 & 31
Mar. 14

CANADA STEAMSHIP LINES LTD. PLAINTIFF;

AND

THE SHIP *WALDEMAR PETER* }
AND HER OWNERS } DEFENDANTS.

Shipping—Action for damages sustained by grounding of vessel caused by alleged negligent operation of defendant vessel—Both vessels to blame—Apportionment of damages—Rule 31 Great Lakes Rules—Courses to be pursued by upbound and downbound vessels in St. Clair River.

The action is brought by the plaintiff company to recover damages sustained as the result of the grounding of its vessel the *Goderich* on the United States shore of the St. Clair River allegedly caused by the negligent navigation of the defendant vessel *Waldemar Peter*.

The Court found that the grounding of the *Goderich* was brought about by the joint and concurrent fault of those in charge of both vessels but that the fault of the *Waldemar Peter* was the greater and more serious and the responsibility should be apportioned between them on the basis of seventy per cent against the defendants and thirty per cent against the plaintiff.

Held: That the *Goderich*, upbound, was at all times to her right of mid-channel and that this should have been seen and appreciated from the outset by those in charge of the downbound *Waldemar Peter* who were negligent and at fault in attempting under such conditions to proceed downstream on the port side of the channel, that fault being all the greater since the *Waldemar Peter* was without means of giving normal and adequate warning of her intentions due to the fact that her whistle and her radio telephone were not operating.

2. That the effect of the fault and negligence on the part of those on board the *Waldemar Peter* was to put the *Goderich* in a position of imminent danger from which it was not possible to extricate herself although all reasonable means were taken in an attempt to do so.
3. That having regard to the currents and the circumstances generally the speed maintained by the *Goderich* was normal and necessary for a vessel of her length in order for her to maintain proper steerageway and even if the *Goderich* committed a technical fault in maintaining her speed, this did not constitute fault or negligence which caused or contributed to the disaster.
4. That those in charge of the *Goderich* were at fault and negligent in not maintaining a proper lookout forward and in failing to comply with Rule 31 of the Great Lakes Rules which required the *Goderich* to sound a danger signal as soon as she had occasion to doubt the intentions of the *Waldemar Peter* to keep to the channel normally reserved for downbound vessels.
5. That in departing from the general rule and practice requiring downbound vessels to navigate the United States channel of the St. Clair River, a downbound vessel is obliged, as a matter of ordinary prudence, to exercise particular care not to follow such a course unless every reasonable means has been taken to ascertain that the Canadian channel is free of upbound traffic which may present danger of collision.

ACTION for damages to plaintiff's vessel.

The action was tried before the Honourable Mr. Justice Smith, District Judge in Admiralty for the Quebec Admiralty District at Montreal.

F. O. Gerity for the plaintiff.

R. C. Holden, Q.C. and *A. S. Hyndman* for the defendant.

SMITH D.J.A.:—The plaintiff, owner of the steamship *Goderich*, sues to recover damages alleged to have been sustained as the result of the grounding of the said vessel on the United States shore of the St. Clair River on the evening of November 21st, 1955, which grounding is claimed to have been a consequence of the negligent navigation of those in charge of the defendant vessel *Waldemar Peter*.

The steamship *Goderich*, whose length is 500 feet and breadth 54 feet, is a steel screw vessel propelled by one set of triple expansion engines. Her full speed is 10 knots per hour and her port of registry is Midland, Ontario.

At about 9.08 p.m. on the 21st day of November, 1955, the *Goderich* fully laden with a cargo of coal and drawing 19 feet three inches forward and 19 feet 9½ inches aft, was proceeding up the St. Clair River on a voyage from the Port of Toledo to the Port of Sault Ste. Marie. She was being navigated at her full speed at about 10 miles per hour and it is alleged that she was holding to the usual upbound course and was at a point in the river approximately off the more southerly of the two red lights lying just north of Bay Point Light on the Canadian shore. It is alleged that at that time the weather was clear, though partially cloudy and that there was little wind. The plaintiff alleges that the *Goderich* was in charge of a competent master, was fully manned and fit for the voyage being undertaken.

The case for the plaintiff is as follows:—In the circumstances abovementioned, those in charge of *Goderich* sighted the lights of a vessel—later known to be *Waldemar Peter*, downbound—that vessel being just north of the Blue Water Bridge and somewhat to the American side of the international line. A one-whistle signal was sounded and, not being replied to, was repeated. On first sighting, the navigation lights of *Waldemar Peter* were not visible owing to the brightness of working lights in and about her decks.

1957

CANADA S.S.
LINES LTD.
v.
THE SHIP
*Waldemar
Peter*
AND HER
OWNERS

1957
 CANADA S.S.
 LINES LTD.
 v.
 THE SHIP
*Waldemar
 Peter*
 AND HER
 OWNERS
 ———
 Smith D.J.A.
 ———

Almost immediately upon sounding of the second whistle signal a green side light on *Waldemar Peter* was sighted— at this time the vessels were some three ship lengths apart and *Goderich* was headed over to the Canadian side of the river. Upon sighting of the green side light aforesaid, it was apparent that *Waldemar Peter* was being so headed as to cross the course of *Goderich*; on sighting of the green side light referred to in the next preceding paragraph, which side light was dim and not readily visible, it was apparent from the course of the approaching ship *Waldemar Peter* that collision between the vessels must ensue if prompt action was not taken. Being thus in a position of danger, the wheel of *Goderich* was put hard to starboard in order to avoid the oncoming vessel, which manoeuvre was successful, the vessels clearing each other by some 30 feet. This manoeuvre placed *Goderich* off and a little to the north of wharf premises situated at Point Edward on the Canadian shore and in such a position of danger that she must strike the shore or take the ground unless action by helm or engines was undertaken. The vessel was put hard over to port, since action by use of engines could not avail in these circumstances; as the result of the manoeuvre recited in the next preceding paragraph, the bow of the ship *Goderich* swung out into the river and, being seized by the force of the down current, her master was unable to bring her head up. The vessel was thus set bodily toward the American shore and, being unable to extricate herself by the use of helm or engines or any seamanlike manoeuvre, took the ground on the American shore approximately opposite the premises of Peerless Cement Corporation, about 9.10 p.m. On this day and date and time aforesaid the current running down under the Blue Water Bridge was estimated at some four miles per hour. Subsequently, by the use of engines and with the assistance of a small local vessel owned by Purdy Fisheries, *Goderich* was freed from the ground and proceeded to her destination.

It is the plaintiff's contention that the grounding and resultant damages to *Goderich* were brought about by the negligent navigation and improper management of the ship *Waldemar Peter* and that those in charge of the navigation of that vessel were negligent, in that; they failed to keep a good lookout; proceeded at an excessive speed; failed to

observe the Rules of the Road for the Great Lakes and more particularly Rules 2, 24, 27, 30 and 31 thereof; failed to take any precautions as dictated by the practice of seamen navigating the Great Lakes and having regard to the circumstances; failed to make use of radio-telephone equipment to give timely warning of her intention, or alternatively, failed to keep such radio-telephone equipment in full and efficient operation as is required by the ordinary practice of seamen navigating in these waters; permitting excessively bright lights to be borne on and about their decks in such a manner as to obscure or render less visible the prescribed navigation lights; failed to answer whistle signals, or alternatively, failed to have a whistle or sound signal in efficient and proper working order; failed to sound a danger signal; so navigated their vessel as to cross upbound traffic without timely warning by whistle, radio-telephone or otherwise and without regard to existing circumstances and conditions; failed to slacken speed, reverse or take timely action to avoid placing *Goderich* in a position of difficulty or danger from which she could not extricate herself and, under reserve of the foregoing, it is alleged that those in charge of the navigation of *Goderich* were placed in a position of difficulty and danger by reason of the negligent navigation or management of *Waldemar Peter*, which made it impossible for those in charge of *Goderich* to avoid the subsequent grounding and the damage resultant therefrom which was brought about and occasioned by the negligent navigation or management of *Waldemar Peter*.

The *Waldemar Peter* is a steel screw motor-vessel of the Port of Cologne, West Germany, 77.13 metres in length and 12.82 metres in breadth, of 2,322.07 tons gross and 1,606.61 tons register, fitted with two 8 Cylinder Diesel Motors of 1,000 h.p., each working on a single shaft. At the time of the accident *Waldemar Peter* was manned by a crew of 26 all told, including a British shipmaster as super-cargo.

The case for the defendants is that: On the evening of the 21st November 1955, *Waldemar Peter*, laden with 654 tons of general cargo, was downbound from Milwaukee, Wisconsin, to Sarnia, Ontario, where she was to load additional cargo at the Government dock. She was carrying regulation navigating lights, which were burning brightly, and a good lookout was being kept on board her. The

1957

CANADA S.S.
LINES LTD.v.
THE SHIP
*Waldemar
Peter*AND HER
OWNERS

Smith D.J.A.

1957
 CANADA S.S.
 LINES LTD.
 v.
 THE SHIP
*Waldemar
 Peter*
 AND HER
 OWNERS
 ———
 Smith D.J.A.
 ———

weather was dark and clear and there was little or no wind. After passing the Port Huron Light vessel off the entrance to the St. Clair River *Waldemar Peter* while coming down on the Point Edward Range met and passed an upbound vessel after sounding a signal of one blast on her whistle. This upbound vessel answered *Waldemar Peter's* one blast whistle signal with one flash on her foremast signal light, as is customary on many upper lake vessels, and the ships passed safely port to port in the usual manner. When *Waldemar Peter* altered to starboard on the Fort Gratiot Range to proceed down towards the Blue Water Bridge her engines were reduced to half speed, and then to slow, and subsequently as she reached the bridge were reduced to dead slow. As is customary for downbound vessels intending to berth at the Government dock at Sarnia *Waldemar Peter* when approaching and after passing through the Blue Water Bridge kept close to the Canadian shore in order to keep in the upstream eddy along that shore and to be able to proceed sufficiently slowly to turn in to her berth at the said Government dock. When in the vicinity of the Blue Water Bridge *Waldemar Peter* met and passed another upbound vessel starboard to starboard. When meeting this vessel *Waldemar Peter*, which vessel had the right of way and the right to choose on which side she intended to pass, attempted to give a signal of two blasts on her whistle to indicate that she intended to keep to port on the Canadian side of the river and to pass green to green, but it was then found that her whistle would not operate. *Waldemar Peter* therefore gave a signal of two flashes on her Morse signal lamp, which signal was answered with two blasts by the upbound vessel, and the ships passed safely green to green in the usual manner. After she arrived at Sarnia it was discovered that a rubber diaphragm or washer in *Waldemar Peter's* tyfon whistle had broken, making it impossible for the whistle to be sounded until the said diaphragm or washer had been removed. It is customary on Canadian and American upper lake vessels to have a signal light on the foremast which lights up when the whistle is sounded, and it is a recognized practice to give passing signals by means of such signal light if the ship's whistle will not function or for some reason cannot be heard. After passing the upbound vessel (hereinabove referred to) green to green,

and while proceeding down close to the Canadian shore those on *Waldemar Peter* observed at a considerable distance ahead the green side light and range lights of another upbound vessel, which turned out to be the *Goderich*. The *Goderich* was coming up the river about in mid-channel or a little on the United States side of the International boundary, and the bearing of her green light was well on the starboard bow of *Waldemar Peter* and her range lights were well open. *Waldemar Peter* was proceeding down close to the Canadian shore and the ships were green to green, and it was clear that if both maintained their respective courses they would pass safely starboard to starboard. As her whistle was temporarily out of commission *Waldemar Peter* gave a signal to the *Goderich* of two distinct flashes on her Morse signal lamp. *Goderich* did not respond to this signal with two blasts or two flashes on her masthead signal light, or sound a danger signal, but gave a cross signal of one blast. *Waldemar Peter* thereupon gave a second signal of two distinct flashes on her Morse signal lamp, but *Goderich* was then observed to be turning to starboard and heading to cross the course of *Waldemar Peter* from starboard to port. To avoid a collision the engines of *Waldemar Peter* were at once rung up to full speed ahead and her wheel was put hard to starboard, and she gave a signal of one flash on her Morse signal lamp. The ships then passed each other safely port to port at a distance of about 100 feet. After passing *Goderich* the engines of *Waldemar Peter* were again reduced to slow, but being then out in the current it was not possible for her to turn in directly to her intended berth at the Government dock at Sarnia and after proceeding past that dock she turned about and proceeded back upstream and turned in to her intended berth. The defendants allege that if the *Goderich* grounded on the American side of the St. Clair River a substantial distance after she passed *Waldemar Peter* on the Canadian side her said grounding and any damage thereby caused were due solely to the improper and negligent manner in which *Goderich* was navigated and to the fault and negligence of those in charge of her, in that: they navigated her at an excessive and improper speed under the circumstances; negligently failed to keep a proper lookout; failed to respect *Waldemar Peter's* right of way; improperly

1957
 CANADA S.S.
 LINES LTD.
 v.
 THE SHIP
*Waldemar
 Peter*
 AND HER
 OWNERS
 —
 Smith D.J.A.
 —

1957
 CANADA S.S.
 LINES LTD.
 v.
 THE SHIP
*Waldemar
 Peter*
 AND HER
 OWNERS
 ———
 Smith D.J.A.
 ———

turned to starboard across the course of *Waldemar Peter*; failed to sound a cross signal or cross signals of one blast; failed to sound any danger signal; failed to slow to a speed barely sufficient for steerageway; failed to slacken speed or reverse the speed of *Goderich* in due time or at all; after passing *Waldemar Peter* safely port to port on the Canadian side of the river, they negligently failed to keep *Goderich* under proper control; failed to make proper use of their helm or engines; negligently directed and continued to direct the course of *Goderich* across the river towards the United States shore until she finally ran aground; failed to exercise the precautions required by ordinary practice of seamen or by the special circumstances of the case; failed to take in due time or at all proper steps to avoid running aground on the United States shore; in contravening Rules 27, 31, 32, 35 and 36 of the Rules of the Road for the Great Lakes and not having sufficient officers or watch on duty. It is alleged that if those on the *Goderich* had navigated her in a proper seamanlike manner she would not have gone aground or sustained damage and that the proximate cause of the grounding was the negligent and improper manner in which she was navigated both before and after she passed *Waldemar Peter*; the grounding of *Goderich* was not due to any fault or negligence on the part of *Waldemar Peter* or those on board her.

The proof is that those in charge of the *Goderich* first sighted *Waldemar Peter* at about 9.08 o'clock near the Blue Water Bridge, the *Goderich* at that time being in the vicinity of Bay Point, approximately 3,000 feet down river from the said bridge and on the Canadian side of the river.

The testimony of those on board the *Goderich* is that they were not in a position to distinguish the navigation lights of the *Waldemar Peter* when she was first sighted, owing to the brightness of working lights on and about her deck, but a one blast signal was sounded by *Goderich* and when no reply was received this signal was repeated. The proof indicates that at the time the second one blast signal was sounded the vessels were about 500 feet apart and almost immediately thereafter those in charge of *Goderich* sighted a green side light on the *Waldemar Peter* and realizing that the vessels were on crossing courses and in

imminent danger of collision, the *Goderich* put her helm hard to starboard with the result that the vessels passed one another port to port at a distance which those on board the *Goderich* estimated at 35 feet while those in charge of the *Waldemar Peter* placed the distance of 100 feet.

The testimony of those on board the *Goderich* is that after clearing the *Waldemar Peter* their vessel was in great danger of collision with the wharf or bank on the Canadian side and that in order to avert this danger and combat the current which runs about 4 knots per hour at this point, the helm of the *Goderich* was first put hard to port and then, as the vessel came out into the channel, it was put hard to starboard in an effort to bring her around to head into the current. This attempt, however, was unsuccessful because of the weight of the current on the vessel's starboard bow and the ship, while proceeding towards the American shore, was also being carried downstream. When her bow reached a point 200 to 300 feet from the United States shore, the engines of the *Goderich* were put full astern and this order was almost immediately followed by the signal for double full astern and the vessel then grounded slightly below the Blue Water Bridge.

The evidence is that the river in the vicinity of and below the Blue Water Bridge presents navigational hazards due to the narrowness of the channel which at the bridge is only approximately 800 feet wide, the configuration of the river and the nature of the currents, cross-currents and eddies which are to be encountered.

The Great Lakes Pilot, Lake Ontario, Lake Erie and Lake St. Clair, 3 Edit. 1953 contains the following directions, page 186:

Regulations. The west channel shall be known as the American Channel and the east channel as the Canadian Channel, and the following traffic rules shall govern on and after July 5, 1921:

Rule 1. All downbound vessels shall navigate the American Channel. All upbound vessels shall navigate the Canadian Channel. Vessels under 100 gross tons and vessels making local stops along these routes are exempt from this rule.

Rule 2. The speed of vessels navigating these channels shall not exceed 9 miles per hour.

Similar directions are to be found in the Great Lakes Pilot (1955) (United States Lakes Survey) p. 281.

1957

CANADA S.S.
LINES LTD.

v.

THE SHIP
Waldemar

Peter

AND HER
OWNERS

Smith D.J.A.

1957

CANADA S.S.
LINES LTD.
v.
THE SHIP
*Waldemar
Peter*
AND HER
OWNERS

Although it was suggested that it was the common practice for vessels, particularly small ones, to proceed downstream close to the Canadian shore if it was the intention to put in at Sarnia, the weight of the evidence is that such is not the general or approved course, although it appears that it is resorted to on occasion.

Smith D.J.A.

While small vessels making local stops are exempted from the obligation imposed by the Rule that downbound vessels are to take the American side of the channel, the Court is satisfied that in departing from the general rule and practice a downbound vessel is obliged as a matter of ordinary prudence to exercise particular care not to follow such a course unless every reasonable means has been taken to ascertain that the Canadian channel is free of upbound traffic which may present danger of collision.

In the circumstances prevailing just prior to and at the time of the occurrences which gave rise to the present action, the burden of care imposed upon *Waldemar Peter* was particularly heavy inasmuch as: (a) it was dark; (b) those in charge of the *Waldemar Peter* stated that they became aware when their vessel was at the Blue Water Bridge and in a position to elect which channel to take that the *Goderich* was upbound; (c) the *Waldemar Peter* was aware at that time she was without the usual means of communicating her intentions to the *Goderich*, since neither her whistle nor her radio-telephone was functioning.

The Court is convinced that it was negligent and poor seamanship for the *Waldemar Peter* in such circumstances to proceed down the Canadian side of the channel. Although an attempt was made on behalf of the *Waldemar Peter* to establish that when the *Goderich* was first sighted she was well towards the United States shore, the weight of the evidence does not support such a proposition. While Captain Crisp, heard as a witness for the defendant, testified that when the *Goderich* was sighted she was about three points on the starboard bow of the *Waldemar Peter* and near the American Reporting Station on the Port Huron side (and although the testimony of Captain Messing was to similar effect) the evidence of Captain Somers, who was navigating the *Waldemar Peter*, is that when he first sighted the *Goderich* she was near the centre of the channel.

On the other hand the testimony of Captain Hall and others is that the *Goderich* passed Bay Point Light well to the Canadian side of the river and was on the course prescribed by the rules for upbound vessels. (See Great Lakes Pilot (Canadian) 1953, page 189.) It is possible that the explanation of the testimony of Captains Crisp and Messing to the effect that when first sighted the *Goderich* was seen over the *Waldemar Peter's* starboard bow and apparently near the American side of the river, is that the river takes a bend about midway between Bay Point and Blue Water Bridge, so that the starboard navigation light of the *Goderich* would, in all likelihood, at a certain time have been open to the *Waldemar Peter* and the *Goderich* would have appeared to be on the American side of the channel.

1957
 CANADA S.S.
 LINES LTD.
 v.
 THE SHIP
*Waldemar
 Peter*
 AND HER
 OWNERS
 —
 Smith D.J.A.
 —

I am satisfied that the weight of the evidence establishes that when the *Goderich* was first sighted by the *Waldemar Peter* she was to her right of mid-channel and that at no time did she cross to the United States side.

The Court is convinced that when those on board the *Waldemar Peter* testified that when the vessels were 1,500 feet apart the *Goderich* swung suddenly to starboard and came across the bow of the *Waldemar Peter* they were in error, the explanation being that what appeared to these witnesses to be a change of course to starboard on the part of the *Goderich* was nothing more than the change of position of the two vessels in relation to the bend in the river and such was the opinion of the Assessors.

The Court finds therefore that the *Goderich* was at all times to her right of mid-channel and that this should have been seen and appreciated from the outset by those in charge of the *Waldemar Peter* who were negligent and at fault in attempting under such conditions to proceed downstream on the port side of the channel, and the fault of the *Waldemar Peter* was all the greater having regard to the fact that she was without means of giving normal and adequate warning of her intentions.

In my opinion the effect of this fault and negligence on the part of those on board the *Waldemar Peter* was to put the *Goderich* in a position of imminent danger from which it was not possible for her to extricate herself although all reasonable measures were taken in an attempt to do so.

1957
 CANADA S.S.
 LINES LTD.
 v.
 THE SHIP
*Waldemar
 Peter*
 AND HER
 OWNERS
 Smith D.J.A.

It was argued strongly that the *Goderich* was at fault particularly in that she was proceeding at full speed right up to the time of the grounding, and failed to maintain a proper lookout or sound danger warnings when she first became uncertain as the intentions of the *Waldemar Peter*.

I have sought the advice of the Assessors with regard to the matter of speed and I am advised that having regard to the currents and the circumstances generally the speed maintained by the *Goderich* was normal and necessary for a vessel of her length in order for her to maintain proper steerageway. I am advised, moreover, that even if the engines of the *Goderich* had been put at slow ahead as soon as those in charge of her became doubtful as to whether the *Waldemar Peter* intended to keep to the American side of the channel, it would have made little, if any, difference in the result, and that moreover it is problematical what effect such action would have had upon the ability of those in charge of the *Goderich* to control her. The advice of the Assessors on this aspect of the case accords completely with my own views and the conclusion I reach is that even if the *Goderich* committed a technical fault in maintaining her speed, this did not constitute fault and negligence which caused, or contributed to, the disaster.

On the other hand, I am persuaded that there was fault and negligence on the part of those in charge of the *Goderich* in that they failed to maintain the lookout forward which should have been kept, and particularly in that they failed to comply with Rule 31 of the Great Lakes Rules, which required the *Goderich* to sound a danger signal as soon as she had occasion to doubt the intentions of the *Waldemar Peter* to keep to the channel normally reserved for downbound vessels. This rule reads as follows:

31. If, when steam vessels are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving the danger signal of several short and rapid blasts of the whistle, not less than five, and if both vessels shall have approached within half a mile of each other, both shall immediately be slowed to a speed barely sufficient for steerageway and, when necessary stopped and reversed, until the proper signals are given, answered and understood, or until the vessels shall have passed each other.

I have considered with the Assessors the argument advanced on behalf of the defendants to the effect that in any event the proximate cause of the grounding was, not what occurred prior to or at the time of the meeting of the vessels but was rather the faulty and unseamanlike handling of the *Goderich* after the vessels had met and cleared in safety port to port. In particular it was argued that the grounding might have been avoided if the *Goderich*, as she should have done, had gone full astern when confronted with the danger of striking the dock or bank on the Canadian side.

I am convinced however by the evidence and having regard to the advice of the Assessors that the *Goderich* was faced suddenly with an emergency resulting from the action taken by her to avoid collision with the *Waldemar Peter*, and that having regard to the circumstances Captain Hall acted without negligence and exercised reasonable competence in the manner in which he handled his ship.

The Assessors advise me that in the circumstances to have gone astern would have been merely to invite disaster, having regard to the current and nature of the channel, and this is a conclusion which appears to me to be altogether reasonable.

On the whole therefore the Court finds that the grounding of the *Goderich* was brought about by the joint and concurrent fault of those in charge of both vessels, but that since the fault of the *Waldemar Peter* was the greater and more serious responsibility should be apportioned between them on the basis of 70% against the defendants and 30% against the plaintiff.

There will be judgment accordingly; the costs to be borne by the parties in the same proportion, namely, 70% by the defendants and 30% by the plaintiff; and in the event that the parties fail to agree as to the amount of damages, there will be a reference to the Registrar for the assessment of same.

Judgment accordingly.

1957
CANADA S.S.
LINES LTD.
v.
THE SHIP
*Waldemar
Peter*
AND HER
OWNERS
—
Smith D.J.A.
—