

THE QUEBEC ADMIRALTY DISTRICT

Quebec
1966
Aug. 25-26
Ottawa
Aug. 31

BETWEEN :

JEAN BERNIER and DEVONA }
LAROSÉE } APPELLANTS;

AND

THE MINISTER OF TRANSPORTRESPONDENT.

Shipping—Canada Shipping Act, 1952 R.S.C., c. 29, sections 558, 568(1)(a) —Contravention of the appropriate rules of the International Regulations for Preventing Collisions at Sea, 1954 and amendments, Rules 16(a)(c), 22, 25—Erratic and illegal manoeuvring—Appeal allowed—Order of the Commissioner, Justice François Chevalier, revoked.

This is an appeal from the decision of the Commissioner, Justice F. Chevalier, appointed by the Minister of Transport, to hold a formal investigation pursuant to section 558 of the *Canada Shipping Act, 1952*, R.S.C. c. 29, into the circumstances of the collision which occurred on the St. Lawrence River between the *M/V Lawrencecliffe Hall* and the *SS. Sunek*, on November 16, 1965.

The Commissioner's decision rendered on March 16, 1966, held that the collision was contributed to by the wrongful acts or defaults of the Master and Pilot of the *SS Sunek* and also of the Master and Pilot of the *M/V Lawrencecliffe Hall* Devona Larosée and Jean Bernier, the only appellants herein.

As a result of this decision, *inter alia*, Pilot Bernier of the *M/V Lawrencecliffe Hall* lost his right to pilot ships for a period of six (6) months to commence from the 19th of March, 1966, and his pilotage license was suspended for that period of time.

Then, Captain Devona Larosée, Master of the *M/V Lawrencecliffe Hall*, was penalized by a suspension of his Master's certificate for a period of four (4) months, said suspension to commence from the 19th day of March, 1966.

The above decision was appealed only by the Pilot and the Master of the *M/V Lawrencecliffe Hall*.

The suspension of the certificate of the appellants by the Commissioner was based on the authority of section 568(1)(a) *Canada Shipping Act, 1952*, R.S.C. chapter 29.

Held, That in the Court's view the determination of the position of the *M/V Lawrencecliffe Hall* on the south side of the channel at the time of the collision by the Commissioner based on the course recorder only, leaves much to be desired, and does not possess the cogency required to establish this point with any certainty.

2. That the course reflected in the course recorder chart is in conflict with the evidence of seven witnesses, two of whom are independent witnesses, the pilot and assistant pilot of another vessel, the *Chios*. They both stated that the *Chios* had no trouble meeting the *M/V Lawrencecliffe Hall* shortly before the collision, said *M/V Lawrencecliffe Hall* was well on its side of the channel at a lateral distance of some 800 feet.

1966
 BERNIER
et al.
v.
 MINISTER OF
 TRANSPORT

- 3 That the course recorder chart is further subject to caution in view of the additional evidence supplied at this appeal by Marcel Deschenaux who was in charge of the course recorder on the *M/V Lawrencecliffe Hall* and who stated under oath that on the day of the collision the repeater was one to three degrees low and had to be adjusted from time to time. That indicates that she was on her side of the channel
4. That evidence throws some doubt on the accuracy of the recorder chart, and this document is not of sufficient cogency to lead to the conclusion that the *M/V Lawrencecliffe Hall* was on her wrong side of the channel and was crossing ahead of the *SS Sunek* in violation of Rule 22.
5. That Rule 16(c) applies only to cases where a vessel "detects the presence of another vessel forward of her beam before hearing her fog signal or sighting her visually in order to avoid a close quarters situation". The preponderance of the evidence is that the *SS Sunek* had been sighted by the *M/V Lawrencecliffe Hall* one and a half miles away upstream on her wrong side of the channel, and even at times beyond its northern limit, and this rule therefore would have no application here
- 6 That the *SS Sunek* would not have collided with the *M/V Lawrencecliffe Hall* had she not suddenly changed her course to starboard in an attempt to cross over to her side of the channel.
7. That it appears that the *M/V Lawrencecliffe Hall* was, prior to the collision, on the starboard side of the channel and therefore there can be no application of Rule 25 which requires that in a narrow channel a vessel should keep to the starboard side of such channel.
8. That the *M/V Lawrencecliffe Hall* at the time of the collision was navigating at a moderate speed "having careful regard to the existing circumstances and conditions" and therefore did not violate Rule 16(a) of the *Regulations for Preventing Collisions at Sea*.
- 9 That it would appear that the *M/V Lawrencecliffe Hall* took one of the very limited means of action available to avoid the *SS Sunek* in the very short period of time at its disposal, which would have been successful had not the *SS Sunek* in another erratic and dangerous manoeuvre and in direct contravention of the appropriate Rules of the *International Regulations for Preventing Collisions at Sea*, suddenly altered course to starboard.
10. That the suspension of Pilot Bernier's pilotage license and of the certificate of competency of Captain Larosée therefore appears to be unwarranted under section 568 of the Act.
11. That this appeal is allowed and the Order of the Commissioner is hereby revoked with costs against the respondent.

APPEAL from the decision of the Commissioner, Justice François Chevalier, penalizing Pilot Jean Bernier and Captain Larosée by a suspension of his right to pilot and of his Master's certificate.

Hon. Léopold Langlois, Q.C. and *Reynold Langlois* for appellants.

Kenneth C. Mackay for respondent.

NOËL J. (*concurring in by DUMOULIN J.*):—This is an appeal from the decision of the Commissioner, Mr. Justice François Chevalier, appointed by respondent, the Minister of Transport, to hold a formal investigation pursuant to section 558 of the *Canada Shipping Act, 1952 R.S.C.*, chapter 29, into the circumstances of the collision which occurred on the St. Lawrence River between the *M/V Lawrencecliffe Hall* and the *S.S. Sunek* on November 16, 1965. This decision which was rendered on March 19, 1966, held that the collision was contributed to by the wrongful acts or defaults of the Master and Pilot of the *S.S. Sunek* and also of the Master and Pilot of the *M/V Lawrencecliffe Hall*, Devona Larosée and Jean Bernier, the appellants herein. As a result of this decision, Pilot Bender of the *S.S. Sunek* lost his right to pilot ships for a period of nine (9) months and his pilotage license was suspended for that period of time; Captain Syversen, Master of the same ship, was penalized by a suspension of his Master's certificate for a period of six (6) months, said suspension to commence from the 19th of March, 1966; Pilot Bernier of the *M/V Lawrencecliffe Hall* lost his right to pilot ships for a period of six (6) months to commence from the 19th of March, 1966, and his pilotage license was suspended for that period of time. Captain Larosée, Master of the *M/V Lawrencecliffe Hall*, was penalized by a suspension of his Master's certificate for a period of four (4) months, said suspension to commence from the 19th day of March, 1966.

1966
 BERNIER
et al.
 v.
 MINISTER OF
 TRANSPORT

The above decision was appealed only by the two appellants, the Pilot and Master of the *M/V Lawrencecliffe Hall* and the Court here in this appeal will deal only with those matters relative to their particular and respective cases.

It should be mentioned that the two appellants were suspended between March 19 and April 12, 1966, at which date an order was made by this Court staying execution of the terms of the suspension order.

The conclusions reached by the Commissioner with regard to the appellants are recited at pages 44, 45 and 46 of his Report reproduced hereunder:

CONCLUSIONS DERIVED FROM THE EVIDENCE:

From all these facts, the Court draws the following conclusions as to the cause of the collision:

1—Both ships were, when it occurred, on their wrong side of the channel;

1966
 BERNIER
et al.
 v.
 MINISTER OF
 TRANSPORT
 Noël J.

2—Both ships were driven at an excessive speed, considering the visibility and the weather conditions prevailing in that area;

3—In the case of the *Sunek*, she followed an erratic and dangerous course, first, by passing outside of the channel, then, trying to re-enter into it too fast and at an angle which would normally, because of her length, make her reach for the Northern limit of the channel, and force her to try, at the same speed, another sharp turn to the right, when poor visibility precluded such a speed and such a manoeuvre;

4—In the said case of the *Sunek* she has also contributed to the unavoidability of the collision by not reducing immediately her speed when it was found that no sounding devices were in operating condition;

5—In the case of the *Lawrencecliffe Hall*, she was directed in a course which was irregular, and in the false assumption that the *Sunek* was outside of the channel, and North of the Northern buoy

5—THE CONDUCT OF THE CREWS
 IN THE CASE OF PILOT BERNIER:

The Court finds that he violated *Rule 16, Paragraphs (a) and (c)* of the Regulations for Preventing Collisions at Sea, which enacts as follows:

"A) Every vessel, or sea plane when taxiing on the water, shall, in fog, mist, falling snow, heavy rainstorms or any other conditions similarly restricting visibility, go at a moderate speed, having careful regard to the existing circumstances and conditions.

...

C) A power driven vessel which detects the presence of another vessel forward of her beam before hearing her fog signal or sighting her visually, may take early and substantial action to avoid a close quarters situation but, if this cannot be avoided, she shall, so far as the circumstances of the case admit, stop the engines in proper time to avoid collision and then navigate with caution until danger of collision is over."

He also violated *Rule 25* of the said Regulations, which stipulates that:

"In a narrow channel, every power-driven vessel when proceeding along the course of the channel, shall, when it is safe and practicable, keep to that side of the fairway or midchannel, which lies on the starboard side of such vessel."

He also acted contrary to *Rule 22*, which states:

"Every vessel, which is directed by these Rules, to keep out of the way of another vessel, shall so far as possible, take positive action to comply with this obligation and shall, if the circumstances of the case admit, avoid crossing ahead of the other "

IN THE CASE OF CAPTAIN LAROSÉE:

The same faults reproached to Pilot Bernier are to be retained against him. He was the Master of the *Lawrencecliffe Hall* and he was on the bridge when the manoeuvres were made. He had a duty to obey the above mentioned regulations and his default, in particular, to order a reduction of the speed of the vessel when visibility became dangerously low, are delicts that contributed to a major extent to the collision.

The suspension of the certificate of the appellants by the Commissioner was based on the authority of Section 568(1)(a), *Canada Shipping Act*, 1952 R.S.C., chapter 29, reproduced hereunder:

568. (1) The certificate of a master, mate, or engineer, or the license of a pilot may be cancelled or suspended

(a) by a court holding a formal investigation into a shipping casualty under this Part, or by a naval court constituted under this Act. If the court finds that the loss or abandonment of, or serious damage to, any ship, or loss of life, has been caused by his wrongful act or default, but the court shall not cancel or suspend a certificate unless one at least of the assessors concurs in the finding of the court;

The matters involved in this appeal were presented in two well prepared factums by both parties and argued very ably by Counsel. The pertinent evidence was reviewed by the Court assisted by two competent and experienced assessors, Pilot Richard Albert Barrett and Captain Ian MacDiarmid, both of whom hold a certificate of competency as master foreign going.

From such material and after due deliberation, the Court is of the view that the determination of the position of the *M/V Lawrencecliffe Hall* on the south side of the channel at the time of collision by the Commissioner based on the course recorder only, leaves much to be desired, and does not possess the cogency required to establish this point with any certainty, having regard to the fact that the course reflected in the course recorder chart (D-56) is in conflict with the evidence of seven witnesses, two of whom are independent witnesses, the pilot and assistant pilot of another vessel, the *Chios*, which, coming downstream, shortly before the collision, met the *M/V Lawrencecliffe Hall* coming upstream, opposite the St. François wharf. They both stated that the *Chios* had no trouble meeting the *M/V Lawrencecliffe Hall* which was well on its side of the channel at a lateral distance of some 800 feet. The course recorder chart is further subject to caution in view of the additional evidence supplied at this appeal by Marcel Deschenaux who was in charge of the course recorder on the *M/V Lawrencecliffe Hall*, and who stated under oath that on the day of the collision the repeater was one to three degrees low and had to be adjusted from time to time.

1966

BERNIER
et al.
v.MINISTER OF
TRANSPORT

Noël J.

1966
 BERNIER
et al.
 v.
 MINISTER OF
 TRANSPORT
 Noël J.

A variation of one degree in this recorder would indicate that the *M/V Lawrencecliffe Hall* was on a true course of 213° prior to the collision, which would indicate that she was on her side of the channel. This does throw some doubt on the accuracy of the recorder chart, and evidence based on this document is not of sufficient cogency to lead to the conclusion that the *M/V Lawrencecliffe Hall* was on her wrong side of the channel and was crossing ahead of the *S.S. Sunek* in violation of rule 22.

Rule 16(c) in our view applies only to cases where a vessel "detects the presence of another vessel forward of her beam before hearing her fog signal or sighting her visually in order to avoid a close quarters situation". The preponderance of the evidence is that the *S.S. Sunek* had been sighted by the *M/V Lawrencecliffe Hall* one and a half miles away upstream on her wrong side of the channel, and even at times beyond its northern limit, and this rule therefore would have no application here. The *S.S. Sunek* indeed would not have collided with the *M/V Lawrencecliffe Hall* had she not suddenly changed her course to starboard in an attempt to cross over to her side of the channel.

In view of the conclusion reached by this Court on the doubtful reliability of the course recorder chart, and relying on the evidence adduced at the inquiry, it appears that the *M/V Lawrencecliffe Hall* was, prior to the collision, on the starboard side of the channel and therefore there can be no application of rule 25 which requires that in a narrow channel a vessel should keep to the starboard side of such channel.

We now come to rule 16(a) which the Commissioner held had been violated by both the appellants. This rule states that "every vessel . . . shall . . . in falling snow . . . or any other condition similarly restricting visibility go at a moderate speed having careful regard to the existing circumstances and conditions".

The evidence establishes that the *M/V Lawrencecliffe Hall* maintained throughout its course to the time of collision a constant speed of approximately 14 knots which the Commissioner, under the prevailing circumstances, held to be excessive, notwithstanding the fact it was a ship that

could be slowed down at once because it had a variable pitch-propeller as well as a bridge-control type of engine control. There is no question that this is the speed at which the vessel was maintained and the only matter to be determined is whether such speed was a contributive cause of the collision as it is admitted that the main cause or causes of the collision are the defaults and wrongful acts of those navigating the *S.S. Sunek* which proceeded on an erratic course down the North Traverse Channel, on its wrong side of the channel, and at times beyond its northwesterly limit, which it could do although its draft was 31 feet 2 inches (31'2") as the depth at this point is 30½ feet (30½'), the tide had been rising for one hour, pushed by a north-east wind which would have allowed sufficient depth for navigation.

That the *S.S. Sunek* was partly or largely beyond the northwesterly limit of the North Traverse Channel immediately prior to the collision is further substantiated by the fact that she came across the channel from its northwesterly side to its south-easterly side on a course of 055° and struck the *M/V Lawrencecliffe Hall* in the latter's starboard side.

In the extremely embarrassing position in which the *M/V Lawrencecliffe Hall* was placed as a result of the erratic courses followed by the *S.S. Sunek* from the time the latter entered the North Traverse Channel to the point of the collision (which courses apparently took her from outside the channel on its south-eastern side to its northwestern side and at times even beyond that limit), it would appear that the *M/V Lawrencecliffe Hall* took one of the very limited means of action available to avoid the *S.S. Sunek* in the very short period of time at its disposal (i.e. approximately 50 seconds—as the combined speed of both vessels was 24 knots and the distance which separated both ships was 2,000 feet—which was to alter course to port, which she did, and which would have been successful had not the *S.S. Sunek*, in another erratic and dangerous manoeuvre and in direct contravention of the appropriate Rules of the International Regulations for Preventing Collisions at Sea, suddenly altered course to starboard to a final heading of 055° in an attempt to re-enter the North Traverse Channel and reach its proper side.

1966

BERNIER
et al.
v.MINISTER OF
TRANSPORT

Noël J.

1966
 BERNIER
 et al.
 v.
 MINISTER OF
 TRANSPORT
 ———
 Noël J.
 ———

It would further appear from the evidence that an attempt to stop the *M/V Lawrencecliffe Hall* may not have been successful within the distance of 2,000 feet, at which distance the *S.S. Sunek* was apparently when it commenced its final and fatal manoeuvre, as it would take the *M/V Lawrencecliffe Hall* one half mile to stop at the speed then being maintained.

Until that moment, the personnel on the bridge of the *M/V Lawrencecliffe Hall* had no reason to believe that a collision was imminent or even possible because although the *S.S. Sunek* was following an illegal course in coming downstream, that course was not a converging course to the *M/V Lawrencecliffe Hall*.

It would also appear than an attempt to crash stop the *M/V Lawrencecliffe Hall* at this stage may not have been anymore successful and might even have resulted in creating a worse danger under the prevalent circumstances, in that her manoeuvrability and control would have been seriously impaired, her bow would have tended to swing to port or to starboard, and if struck by the *S.S. Sunek* in either position it would, in all probability, have sunk and largely blocked the channel.

Under the existing circumstances a reduction of speed may not have been successful either in assisting the *M/V Lawrencecliffe Hall* to avoid the collision which then instead of occurring amidships as it did might well have occurred somewhere further towards its bow. In such an event she might have been struck in her forward accommodation thus possibly causing loss of life as well as of ship.

Although a reduction of speed by the *M/V Lawrencecliffe Hall* upon entering the channel would have been a good precautionary measure, a finding under the circumstances of this particular case that the speed of the *M/V Lawrencecliffe Hall* was a contributing cause as required by section 568(1)(a), *Canada Shipping Act*, R.S.C. 1952, chapter 29, can, in our view, be nothing more than mere speculation.

The situation created by the erratic and illegal manoeuvring of the *S.S. Sunek* placed the *M/V Lawrencecliffe*

Hall in an impossible position from which it could attempt to extricate itself by a last minute manoeuvre only, which might have been the manoeuvre adopted, or one of a very limited number of others, none of which however, regardless of the speed of the vessel, could, under the circumstances be attempted with any significant degree of success.

The suspension of Pilot Bernier's pilotage license and of the certificate of competency of Captain Larosée, under the particular circumstances of the present case, therefore appears to be unwarranted under Section 568 of the Act.

It therefore follows that this appeal is allowed and the order of the Commissioner that Captain Devona Larosée's Master certificate be suspended for a period of four (4) months from March 19, 1966, and that the Pilotage license of Jean Bernier be suspended for a period of six (6) months from March 19, 1966, be and is hereby revoked with costs of the present appeal against the respondent.

1966
 BERNIER
et al.
 v.
 MINISTER OF
 TRANSPORT
 Noël J.