TORONTO ADMIRALTY DISTRICT 1925

THE PINE BAY STEAMSHIP COMPANY. PLAINTIFF; April 28.

AGAINST

THE SHIP *CHARLES DICK*

Collision—Moored ship—Standing by—Vigilance.

Held, that in a case of collision with a moored ship the onus of proving that she was properly and securely fastened to the dock, in view of

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perils which she should have anticipated, is upon the moored ship, and a duty lies on her to do all that is possible in the circumstances to render a collision or accident less probable. The degree of vigilance to be exercised must depend on the possible danger to be anticipated and guarded against (1).

2. In a narrow channel where vessels are passing or are expected to pass, standing by is necessary on the part of the moored ship, unless she intends to rely entirely on the sufficiency of her fixed moorings or on a warning to approaching vessels.

3. The use of a canal is undertaken upon the conditions imposed by the rules governing that use, and that a vessel which, in deliberate breach of such a canal regulation, keeps her engines moving while passing a moored ship, is responsible for the consequent damage. She is not excused because she could not pass without keeping her engines going, unless her safety requires her to pass the moored ship when she does, or unless she takes adequate precautions to avoid injury.

ACTION for damages by collision between the steamer *Pine Bay* and the steamer *Charles Dick* in the Welland Canal.

Toronto, April 14th, 1925, and following days.

Action now tried before the Honourable Mr. Justice Hodgins.

Mr. W. Law for plaintiff.

R. I. Towers, K.C. and *F. Wilkinson* for defendant.

The facts are stated in the reasons for judgment.

HODGINS L.J.A., now April 28th, 1925, delivered judgment (2).

This is an action for damages alleged to have been suffered from a collision between the steamers *Pine Bay* and *Charles Dick* in the Welland Canal, or consequent upon the passing in the canal by the *Charles Dick* of the *Pine Bay*, then moored to Beattie's dock, whereby the latter was torn from her moorings and injured by contact with the bank. What happened took place at about 1.40 a.m. of the 24th October, 1923. The *Pine Bay* is a steel vessel of 1,222 gross tons, 218 feet long, 34 feet beam and 15 feet depth, and was loaded with 54,000 bushels of wheat and drew 14 feet. The water in the canal being low she tied up at Beattie's Dock waiting for it to rise. While there the *Charles Dick* went by with her engines going at 3 miles an hour (dead slow) a slight adverse current estimated at 1 mile causing her to pass over the ground at 2 miles. The

(1) Note: See Pine Bay SS. Co. v. The *Steel Motor*, (1925) Ex. C.R. 147.

(2) An appeal has been taken to the Exchequer Court.

Charles Dick is a steel vessel 244 feet in length, 43 feet beam, 14 feet depth and of 2,015 registered and 650 registered tonnage.

During the passage of this vessel she created the usual movement of the water in the canal, and its interaction caused the *Pine Bay's* after moorings to part. She swung across the channel and it took about $\frac{3}{4}$ of an hour to get a line out and to work her back and remoor her. When this was done an additional steel cable was put out aft.

I find on the evidence that the *Charles Dick* moving under the power of her engines past the *Pine Bay* caused the breaking of the lines, and the consequent swing but I am not able to find that any actual collision between the two ships took place.

[His Lordship here discusses the evidence.]

I have come to the conclusion and so hold, that the *Pine Bay* was insufficiently moored in view of the conditions existing at the time when she ought and should have apprehended what happened. The onus to show that she was properly and securely fastened to the dock in view of perils which she should have anticipated, is upon her. *The Harley* v. *Wm. Tell* (1). Beattie's wharf as described in the evidence is a stageing, and was neither intended for nor was in fact a mooring wharf. There was a notice on it against trespassing. No proper provision existed upon it for the reception of the lines or cables, so that what could be done depended on where posts were found to which to tie. The photographs put in indicate this, and the evidence of Gothard makes this fact quite clear. The canal is narrow there, so that it was to be expected that the action of the water would be strongly felt. It is clearly shown that many vessels did in fact pass during the day and the canal was known to be a busy thoroughfare. A duty lay on the moored ship to do all that was possible in the circumstances to render a collision or accident less probable. *The Pladda* (2); *St. Aubin* (3). The cases which deal with an anchored vessel are equally applicable to one that is moored. I also refer to the statement of Maclennan L.J.A. in the *Geo. Hall Coal Co.* v. *C.P. Ry.* (4),

(1) [1865] 13 L.T. 413.
(2) [1876] 2 P.D. 34.
(3) [1907] P. 60.
(4) [1925] Ex. C.R. 70, at p. 78.

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the degree of vigilance to be exercised * * * must depend on the danger to be anticipated and guarded against.

There was, somewhat astern of the *Pine Bay,* a good and sufficient concrete Government dock with ample facilities for safely tying up. I was pressed with a decision of my brother Maclennan in this court given in Montreal, in a case involving this same vessel at the same place, several hours later during the night following this accident. I do not know on what facts the view was arrived at by the learned judge and his assessors, that the mooring there was sufficient, and that Beattie's Wharf was *a safe place.* It is not of course binding upon me as it must depend on facts and conditions which may be, and indeed, in one respect, are, different from those developed before me. That particular respect is that there had been an additional wire cable put out after the accident here in question. But it is nevertheless with some considerable hesitation that I venture to differ from it. My own experience would lead me to appreciate highly the value of spring lines running from amidships, fore and aft, and I may perhaps refer to a decision of the Judicial Committee in a case of *Playfair* v. *Meaford Elevator Company* (1), as indicating that in that court the general concensus of nautical opinion was shown to regard the use of these lines as usual in proper mooring. What happened here would not in my opinion have occurred had they been in use on the night in question. They lead fore and aft and are properly springs, while the breast lines referred to in the *Steel Motor* case lead from the vessel at a right angle and do not give any power to aid bow or stern when either the fore or aft moorings part. Some of the fastenings of the cables in board were such as to render the taking up of any slack really impossible. The Montreal decision is, I think, distinguishable on two other points. It appears from that judgment that when *Steel Motor* was approaching, the *Pine Bay* sounded a signal for reduced speed and that *Steel Motor* disregarded the warning and passed at too great a speed. This produced an unusual effect, i.e., damaging the winch, something which was not to be expected if the speed had been reduced. It is also said that

the *Pine Bay* could not be expected to have had men standing by to ease her lines as other vessels passed by.

(1) [1912] 24 O.W.R. 946.

This conclusion may be supported by the fact that a warning signal having been given, it would not be expected that it would be disregarded and that in consequence the men would not stand by on the assumption that it would not be obeyed. Upon the evidence before me I must hold that no such signal was given, although sworn to by the wheelsman and watchman of the *Pine Bay,* and corroborated by the mate (Piement) who, however, was down below in bed and was not clear as to some matters which, if he had been alert, he would not have had any doubt about. Upon the evidence here, I arrive at the conclusion and so hold, that standing by is necessary where vessels are passing or expected to pass, unless the moored ship intends to rely entirely on the sufficiency of her fixed moorings or on a warning to approaching vessels. The mate of the *Pine Bay* said that if on duty he would have had a man on the winch all the time and that in the daytime when vessels were passing the watchman and wheelsman handled the winches and gave play to the lines when needed. See the *Excelsior* (1); *The Hornet* (2); *Ogilvy* v. *Richelieu & Ontario Nav. Co.* (3). The taking up and letting out of slack is essential where a vessel is lifted up in the water and drawn forward and aft or sideways. The crew of the *Pine Bay* admit this was their duty as they understood it, and one of them says that if slack had been taken up there would have been no collision. Notwithstanding this the winches were not used.

Generally speaking the evidence given by several of the plaintiffs' witnesses and some on the other side did not impress me by its clearness or candour, and I have had in some measure to arrive at conclusions directly contrary to statements made before me. The Master of each vessel was rather garrulous and frequently obscured the situation instead of clearing it up.

I have further arrived at the conclusion, after some doubt, that the defendant ship is also to blame. She was proceeding at night—a rainy one according to her witnesses, past a ship tied up at a point in the canal and to a so-called dock which was known to the officers of the pass-

(1) [1868] 2 A. & E. 268. (2) [1892] P. 361, at p. 365.
(3) [1908] 11 Ex. C.R. 231.

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ing ship according to their evidence not to be safe or suitable for tying up. She did not warn the *Pine Bay* in any way that she was intending to steam past. It is not denied, and indeed it was asserted by the defendant, that to carry the *Dick* past the *Pine Bay,* her engines needed to be kept moving. She did so and so broke Canal Rule 19, and was a vessel deliberately using the canal under forbidden conditions. It was urged that (1) the rule could not be obeyed, (2) that the provision in the rule rendering the violator of it liable for damages was ultra vires, as being an invasion of civil rights which the Dominion Parliament could not authorize, (3) that Rule 37 (under the Canadian Shipping Act) applied and governed.

As to the first point, if literal obedience to the order, which is quite clear, would in effect, according to the uncontradicted evidence here, forbid passing at all unless the engines were moving, or the risk of an accident was taken, then it must follow that a vessel essaying to break the regulation must assume responsibility for the consequences resulting from that step. The alternatives are to stop and wait or to slow down and obtain permission, or to warn in time to enable precautions to be taken. It is not shown by any evidence that the *Dick* could not tie up and wait till daylight so as to try to obtain consent or more favourable or less dangerous conditions.

It is not necessary to consider whether the latter part of Rule 19 is ultra vires or can be supported ancillary to the right to legislate as to canals. If the condition imposed by that Rule is one on which the use of the canal is undertaken then I think that if its breach caused damage, Admiralty law would warrant the court in imposing liability therefor quite apart from the rule itself. Rule 37 does not, under the situation proved, apply here.

I think the Canal Regulations are binding on those using the canal. See *Canadian Sand and Gravel Co.* v. *The Key West* (1). My reference to Canal Rule 22 in the *Lakes & St. Lawrence Transit Co.* v. *Niagara St. Catharines & Toronto Ry. Co.* (2), was merely directed to the fact that the Railway Board had no authority to direct how navigation in the canal should be regulated. That belonged to another

(1) [1917] 16 Ex. C.R. 294. (2) [1923] Ex. C.R. 202.

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authority. This case differs from one relied on by the defence, the *George Hall Coal Co.* v. *SS. Parks Foster* (1), in that here the breach of the regulation directly caused the accident, although it was impossible to pass without the risk of an accident, unless the rule was disregarded.

I therefore find both vessels to blame and the result is that judgment must go for the plaintiff for half the damages, the amount of which will be referred to the Registrar at Toronto to fix. There will in consequence be no costs to either party.

Judgment accordingly.