

ONTARIO ADMIRALTY DISTRICT

1953
Jan. 7, 8 & 9
Jan. 29

BETWEEN:

COLONIAL STEAMSHIPS LIMITED . . . PLAINTIFF;

AND

THE SHIP WINNIPEG DEFENDANT.

Shipping—Action for damages—Failure to discharge onus of showing collision was caused by the faulty navigation of defendant ship—Action dismissed.

Held: That in an action for damages arising out of a collision between two ships in the Soulages Canal the onus is on plaintiff to show by a preponderance of evidence that the damage to its ship was caused by the faulty navigation of defendant ship and since that onus has not been discharged the action must be dismissed.

ACTION by plaintiff to recover damages allegedly caused by defendant ship.

The action was tried before the Honourable Mr. Justice Barlow, District Judge in Admiralty for the Ontario Admiralty District, at Toronto.

Peter Wright and F. O. Gerity for the plaintiff.

R. C. Holden, Q.C. for the defendant ship.

The facts and questions of law raised are stated in the reasons for judgment.

BARLOW, D.J.A. now (January 29, 1953) delivered the following judgment:

An action arising out of a passing on the 3rd day of November, 1951, about 0455 hours E.S.T. by the Ship *George M. Carl*, hereinafter called the *Carl* which was downbound and the ship *Winnipeg* which was upbound in the Soulages Canal east of Lock 5, when the plaintiff alleges that by reason of the faulty navigation of the *Winnipeg* the *Carl* rubbed the bank of the canal and damaged certain plates on her starboard side and twisted her rudder stock necessitating repairs costing about \$25,000.

Each ship is about 250 feet long with a beam of about 43 feet. The canal has a width at full depth of 96 feet and a width from bank to bank of 162 feet.

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The plaintiff alleges that the *Carl* observed the *Winnipeg* when about a mile distant. The plaintiff then pleads as follows:

The *George N. Carl* kept her course and dead slow speed, sounding one blast. This was answered by one blast from the *Winnipeg*. When some 300 feet, or so, from the *Winnipeg* the course of the *George M. Carl* was altered to starboard so that the vessels might safely pass. When it was seen that the *Winnipeg* had not altered course the wheel of the *George M. Carl* was put to starboard in an endeavour to clear the *Winnipeg*. As the ships neared each other the *Winnipeg* was seen to be headed for the *George M. Carl* and it appeared that she would strike amidships. The wheel of the *George M. Carl* was then put to port to straighten the ship in line with the canal bank and to avoid collision. The *George M. Carl* struck the east bank of the canal, and the *Winnipeg* coming on at speed struck the port quarter of the *George M. Carl* and drove her heavily into the canal bank, causing extensive damage.

The defendant, the ship *Winnipeg* observed the *Carl* when about one and a half miles distant, and then pleads as follows:

When the vessels were about half a mile apart passing signals of one short blast were exchanged, and the engines of the *Winnipeg* were at once reduced to slow, and shortly afterwards to dead slow. When the ships were still two or three ship's lengths apart the *Carl* was seen to have gone against or too close to her starboard bank and there appeared to be danger that she would get out of control and sheer out towards the *Winnipeg* when passing. The *Winnipeg* had been coming up in the centre of the canal and at the time was commencing to direct her course gradually to starboard in order to take her own starboard side and to meet and pass the *Carl* in the usual and proper manner. When it was seen that the *Carl* had got too close to her starboard bank too soon the course of the *Winnipeg* was directed further to starboard, in order to try to keep clear of the *Carl* if the latter should sheer, and when the ships met their bows cleared by a greater distance than usual. As the ships passed the *Winnipeg* straightened up, and while passing she was completely on her own starboard side of the canal. The *Carl* had ample water in which to pass safely, but was not under proper control, and shortly before the sterns of the ships cleared one another the stern of the *Carl* came out towards the *Winnipeg* and her port quarter rubbed the port side aft of the *Winnipeg* lightly while passing, but without doing any damage to either ship. When it was seen that the ships were going to rub the *Winnipeg* was given port wheel, but her stern was over against or close to her starboard bank and it was not possible for the *Winnipeg* to avoid the rubbing which occurred. After rubbing lightly the ships cleared one another and the *Carl* proceeded on down and the *Winnipeg* up in the centre of the canal.

The above quoted pleadings set out the facts which each party endeavoured to prove. There is some conflict between the evidence of the Captain and Mate of the *Carl* and the evidence of the Captain and Mate of the *Winnipeg*.

I was impressed with the demeanour in the witness box of the Captain and Mate of the *Winnipeg* and accept their evidence where it conflicts with that of the Captain and Mate of the *Carl*. Clearly the two ships did not pass within 1,000 feet of Lock 5 as is sworn to by the Master of the *Carl*. The passing took place at least three-quarters of a mile east of Lock 5. The evidence clearly establishes that the rub of the two vessels on their port quarters did not move either ship out of her course and did not drive the *Carl* into the canal bank causing damage as alleged by the plaintiff. The evidence establishes that it was a normal passing. The port quarters merely rubbed slightly as the ships cleared one another.

When the *Carl* was dry-docked at the end of the season it appeared that she at some time had suffered damage to certain of her plates on the starboard side, which damage could have been suffered by the rubbing of the canal bank. If this damage was suffered during the voyage in question, and at or about the time the two ships passed, the evidence satisfies me that it was caused before the passing and by reason of the faulty navigation of the ship *Carl* as she approached the *Winnipeg*. I accept the evidence of the Captain and Mate of the *Winnipeg* as to the course of the *Carl* and as to the course of the *Winnipeg* as the two ships approached each other. Furthermore, the onus is upon the plaintiff to show by a preponderance of evidence that the damage to the *Carl* was caused by the faulty navigation of the *Winnipeg*. There is not sufficient evidence to satisfy me that the navigation of the *Winnipeg* caused the *Carl* to rub the bank of the canal.

The evidence as to the twisting of the rudder stock is most unsatisfactory and does not show how this damage could have been suffered at the time of the passing of the ships. The rudder of the *Carl* would be about 21 feet from her starboard side. At no time was the *Carl* in such position in the canal as to cause her rudder to come in contact with the bank. Again the onus is upon the plaintiff and this onus has not been satisfied.

For the above reason the action will be dismissed with costs.

Judgment accordingly.

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