

NOVA SCOTIA ADMIRALTY DISTRICT.

1913
 Oct. 6.

WILLIAM NORMAN RHEINHARDT
 .And Others..... PLAINTIFFS.

AND

THE STEAMSHIP *CAPE BRETON*.

Shipping—Collision—Fishing Vessel—Loss of prospective catch of Fish—Measure of Damages.

In a case of collision between a steamship and a fishing schooner owing to the fault of the former, by which the fishing vessel is so much injured as to prevent her continuing on her trip to the grounds, the fair measure of damages is the estimated value of a prospective catch of fish by the injured vessel had she been permitted to prosecute her trip.

THIS was a claim against the defendant steamship *Cape Breton* for the sum of \$10,000, arising out of a collision with the plaintiff's schooner *Guide* in Halifax Harbour, in the Province of Nova Scotia, on the 7th day of July, 1911.

The trial took place before the Honourable Mr. Justice Drysdale, Local Judge of the Nova Scotia Admiralty District, on the third day of April, A.D., 1913.

J. A. McLean, K.C., and *W. A. Henry*, K.C., for the plaintiff.

H. Mellish, K.C., and *W. C. McDonald*, for the defendant ship.

On October 6, 1913, the Local Judge pronounced in favour of the plaintiff and condemned the defendant ship in the amount to be found due to the plaintiff, and ordered that an account be taken, and referred the same to the Registrar (assisted by two merchants) to report the amount due.

The evidence taken before the Registrar showed that the plaintiff's schooner *Guide* at the time of the collision, was on her way to the Grand Banks off Newfoundland on a fishing trip, and that by reason of the collision she was compelled to return to Halifax and be repaired and these repairs could not be completed before the fishing season was over.

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In addition to the injury to the *Guide*, she also lost part of her permanent outfit and nearly all of her supplies. After the collision, the plaintiffs chartered another vessel, the *Speculator*; a few tons larger than the *Guide*, put the same crew in her and sent her on the same fishing trip, she arriving at the Banks about two weeks later than the *Guide* should have arrived there.

The *Speculator* on this trip, caught about 700 quintals of fish. By the evidence, the prospective catch of the *Guide* would have been 980 quintals.

H. Mellish, K.C., for the defendant ship.

The defendants are entitled to be credited with the net amount earned by the *Speculator*, as she was chartered by the plaintiffs, took the place of the *Guide* and finished out the latter's trip. They are also liable for the repairs of the *Guide*, the charter money paid for the *Speculator* and any other expense.

A ship gets her freight in damage and interest in the repairs and disbursements. They also get the profits of the voyage and interest on the outlay.(1)

The plaintiffs are only entitled to interest at the rate of five per cent per annum as that is the legal rate in Canada.

The rate of interest allowed in the Admiralty Registry in England is four per cent.(2)

There was no special agreement here to pay a larger rate of interest.

(1) Roscoe on Collisions, p. 113; *The Gleaner* 3 Asp. M.C. 582 *T. Argentino*, L.R. 13 P.D. 191.

(2) Roscoe on Collisions, p. 3

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R. E. Harris, K.C., for the plaintiffs.

In this case the defendant ship has been found to be wholly to blame for the collision and the rule as to damages in such cases is, *restitutio in integrum*. The *Speculator* was an independent venture of the plaintiffs, financed with their own funds and had no reference whatever to the trip of the *Guide*. Had the *Speculator* trip proved a failure, could the defendant vessel have been compelled to share the loss with the plaintiffs? If not, then the defendants are not entitled to participate in the profits. The *Guide* was so badly damaged that she could not make her usual fishing trip and the plaintiffs are entitled to be allowed the full amount of the estimated profits thereof, without any deduction whatever (1).

The plaintiffs are entitled to interest at 7% from the time the repairs to the *Guide* were completed, say two months after the collision up to the date of judgment, as they have sworn that the money was worth 7% to them, had the defendant paid it then. (2)

The Registrar reported fixing the damages due the plaintiffs by the defendant's ship at \$8,404.70. He held that the defendants were entitled to be credited with the net profits of the fishing trip of the *Speculator* and that 5% interest should be charged.

Of the above sum of \$8,404.70, the sum of \$2,606.19 was allowed for the vessel's loss of voyage.

The plaintiffs move before the judge to vary the report of the Registrar and two merchants in allowing only \$2,606.19 for the vessel's loss of voyage, claiming that the Registrar erred in deducting from the amount allowed to the plaintiffs for the loss of the fishing voyage of the plaintiff's vessel the net profits of a fishing

(1) *The Mediana*, (1900) A.C. at p. *Kate* (1899) Prob. 165.
 121, explaining the "*City of Peking*"; (2) *The Gertrude*, 12 P.D. 204. *The Risoluto*, 8 Prob. D. 109; *The Kong Magnus*, (1891) P.D. 223.
Greta Holme, 8 Asp. M.C. 317; *The*

voyage of the schooner *Speculator* and asked that the said amount be increased.

The motion was argued before the Honourable Mr. Justice Drysdale, Local Judge of the Nova Scotia Admiralty District, on December 23, 1913.

W. A. Henry, K.C., for the plaintiffs;

H. Mellish, K.C., for the defendant vessel.

DRYSDALE, LO. J.—The damages here were referred to the Registrar and two merchants and assessed at \$8,404.70.

This is a motion to vary the report made thereon and to increase the amount allowed the owners of the *Guide* by some \$522. This motion is based first on an allegation that the people employing the ship for the substitute trip were not in fact the same people as the owners of the *Guide*, but I find in referring to the Registrar that the owners were the same in both cases.

The Registrar, in arriving at the damages, adopted the seemingly well settled rule in Admiralty in allowing in such a case as we have here the loss occasioned the owners of the *Guide* based on a prospective trip and catch, as if no injury had happened the *Guide*. This I think, is correct, and I am quite unable to detect any error in the calculations made upon the examination of the proof submitted.

I am of opinion the plaintiffs have recovered, according to the report and proofs upon which the same is based, full compensation for any damages sustained.

It was also argued that it was error to take into account the substituted trip, but the rule in this connection is too well settled to admit of controversy at this date.

I dismiss the motion to vary with costs, and confirm the report.

Judgment accordingly.

Solicitor for plaintiffs: *J. A. McLean.*

Solicitor for ship: *W. H. Fulton.*

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Reasons for
Judgment.