

1923  
Feb. 6.

QUEBEC ADMIRALTY DISTRICT

GEORGE HALL COAL COMPANY OF } PLAINTIFF;  
CANADA, LIMITED . . . . . }

AGAINST

THE SHIP *PARKS FOSTER*

*Shipping—Collision—Canal Rules and Regulations No. 19 and 22b and Rules of the Road for Great Lakes—Burden of Proof—No presumption of contributing to accident by non-observance of Rule.*

The collision took place in the Cornwall Canal, above Lock 18. The *P.F.* coming down, tied to the south bank to permit of the *S.D.* coming out of the lock to pass. The *S.D.* started out of the lock at slow speed, and when her bow was about opposite that of the *P.F.* the down current (between 2 and 2½ miles an hour) caught her port bow, causing her to sheer to starboard, and her master signalled for ½ speed ahead to give her steerage way. She was allowing for all possible space between the vessels.

As the *S.D.* left the lock, the mate of the *P.F.* went astern to look after the stern line. A second line was lying on the deck, but was not used. As he arrived aft, the *P.F.* began to surge ahead and he eased the stern line which was attached to the capstan. The *P.F.* moved ahead about 10 feet and stopped, and thereupon the mate took the line off the capstan, and had a deck hand on the bank remove the line from snubbing post and carry it forward to the next, 75 feet distant. In the meantime he was hauling in the slack by hand, and placed his end on the bollard. While this change was being made, the stern of the *P.F.* swung out into the canal, and, as the *S.D.* was passing, she began to surge astern, the mate slackening on the stern line; her stern went out 15 to 20 feet from the bank and her port quarter came into collision with the rail of the *S.D.*

*Held*, upon the facts, that the breach of Rule 19 of the Canal Rules and Regulations by the *S.D.*, in not stopping her engines while passing, did not cause or contribute to the collision, but that the immediate and proximate cause thereof was defendant's non-observance of Rule 22b in changing the stern line at the time and in the manner aforesaid.

- 2. That the burden of proof was upon the defendant to show that non-observance of the Rule 19 caused or contributed to the accident, as non-observance by itself creates no presumption. *Fraser v. Aztec*, 19 Ex. C.R. 454 at p. 467.

ACTION by plaintiff to recover damages sustained by reason of a collision in the Cornwall Canal above Lock 18. January 30th and 31st, 1923.

Case now heard before the Honourable Mr. Justice Mac-  
lennan at Montreal.

*A. R. Holden, K.C.* and *R. C. Holden* for plaintiff;

*Francis King, K.C.* and *W. B. Scott* for the ship *Parks Parks Foster*.

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

MACLENNAN L.J.A., now (February 6th, 1923), delivered judgment.

The plaintiff is the owner of the Steamer *Senator Derbyshire* and sues for damages resulting from a collision with the Steamer *Parks Foster* in the Cornwall Canal, and for costs.

The plaintiff's case is that in the afternoon of 27th May, 1922, the weather being fine and clear with no wind, the Steamer *Senator Derbyshire* upbound left Lock 18 of the Cornwall Canal after the *Parks Foster* was made fast to the south bank about 300 feet above the upper gates of the lock, and as the *Senator Derbyshire* was passing the *Parks Foster* at a suitable distance and speed the stern line of the latter was let go and her stern swung away from the bank and her port-quarter struck the port side of the *Senator Derbyshire* causing serious damage; that no blame in respect of the collision is attributable to the *Senator Derbyshire* or those on board her, but on the contrary the collision was due solely to the fault and negligence of the *Parks Foster* and those on board her; that the *Parks Foster* improperly let go some of her lines and put her engines in motion while the *Senator Derbyshire* was passing; that the *Parks Foster* broke Rules 22 (b), 27 and 46 of the Canal Rules and Regulations and Rules 37 and 38 of the Rules of the Road for the Great Lakes; that she gave improper signals, was not provided with proper or sufficient lines or bawzers and the same were improperly handled; that she did not have competent or sufficient men attending to her lines and did not have competent or sufficient officers or watch on duty, and the plaintiff claims a declaration that it is entitled to the damages proceeded for, a condemnation

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of the defendant and its bail in such damage and in costs, to have an account taken of such damage and such further and other relief as the nature of the case may require.

The case of the defendant is that shortly before the collision the *Parks Foster* on a voyage from Toledo, Ohio, to Montreal, laden with a cargo of coal, had arrived in the Cornwall Canal at a point 300 feet or more above the upper gates of Lock 18 and was there securely moored at the southern bank of the canal to await the passage of an up-bound steamer then in Lock 18, which proved later to be the *Senator Derbyshire* belonging to plaintiff; that the weather was fine and clear and there was practically no wind. While the *Parks Foster* lay securely moored the *Senator Derbyshire* left the lock and approached the moored steamer and when the bows of the two steamers were almost abreast a signal of four bells was heard given from the bridge to the engine room of the *Senator Derbyshire*, and her engines were accordingly turned full speed ahead and she came on at excessive speed. Immediately a signal of three blasts was blown to her on the main whistle of the *Parks Foster* as a signal to check down, but the *Senator Derbyshire* continued at full speed with the result that her suction drew the stern of the *Parks Foster* away from the canal bank and subjected the stern moorings of that steamer to such excessive and dangerous strain that those in charge of the *Parks Foster* eased these moorings gradually to prevent parting; that the stern of the *Parks Foster* remained at all times clear of the centre of the canal; the stern of the *Senator Derbyshire* as she continued to pass at excessive speed and too close was drawn by the suction towards the *Parks Foster* and the port side of the *Senator Derbyshire* abreast of the boiler house hit the *Parks Foster* on the portquarter at the knuckle of the stern; that those in charge of the *Senator Derbyshire* were negligent and disregarded their duty in coming up to the *Parks Foster* at excessive speed and in increasing speed as she passed and in failing to check down when signalled so to do, in violating Canal Regulation 19, which required her to have her engines stopped while passing the *Parks Foster* moored to the bank, in not keeping to her own side

of the canal and at a safe distance from the *Parks Foster* and in failing to make any reasonable allowance for the risk of accident and in unnecessarily crowding into the southern bank of the canal, in not controlling her helm and in not observing Rule 38 of the Rules of the Road. No blame for the collision is attributable to the *Parks Foster* or to any of those on board her, and defendant claims the costs of the action and such further and other relief as the nature of the case may require.

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The Canal at Lock 18 and for fifty feet above the lock has a width of about 45 feet. At that point a guard pier on the north side runs out about 175 feet and ends at a point about 80 feet from the south side of the canal. On the south side of the canal there is a straight stone wall running westward past a railway bridge which crosses the canal about 850 feet from Lock 18. The passage way for boats in the canal at this bridge has a width of 100 feet from the south wall. In the reach between the end of the guard pier and the railway bridge the canal varies in width on top of the water from 175 to 200 feet. The north bank of the canal is of clay and stone and is slanting from the top of the bank out into the canal. Opposite the end of the guard pier there is a headrace to a paper mill through the north bank. This headrace is about 80 feet wide. The current down the canal from the railway bridge sheers towards the north bank, part of the water escaping through the headrace and part going over a waste weir on the north side of the canal. When the *Parks Foster* came down through the opening at the railway bridge she tied up to the south bank about half way from the railway bridge to Lock 18, two wire cables being put out from the bow, one leading head and the other leading astern. From her stern a six-inch hemp hawser was put out from the capstan on the poop and was fastened to a snubbing post astern of the ship. The length of the *Parks Foster* was 248 feet, her beam 39 feet 6 inches, and being moored about half way between the bridge and the lock her stern was about 300 feet below the railway bridge and her bow was about 300 feet above the upper gates of Lock 18.

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As the *Parks Foster* tied up to the south bank the *Senator Derbyshire* came into Lock 18 and upon the opening of the upper gates of the lock she started up at slow speed taking about ten minutes to get clear of the lock. When she got through the narrow passage between the south bank and the guard pier already referred to and her bow arrived about opposite the bow of the moored vessel, the down current there bearing to the north side of the canal in the direction of the headrace to the paper mill caught her port bow and she began to sheer to starboard. The down current was from two to two and a half miles per hour, she had her helm hard astarboard and her mate, who was at the wheel, asked the master, who was standing beside him, to give her more speed, and the master then sounded four bells to the engine room and she was put at half speed. The master of the *Parks Foster* testified that he heard these four bells and at once gave three short blasts on the steam whistle of the *Parks Foster* intending that as a signal to the other steamer to check her speed. The master and mate of the upbound steamer testified that the signal they heard was two short blasts followed by a short interval and then one short blast. They did not understand what the signal meant and the *Senator Derbyshire* continued at half speed which was not greater than three and a half to four miles through the water, and taking into account that the down current was from two to two and a half miles, the speed of the upbound passing the moored steamer would be in the neighbourhood of one and a half miles per hour. It is clearly established by the evidence that the only signals given from the bridge of the *Senator Derbyshire* to her engine room, from the time she started to leave the lock until after the collision, was one bell when she started, slow, and four bells when she was put at half speed. There was no second signal of four bells as was suggested at the trial. The distance between the steamers when the *Senator Derbyshire* was put to half speed and their pilot houses were abreast was about 15 to 20 feet. The purpose of putting the upbound steamer at half speed was to give her steerageway, which was necessary in order not to be carried too much by the current to starboard

towards the north bank and also in order that she might safely pass through the opening of the canal at the railway bridge. This opening, as already stated, is on the south side of the canal and was 300 feet above the stern of the moored steamer. As the *Senator Derbyshire* left the lock the mate of the *Parks Foster*, who was then forward, went astern to look after the stern line which had been put out when she moored. Another line was lying on the deck astern but had not been put out. There was a deckhand also aft when the mate went to look after the stern line. The *Parks Foster*, about the time the mate arrived aft, began to surge ahead and the mate eased the line leading astern. This line was attached to the capstan. The steamer surged ahead about ten feet and then came to a standstill and the mate thereupon took the line off the capstan and had one of the deckhands, who was on the canal bank, take the other end off the snubbing post and carry it down the bank to the next post at a distance of 70 or 75 feet. In the meantime the mate was hauling in the slack by hand and placed his end of the line on the bollard. While this change was being made the stern of the *Parks Foster* swung out into the canal from the bank, and as the upbound steamer was passing the *Parks Foster* began to surge astern, the mate slacked off two or three feet under the strain, her stern went out into the current 15 or 20 feet from the bank and her port quarter came into collision with the rail of the *Senator Derbyshire* doing some damage thereto.

I had the assistance at the trial of two Assessors, Captain J. O. Gray, Shipping Master of the port of Montreal, who has had great experience, and Captain Legault, who has navigated the canals and Great Lakes since 1911 and has had a Master's certificate since 1917. Among the questions put by me to the Assessors with their answers are the following:—

1. Under all the circumstances would it have been safe and practicable for the *Senator Derbyshire* to have given the *Parks Foster* a wider berth while passing her?

Ans. No. Had she done so there was a great possibility of her getting ashore on the North Bank. And again act-

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ing on her starboard helm to straighten up for the bridge, she would have got the current on her starboard bow and possibly have struck the South wall.

2. Was the speed of the *Senator Derbyshire* excessive while passing the *Parks Foster*?

Ans. No. It was imperative that sufficient speed was kept to counteract the effect of the strong down current and the indraft of the headrace.

3. When the *Senator Derbyshire* was passing and the *Parks Foster* had surged ahead ten feet, should the line aft leading astern have been changed by the mate to the next snubbing post down the canal bank where it became a line leading ahead? If not, why, and what was the effect of this change?

Ans. The stern line should have been kept on the post in its first position, slacked away as the *Parks Foster* surged ahead, and as she surged back again on its return, the slack should have been gathered in by the steam capstan. The effect of changing the line at this time was to give the first cant of her stern away from the wall, and with the changing of the line to the next post all control over keeping her stern alongside was lost.

4. Was there anything to prevent the mate from putting out a second line from the stern of the *Parks Foster*, and what effect would a second line there have had?

Ans. There was nothing to prevent a second line being passed ashore. A sailor was already on the dock, another was on the poop. A line was all ready with heaving line attached. Had this second line been passed out and the first remained in its place the ship would have laid snug alongside all the time and all danger averted.

Rule 19 of Canal Regulations provides that the engines of steamers passing vessels moored to the bank of any canal shall be stopped while so passing. The *Senator Derbyshire* did not stop her engines while passing the *Parks Foster*; she could not have done so without losing steerage way and getting into a dangerous position. I am satisfied that, had she stopped her engines when she came opposite the moored steamer, she would have been carried by the current

into the north bank of the canal. My Assessors are of that opinion and so advise me. Besides, the breach of Canal Rule 19 did not, in my opinion, cause or contribute to the collision. The burden was upon defendant to prove that the non-observance of the rule contributed to the accident, as its non-observance by itself created no presumption; *Fraser v. SS. Aztec* (1). This disposes of the contention that the speed of the *Senator Derbyshire* was excessive.

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The *Senator Derbyshire* was 235 feet long with a beam of 40 feet 6 inches. She was bound to pass the *Parks Foster* at a sufficient distance from her to avoid the chance of collision. Did she do so? Suction is a force which has to be recognized, but there was no danger so long as the moored vessel was kept tied to the canal wall. The *Senator Derbyshire* was passing the moored steamer at a distance of from 15 to 20 feet and her master had a right to expect that the *Parks Foster* would have been kept securely moored to the canal bank and no collision would have taken place if she had been so kept. My Assessors advise me she was passing at a sufficient distance and I am of the same opinion. That, in my judgment, was not the cause of the accident.

The collision was due to the stern of the *Parks Foster* swinging out into the canal until it came into contact with the upbound steamer. Rule 22 (b) of the Canal Rules and Regulations provides that:—

All vessels approaching a lock, while any other vessel going in the contrary direction is in or about to enter the same, shall be stopped and be made fast to the posts placed for that purpose, and shall be kept so tied up until the vessel going through the lock has passed.

The six-inch line holding the stern of the *Parks Foster* against the canal wall was changed from one snubbing post to another at a very critical moment while the other vessel was passing, with the result that from the combined influence of the down current and the suction from the other vessel, the stern of the *Parks Foster* began to move out into the canal and all control over keeping her against the canal wall was lost. A second line ready for use on the poop was not put out, which would have been the natural and logical thing for the mate of the *Parks Foster* to have done, if he considered the six-inch line already out was

(1) [1920] 19 Ex. C.R. 454 at pp. 467-468.



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insufficient. When the *Parks Foster* was made fast to the canal bank, her master knew the vessel in the lock would have to pass up in a short time and it was his duty to see that his vessel was properly and sufficiently moored and to have kept her so tied up until the other had passed in safety. The *Parks Foster* was not so kept tied up and the improper handling of her stern line brought about the collision. My Assessors advise me the collision was due to the changing of the stern line from one post to another. The control of the stern was lost as soon as the line leading aft was taken off the snubbing post and the collision then became inevitable. That, in my opinion, lead directly to and was the proximate and immediate cause of the collision.

Having regard to the advice of my Assessors, my own appreciation of the evidence, the Rules of the Road, the Canal Regulations and the principles of law which govern the case, I come to the conclusion that the *Parks Foster* failed to observe Rule 22 (b) of the Canal Regulations and Rules 37 and 38 of the Rules of the Road for the Great Lakes, and she is therefore alone to blame for the collision. No blame is imputable to the *Senator Derbyshire* or those in charge of her.

There will therefore be judgment against the *Parks Foster* and her bail for the damages proceeded for and for costs with a reference to the Deputy District Registrar and merchants to assess the amount of the damages.

*Judgment accordingly.*

Solicitors for Plaintiff: *Meredith, Holden, Hague, Shaughnessy & Heward.*

Solicitors for the Ship: *King & Smythe.*

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