

NOVA SCOTIA ADMIRALTY DISTRICT.

BETWEEN

WILLIAM W. GRAHAM.....PLAINTIFF;

AND

THE SHIP "E. MAYFIELD".....DEFENDANT.

1913  
MARCH 24.

*Shipping—River—Right of Navigation—Unreasonable use of such Right—Damages.*

A navigable river is a public highway, affording a right of passage to all His Majesty's subjects. This right, however, must be exercised in a reasonable manner, since each individual is entitled in common with every other person to its enjoyment. The enjoyment of it by one necessarily interferes to a certain extent with its exercise by another, but what constitutes reasonable use depends on the circumstances of each particular case.

**ACTION** for damages against a ship for loss arising from improper navigation.

The plaintiff's claim was as owner of the Ship *Stella Maud* for the sum of one thousand dollars against the Ship *E. Mayfield* for damages occasioned by the wrongful taking of the berth of the Ship *Stella Maud* by the said Ship *E. Mayfield* at Windsor, Nova Scotia, on the 17th day of December A.D., 1912, in consequence of which the *Stella Maud* fell over and became a total loss, and for costs.

The trial took place before the Honourable Mr. Justice Drysdale, Local Judge, at Halifax, N.S., on the 20th February, 1913.

*J. L. Ralston* and *V. B. Fullerton* for the plaintiff;

*H. Mellish*, K.C., for the defendant Ship.

The evidence for the plaintiff was that the plaintiff's vessel, the *Stella Maud*, and the defendant ship both loaded coal at Parrsboro, N.S., for F. W. Dimock at

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Windsor, N.S., both intended to discharge at Dimock's Wharf at the latter place, and it was agreed that which arrived at the latter wharf first would have the berth at the wharf. Both left Parrsboro about the same time, but the *Stella Maud* arrived at Windsor about six o'clock in the evening, about half an hour ahead of the *E. Mayfield*. When the *Stella Maud* arrived abreast of Dimock's wharf, she began to pay out her anchor but it did not take hold of the bottom quickly and she went past the wharf striking the next wharf, Shand's, carrying away her jibboom. A four inch line was then put on the cleat on the face of Dimock's wharf and another smaller line was put to Shand's wharf. They then started to raise the anchor and haul her into Dimock's wharf and while doing so the *E. Mayfield* came up, being propelled by gasoline, and went into Dimock's wharf and took the berth. The plaintiff called to the captain of the *E. Mayfield* and told him that he had his line first on Dimock's wharf, but the latter ship did not give him the berth but remained there.

As the tide was then high and the wind blowing on the wharves, the *Stella Maud*, which had sails only, was compelled to take the berth at Shand's wharf. They were only able to get her into five feet of the wharf, and she was made fast there. The Captain made enquiries and learning that it was a mud bottom did not list his vessel on the wharf. The tide here has a fall of about twenty feet and when it is out there is only a small stream in the centre of the Avon River, the decline from the berth in front of the wharf being very steep.

When the tide fell the *Stella Maud* fell over into the centre of the river and became a total wreck.

The defendant's evidence was that when the *E. Mayfield* arrived at Dimock's wharf, the plaintiffs' vessel was anchored at Shand's wharf. They also, when putting their lines on Dimock's wharf, searched with a lantern for lines from the *Stella Maud* to that wharf but could find none.

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DRYSDALE, Local Judge, now (March 24th 1913) delivered judgment.

The action here is based on the navigation of the defendant ship in an unreasonable manner to the injury of the plaintiff's vessel, the *Stella Maud*, whilst both vessels were using the navigable river Avon.

It seems both vessels were coal laden and bound up said river, consigned to Dimock, a coal dealer at Windsor, in Hants County, and both were making for a wharf in the Port of Windsor known as Dimock's wharf. It is very clear that a navigable river is a public highway, navigable by all His Majesty's subjects in a reasonable manner and for a reasonable purpose. This right, however, must be exercised in a reasonable manner, since each person has a right with every other person to its enjoyment and the enjoyment of it by one necessarily to a certain extent interferes with its exercise by another, and what constitutes reasonable use depends on the circumstances of each particular case. The plaintiff's vessel it seems was sailing up the river and to the knowledge of those in charge of the defendant ship, bound for Dimock's wharf. The plaintiff's vessel was using sail only whilst defendant vessel had auxiliary power. The plaintiff's vessel was leading with the right of way and made for the wharf mentioned, where a safe berth at the end of the wharf was awaiting the first arrival. In trying to make the berth, the plaintiff failed to

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drop his anchor quite in time and brought up in front of the next wharf up river, known as Shand's wharf. The plaintiff then promptly took steps to warp his vessel the *Stella Maud* into Dimock's wharf, or rather into the berth arranged for vessels at the outer end of such wharf.

The charge against the defendant ship is that whilst plaintiff was in the act of docking his vessel or warping her into the berth mentioned, the defendant vessel, by the aid of its auxiliary power, unreasonably and improperly interfered with plaintiff's ship whilst in the act of docking, and by the aid of its said power slipped past the plaintiff's vessel into the berth that plaintiff had almost reached and into which by the aid of a line then already fastened to said Dimock's wharf, the plaintiff was actually in the act of taking; that by such a manoeuvre the defendant unreasonably and improperly crowded the plaintiff's vessel out of her intended berth and compelled her to remain in a dangerous place, where, owing to the ebbing of the tide, she suffered damage. After having given the extended notes in this case full consideration, I feel obliged to make the following findings:

The plaintiff with his vessel the *Stella Maud* was, to the knowledge of those navigating the defendant vessel, in the act of warping into the Dimock berth at the time the defendant vessel, by the aid of its auxiliary power, slipped by and took possession of the berth.

That when the defendant vessel and those in charge decided on and put into execution the manoeuvre that enabled the *E. Mayfield* to take the berth, the defendant vessel's master well knew he was preventing the plaintiff's vessel from completing a manoeuvre that would in a then very short time have given the *Stella Maud* the berth,

I find that when the defendant vessel attempted its manoeuvre to take the berth the master of the *E. Mayfield* had full notice that the *Stella Maud*, by the aid of a bow line then fastened to Dimock's wharf, was in the act of docking at that wharf and that the act of taking the bed on the part of the *E. Mayfield* was deliberately performed for the purpose of first acquiring the berth, notwithstanding the first arrival of the *Stella Maud* in the immediate vicinity, and notwithstanding the fact that the *Stella Maud* was then engaged in warping or in endeavouring to warp in.

It was argued that the *Stella Maud* had grounded in front of Shand's wharf and could not be warped in as intended, but I have no doubt that in a short time, viz, at high tide, the warping in would have been completed had it not been for the act of the *E. Mayfield*.

I think I am obliged to hold under these findings that those in charge of the *E. Mayfield* were unreasonably exercising the right of navigation on the occasion in question, and to the prejudice and injury of the *Stella Maud*. I think also the injury suffered by the *Stella Maud* as a consequence of what I must regard as unreasonable navigation, was directly due to defendant's acts found above. It was urged that the injury suffered by the *Stella Maud* was caused by her own neglect of reasonable precautions at Shand's wharf, but I think the evidence does not establish this contention.

I will either assess the damages myself after hearing the parties, or adopt the usual way of assessing damages in this Court by a reference to the Registrar, assisted by two merchants, as counsel may desire.

*Judgment accordingly.*

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