

1918  
 March 2.

QUEBEC ADMIRALTY DISTRICT.

CANADA SHIPPING COMPANY, LIMITED,  
 PLAINTIFF;

v.

SS. "TUNISIE",  
 DEFENDANT,

AND

ARMEMENT ADOLF DEPPE,  
 PLAINTIFF;

v.

SS. "CABOTIA",  
 DEFENDANT,

*Collision—Harbour—Incoming and outgoing vessels—Duty.*

A vessel has no right to manœuvre her entry into the basin of a harbour while another vessel is leaving her moorings ready to come out; under such circumstances it is the duty of the former to remain below the canal entrance, in order to give way to the outgoing vessel, and her failure to do so will render her liable in case of collision.

*Taylor v. Burger*, (1898), 8 Asp. M. C. 364, followed.

**ACTION** for damages resulting from a collision.

Tried before the Honourable Mr. Justice MacLennan, Deputy Local Judge of the the Quebec Admiralty District, at Montreal, Que., February 8, 19, 1918.

MACLENNAN, Dep. L.J. (March 2, 1918) delivered judgment.

These two actions *in rem* arise out of a collision between the SS. "Tunisie" and the SS. "Cabotia" which took place in the harbour of Montreal on the

morning of October 28, 1917. The owner of each vessel sues the other for damages, each alleging that the collision was due to the fault of the other.

The SS. "Tunisie" was a steel single-screw steamer 310 feet long, 42 feet wide, having a gross tonnage of 2,470 tons, and at the time was drawing about 21 feet, being loaded and ready for sea. The SS. "Cabotia" was a single-screw wooden steamer 243 feet long, and 35 feet wide, drawing 13.10 feet and having a gross tonnage of 1,530 tons. The officers and pilot on the SS. "Tunisie" gave very clear and satisfactory evidence regarding the movements of the steamers immediately before the collision. The evidence of the master and others on board the SS. "Cabotia" is far from satisfactory, and I accept the evidence of the master, pilot and officers of the "Tunisie" in preference to the testimony given on behalf of the other steamer. The "Tunisie" had been lying at the Grand Trunk quay in the Windmill Point Basin, where she took her cargo aboard and was ready for sea early on the morning of Sunday, October 28, 1917. Windmill Point Basin can be described as a slip about 300 feet wide and 2,000 feet long; it opens into a large basin approximately about 1,000 feet square between the lower end of the Lachine Canal and Alexandra Pier, and on the downstream side leads into the main channel through the harbour of Montreal. The "Tunisie" was moored about 600 or 700 feet from the outer end of the Windmill Point Basin and on its west side stem inward. Shortly before 6.50 a.m. on October 28, last, a competent licensed pilot came on board the "Tunisie" and took charge. The steamer was unmoored, the engines put slow astern for a minute or two, a signal of three blasts was given twice and with a tug at

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the stern and another tug at the bow the steamer was slowly pulled out into the middle of the basin, the stern pointing downward to the mouth of the basin, with the intention to proceed down the harbour to turn round and proceed to sea. The master of the "Tunisie" swears that when his steamer was unmoored and left the quay no other steamer was in sight; but when he had proceeded about half a ship's length he saw the "Cabotia" standing still in the large basin between the lower end of the canal and the Alexandra Pier, and when at a distance of about 700 feet from the "Cabotia" another signal of three blasts was given on the whistle of the "Tunisie". When the latter arrived at about 250 feet from the end of the Windmill Point Basin, the master of the "Tunisie" saw the "Cabotia" moving forward, and a signal of three blasts was given again on the whistle of the "Tunisie". Both these signals were heard by the master of the "Cabotia". No signal of any kind was given by the "Cabotia". The "Cabotia" appeared to be endeavouring to enter the west side of the Windmill Point Basin, came forward, reversed her engines and then came forward again, apparently at full speed. The "Tunisie" was well to the starboard or east side of the Windmill Point Basin, being pulled out by the two tugs. While the "Cabotia" was manœuvring ahead and astern she was affected by a strong northwest wind blowing 27 miles an hour on her starboard side, which tended to carry her to the east side of the large basin where she was performing these manœuvres. The "Cabotia" made no allowance for this wind. At 7.13 a.m., when it became apparent to those in charge of the "Tunisie" that there was going to be an accident, the engines of the "Tunisie" were put full

speed ahead in order to lessen the effect of the impending collision. Notwithstanding this the "Cabotia's" stem came into collision with the stern of the "Tunisie" at 7.15, causing considerable damage to both steamers. The master of the "Cabotia", while he was manœuvring for the purpose of entering the Windmill Point Basin, was alone in his wheelhouse steering and handling his vessel. The "Cabotia" had come down the Lachine Canal a little to the west and parallel to Windmill Point Basin, and her master admits that, when he came out of the last lock and entered the basin between the end of the canal and the Alexandra Pier, he turned to starboard, and when he was about 200 feet from the end of the pier on the west side of the Windmill Point Basin, he saw the "Tunisie" in mid-channel at a distance of about 600 feet, being towed out by the tugs. He admits having heard the "Tunisie's" signal of three blasts twice. No signal was given by the "Cabotia" to indicate her movements or that she wished to enter the Windmill Point Basin, but she continued to manœuvre for that purpose until the collision.

My assessors advise me that the pilot and master of the "Tunisie" took all proper and necessary precautions before starting to go out of the Windmill Point Basin; that the "Tunisie" left nothing undone which she should have done while attempting to go out; that her manœuvres were right; that the "Cabotia" was not justified in manœuvring to enter the basin while the "Tunisie" was coming out and should have remained below the canal entrance where she was in safety, until the "Tunisie" had passed clear; that the "Cabotia" was at fault for

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not blowing her whistle to indicate what her intentions were; that she was not handled in a seamanlike manner; that her master should have had the wheelsman with him on the bridge and that his injudicious conduct was the cause of the collision.

The evidence establishes that, when the "Tunisie" was about half way out of the Windmill Point Basin and in full view of the "Cabotia", the latter was in a position of safety and instead of remaining in that position she began manœuvring to enter the Windmill Point Basin while the "Tunisie" was coming out. These manœuvres ended in the collision.

In the case of *Taylor v. Burger*,<sup>1</sup> the Lord Chancellor, p. 365, referred to "the universal rule that "an out-going vessel should get clear of a dock or "harbour before the in-coming enters", and the House of Lords applied this rule and held that, where a steamer was approaching a lock leading from a basin into a dock at the time another vessel was coming out, the in-coming vessel should give way to the out-going vessel.

Having regard to the evidence and the advice of my assessors, I find that the collision between these steamers was caused solely by the improper and negligent navigation of the "Cabotia". There is no blame imputable to those in charge of the "Tunisie".

There will be judgment, therefore, against the SS. "Cabotia" and her bail for damages and costs, with a reference to the Deputy District Registrar to assess the damages.

<sup>1</sup> (1898), 8 Asp. M. C. 364.

The action against the SS. "Tunisie" will be dismissed with costs.

*Judgment accordingly.*

Solicitors for the Canada Shipping Company:  
*Meredith, Holden, Hague, Shaughnessy & Heward.*

Solicitors for defendant, Deppe: *Atwater, Surveyer & Bond.*

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