

NOVA SCOTIA ADMIRALTY DISTRICT

1938
Feb. 28.
March 1.
—
July 13.

BETWEEN:

CALEB W. HIRTLE, Owner, NORMAN }
HIRTLE and WALTER BUSH, Mem- } PLAINTIFFS;
bers of the Crew of the *FISHING BOAT* }
NUMBER 54

AND

THE SHIP SHANALIAN, her cargo and } DEFENDANTS.
freight

Shipping—Collision—Duty of steamship in fog.

Held: That it is the duty of a steamship at anchor in a dense fog to remain at anchor and not attempt to make port, especially by a route known to the master of the ship to be frequented by many small fishing boats.

ACTION by the owner and members of the crew of the *Fishing Boat Number 54* to recover damages occasioned by collision between it and the defendant ship.

The action was tried before the Honourable Mr. Justice Carroll D.J.A., Nova Scotia Admiralty District, at Halifax, N.S.

W. P. Potter, K.C. for plaintiffs.

G. McL. Daley, K.C. for defendants.

The facts are stated in the reasons for judgment.

CARROLL D.J.A., now (July 13, 1938) delivered the following judgment:

On the morning of August 9th, 1937, about 5.30 o'clock, a small fishing boat *Number 54* was run down and sunk by the Steamship *Shanalian*. This action is brought against the defendant ship for damages by the owner of the sunken boat—the boat and tackle being a total loss—and by two members of the boat's crew for loss of personal effects, nets and gear.

It is rather difficult for me in my position, without the assistance of experts, to say exactly where this collision took place. One thing I am convinced of and find as a fact, namely, that the defendant ship was well off from the "fairway" leading up and into the La Have river. Had she been there she would have been on her proper course. I think that the accident occurred at a point about one

and one-quarter miles south southeast of the Western Head of Mosher's Island and about the same distance north northwest of the La Have automatic light and whistle buoy. These distances are purely approximate. The automatic light and whistle buoy is located south by east from Mosher's Head light and this light works the western side of the mouth of the La Have river. It was to and up this river the *Shanalian* was proceeding.

The *Number 54* was at the time of the accident not equipped with a fog horn or other sound making device as provided for by Article 9 (*h*) of the International Rules of the Road, but being, I think, under twenty tons gross tonnage, there was no obligation for such equipment. I am not prepared to say that there was any other efficient sound signal being made by those aboard "at intervals of not more than one minute" for the purposes of complying with the rule, but there were sound signals made at such intervals, first by the engine and then by other "poundings" which, I think, were as sufficiently "efficient" as the circumstances required. I am, however, of the opinion that the absolute absence of such sound signals under the circumstances was not such negligence as would in any way have contributed to the collision. In other words, if the boat were equipped as required of larger boats and giving the required signals, I do not think the collision would have been avoided.

The *Shanalian* was proceeding at about three nautical miles per hour, which was about half speed. The siren was kept in action I think at the required intervals. She had been lying by the La Have automatic buoy above mentioned from eleven o'clock Sunday night until nearly five o'clock Monday morning, August 9th, light laden, bound for Bridgewater up the La Have river. The weather at the hour of departure was very thick and foggy with visibility on board of only fifty or sixty feet and so continued up until the accident.

I have already mentioned that the *Shanalian* at the time of the collision was not in the "fairway" where of course she should have been. She was as a matter of fact a considerable distance off her course which could have been averted by good seamanship and ordinary care. The Master of the *Shanalian* knew that off the fairway, espe-

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cially to the west thereof, was a fishing ground, frequented by many small fishing boats. Those boats, of which the plaintiff's was one, were entitled to be there and "it is the duty of other ships to take greater precautions when passing over such a fishing ground, so as to keep clear of fishing boats." Marsden on Collisions, 9th ed., p. 449. The plaintiff's boat was not in the fairway and had the defendant ship been in her proper place in the fairway, the collision would not have happened. I do not intend discussing the reasons for her being off her course other than to say that it was probably caused by the master not taking into account the tides running that morning.

As already indicated there was a very dense fog that morning when the defendant ship left her moorings and the fog continued so thick that I am of opinion that she should have remained at anchor and not have attempted to make port especially by a route known to the Master to be alive with small fishing craft. *The Lancashire* (1); *The Otter* (2).

In the first mentioned case it was said (pp. 201, 202):

The question arises in this case, whether it was proper and right in this ferry-boat to go deliberately across the river in a fog of such a dense nature as here described, and with the knowledge of these vessels lying in her track I have no doubt that it is very much for the convenience of the public that the ferry-boat should go in all weathers and at all times, but at the same time, I cannot myself think it right to set the convenience of the public in competition with the possibility, or rather the probability, of injuring human life and greatly damaging property But one thing appears to me quite clear—that if this ferry steamer thinks herself justified in going across the river in such a dense fog as this, she takes upon herself all the responsibility incident to such a course. She has the advantage if she goes over safely, and she must have the disadvantage if she injures life or property in the course of the passage.

I will express no opinion as to whether the *Shanalian* was properly manoeuvred after sighting the small boat as I am of opinion that for the two reasons mentioned—being out of her course and running in such a dense fog—the *Shanalian* was wholly and entirely to blame for the collision and that it was her negligence alone which caused the damage to the *Number 54*, and I assess the damages as follows:—

(1) (1874) L.R. 4 Ad. & Ecc. 198. (2) (1874) L.R. 4 Ad. & Ecc. 203.

To the plaintiff Caleb Hirtle:		
Boat	\$120 00	
Engine	115 00	
Three nets	60 00	
	<hr/>	\$295 00
To the plaintiff Norman Hirtle:		
Coat, hat and lines		6 65
To the plaintiff Walter Bush:		
Net with moorings and grapple		20 00

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The plaintiffs are entitled to only one bill of costs.

Judgment accordingly.