QUEBEC ADMIRALTY DISTRICT

1925
Apr. 11.

THE STEAMER *LIVINGSTONIA* COMPANY LIMITED ..... } PLAINTIFF;

AND

THE DOMINION COAL COMPANY LIMITED ..... } DEFENDANT.

Shipping—Navigation in harbour—Responsibility of wharf owner.

The *L.*, under charter to the defendant, arrived at Montreal with a cargo of coal, and on defendant's instructions docked at its dock and commenced discharging the cargo. Upon the defendant's instructions the steamer was moved astern about a ship's length to make way for another ship, and later, again on defendant's instructions, returned to the dock to discharge the balance of the cargo. When returning, a wire cable attached to the boom of one of the defendant's coal towers fouled the ship's fore top mast causing damage. The *L.* had neglected to keep one of her lines attached to a back snubbing post.

Held: That the conditions of the berth being fully known to the officers of the ship they needed no warning of the danger, if any existed, and, moreover, had they used ordinary care and maintained adequate lookout in returning to their berth, which she should have done, the accident would not have happened, and she was victim of her own negligence. [The case of *The Grit* (1924) P. 246; 94 L.J. Adm. 6, where a dock owner was required to use reasonable care to see that the berth was safe for use by vessels he invited to enter it, compared and distinguished].

2. That even if the wire in question was a source of danger, its presence being known to the officers of the ship, and as by the exercise of ordinary care the accident could have been avoided, no action lies against the defendant for the damages suffered.

ACTION to recover damages by reason of a collision of plaintiff's boat with certain wires attached to the boom of one of the defendant's coal towers in Montreal Harbour.

Montreal, April 6, 1925.

Action now heard before the Honourable Mr. Justice Maclennan.

R. C. Holden, Jr. for plaintiff.

G. Gordon Hyde K.C. for defendant.

The facts are stated in the reasons for judgment.

MACLENNAN L.J.A., now this 11th day of April, 1925, delivered judgment.

The plaintiff's steamer *Livingstonia,* while under charter to defendant, arrived at Montreal on a voyage from Sydney, N.S., with a cargo of coal on 11th October, 1924, and on defendant's instructions docked at the defendant's dock

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and commenced discharging her cargo. Next morning, on defendant's instructions, the steamer was moved astern about a ship's length to make way for another ship and, two days later, on defendant's instructions, returned to the dock in order to discharge the balance of her cargo, and when so returning a wire cable attached to a boom or crane on one of defendant's coal towers fouled the ship's fore top mast causing it to buckle and doing considerable damage. The plaintiff claims that the defendant is responsible for this damage, as it failed to maintain its berth in a safe and proper condition and improperly failed to warn those on board the *Livingstonia* that the berth was not safe, and plaintiff claims damages in the sum of $1,328.45, with interest and costs.

The defendant denies that the berth was not safe and alleges that the coal tower was an ordinary one; that its boom at the time of the accident was canted up as high as possible; that the accident complained of was caused solely by the improper and negligent navigation of the ship in failing to keep a good lookout, in being brought too close to the wall of the dock and at too great a speed without having the necessary means of checking the speed of the vessel in case of necessity, and defendant prays for the dismissal of the action with costs.

The four coal towers on the dock belonged to defendant. The boom of each projects outwards over the vessel which is being discharged and three of these booms, when not in operation, are moved back horizontally, the fourth operates on a hinge and the outer end cants upwards at an angle of about 45 degrees. Attached to the latter boom is a wire which, when the boom is not operating, is tied up close to it and within probably seven or eight inches. This was the wire which fouled the steamer's mast. It is proved that the towers are of the ordinary type, have been in operation for at least twenty-five years and that no accident of this nature has ever occurred before. The defendant's dock runs parallel to the harbour and when plaintiff's ship left her berth to make room for the other vessel, she simply moved astern alongside the dock and then tied up. When she returned, the day of the accident, the ship's master and a licensed pilot were on her bridge. The first officer, boatswain, the carpenter and three men were on her

foc'sle head, and the second officer with four men were on her poop, and she was moved forward by the combined action of a tug and a winch heaving on lines which ran forward. The stern lines and the back spring had been cast off and were handled on the dock by men supplied by the company defendant and who would place them on the snubbing posts on the dock when ordered so to do. The first officer admits that he had seen the wire on the boom before the ship moved; that he knew that it was there; that there are always wires on a coal tower such as this, and that he was supposed to be on the lookout and to watch for any obstruction of any kind while the ship was being moved; but neither the first officer nor the master, nor any one else on board the ship appear to have paid any attention to the wire, or to see if there was any danger of the mast fouling it while the ship was being moved. As all lines leading aft had been taken off the snubbing posts, there was nothing to check the forward movement of the ship until these lines were placed on one or more of the posts and the slack hauled in and made fast on the ship. My assessors advise me that it was not in accordance with good seamanship not to have had one of the lines leading aft attached to a snubbing post, so that it could be eased on the ship as she went forward and in case of necessity her forward movement checked. It appears to me that, if an efficient lookout had been maintained, this accident would not have occurred. The officers on the ship had full knowledge of the boom, its position and the wire attached to it. They knew the height of their mast, and it was their duty to see that in returning to the berth they did not allow their mast to come into contact with the boom or the wire.

Counsel for plaintiff invoked the familiar principle of which the case of *The Grit* (1) is the latest example, that a dock owner is required to use reasonable care to see that the berth is safe for use by vessels which he invites to enter it, and, if not safe and if he has not taken such reasonable care, it is his duty to warn vessels about to come into the berth that he has not done so. These cases all have reference to obstructions under water which could not be seen by those in charge of a vessel coming into the berth to load

(1) [1924] P. 246; 94 L.J. Adm. 6.

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or unload cargo. Here the conditions of the berth were fully known to the officers of the ship, who needed no warning of danger, if any existed, and they should have used ordinary care and maintained an adequate lookout in returning to the berth, and in this view my assessors concur.

Even if it could be held that the wire on defendant's boom was a source of danger, and in my opinion it was not, its presence was known to the officers of the ship and they could, by the exercise of ordinary care, have avoided the accident, and on the principle laid down in the House of Lords in *Spaight* v. *Tedcastle* (1); *Cayzer Irvine & Co.* v. *Carron Co.* (2), and *Anglo-Newfoundland Development Co.* v. *Pacific Steam Navigation Co.* (3), the ship alone is to blame.

There will therefore be judgment dismissing plaintiff's action with costs.

Judgment accordingly.

Solicitors for plaintiff: *Meredith, Holden, Holden & Heward.*

Solicitors for defendant: *Markey, Skinner & Hyde.*