

1931
Mar. 30.
Apr. 20.

ON APPEAL FROM THE QUEBEC ADMIRALTY DISTRICT

THE STEAMSHIP "ELFSTONE" } APPELLANT;
(DEFENDANT)

vs.

CHICAGO TRIBUNE TRANSPORTA- } RESPONDENT.
TION CO., LTD. (PLAINTIFF).....

AND

CRETE SHIPPING COMPANY, LIM- } APPELLANT;
ITED (PLAINTIFF)

vs.

THE STEAMSHIP "CHICAGO } RESPONDENT.
TRIBUNE" (DEFENDANT).....

Shipping—Collision—Right of way—Narrow channels—Rules 25 and 37 of the Rules of the Road for the Great Lakes

Held (affirming the judgment appealed from) that when a danger of collision occurs, a vessel is not justified in arbitrarily and obstinately insisting on her right of way conferred under Rule 25. If in obstinately following out the letter of the Rules regulating the course, a collision thereby occurs, she becomes at fault under Rule 37.

- 2. That where the *E.*, coming down stream in a narrow channel of Lake St. Louis, and upon giving the two-blast signal, indicating she elected to meet green to green, received in answer a one-blast signal, amounting to cross signals, the *E.*, instead of persisting in her course and sounding a second two-blast signal, should under the rule have given a danger signal.

APPEAL from the Judgment of the Local Judge in Admiralty for the Quebec Admiralty District.

The appeal was heard before the Honourable Mr. Justice Audette at Ottawa, assisted by Commodore W. Hose, R.C.N., as Nautical Assessor.

R. C. Holden for appellants.

Errol M. McDougall, K.C., for respondents.

The facts and questions of law raised are stated in the Reasons for Judgment of the Honourable Mr. Justice Audette as well as in the Reasons of Demers J. in the trial court, printed at the end of this report.

AUDETTE J., now (April 20, 1931), delivered the following judgment.

This is an Appeal from the judgment of the Local Judge of the Quebec Admiralty District, in the above mentioned two consolidated actions, pronounced, on the 20th October, 1930, in favour of the respondent Chicago Tribune Transportation Company Limited, and condemning the ship *Elfstone* and her bail and dismissing the action of the appellant Crete Shipping Company Limited against the ship *Chicago Tribune*.

On an appeal of this kind when there is evidence sufficient to support the finding of the trial judge, and no error can be assigned to his view, an appeal to vary his finding should not be entertained. There is in this case ample evidence to support the trial judge's finding.

As is usual in Admiralty cases which arise out of collision, the evidence of the respective parties is very conflicting. In such a case the Court must be guided by the balance of probabilities arrived at by a careful analysis of the credible evidence as a whole. All that evidence read together confirms itself. *Purdy case* (1).

After reviewing the evidence I must come to the conclusion that the respondent's vessel was properly manned and manoeuvred; while the same cannot be said of the *Elfstone* wherein the manoeuvre and management were left entirely in the hands of one man alone who did not see fit to call the Master under then dangerous circumstances. Too much was left for him to do and he seemed to have

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been especially impressed with the sole idea of taking, as he said, his advantage of having the right of way as a downbound vessel.

He directed his vessel too much to the north, out of the channel, scraped the bottom as testified by witness Carter. Then in his endeavour to rectify his course he swung around and went to the south side of the fair-way, the collision taking place on the south of the channel near buoy No. 39. Knowing, as testified, that the *Elfstone* was liable to sheer or yaw, I can only ascribe the accident to the combined reason of bad manoeuvring and the tendency of the vessel to sheer or yaw.

Moreover, when a danger of collision occurs, a vessel is not justified in obstinately following out to the letter the rules regulating the course; and in the event of a collision occurring thereby, the vessel becomes at fault under Rule 37. In the present case, changing his course as he did, while endeavouring to swing into the channel, there was no justification in insisting to the last upon the other ship to be guided by his reckless course. *Richelieu and Ontario Navigation Co. v. The SS. Cape Breton* (1).

This was a narrow channel, where one would expect *prima facie* the vessels would pass red to red, without, however, finding any fault for passing green to green and departing from the General Rule. But the signals as given amounted to *cross signals* and the *Elfstone*, instead of persisting in her course and sounding a second two blasts should have, under the Rule, given a danger signal—when indeed, at that time, the vessels were distant enough from one another to have avoided the accident.

I find with the trial judge that the collision took place near buoy No. 39. The *Chicago Tribune* steered perfectly while the *Elfstone* was liable to some sheering.

Now when the *Elfstone* came out of the bend she went north very far—it was even contended she went out of the channel and touched or scraped over the bottom (p. 143). Leaving the bend she pursued a curve from the bend towards the north and then came back towards the south and it is this course of operation that brought on the collision. She did not keep to her side of the channel. From the bend she first showed her green light and in describ-

ing that curve, before colliding, she showed her red light and in the endeavour of straightening herself in the channel in thus swinging around, she again hid her red and showed her green light when the collision occurred. Did she fail to obey the rudder and sheered? She obviously occasioned the accident and she is the one to blame under circumstances of the case.

I have had the advantage in this case of being assisted by Commodore Hose, R.C.N., as Nautical Assessor, and I am pleased to say that he entirely shares my view in arriving at my conclusion.

There will be judgment dismissing the appeal with costs.

Judgment accordingly.

Reasons for judgment of Demers J.

These cases have been united for proof, hearing and judgment, and by consent have been submitted upon the evidence taken before the Wreck Commissioner.

This collision occurred on the 29th of July, 1928, at four o'clock a.m., Eastern Standard Time, between Buoy No. 39 and 38, Lake St. Louis, off Lachine Ranges. It appears there is a cross current of about three miles an hour at that place.

The *Elfstone* was coming down and the *Chicago Tribune* was going up. Both ships were going full speed ahead up to the time that they saw that the collision was about to occur.

It is admitted that the *Elfstone* had the right of way; that she had the right to elect on which side she would pass the other ship.

The contention of the *Elfstone* is that she gave a two-blast signal; that the *Chicago Tribune* answered with one blast; that the *Elfstone* gave a second two-blast signal, and received the same answer from the *Chicago Tribune*; that the *Elfstone* kept as far as she could to her port side; that the *Chicago Tribune* caused the collision because:—

(a) she did not observe the *Elfstone's* right of way.

(b) the *Chicago Tribune* did not obey the *Elfstone's* two-blast signal.

(c) the *Chicago Tribune* gave a cross signal.

(d) the *Chicago Tribune* kept on at too high a rate of speed.

(e) the *Chicago Tribune* did not have a sufficient lookout.

(f) the *Chicago Tribune* did not have competent or sufficient officers and watch on duty.

(g) the *Chicago Tribune* broke Rules 22, 23, 25, 37 and 38 of the Rules of the Road for the Lakes and the St. Lawrence above Victoria Bridge.

(h) if the *Chicago Tribune* had exercised ordinary and reasonable care and prudence, no collision would have occurred.

The *Chicago Tribune*, on the contrary, contends that the first signal given by the *Elfstone* was one blast; that later the *Chicago Tribune* gave a signal of two blasts which was answered by a two-blast signal and hard-a-starboard on wheel, and the faults reproached to the *Elfstone* are that—

(a) the *Elfstone*, as the descending vessel navigated at an immoderate speed having regard to the wind and current.

(b) the *Elfstone* failed to keep to her own side of the channel.

(c) the *Elfstone* gave a two-blast signal after previously having given a one-blast signal.

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(d) the second signal of the *Elfstone* was improper and the manoeuvre thus indicated could not then be carried out.

(e) the *Elfstone* failed to keep a proper lookout, which, according to the location of vessel's bridge, in the after part of the ship was a default more serious even than usual.

(f) the *Elfstone* is so constructed as to be difficult to handle in narrow waters.

(g) the *Elfstone* was navigated in an improper and unseamanlike manner.

(h) the *Elfstone* improperly directed her course to port immediately preceding the collision.

(i) the *Elfstone* failed to blow a danger signal in the particular circumstances in which the vessels found themselves.

(j) the *Elfstone* negligently failed to observe rules 21, 22, 23, 25, 31 and 38 of the Rules of the Road.

The parties do not agree as to the place where the collision occurred. It appears to me, and to the Assessor, that it must be put half way between Buoy 39 and 38.

After the collision, the *Elfstone* must have continued towards 38 and the *Chicago Tribune* towards 39, and it explains the different versions.

There is a contradiction in the evidence of Pilot Chartier as to the place where he was when he gave the first signal. He contends at first that he was opposite the Dixie Lower Range Light, but at the end of his evidence, being cross-examined, page 50, he admits that he had passed the turn of Dixie Range by a quarter of a mile, and he was about half a mile from Buoy 38.

That would agree with the Log Book, though that Log Book has been written later on, and there is not much faith to be accorded to it, especially as to the time; but by the Log Book he had passed the Dixie White Gas Buoy since four minutes when he gave the two-blast signal, but this is not very important since everybody admits that when the first signal was given, both ships were at a fair distance, to wit, at least about half a mile.

I am of opinion that both ships gave the signals they contend they

gave, that the first signal of the *Elfstone* was two blasts, answered by one blast, and the second two blasts answered by two blasts.

I am also of opinion that the *Chicago Tribune* heard one blast as the first signal and she was not to blame when she answered one blast.

I agree with the Assessor that there was no fault in the fact that only one window in front was open in the *Chicago Tribune* wheel-house, as with too many windows open there is too much noise from the wind and a ship's whistle cannot be heard properly, especially with a cross wind.

The Master of the *Chicago Tribune* was in the best possible position in the wheel-house to hear the whistle of other steamers. The Master heard one signal in spite of the side windows being closed, and it is to be presumed that, on account of the innumerable duties of the pilot who was obliged to look to the lights, keep his wheel, attend to the telegraph and to the signals, it is only natural, under the circumstances, that the interval between the two should have been pretty short, and this is the best explanation, and lastly, at the distance where they were, that cross signal would cause no damage if the *Elfstone* pilot had followed Rule 22, he had, at that time, and that distance, plenty of time to give that signal, and he had also, in my opinion, time to give his two-blast signal.

It is not the violation of the Rule at that moment which was of consequence, but he blew his second two-blast signal when the ships were at a distance of between four and six lengths of each other, to wit, at about a minute of distance, as he said he insisted on his right of way.

As I have said, the answer was two blasts. He says that he heard only one.

Admitting that he heard one blast, then he disobeyed the rule as to cross signal for a second time.

It is evident that he changed his mind and decided to pass *port to port*, without giving any notice, this appears by the Log Book, otherwise he would have given the danger signal. The *Chicago Tribune*,

changing also her course to pass starboard to starboard as signalled, it is not surprising that a collision occurred. By whose fault? Evidently, by the fault of the *Elfstone*.

One might say that it is surprising that the *Chicago Tribune* saw the *Elfstone* so suddenly in front of her, but one must not forget that in those narrow waters the vessels are navigating in a very small space and that the course of a ship is altered pretty fast.

It may also be objected that when the second signal of two blasts was given, the Master of the *Chicago Tribune* hesitated for a moment, but it was very natural when, after receiving what he considered one blast, he received two; but he was not in doubt as to the intention at that time of the *Elfstone*; he could not foresee that the *Elfstone* would change her mind and without notice. At the time of the second blast, the *Elfstone* was going to port and what the *Chicago Tribune* had to do was to obey and this is what she did.

The only doubt I had was as to the speed of the *Chicago Tribune*. In the opinion of my Assessor, the descending ship at that place should never go full speed; for the ascending ship it was the proper

thing to do to go full speed, as the current at that particular spot has a tendency to push her side-ways, a fact which would have rendered the collision more serious; and the more speed she has, the easier it is for her to keep straight in the channel, and I feel disposed to adopt that view.

In resumé, the fault of the *Elfstone* is clear, repeated and voluntary, which is equivalent to *faute grossière*, and in my opinion the collision should be attributed to her exclusively.

Under the circumstances, it being clear that the *Elfstone* violated Rule 22; that if she had obeyed that rule there would have been no accident; the *Elfstone* having created the danger, it was incumbent upon her to show that the other ship was also in fault; this she has failed to do, in my opinion.

For these reasons, the action of the Chicago Tribune Transportation Company Limited against the *Elfstone* shall be MAINTAINED, with costs, and the action of the Crete Shipping Company against the *Chicago Tribune* shall be DISMISSED with costs against the Crete Shipping Company, and the case shall be referred to the Registrar for assessment of damages.

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