

<p>THE OWNER OF THE TANK- SHIP <i>BRITAMLUBE</i> }</p>	}	<p>PLAINTIFF;</p>	}	<p>1959 Jan. 29, 30 & 31 Mar. 2 1959</p>
<p>AND</p>				
<p>THE SHIP <i>PRINS FREDERIK WILLEM</i> AND HER OWNERS }</p>	}	<p>DEFENDANTS AND COUNTER- CLAIMANTS.</p>		

Shipping—Action for damages—Collision between two ships in Montreal Harbour—Defendant ship held sole cause of collision—Failure to comply with Regulations for Preventing Collisions at Sea—Regulations of the National Harbours Board governing the Harbour of Montreal—Negligent operation of defendant ship—Failure of defendant to comply with the Rules of the Road and display ordinary good seamanship—Defendant ship negligent in attempting to cross channel without warning and without due regard to downbound shipping—Plaintiff ship not negligent in failing to secure permission of Harbour Master to leave berth, or sound blast in accordance with Rule 43(b).

In an action for damages arising out of a collision between the *Britamlube* downbound and the *Prins Frederik Willem* upbound, in the harbour of Montreal, the Court found that the *Britamlube* in keeping to midchannel and proceeding at the speed she did was acting in accordance with the usual practice, having regard particularly to the contour of the channel and the currents which characterize that area, and that she committed no fault which could properly be

1959
 }
 OWNER
 OF THE
 TANKSHIP
Britamlube
 v.
 THE SHIP
Prins Frederik Willem
 AND
 HER OWNERS

 Sidney Smith
 D.J.A.

considered as having caused or contributed to the collision which was rendered inevitable by the wrongful and imprudent action taken by those in charge of the *Prins Frederik Willem* which was found solely responsible for the collision.

Held: That as the view upriver of those in charge of the *Prins Frederik Willem*, as she left her berth and lined up preparatory to crossing the channel, was very limited and obstructed, even if no warning signals had been heard by them the possibility of a downbound vessel suddenly coming into view should have been anticipated by those in charge of her and due precautions should have been taken to deal with such an eventuality, notwithstanding which she set a course across channel with her engines at half speed and without any signal.

2. That under the circumstances the burden of proving its inability to stop, reverse or ease in accordance with Rule 23 rested upon the defendants and was not discharged.
3. That those in charge of the defendant ship failed to comply with the Rules of the Road and display ordinary good seamanship; had they done so the defendant ship should have been able to avoid the collision.
4. That those in charge of the *Prins Frederik Willem* were negligent in entering and proceeding to cross the channel as they did without warning and without taking reasonable means to assure themselves that this manoeuvre could be made without risk of collision with downbound shipping.
5. That the collision was caused by the fact that those in charge of the defendant ship attempted to cross the channel without warning and without due regard to downbound shipping and in violation of Rules 22, 23 and 25 of the International Rules.
6. That neither the fact that the *Britamlube* failed to secure the permission of the Harbour Master on leaving Lock No. 1, nor the fact that she did not blow a long blast when abeam the Marine Tower in accordance with Rule 43(b) constituted fault or negligence contributing to the collision since those on board the *Prins Frederik Willem* first sighted the *Britamlube* at a distance and under circumstances which provided ample time and space for the *Prins Frederik Willem* to avoid collision had she taken the means which were at her disposal and which should have been taken.

ACTION for damages arising out of a collision between two ships in Montreal Harbour.

The action was tried before the Honourable Mr. Justice Arthur I. Smith, District Judge in Admiralty for the Quebec Admiralty District, sitting with assessors, at Montreal.

F. O. Gerity and *A. S. Hyndman* for plaintiff.

Jean Brisset, Q.C. and *R. G. Chauvin* for defendants.

The facts and questions of law raised are stated in the reasons for judgment.

SMITH D. J. A. now (March 2, 1959) delivered the following judgment:

This litigation, comprising claim and counterclaim, arises out of a collision which occurred in the Harbour of Montreal, on the 20th day of June, 1958, at about 12:12 P.M. between the Tankship *Britamlube* and the M/V *Prins Frederik Willem*. The *Britamlube*, registered at the Port of Toronto, having a length of 250 feet and a breadth of 44 feet, a maximum speed of 8 to 9 knots, was down-bound from Lock No. 1 of the Lachine Canal. Her draft was 8'0" and 13'6" aft. She was carrying a pilot.

The *Prins Frederik Willem*, registered at Rotterdam, having a length of 258' with a width of 42 feet and tonnage of 1598 tons gross and 838 tons net register, was powered by a Diesel motor with a right-hand propeller and manned by a crew of 30 all told, had left Shed No. 24, where she had been tied up starboard side to, intending to proceed upriver. She also had a pilot.

The case for the plaintiff is that the *Britamlube* departed Lock No. 1 in ballast, at about 12:03 P.M. bound down-river for the McColl Frontenac water-lot premises in Montreal East. Prior to leaving Lock No. 1 safety calls were made by radio-telephone and a prolonged blast on the whistle was sounded. It is alleged that the *Britamlube*, having cleared Alexandria Pier, was headed down-river on the starboard side of the buoyed channel proceeding at full harbour speed in order to obtain manoeuvrability in the heavy currents to be encountered further down. While thus proceeding two vessels were seen ahead both upbound and in the vicinity of Jacques-Cartier bridge. On approaching the down-river end of Victoria Pier a ship, later known to be the *Prins Frederik Willem*, was sighted coming up from behind Victoria Pier and heading across the channel. Almost simultaneously that vessel sounded a two blast signal to which the *Britamlube* replied with a danger signal and later with one blast. At the same time the helm of the *Britamlube* was put hard-a-starboard and then just prior to the impact hard-a-port in an attempt to clear the other vessel. The *Prins Frederik Willem*, however, maintained its course and speed, but sounded one blast and the vessels collided in the vicinity of Buoy 201 M, the *Prins Frederik Willem* coming into

1959
 OWNER
 OF THE
 TANKSHIP
Britamlube
 v.
 THE SHIP
*Prins Fred-
 erik Wil-
 lem* AND
 HER OWNERS
 —
 Sidney Smith
 D.J.A.
 —

1959
 OWNER
 OF THE
 TANKSHIP
Britamlube
 v.
 THE SHIP
*Prins Fred-
 erik Wil-
 lem* AND
 HER OWNERS
 Sidney Smith
 D.J.A.

heavy contact with the *Britamlube* on her portside in the way of No. 4 tank. At the time of the collision the head of the *Britamlube* had commenced to swing to port. It is alleged that, other than the signals above-mentioned, none were heard from the *Prins Frederik Willem*, nor were any radio-telephone messages received at any time. The plaintiff alleges that the collision and damages resulting therefrom were brought about by the negligence of those in charge of the *Prins Frederik Willem*, in that they failed (a) to keep adequate radio-telephone watch; (b) to hear or heed radio-telephone calls made by the *Britamlube*; (c) to hold back or maintain position on their own side of the river until traffic had been observed and a course shaped upriver which could be followed in safety; (d) they shaped a course and maintained speed without due regard to traffic and without sanction of the Harbour authorities; (e) they failed to broadcast their navigational intentions; (f) to slacken speed, stop or reverse in due time or at all; (g) to carry out the ordinary practice of seamen as required by the special circumstances and the custom and usage of the mariners navigating in the vicinity of the collision; (h) to follow the *Regulations for Preventing Collisions at Sea*, more particularly Rules 19, 22, 23, 28 and 29 thereof.

On the other hand, the case for the defendants and counter-claimants is that the *Prins Frederik Willem* was berthed at Section 24 starboard side to and that shortly after twelve noon she left her berth in charge of a duly licensed and competent pilot to proceed on her voyage up the Lakes. When all lines were in and the ship clear of her berth, the order half speed was given (at about 12:10) the ship having been lined up to enter the channel at an angle of 45° in order to stem the current which at that time flowed in a north-westerly direction below the Clock Tower and was of a velocity of about 5 or 6 knots.

When the ship was about in line with the low level wall of Victoria Pier, the bow of a downbound vessel, which proved to be the *Britamlube*, was sighted then coming out of the corner of the Clock Tower and past the bow of a large ship which was tied up to the wharf at the Clock Tower with her bow slightly overlapping the corner of the wharf. The *Britamlube* appeared to be proceeding on her left-hand side of the channel and upon sighting her the

wheel of the *Prins Frederik Willem* was ordered hard-a-port, a signal of two blasts blown and her engines put slow ahead in order to cause the bow of the *Prins Frederik Willem* to swing down-river and avoid the collision by giving the downbound vessel, which was then from 5 to 6 ship's lengths away, as much sea-room as possible.

Shortly thereafter the *Britamlube* was heard to give a danger signal of a number of short blasts and appeared to be swinging to starboard, whereupon the engines of *Prins Frederik Willem* were put full speed astern and a signal of 3 short blasts blown. The *Britamlube* was seen bearing down broadside to the current on the stem of the *Prins Frederik Willem*, which by then was starting to gather sternway, and the collision could not be avoided. The stem of the *Prins Frederik Willem* came into contact with the portside of the *Britamlube* forward of her afterhouse; the angle of collision being about 80°.

The weather was fine and clear and visibility good with the wind from the south-east with a force of 1 to 2.

It is alleged that the collision and damage occasioned thereby were caused by the fault and negligence of the *Britamlube* and those on board her, in that: (a) they contravened Section 24 of the Regulations of the National Harbours Board governing the Harbour of Montreal; (b) they contravened Section 43, ss. (a) and (b) of said regulations; (c) they failed to keep to the right of midchannel in compliance with said Regulation 43 (a) and of Article 25 of the International Rules of the Road; (d) they failed to take proper or any or sufficient helm or engine action in due time or at all; (e) they failed to indicate by proper signals the action which they actually took; (f) proceeded at an excessive and immoderate speed in contravention of the *Harbour Regulations*; (g) they failed to exercise the precautions required by the ordinary practice of seamen or the special circumstances of the case; (h) they failed to take in due time or at all any steps to avoid the collision; (i) they contravened articles 22, 25, 27, 28 and 29 of the *International Rules* and Articles 35, 42 and 43 of the *National Harbours Board Regulations*.

The proof shows that the *Britamlube* left Lock No. 1 at 12:03 P.M. The evidence indicates that she did so without first obtaining the permission of the Harbour Master,

1959
 OWNER
 OF THE
 TANKSHIP
Britamlube
 v.
 THE SHIP
*Prins Fred-
 erik Wil-
 lem* AND
 HER OWNERS
 Sidney Smith
 D.J.A.

1959
 OWNER
 OF THE
 TANKSHIP
Britamlube
 v.
 THE SHIP
Prins Frederik Willem
 AND
 HER OWNERS
 Sidney Smith
 D.J.A.

in accordance with Rule 42 of the Harbour Rules. The evidence of those on board is that although calls were made to the office of the Harbour Master these calls were not answered. There is evidence that the *Britamlube* blew one long blast as she left the lock in compliance with Rule 43 (a) and while those on board the *Prins Frederik Willem* denied having heard this warning signal, the testimony of those in charge of the *Britamlube* that it was given is corroborated by persons on board the two vessels which were upbound and then in the vicinity of Jacques-Cartier bridge. There is also evidence that the *Britamlube* made a number of security calls over her radio-telephone as she left Lock No. 1. None of these appears to have been heard by those on board the *Prins Frederik Willem*.

The evidence shows that the *Britamlube* after clearing Alexandria Pier put her engines full ahead and proceeded down-river in the centre of the channel.

The *Prins Frederik Willem* on the other hand left her berth at Shed No. 24 shortly after 12:00 o'clock and with the intention of crossing the channel to proceed upriver she was put on a course calculated to bring her close to Buoy 201 M on the South side of the channel. The testimony of those in charge of the *Britamlube* is that after she was lined up on this course (which was calculated to bring her across the channel at an angle of about 45°) and when she was opposite, and about 500 feet below, the Clock Tower (which is at the lower end of Victoria Pier) and just at the edge of the current, the *Britamlube* was seen coming down in the centre of the channel. She was first sighted about 3 points off the starboard bow of the *Prins Frederik Willem* and at a distance of from 1500 to 2000 (according to defendants' Preliminary Act a distance of about 5 to 6 ship's lengths. Captain Hoekstra however estimated it at from 6 to 8 ship's lengths). There is a discrepancy as to the speed of the *Prins Frederik Willem* at the moment the *Britamlube* was first sighted. According to defendants' Preliminary Act her engines were half ahead and her speed about 1½ knots, whereas the testimony of Captain Hoekstra is that the engines at that moment were full ahead. He stated that he reported seeing the *Britamlube* to the pilot and that for a time his engines remained full ahead as the *Britamlube* was being watched.

However, very shortly after the *Britamlube* had been sighted, the wheel of the *Prins Frederik Willem* was ordered hard-a-port, a two blast signal given and her engines put "slow ahead". At about the same time that the *Prins Frederik Willem* sounded its two blast signal those on board the *Britamlube* sighted the former as she appeared around the end of Victoria Pier, whereupon the *Britamlube* blew a danger signal of 5 or more short blasts in rapid succession and at the same time her helm was put hard-a-starboard and then just prior to the collision was ordered hard-a-port in the hope that the stern of the *Britamlube* might swing clear of the other vessel.

The proof is that the wheel of the *Prins Frederik Willem* was kept hard-a-port from the time the *Britamlube* was first sighted right up to the moment of the collision and that on hearing the *Britamlube's* danger signal the *Prins Frederik Willem's* engines were put full astern and a signal of 3 blasts blown.

The evidence shows that the collision occurred approximately in midchannel in the vicinity of Buoy 201 M, about in line with the Clock Tower. The contact was between the stem of the *Prins Frederik Willem* (which was pushed slightly to port) and the portside of the *Britamlube* in the way of No. 4 tank forward of her afterhouse; the angle of collision appears to have been between 60° and 80°. The proof shows that the stem of the *Prins Frederik Willem* opened a vertical hole or gash of considerable proportions in the side of the *Britamlube*, which extended from the deck to a point well below the portside fendering causing very considerable damage.

Although the *Prins Frederik Willem* is charged with negligence in the matter of keeping a proper lookout and failing to hear and heed radio-telephone warnings sent out by the *Britamlube*, the principal complaint made against her is that she failed: (See Preliminary Act)

- (5) to hold back, or maintain position, on their own side of the river until traffic had been observed and a course shaped up river which could be followed in safety;
- (6) Shaping a course, and maintaining speed, without due regard for the movement of traffic in the river and without sanction for the movement from those in charge of the Harbour and Lachine Lock operations;

1959
OWNER
OF THE
TANKSHIP
Britamlube
v.
THE SHIP
*Prins Fred-
erik Wil-
lem* AND
HER OWNERS
Sidney Smith
D.J.A.

1959
 OWNER
 OF THE
 TANKSHIP
Britamlube
 v.
 THE SHIP
*Prins Fred-
 erik Wil-
 lem* AND
 HER OWNERS
 Sidney Smith
 D.J.A.

It is apparent that the view upriver of those in charge of the *Prins Frederik Willem*, as she left her berth and lined up preparatory to crossing the channel, was very much limited and obstructed by the lower end of Victoria Pier and the Clock Tower and the large vessel tied up there, and, in such circumstances, I consider, and I am so advised by the Assessors, that even if no warning signals had been heard by them the possibility of a downbound vessel suddenly coming into view is one which should have been anticipated by those in charge of the *Prins Frederik Willem* and that due precaution should have been taken to deal with such an eventuality. Notwithstanding this however the *Prins Frederik Willem* set a course across channel with her engines at half speed (if not at full speed) and without signal of any kind.

At the hearing the question of whether or not it was possible for the *Prins Frederik Willem*, at the moment she first sighted the *Britamlube* at a distance of from 1500 to 2000 feet, to have stopped, come to starboard, gone astern or taken other action by which the collision might have been averted was argued.

Having regard to the circumstances, I am satisfied that the burden of proving its inability to stop, reverse or ease in accordance with Rule 23 which, in the circumstances, rested upon the defendants was not discharged.

The evidence does not, in my opinion, support the view that when the *Prins Frederik Willem* first sighted the *Britamlube* the former had not both time and space in which to avoid the collision had those in charge of her complied with the *Rules of the Road* and displayed ordinary good seamanship.

On the other hand, it was argued that when she first sighted the *Britamlube* the *Prins Frederik Willem* was already irrevocably committed to a cross channel course. In my opinion, the proof does not justify this conclusion. If the testimony of Captain Hoekstra and others is accepted, the ship *Prins Frederik Willem* at that moment was proceeding at a speed of about 1½ knots approximately 500 feet below the lower tip of and in line with Victoria Pier and had just reached the edge of the current. The Assessors

advise me that in such circumstances the *Prins Frederik Willem* should have been able to avoid the collision had she complied with the rules and practice of good seamanship.

Moreover, regardless of whether or not the *Prins Frederik Willem* could by the exercise of reasonable care and skill have avoided the collision after she sighted the *Britamlube*, I am convinced, and I am so advised by the Assessors, that those in charge of the *Prins Frederik Willem* were negligent in entering and proceeding to cross the channel as they did without warning and without taking reasonable means to assure themselves that this manoeuvre could be made without risk of collision with downbound shipping.

Although the pilot of the *Prins Frederik Willem* endeavoured to convey the impression that his hard-a-port action was taken deliberately, in the face of the danger of and, with the considered object of avoiding the collision, I am convinced that such was not the case. The evidence leaves no doubt in my mind that, from the moment of casting off, it was the pilot's intention to cross and proceed upriver on the portside of the channel. It was sought to justify such a course on the ground that it is common practice for vessels to meet in the channel starboard to starboard in that area. I am advised however that although this practice is followed to some extent when downbound and upbound ships are meeting, such is the case only when the meeting vessels have exchanged signals and are agreed upon such a course.

On the proof as a whole, and having regard to the advice of the Assessors in which I concur, I conclude that the *causa causans* of the collision was the fact that those in charge of the *Prins Frederik Willem* attempted to cross channel without warning and without due regard to downbound shipping and in violation of Rules 22, 23, and 25 of *The International Rules*.

It was alleged and argued that the *Britamlube* was at fault, in that it failed to comply with Rules 42 and 43 of the Harbour of Montreal. In my view however neither the fact that the *Britamlube* failed to secure the permission of the Harbour Master on leaving Lock No. 1, nor the fact that she did not blow a long blast when abeam the

1959
OWNER
OF THE
TANKSHIP
Britamlube
v.
THE SHIP
*Prins Fred-
erik Wil-
lem* AND
HER OWNERS
—
Sidney Smith
D.J.A.
—

1959
 OWNER
 OF THE
 TANKSHIP
Britamlube
 v.
 THE SHIP
*Prins Fred-
 erik Wil-
 lem* AND
 HER OWNERS
 Sidney Smith
 D.J.A.

Marine Tower in accordance with Rule 43 (b) constituted fault or negligence contributing to the collision, since it is admitted by those on board the *Prins Frederik Willem* that the *Britamlube* was first sighted at a distance of from 1,500 to 2,000 feet (which would put her just about abeam of the Marine Tower) and since I am advised that under these circumstances the *Prins Frederik Willem* had ample time and space to avoid the collision had she taken the means which were at her disposal and which should have been taken.

Although it was also alleged that the *Britamlube* was at fault, in that she failed to keep to her starboard side of the channel and was proceeding at an excessive speed, I am advised that in keeping to midchannel and proceeding at the speed she did the *Britamlube* was acting in accordance with the usual practice, having regard particularly to the contour of the channel and the currents which characterize that area.

It was admitted that it was impossible for the *Britamlube* to avoid the collision by going further to starboard, and on the whole I am satisfied that she committed no fault which could properly be considered as having caused or contributed to the collision which was rendered inevitable by the wrongful and imprudent action taken by those in charge of the *Prins Frederik Willem*.

I find therefore that the defendants were solely responsible for the collision and accordingly maintain plaintiff's action and dismiss defendants' counterclaim, with costs; failing agreement between the parties as to the amount of the plaintiff's damages there will be a reference to the Registrar in order that the said damages may be calculated and assessed by him in the usual manner.

Judgment accordingly.