

1927

TORONTO ADMIRALTY DISTRICT

Feb. 23-25.
Feb. 28.

BETWEEN:—

THE EASTERN STEAMSHIP COM- PANY	}	PLAINTIFF;
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AND

THE STEAMER *ALICE* DEFENDANT.

AND BETWEEN:—

J. P. PORTER & SONS LTD..... PLAINTIFFS;

AND

THE STEAMER *WM. C. WARREN*..... DEFENDANTS.*Shipping—Collision—Negligence—Duty of Masters—Narrow channel*

Held, that when two vessels are meeting in a narrow channel, careful watch must be kept by the Masters of each vessel over the movement of the other vessel and they must be prompt to signal in case of emergency resulting from their manoeuvres. Carelessness or neglect to so act, if damage results therefrom, is negligence for which each vessel offending is liable. Neglect when practicable to slow down or to wait when conscious that the other vessel is in difficulties is likewise negligence in navigation.

The action of the Master of a ship in altering the entries in his Scrap Log Book in reference to a collision after it has taken place is strongly condemned by the court.

These actions,, tried together, arose out of a collision in the Welland Canal between the SS. *Warren* and *Scow No. 11* in tow of the tug *Alice*.

The trial took place before the Honourable Mr. Justice Hodgins on the 23rd, 24th and 25th days of February, 1927, at Toronto.

The facts are stated in the reasons for judgment.

G. M. Jarvis for plaintiffs in No. 1 and for defendants in No. 2.

R. I. Towers, K.C., for defendant ship in No. 1, and for plaintiffs in No. 2.

HODGINS L.J.A., now (28th February, 1927), delivered judgment.

Actions tried together arising out of a collision between the SS. *Warren* and *Scow No. 11* in tow of the tug *Alice*, in the Welland Canal. Each plaintiff claims against the defendant ship and in the second action the defendants counter-claim in personam against the plaintiffs therein as owners of the *Scow No. 11*.

These two cases are a good example of the problem frequently set before an Admiralty Judge, where each party places his vessel close to one side of a narrow channel and opposite the other and keeps it there at the time of collision, so that it is impossible to reconcile the stories, and the evidence on one hand or the other, possibly on both, must be largely discounted.

On the best consideration I can give to the evidence in this case, I have come to a definite conclusion of fact as to the causes of the accident. The SS. *Warren* was passing through the railway bridge lock at Port Colborne bound northwest and having the current in the canal (at 1½ to 2 miles) with her. The tug *Alice*, with a steel scow in tow, was coming south and against the current, and was at the same time south of the Humberstone bridge and from 1,500 to 1,700 feet distant from the *Warren*. At this point the *Warren* just as she was in the draw of the railway bridge, blew one blast signal to the tug which answered with a one blast signal. Apparently no difficulty in passing safely was then anticipated.

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The *Warren* came ahead at a speed of about $2\frac{1}{2}$ to 3 miles an hour, her engines assisting the current in moving her, and when clear of the abutment of the draw, according to her 1st Mate, Harpin, altered her course to port to get the ship into the centre of the channel. Harpin, who is not now in the plaintiff's employ, says this was the time when the whistles were exchanged, but nothing turns upon that. Before this the Master says he had noticed the scow pointing to the east bank with its corner. The *Warren* proceeded towards the centre of the canal, went up to the centre of the canal, and continued in the centre for from two to four minutes, traversing two or two and a half boat lengths or from five to six hundred feet. She then altered her course to starboard to meet the *Alice*, and when her starboard bow was about ten feet from the eastern bank of the canal the collision occurred between the forward port corner of the scow and the bow of the *Warren* about fifteen to eighteen feet from her stem. The evidence given by the Master of the *Warren* is to the effect that he went half astern on clearing the abutment so as to throw the stern to port and away from the east wall, to which it was drawn, and to stop his bow which tended, in coming out of the draw, to go towards the middle of the canal. He states his forward movement after his stern was clear of the abutment to be only about 147 feet. He was going, according to his account, dead slow ahead till his stern was clear, and then went $\frac{1}{2}$ speed astern. In this way he got his ship parallel to the east bank, about ten feet away, and kept her there until the collision. The difference between the accounts given by the Master and the first Mate of the *Warren* in regard to the distance travelled is that the former puts her position at the collision as 147 feet plus her length, $253=400$ feet, while the Mate says two or two and a half boat lengths—632 feet, plus 150 feet or part of it when turned to starboard to meet the *Alice*—in all say about 700 feet. The Mate says the bow of the *Warren* was 10 feet from the east bank at the collision, the Master puts the whole of his ship parallel to the bank at about the same distance. The course of the tug and tow appears to have been as follows: after the exchange of signals the tug proceeded a little to starboard from the centre of the channel, making, as her Master says, two miles over the ground against the current.

The *Warren* was then righting herself to starboard, and according to the tug Master, was within forty to fifty feet from the West wall of the canal; she had come out of the draw. The tug checked to half speed when she and the *Warren* were about seven or eight hundred feet apart, in order to give the *Warren* lots of time, as that vessel was well over in the tug's water, that is, well over the centre of the channel. . . . The tug proceeded as if to pass between the west wall and the *Warren* through what was a very narrow opening, and no signals were exchanged. Whether the slowing of the tug's speed and the weight and momentum of the scow disturbed the proper alignment of the tug and tow is not shown except by the results. Those who saw both vessels just prior to the collision are united on three facts: that when about 40 or 50 feet apart, the scow appeared to be sheering over towards the *Warren*: that the port line was taut, and that the tug was close to the west bank (five to six feet according to one and fifteen feet according to another), and pulling hard on the port line. Apparently what she was doing did not pull the scow out of danger and its corner struck the port bow of the *Warren*, not scraping along the side, but rebounding and getting clear. In order to understand how this situation came about, it is necessary to remember that the channel is a narrow one only 145 feet in width, and that each side has a batter which reduces the navigable width at the bottom by several feet. The size of the vessels are as follows:

Warren, length 253 feet, beam 43 feet, loaded depth bow 13 feet 9 inches and as stern 13 feet 11 inches.

Tug, length 70 feet, beam 17 feet 5 inches.

Scow, 30 feet wide by 147 feet long, loaded with mud and attached to the tug by two ropes, one from each forward corner to two bitts on the tug, situated amidships; the distance between the stern of the tug and the bow of the tow was about 20 to 25 feet.

To manoeuvre as long a vessel as the *Warren* in such a narrow channel is a difficult task.

If the *Warren* was over the centre of the canal, as her first mate testifies, then she occupied 105 feet which left only 40 feet for the tug and tow; and if she went to starboard, as he says she did, after running five or six hundred

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feet from the end of the abutment in the centre of the canal, she would still, having a beam of 43 feet, project over the centre line of the channel for some time while going 150 feet. Even when tied up at the bank, as her Master professes she was, at the time of the collision, she would be at least 12 feet out from it (given variously from 10 to 15 feet) and with her beam would occupy 55 feet, leaving some 90 feet for the tug and tow. If the tug was six feet from the west wall and was pulling the scow, as is stated, in the direction of the west wall, they would, measured in a slanting direction across the channel, stretch out some 243 feet. This is the six feet between tug and the wall, her own length, 70 feet, 20 or 25 feet of line and 147 feet the length of the scow. This would, in my judgment, take up at any reasonable angle possible on such a movement rather more than her fair half of the channel, so that it is quite easy to see how, if the tow took a sheer and the *Warren* was only going from mid channel slowly to starboard, a collision in this narrow channel might very well occur or, if the account of the Master of the *Warren* is taken, is possible. It now remains to determine whether or not the navigation of either or both of these vessels are faulty.

I am unable to accept the version of the Master of the *Warren* or of those who support him as to her movements, and think that of Harpin the 1st Mate is more correct. The *Warren* was moving at dead slow and with the current, at a speed of two and one half to three miles per hour, as her Master admits. Her Master was in difficulty with the stern which was drawn by suction to the east bank and had to throw it out, bringing his bow back from where it had gone towards or over the centre of the channel. He could not well do this until clear of the draw 65 feet in width. He was busied with steering himself and says he did not watch the tug *Alice* always and I have no doubt that he got further out than he intended. He has no recollection whether he gave any orders to the engine room after the collision. All the evidence seems to agree that the collision took place slightly to the south of the little dock office on the Camp Valley Coal Dock, which is 640 feet south of the railway line or abutment, so that the Mate's figures as to the distance covered by the *Warren* seem to be well verified and

not those of the Master. As no suggestion is made that the *Warren* was in any difficulty, except the very usual one with a heavily laden vessel in a narrow draw, of finding her stern drawn to the east bank the handling of the *Warren* must have been at fault to bring her so far down and in the centre of the canal, in face of a tug and tow approaching at a good speed. The Master's description of his vessel's movements and his signals put her close to the bank and nearer the end of the draw by several hundred feet than the place where the collision took place, and indicate what he was no doubt intending to do and what he would have accomplished if he had not let the current draw him down too far. He gave no alarm and was not watching the *Alice* closely, while Harpin says that at 200 feet distance the tow was coming about in the centre of the channel and 60 feet from the east bank. The scow had been seen by the Master coming up with her port corner pointing to the east bank and at a speed estimated by him at four miles per hour.

As to the tug, her Master says that he went to starboard from midchannel on the exchange of signals. He saw the *Warren* getting over to the west wall till she was only 40 or 50 feet away from it and says she was well over in his water. He checked to half speed when they were 700 to 800 feet apart. He could he says have stopped and tied up but that it was not "customary." He proceeded to within 400 feet and then went at slow speed when he thought there was room to pass through pretty close. He gave no signal. His bow he says was then within three or four feet of the west wall, and the scow went out suddenly owing to suction from the *Warren*. In that position, with his bow right up against the wall, he could have had little lateral effect on the tug, though he had a "tight line on the corner." He contends that her way was off and she was merely held in the current. The admissions by the tug Master that the *Warren* should have been able to straighten up in the canal 800 or 1,000 feet from the bridge, coupled with the fact that the collision was only about 600 feet from it, and that he knew the *Warren* was drifting down and had not steerage way enabling her Master to handle his ship, but thought the tug and tow could pass if he held where he was, are most significant. I cannot understand how under these conditions I can hold the tug blameless in not waiting and either

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tying up till the *Warren* had straightened up, or standing still lower down in the current as the Master professed he was quite able to do. *City of Puebla* (1); *Hall v. SS. Fife-town* (2); *Hall v. SS. Beachbay* (3).

In my judgment both vessels were to blame. The *Warren* I find guilty of negligent navigation after giving a passing signal, in getting well out into the channel so far down in face of an approaching tug and tow, for inattention by her Master to their movements and for his failure to signal again when the lateral movement of the tow was first seen by him or when he realized or should have realized that he was unable to get his vessel close in so as to avoid a collision. *The Glencova* (4); *Hamonic v. Fryer* (5). As to the tug I find her negligent in not waiting for the *Warren* to get straightened up, in proceeding on realizing the difficulties on the *Warren* which he says was not under control, and for letting the scow get so far over as to strike the *Warren*. *Poplar Bay SS. Co. v. SS. Charles Dick* (6). There will be a reference to the Local Registrar in Toronto to ascertain the damages in both actions and to report.

In view of the fact that there is a counterclaim in personam against the plaintiffs, J. P. Porter and Sons Ltd., in the second action and that it is contended that it is not competent in such an action as this for the court to entertain a counterclaim in personam nor to give judgment thereon, I will reserve further directions, and judgment upon or in regard to such counterclaim, till the Registrar has made his report. The parties will each pay their own costs of the actions and of the reference.

I feel obliged to comment upon the action of the Master of the ss. *Warren* in erasing entries in the scrap log dealing with the critical point of time and in writing in their place other words; in short destroying the whole value of the log with regard to the collision. He professed himself at a loss to explain what had been originally entered in the log or why he altered it. Such an action ought to meet with the strongest reprehension by shipowners and should be severely condemned by the court.

Judgment accordingly.

(1) (1891) 3 Ex. C.R. 26.

(2) (1924) Ex. C.R. 12.

(3) (1925) Ex. C.R. 23.

(4) (1925) Ex. C.R. 217.

(5) (1924) Ex. C.R. 102.

(6) (1926) Ex. C.R. 46.