

## QUEBEC ADMIRALTY DISTRICT

EXPORT STEAMSHIPS, LIMITED. . . . . PLAINTIFF;

1923  
April 21.

AGAINST

THE SHIP *IOCOMA**Shipping—Collision—Canal navigation—Inevitable accident—Antecedent error of seamanship.*

At about 9.30 p.m. on the 4th May, 1922, a collision took place in a straight reach of the Welland Canal, between The *I.* and *T.* Weather was fine and clear, wind light, and current about  $1\frac{1}{2}$  miles per hour. The *T.* was going with the current and the *I.* was coming up. All regulation lights were shown on both ships and all proper signals were given, and both vessels were going slow. The *T.* at time of collision was on her own side of the canal, but the bow of the *I.* sheered to port across the canal and collided with the *T.*

*Held* that although at the moment of collision all was done by the *I.* that maritime skill could suggest to avoid it, the earlier manoeuvres of the *I.* in changing her direction too soon; going too near the bank, thus subjecting the stern to suction, resulting in a loss of control and, when endeavouring to straighten up, putting her helm too far to starboard thus giving her bow a cant from the bank, were unseamanlike and unskilful and were the cause of the sheer to port and the consequent collision.

2. Where a defendant alleges that the collision was inevitable, the burden of proof is upon him to show, not only that at the moment, in the agony of collision, or immediately before it took place, he had done all that ordinary care or maritime skill could suggest to avoid it, but also that all antecedent manoeuvres had been adopted which might have prevented it or rendered the risk of it less probable, and that the position in which the vessels found themselves at or just before collision, and which made it inevitable, was not due to any error in manoeuvring on its part.

ACTION *in rem* for damages resulting from a collision between the *Trevisa*, one of plaintiff's ships, and the *Iocoma*.

March 15th, 25th, April 4th and 21st, 1923.

Case now heard before the Honourable Mr. Justice MacLennan, at Montreal.

*R. C. Holden, Jr.* for plaintiff;

*P. A. Badeaux* for defendant.

The facts of the case are stated in the reasons for judgment.

MACLENNAN, L.J.A. now (April 21st, 1923) delivered judgment.

Plaintiff sues *in rem* for damages resulting from a collision between its Steamer *Trevisa* and the Steamer *Iocoma*.

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Plaintiff's case is that at about 10.30 p.m. on 4th May, 1922, the *Trevisa* was coming down the Welland Canal at a slow speed when she sighted the *Iocoma* coming up; the weather was fine and clear with practically no wind and there was a current of about one and a half knots with the *Trevisa*. The latter gave a one blast signal which was answered by the *Iocoma* and when the ships were at a suitable distance apart the *Trevisa's* helm was ported and she was taken close to the bank of the canal on her starboard side. When about to pass, the *Iocoma* suddenly swung violently towards the *Trevisa*; the latter's engines were at once put full speed astern, but the *Iocoma* struck her port bow causing serious damage; neither the *Trevisa* nor those on board her were in any way responsible for the collision which, on the contrary, was due solely to the fault and negligence of the *Iocoma* and those on board her; the *Iocoma* improperly and without reason or excuse failed to keep to the side of the fairway or mid channel which lay on her starboard side and her rate of speed was improper; she was improperly and negligently navigated and broke Rules 28, 31 and 37 of the Rules of the Road for the Great Lakes, and plaintiff claims a declaration that it is entitled to the damage proceeded for, a condemnation of the defendant and her bail in such damage and in costs, to have an account taken and such further relief as the nature of the case may require.

Defendant's case is that when the vessels were about two ships length from each other, the *Iocoma* put her wheel to port, to which the vessel responded. The *Trevisa* did not apparently port her helm nor slacken speed, but continued in the middle or very near the middle of the canal. When the vessels were on the point of passing, the bow of the *Iocoma* took a sudden turn to port which was not caused by any action of her helm, and her port bow struck the port bow of the *Trevisa*. The moment the bow of the *Iocoma* began to swing to port the engines were put full speed astern, the helm was hard-a-port. She was practically stopped when the collision occurred. The *Trevisa* did not alter her helm or her speed. The reason for the sheer taken by the bow of the *Iocoma* is unknown, but was not due to any act or

neglect on the part of those in control of her. It may have been due to a current, to the wash of the *Trevisa* or to a landslip from the bank of the canal beneath the surface; but in any event the collision would not have occurred had the *Trevisa* been farther toward her starboard side of the canal for which there was plenty of room, and had she observed her own signal to the effect that she was going to that side, and had she had proper regard to the difficulties of navigation in a narrow space such as the canal, and to the respective beams of the two vessels, in effect forcing the *Iocoma* too near the other side of the canal. The *Iocoma* did not break any of the rules applicable to navigation nor neglect to observe any. The *Trevisa* was improperly and negligently handled and violated Rules 31, 37 and 38 of the Great Lakes Rules, and defendant claims that plaintiff's action should be dismissed with costs.

The collision took place in a straight reach of the Welland Canal between Rami's bend and the Air Line Bridge about 9.30 p.m. Standard time, on May 4th, 1922. The weather was fine and clear, wind very light and current about one mile and a half per hour. The *Trevisa*, a steel steamer 256 feet long, 42 feet 6 inches beam and drawing 14 feet forward and 14 feet 3 inches aft, was going down with the current and under the rules had the right of way. The *Iocoma*, a steel steamer 252 feet long, 42 feet beam, light, drawing 5 feet forward and 12 feet 6 inches aft, was upward bound. All regulation lights were shown on both ships. When at a distance of about half a mile the *Trevisa* gave one blast on her whistle and the *Iocoma* answered with a similar signal. The *Trevisa* was going at half speed and on giving the signal reduced to dead slow. The collision happened about ten minutes later. The speed of the *Iocoma* was slow from the Air Line Bridge until the ships were within one ship's length, when her master put her engines dead slow. Both were approaching each other in the middle of the canal, the water having a width of 200 feet on the surface. The banks sloped down and came in 15 or 18 feet, so that the bottom of the canal had a width of over 160 feet. All witnesses agree that the *Iocoma* was first to change direction by porting and then the *Trevisa*

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ported. There is some contradiction as to the distance the ships were apart when these and subsequent manoeuvres took place. According to the master of the *Trevisa* her helm was altered half a point to port about three ships' lengths from the other ship—her second mate who was at the wheel says he started to alter the wheel at about two lengths—she was then going dead slow and went to starboard, and when the ships were about one length apart her engines were put full speed astern and the wheel was put hard-a-port. The chief engineer of the *Trevisa* says her engines were going full speed astern at least 25 to 30 seconds before the collision, while the second mate says the order to go astern was given by the master about a minute before the collision. According to the mate she touched the bank after her engines began to go astern and when the collision took place was in her own water.

According to the master of the *Iocoma* he ported her helm about half a point when about two ship's length from the other ship; the latter did not alter her course until at about a boat's length, when the *Iocoma's* engines were checked to dead slow, and at half a ship's distance she was straightened up, her bow began to go to port across the canal and her engines were put full speed astern, the helm amidships, and the *Iocoma's* stem struck the *Trevisa's* port bow about ten feet abaft the latter's stem. There were several movements of the *Iocoma's* wheel between the time when she first ported and the collision. The wheelsman of the *Iocoma* was in charge of her wheel, her master and second mate being in the wheelhouse with him. He does not say how far apart the ships were when he got an order from the master to port the wheel and clear the other vessel, and he put the wheel to port, then he got an order "steady" and he altered to starboard to get her steady and stop her swing, then he eased the helm back to amidships and a little bit to port, and then he got the order to straighten her up and he "starboarded a little" and got her into a position parallel to the starboard bank of the canal; he cannot say whether he brought the wheel back a little to port or amidships, but he saw her bow swinging over to the *Trevisa* and he then put the wheel hard-a-port

of his own accord to keep her from swinging. When the *Iocoma* was straightened according to the wheelsman, she was probably about one and a half or two boat lengths from the other ship,—perhaps a little more or a little less—the full speed astern order was given when the ships were somewhere near a boat’s length apart and the master told him to put the wheel amidships. If the *Iocoma* when straightened in her course was one and a half or two lengths from the other ship, she must have ported when considerably more than two ship’s lengths, as her master says, from the *Trevisa*. The mate of the *Iocoma* says the swing to port started at three-quarters ship’s length from the *Trevisa* and the collision occurred half a minute or a minute after. There is a discrepancy between the master, mate and wheelsman as to when the swing to port started; the master says around half a ship’s length from the *Trevisa*, the mate at three-quarters’ ship’s length, and the wheelsman at one and a half to two ship’s lengths. The master did not order the engines full speed astern until the ships were less or about half a boat’s length apart. There is a question if the full speed astern order was proper, and if so, was it given too late. There is also the action of the helm having been put amidships when the engines were going astern.

The evidence further establishes that the stem of the *Iocoma* struck the port bow of the *Trevisa* at an angle of about 45 degrees and that the latter was then well over to her starboard side of the canal and close to the bank. The anchor of the *Iocoma* was hanging over her port bow and was crushed through the shell plates of the *Trevisa* and part of its stock and flukes was carried away in the side of the *Trevisa*. The impact was fairly heavy, no doubt due more to the weight of the ships than to their speed, and several plates on the *Trevisa* were damaged. No damage was caused to the *Iocoma* apart from the loss of her anchor. At the trial counsel for the *Iocoma* abandoned any contention that the *Trevisa* was to blame except possibly that she may have been too near the centre of the canal at the time of the collision, but a careful consideration of the evidence leads me to the firm conclusion that she had gone

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to her own side of the canal and did not in any way crowd the *Iocoma*.

It was contended that the sheer to port which ended in the collision was due to suction of the stern of the *Iocoma* towards the canal bank due to a cave in. The evidence in support of this theory is not very definite or conclusive. Suction is a force which has to be reckoned with in shallow waters. It usually occurs between passing ships and the extent to which its force may be exerted depends upon the distance between the ships, their relative speed and size and the character of the channel or water in which they pass. It is well known that when ships approach too near the bank or bottom, or "smell the land," in sailor parlance, they have a strong tendency to sheer. The bank of the canal sloped from top to bottom and the closer the ship approached the bank the less water she had under her. The *Iocoma* was light and could go much closer to the bank than if loaded. Her stern was much deeper in the water than her bow and if, as is contended, her stern was affected by suction, it may have resulted from having gone too close to the bank. If the sheer was due to a force not then under her control, it is necessary to consider several questions of navigation, viz:—Was it without fault on her part? Could it have been avoided by the exercise of ordinary vigilance and seamanship, or have been controlled and the ship's course recovered by the exercise of reasonable and ordinary good seamanship? The plaintiff has a right to call upon the *Iocoma* to show that she was brought within this influence without any antecedent fault and that there was no fault in her management after this force began to exert itself upon her. The question whether proper manoeuvres were employed and whether any manoeuvres could have averted the collision, are matters of nautical skill upon which I have taken the advice of my assessors.

Among the questions which I have put to my assessors, with their answers, are the following:—

1. Did the *Iocoma* port too soon?—Ans. Yes.
2. Did she go too close to the canal bank and thereby subject her stern to suction and become incapable of

answering her helm?—Ans. Yes. We are inclined to say that in the straightening up of the ship, the wheelsman, on his own initiative, gave her too much starboard helm and was unable to overcome the swing to port in sufficient time to avert the collision.

3. Was full speed astern a proper manoeuvre, and if so was it done at the right time?—Ans. If the two ships were only one-half ship's length apart at this moment, this was the right manoeuvre. If, as the wheelsman says, they were one and one-half ship's length apart, a kick ahead on her engines would have straightened her up.

4. What should have been done with the helm when the full speed astern order was given?—Ans. We would suggest the rudder should have been put hard-a-starboard, particularly as the ship had very little way through the water.

5. Was her speed under the circumstances too great?—Ans. No.

6. Did the *Iocoma* fail to use any manoeuvre which would have averted the collision?—Ans. If she had not gone so close to the bank, and remembering she was a light ship, she would not have felt the suction of the bank to the extent claimed.

Although the canal is a narrow channel, there is ample room for ships to meet and pass in safety provided they are navigated with care and ordinary nautical skill and seamanship. I am advised by my assessors that it is not necessary for meeting ships to change their course from the centre to their respective sides at a very great distance from each other, in fact, they can approach each other with safety to a comparatively short distance and that then with proper manoeuvring they pass without difficulty. The defence relied upon here is inevitable accident and the burden of that defence rests on the defendant. This defence is well known in Maritime Law and the principles applicable have been stated in a great many cases.

In *St. Clair Navigation Company v. The Ship D. C. Whitney* (1), Mr. Justice Hodgins said:—

The law of inevitable accident where the maritime offence of collision is charged, requires the offending party to prove that he could not possibly

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(1) [1905] 10 Ex. C.R. 1, at p. 13.

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prevent it by the exercise of ordinary care, caution, prompt action or maritime or engineering skill. It is not enough to show that the damage could not be prevented by the offending party at the moment of collision; for one of the crucial questions is—could previous measures have been adopted which would have prevented it or rendered the risk of it less probable.

In the *D. C. Whitney* case the defence of inevitable accident was rejected by the trial judge and the plaintiff's action was maintained, but it was reversed in the Supreme Court on the question of jurisdiction alone (1).

*Taylor v. SS. Prescott* (2) affirmed by the Supreme Court of Canada and the Privy Council.

*Ulric Tremblay v. Hyman* (3), and authorities there cited.

Marsden's Collisions at Sea, 7th Ed., p. 19:—

It is not enough for a ship to show that, as soon as the necessity for taking measures to avoid collision was perceived, all that could be done was done. The question remains whether precautions should not have been taken earlier. When two ships are shown to have been in a position in which a collision was inevitable, the question is, by whose fault, if there was fault, did the vessels get into such a position.

See also the leading English case of *The Merchant Prince* (4), and also the case of *The Ralph Creyke* (5), and a leading American case of *The Ohio* (6).

Smith's Rule of the Road at Sea, 218.

The collision in this case was caused by the bow of the *Iocoma* sheering to port and coming across past the centre of the canal until she came in contact with the *Trevisa*, notwithstanding that her engines had been put full speed astern. How did the *Iocoma* get into the position which immediately preceded the sheer to port? I am advised by my Assessors that she ported too soon and went too close to the canal bank on her starboard side and that in straightening up her wheelsman put the helm too much to starboard. This gave her bow a cant away from the bank and her bow continued to swing to port until the collision happened. I accept the advice of my Assessors that the master did right in putting her engines full speed astern when he did. In my opinion his evidence as to the distance the ships were apart when the sheer to port

(1) [1906] 38 S.C.R. 303.

(2) [1908] 13 Ex. C.R. 424;

[1910] A. C. 170; 79 L.J.  
P.C. 65.

(3) [1920] 20 Ex. C.R. 1.

(4) [1892] P.D. 179.

(5) [1886] 6 Asp. (N.S.) 19.

(6) [1898] 91 Fed. Rep. 547.



started is more trustworthy than the evidence of the wheelsman. The speed of the ship was not excessive and it was then too late to attempt to recover her course by increasing her speed ahead. The reverse was the only thing for the master to do under the circumstances, but unfortunately it did not avert the collision. I think it is very plain that the *Iocoma* changed her direction too soon and went too close to the bank, with the result that being too close to the bank the ship refused to answer her helm. If she had delayed porting in the first place until the ships were closer, she would have passed in safety, and this is the opinion of my Assessors. There was therefore antecedent fault in porting too soon and in going too close to the bank, and this fault lead to the situation which exposed the stern of the *Iocoma* to suction towards the bank and resulted in the collision. I am of opinion that the master did the best he could when he found that the bow of his ship was swinging to port when it should have been going in the contrary direction, but I cannot excuse his owners from the manœuvres which preceded the sheer and for which I think the wheelsman is mainly responsible. This is also the opinion of my Assessors. There was fault as above pointed out in the navigation of the *Iocoma* between the time she ported and the sheer to port started which prevents the defence of inevitable accident prevailing. No blame is imputable to the *Trevisa* or those in charge of her.

There will therefore be judgment for the plaintiff for damages and costs against the defendant and her bail, with a reference to the Deputy Registrar to assess the damages.

*Judgment accordingly.*

Solicitors for plaintiff: *Messrs. Meredith, Holden, Hague, Shaughnessy & Heward.*

Solicitors for defendant: *Messrs. Atwater, Bond & Beau-regard.*

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