

QUEBEC ADMIRALTY DISTRICT

GEORGE HALL COAL CO. OF CAN- } PLAINTIFF;
 ADA, LTD. }

1923
 Sept. 19.

AGAINST

THE STEAMER *MAPLEHURST*

AND

CANADA STEAMSHIP LINES LTD. PLAINTIFF;

AGAINST

THE TUG *MARGARET HACKETT*

Shipping—Collision—Breach of rules—Fault of both parties—Liability proportionately divided.

The *M.* was proceeding from Montreal to Quebec with the barge *B.* in tow, without the regulation light equipment for steam vessels engaged in towing, having the usual mast head white light and red and green lights, but having only an ordinary anchor light of insufficient visibility and not properly placed for the additional white towing light required by article 3 of the Collision Regulations. When on Lake St. Peter, the tug *M. H.* upbound with barge *Gladys H.* in tow collided with the *B.* The tug foundered and the *B.* sustained damages and action and cross-action resulted.

About 2,000 feet astern of the *M.* and tow, was a large steamer, and the master of the tug *M.H.*, as the lights did not show the *M.* had a tow, decided to go under her stern, cross diagonally to the other side of the channel and pass the large steamer to port. When between 200 and 300 feet away he saw the green light of the *B.* and took her to be a sailing vessel. He continued on his course and did not discover she was a tow till just before the collision. There was still time to have avoided the collision by starboarding, which the *M.H.* failed to do.

Held, on the facts, that although the *M.H.* could have avoided the collision by starboarding, yet, the failure of the *M.* to show the regulation towing lights primarily led to the collision, and both should be held liable in proportion to the degree in which each was in fault, which in this case, was fixed at 75 per cent for the *M.* and 25 per cent for the *M.H.*

Proof of the breach of the Collision Regulations casts the burden of proof upon the infringing vessel to establish that such breach did not cause or contribute to the collision.

ACTION AND CROSS ACTION to recover damages due to collision between the tug *Margaret Hackett* and the barge *Brookdale* (1).

July 23 and 30, 1920.

Case now heard before the Honourable Mr. Justice Mac-lennan at Montreal.

(1) REPORTER'S NOTE: Judgment herein was affirmed on appeal to the Supreme Court of Canada. See [1923] Can. S.C.R. 507. Compare also report in cases of *Fraser v. Aztec* (19 Ex. C.R. 454), and *Geo. Hall Coal Co. v. Ship Parks Foster* [1923] Ex. C.R. 56.

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THE
GEO. HALL
COAL Co.

v.

SS. *Maple-*
*hurst.*MacLennan
L.J.A.A. R. Holden, K.C. for the tug *Margaret Hackett.*C. A. Barnard, K.C. for the barge *Brookdale.*

The facts are stated in the reasons for judgment.

MACLENNAN, L.J.A. now (19th September, 1921) delivered judgment.

These two actions were tried together and were submitted on the evidence taken before the Wreck Commissioner in an inquiry held by him into the collision between the tug *Margaret Hackett* and the barge *Brookdale* (in tow of the steamer *Maplehurst*) which took place in Lake St. Peter on the morning of July 16, 1920. As a result of the collision, the tug foundered and the barge sustained damage and the plaintiffs, as their respective owners, sue for the damages arising from the collision, each imputing fault and blame to the other.

The *Maplehurst* which was a lake steamer, having a net tonnage of 742 tons, left Montreal for Quebec on the evening of July 15, 1920, having in tow the barge *Brookdale*, both the property of the Canada Steamship Lines, Limited. The *Maplehurst* was not equipped for towing as she did not have the regulation towing lights. Her regulation masthead light was electric, as it was necessary that she should show a second light on her mast, the 2nd officer was instructed to provide the additional light, and for that purpose he used a vegetable tin box 12 to 14 inches square, part of which he cut away and in which he placed an anchor light, which was a coal oil lantern, which he found in the lamp room and which had not been previously used during that season. Neither the oil nor the wick were changed and this improvised light was attached to guide wires below the electric masthead light. The box which was used to hold this temporary anchor light was not produced at the investigation held in the Wreck Commissioners Court nor at the trial. It seems to have mysteriously disappeared and its absence and non-production have not been satisfactorily accounted for. There is conflict of evidence as to the position in which this anchor light was placed. According to the evidence of the first officer, under whose direction it was put up, the anchor light was 20 feet above the forecastle deck and the electric

masthead light, by measurement, was bound to be 35 feet 9 inches above the forecastle light. The barge *Brookdale* had regulation red and green side lights. While the *Maplehurst* with her tow was proceeding down the channel through Lake St. Peter a collision occurred about 100 feet west of gas buoy No. 25 between the *Brookdale* and the tug *Margaret Hackett* upbound with the barge *Gladys H.* in tow.

Odilon Portelance, mate of the tug *Margaret Hackett*, was in charge of her navigation at the time of the collision about 3.20 a.m. He was approaching the main channel at gas buoy No. 25, where there is a curve, taking a short cut in the shallow water south of the dredged channel and passed the steamer *Maplehurst* to starboard. There was a large steamer coming down the main channel about 2,000 feet behind the *Maplehurst's* tow. Portelance saw the lights of this large steamer and, as the *Maplehurst's* lights as seen by him did not show that she had a tow, he decided to go under her stern and pass over to the north side of the channel and pass the large steamer coming down to port, and for this purpose he was directing his tug with her tow to diagonally cross the main channel. Portelance swears that when he first saw the green light of the *Brookdale* to his port he was at a distance of about 250 to 300 feet, he took her for a sailing vessel and, as there was a northwest wind he thought he could cross the bows of the *Brookdale* and get over to the north side of the channel before meeting the large steamer which was coming down stream. He did not discover the *Brookdale* was a tow until just before the collision between his tug and the *Brookdale*. After the collision he ordered his tow line cut and tried to reach shallow water, when the *Margaret Hackett* sank. The damage to the *Brookdale* was not so serious and she continued on her course to Quebec.

The plaintiff, George Hall Coal Company, the owner of the tug *Margaret Hackett*, submits that the collision which resulted in the sinking of its tug was caused by the absence of proper lights on the *Maplehurst* to indicate she had a tow and that the tug was thereby misled. The *Maplehurst* did not have the regulation light equipment for a steam vessel engaged in towing another vessel. She had the usual masthead white light and the red and green

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side lights—all electric—as required by Article 2 of the Regulations. The additional white towing light required by Article 3 was not electric but was an ordinary anchor light, a coal oil lamp, which if provided with good oil and wick, properly trimmed, would be visible for one mile, whereas the regulations require it to be of such a character as to be visible at a distance of five miles. Its position was not such as conformed with the Regulations as it was 15 feet below the electric masthead light and not six feet as required by Article 3. The regulations concerning lights are of the highest importance and particularly so in the navigation of the narrow and crowded waterway between Montreal and Quebec, and owners and masters are required by statute to obey these regulations and departure from them is only justified by necessity. Non-observance is *prima facie* negligence. The *Margaret Hackett* up-bound was entitled to expect a vessel with a tow, which it might meet, would show the regulation lights, two bright white lights on the masthead and both of the same construction and character, both visible for five miles and not less than six feet apart, but certainly not over 15 feet apart as was the case here. I find the *Maplehurst* did not have the towing lights required by the regulation. The men in charge of the tug and her tow saw the bright electric light on the mast of the *Maplehurst* but not the second light. The light of the coal oil lantern was so dim and in such a position that it was no notice to the tug that the *Maplehurst* had a barge in tow. There were a number of other lights about the deck of the *Maplehurst* and what was intended as a second bright light was so poor and so far out of the position which it should occupy as a towing light that it is not surprising that the lights were misleading and that the officer in charge of the tug thought he was meeting a vessel unencumbered with a tow. Proof of the breach of the regulations casts the burden upon the infringing vessel to establish that the breach did not cause or contribute to the collision; *The Fenham* (1), and *The Gannet* (2). The owners of the *Maplehurst* are very much to blame for having undertaken to tow a vessel without

(1) [1870] L.R. 3 P.C. 212.

(2) [1900] A.C. 234; 69 L.J. Adm. 49.

having on board and using the proper towing lights in conformity with the regulations and they have failed to establish that their breach did not cause or contribute to the collision. The evidence is conclusive that if the lights of the *Maplehurst* had indicated she had a vessel behind her in tow, the tug *Margaret Hackett* had ample water and room to pass her, her tow and the large steamer following them, green to green, in which case no collision would have occurred. My assessor is of the same opinion as he advises me that the absence of the Regulation Towing Lights on the *Maplehurst* primarily led to the collision.

Is the mate of the *Margaret Hackett* free from blame and should her owners be held liable in whole or in part for the damage sustained by the barge *Brookdale*. When the mate of the *Margaret Hackett* saw the green light of the *Brookdale* to port he concluded she was a vessel under sail. There was a northwest wind on the port side of the *Brookdale* which would have a tendency, had she really been a sailing vessel, to carry her to the south or starboard and the intention of the tug's mate was to cross her bows to the north or starboard side of the channel and pass her and the large steamer in the distance red to red. The mate's conduct must be considered in the light of the knowledge which he then had or should have had from all the surrounding circumstances of the situation, and the rights and obligations imposed upon him by the regulations. My assessor advises me that the mate of the *Margaret Hackett*, supposing the *Brookdale* to have been a sailing vessel, was justified in this manoeuvre, but evidently failed to take into consideration his own tow and its great length. Further he advises me that had the tug been alone and had the *Brookdale* actually been a sailing vessel, he believes he could easily have crossed ahead and even at the last moment before the collision he could have signalled his own tow, eased his engines and passed starboard to starboard of the *Brookdale* and the large down-bound steamer, there being plenty of water in the vicinity to allow this to be done. He also advises that the mate of the *Margaret Hackett* was guilty of a breach of the regulations in attempting to cross ahead of another vessel

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although there was justification for this and that he was guilty of a grievous error of judgment when he believed that his tow, considering its length, could cross the bow of the supposed sailing vessel. The regulations are clear on what should have been done in the circumstances. As the *Margaret Hackett* was about to re-enter the dredged channel, 450 or 500 feet wide, her mate saw ahead, apart from the *Maplehurst*, two vessels meeting him, the *Brookdale* near and a large steamer half a mile away. Article 25 provides that in narrow channels every steam vessel should, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies to the starboard side of such vessel. To comply with this article, the *Margaret Hackett* had to cross ahead of the other two vessels and her mate thought he could safely do so. Article 20 provides that when a steam vessel and a sailing vessel are proceeding in such directions as to involve risk of collision, the steam vessel shall keep out of the way of the sailing vessel, and Article 22 provides that every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other. In my opinion Articles 20 and 22 apply to this case, as the *Margaret Hackett* and the *Brookdale* were proceeding in such directions as to involve risk of collision and there was ample room and water to permit the *Margaret Hackett* to allow the *Brookdale* and the large steamer to pass to starboard. Had the *Brookdale* been a sailing vessel, it would have been the duty of the *Margaret Hackett* to have kept out of her way and she had ample room to avoid crossing ahead, to have gone under her stern, but as the *Brookdale* proved to have been a barge in tow, the attempt to cross her bows inevitably resulted in collision. The mate of the *Margaret Hackett* must be held to blame for his error of judgment and for his failure at the last moment to have starboarded which, in the opinion of my assessor, would have averted the collision. He was wrong in attempting to cross ahead of the tow when he should have kept out of the way and his owners must be held responsible in proportion to the degree in which he was in fault for breach of Articles 20 and 22 and which contributed to the collision.

I find the collision resulted from the fault of both the steamer *Maplehurst* and the tug *Margaret Hackett*. Their liability to make good the damage or loss arising from said collision is in proportion to the degree in which each vessel was in fault. In my opinion, which is shared by my assessor, the *Maplehurst* was very much more to blame for the collision than the *Margaret Hackett*, as the failure to show proper towing lights lead the latter into the hazardous position where on the spur of the moment she attempted to cross the bows of the downbound tow. I find that three-quarters of the fault which resulted in the collision is attributable to the *Maplehurst* and one-quarter to the *Margaret Hackett*.

There will therefore be judgment in favour of the George Hall Coal Company of Canada, Limited, against the steamer *Maplehurst* and her bail for three-quarters of the damages to the tug *Margaret Hackett* and costs, and judgment in favour of the Canada Steamship Lines, Limited, against the tug *Margaret Hackett* and her bail for one-quarter the damages to the barge *Brookdale* and costs, with a reference to the District Registrar assisted by merchants as assessors to determine the damages due in each case.

Judgment accordingly.

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