
TORONTO ADMIRALTY DISTRICT

1927
 Jan. 24, 25.
 Feb. 7.

BETWEEN:—

OWNERS OF SS. *MANLEY*..... PLAINTIFFS;

AND

OWNERS OF SS. *HECTOR* AND THE }
 NORTHERN CONSTRUCTION CO..... } DEFENDANTS.

Shipping—Collision—Signals—Rules—Negligence

Held, that where vessels are meeting in narrow channels or areas and improper signals by whistle are exchanged, Rules 22 and 23 being violated by both vessels, liability for negligence which causes a collision must be determined by the weight of evidence after consideration of the action of each vessel, having regard to Rule 37.

This was an action for damages arising out of a collision which took place on the 8th day of August, 1925, between a scow in tow of the tug *Hector* and the tug *Manley*, in a part of Port Colborne Harbour.

The action was tried on January 24 and 25, 1927, before the Honourable Mr. Justice Hodgins, at Toronto.

R. I. Towers, K.C., for plaintiffs.

R. S. Robertson, K.C., for defendant company.

The facts are set out in the reasons for judgment.

HODGINS, L.J.A., now (February 7th, 1927) delivered judgment.

Action for damages due to a collision on 8th August, 1925, between a scow in tow of the tug *Hector* and the tug *Manley* in that part of Port Colborne Harbour through which a deeper channel for the New Welland Canal was being dredged and drilled.

At the opening of the case the claim against the owners of the *Hector* was abandoned, as that tug and her scow were at the time of the collision being operated by the defendant company under charter.

The tug *Hector* was coming down the navigable channel leading from the last lock of the Welland Canal with a scow behind loaded with some 750 tons of clay and fastened by two towing lines to the tug. The distance of the scow behind was some 66 feet. The tug *Manley* was coming in from Lake Erie with a light scow lashed to her starboard side. Before the collision the *Hector* had met and passed SS. *Griffen* in the navigable channel. The dimensions of the vessels named are as follows:—

Manley, 92 feet long, 18 ft. 4 in. beam, draught 10 ft.

Hector, 67 feet 5 in. long, 16 ft. 6 in. beam, draught 9 ft.

Griffen, 266 feet long, 38 feet beam, draught 15 feet.

Manley's scow (Approx.) 130 feet long, 40 ft. beam, draught line 4 ft.

Hector's scow, 350 tons weight, 40 ft. beam, draught loaded 8/9 feet.

Owing to the operations connected with the new Welland Canal, the channel through the harbour to the canal had been divided in 1924 into a navigable channel 200 feet in width and a construction area lying alongside to the east, divided from the navigable channel by a line, over 2,000 feet in length from north to south, of spar buoys or stakes 600 feet apart, with two gas buoys marking the north and south ends. These gas buoys are shown on Exhibit 1, the position of that at the south end being marked "A." To the west of the navigable channel the harbour spread out with plenty of water some 22 feet in depth. In the construction area there was a drill boat anchored which, on the morning of the collision was at work some 140 feet east of the line of buoys and stakes as shown on Ex. 1.

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[The learned trial judge here discussed the preliminary acts and the evidence given by each side. After pointing out the contradictions and discrepancies in the testimony, he found the facts largely as given by the Master and crew of the SS. *Griffen*, a vessel proceeding inward ahead of the SS. *Manley*. He then proceeds.]

The only difficulty presented is in connection with the signals. The *Manley* says that when the *Hector* first blew 2 blasts he answered with an alarm and 1 blast, the *Hector* responding with an alarm and two blasts. The *Manley* then again repeated her alarm and one blast, and the *Hector* replied with one blast. Both thus violated Rules 22 and 23 which require slowing down and stopping if necessary. I will deal with this branch of the case later.

. In view of the short distance traversed by the *Hector*, 100 feet, while she was giving her two signals of two blasts and an alarm with them, and considering that the *Manley*, encumbered by a scow lashed to her, was coming in with the current, and liable to drift crosswise and into the *Hector's* course if stopped, I think the course of the *Manley*, though technically a breach of rules 22 and 23, was justified by Rule 37. I doubt if Rule 30 is applicable. If it is, then the *Hector* was bound to go to starboard and she finally accepted the one blast signal of the *Manley*. I consider that the position was made critical by the position and signals of the *Hector*, and should be governed rather by Rule 37 than by Rule 30.

I find that the *Hector* was to blame for keeping too long on the course she chose in order to clear the *Griffen* and thus crossing into the construction area where she admits she should not have gone, by her confusing signals, in not going to starboard earlier, and in stopping when she had got so close to the *Manley's* course as to thereby endanger the *Manley* and permit her heavy scow to swing, causing the collision which happened.

There will be judgment for the plaintiff company against the defendant company, and a reference to the Registrar at Toronto to ascertain the damages. The defendant company must pay the costs of the action and reference.

Judgment accordingly.