

SINCENNES McNAUGHTON LINE, LTD., PLAINTIFF;

1927

Nov. 17.

VS.

THE STEAMSHIP *BRULIN*, DEFENDANT.

*Shipping—Collision—Rule 25—Contributory negligence—Passing signal—
Breach of Rules—River navigation*

On June 15, 1926, at 11.30 p.m., the weather being fine and clear, with little or no wind, the tug *E. L.* was proceeding down the St. Lawrence River channel, on Lake St. Louis, and the *B.*, a steel vessel of the lake type, was going up. When the ships were about 2½ miles apart, *B.*'s pilot observed a white light ahead, which he took to be that of a yacht coming down on the north side of the channel. The channel at this point is between 2,000 and 4,000 feet wide and bounded by shoals. The *E. L.* was on the north side of the channel and the *B.* was at all material times on the north of midchannel, which was her proper side. The only lights seen by the *B.*, on the *E. L.* were then the two white lights which were broadening on the starboard bow of the *B.* indicating she was passing clear, starboard to starboard. When 70 feet away the *E. L.* suddenly changed her course, to cross the *B.*'s bows, when her red light was disclosed. The *E. L.* failed to give any signal to indicate which side she elected to take (Rule 25) nor did the *B.* give any signal. When the *E. L.* changed her course the *B.* put her helm hard astarboard, and her engines full speed astern, and collision occurred, the stem of the *B.* colliding with the port side of the *E. L.*, near the pilot house.

Held: On the facts, that the *E. L.* was solely to blame for the collision.

2. That the fact of the *E. L.* attempting to cross the bow of the *B.* was the direct and immediate cause of the accident, and that the fact of the *B.* earlier transgressing one or more of the Rules of the Great Lakes, or the rules of good seamanship did not contribute to the accident, and did not constitute contributory negligence. [*Anglo-Newfoundland Development Co. v. Pacific Steam Navigation Co.* (1924) A.C. 403, followed.]

ACTION by the plaintiffs to recover for the loss of their tug *Emma L.* by reason of collision with the defendant.

The action was tried before the Honourable Mr. Justice Archer at Montreal, assisted by Captains J. Mackintosh and J. O. Grey as Nautical Assessors.

A. R. Holden, K.C., for plaintiffs.

Francis King, K.C., for defendant.

The facts are stated in the reasons for judgment.

ARCHER L.J.A. now (November 17, 1927), delivered judgment.

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The plaintiff is the owner of the tug *Emma L.*, a steam tug of 56 tons gross, 35 tons net, 68 feet 4 inches long, and 14 feet 8 inches wide, drawing 7 feet 8 inches, and carrying a crew of seven; her speed being from 8 to 9 miles per hour.

The steamship *Brulin*, under the command of Captain G. A. Felker, is a steel lake type vessel of 2,241 tons gross, 1,576 tons net, speed $9\frac{1}{4}$ knots an hour, carrying a crew of nineteen. At the time of the collision she was drawing 13 feet aft, and 4 feet forward. Her length is 247 feet and her beam 43 feet.

On the evening of June 15, 1926, the weather being fine and clear with little or no wind, the tug *Emma L.* was proceeding down the channel of the River St. Lawrence in Lake St. Louis, with the current. The *Brulin* was en route for Port Colborne, proceeding up Lake St. Louis. Shortly after leaving Lachine the Master of the *Brulin* had retired, leaving command of the vessel to Captain J. Clark, who was engaged as a pilot. When nearing buoy 868 Captain Clark, the pilot of the *Brulin*, observed a white light ahead of buoy 988, and thought it was a yacht coming down the river on the north side of the channel. It should be noted that the distance between buoy 868 and buoy 988 is approximately two and one-half to two and three-quarters miles. The buoys are all placed on the north side of the channel.

After passing buoy 848 the channel is bounded north and south by shoals, the width varying approximately from 2,000 to 4,000 feet.

The evidence clearly establishes that the tug *Emma L.* was on the north side of the channel. The *Brulin* was always northward of the midchannel line, and, therefore, on her right side of the channel. As both ships were approaching, the only lights seen on the *Emma L.* were the two white lights which were broadening on the starboard bow of the *Brulin*, indicating that she was a ship passing clear, starboard to starboard. The crew of the *Brulin* claim they did not see the green light of the *Emma L.*

The evidence shows clearly that had the *Emma L.* followed this course she would have passed clear of the *Brulin* on the starboard side of that vessel, close to the line of buoys on the north side of the channel, but when at about

70 feet distance the *Emma L.* suddenly changed her course to cross the *Brulin's* bow, and at the same time disclosed her red light. The *Brulin's* helm was put hard astarboard, and her engines were put full speed astern. I am instructed by my assessors, and I am of opinion, that when one considers the speed of the *Brulin* and the short distance between the ships the above manoeuvre did not make any appreciable change in her direction or speed. The *Emma L.* continued across the *Brulin's* course, and a collision followed, the stem of the *Brulin* and the port side of the *Emma L.* in the vicinity of her pilothouse coming together.

As a result of the collision the tug *Emma L.* sank immediately, and became a total loss; and all her crew, with the exception of one fireman who was sitting on deck, were drowned. The *Brulin* was not damaged.

The collision occurred at 11.30 p.m., a short distance below buoy 92, at one of the widest parts of the channel, and at about 800 feet south of the buoy line.

In this case I have not had the advantage of seeing and hearing the witnesses, the parties having by consent submitted the case on the evidence taken before the Wreck Commissioner. Some of the evidence is not very satisfactory, but I cannot impute perjury. I have to accept the evidence given by the crew of the *Brulin*, and, accepting this evidence, which I have analyzed with great care, it is clear that the only and determining cause of the collision is to be found in the fact that the *Emma L.*, for reasons unknown and unexplained, suddenly changed her course to starboard from a position and direction in which she would have passed the *Brulin* in perfect safety starboard to starboard, and crossed the bow of the *Brulin*.

The only survivor of the *Emma L.*, fireman Sylvio Mongeon, corroborates to a certain extent the evidence given by the crew of the *Brulin*. He admits that shortly before the collision the *Emma L.* suddenly changed her direction to the right,—that is to the starboard. (Pages 5, 6, 7 and 8).

There is no doubt that the *Emma L.* proceeding down the channel with the current had the right of way under section 25 of the Rules of the Road for the Great Lakes. This section reads:

[The learned trial judge here cites Rule 25.]

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The *Emma L.* did not give any signal to indicate which side she elected to take, neither did the *Brulin* give any signal.

Captain Clark who was acting as pilot, and the second mate who was with him in the pilothouse, do not seem to have watched with care the movements of what they supposed to be a yacht. This lack of care and attention did not contribute to the collision, which was brought about by the sudden change of course of the *Emma L.*

I am of opinion, and I am also advised by my assessors, that although the initiative lay with the *Emma L.*, if she neglected to give a signal, the pilot of the *Brulin* would have shown good seamanship by indicating his intention by blowing a passing signal.

When the red light of the *Emma L.* appeared, as she started to cross the bow of the *Brulin*, the latter instead of putting her helm hard astarboard should have ported her helm and gone full speed astern. But, as I said before, this manoeuvre was *in extremis* and even if the proper manoeuvre had been adopted it would not have had any effect.

Having reached the conclusion that the direct and immediate cause of the collision is proven to be due to the fault of the *Emma L.*, even if I assume the *Brulin* transgressed one or more of the Rules of the Great Lakes, or the rules of good navigation, I must say that the transgression of such rules did not in any way contribute to the accident. This question has been fully discussed in many cases but I think the leading case is *Anglo-Newfoundland Development Company v. Pacific Steam Navigation Company* (1). See also remarks of Lord Selbourne in *Spaight v. Tedcastle* (2).

I am, therefore, of opinion the *Emma L.* is alone to blame for the collision, and plaintiff's action is dismissed with costs.

Judgment accordingly.

Solicitors for plaintiff: *Meredith, Holden, Heward & Holden.*

Solicitors for defendant: *King & Smythe.*

(1) (1924) A.C. 406, at p. 421.

(2) (1880-81) 6 A.C. 217, at p. 219.