

QUEBEC ADMIRALTY DISTRICT

1924
 Nov. 4.

THE GEORGE HALL COAL AND SHIP- }
 PING CORPORATION } PLAINTIFF;

AGAINST

THE STEAMER *BEECHBAY*

Shipping—Narrow channel—Right-of-way—Currents—Speed—Rules 29 and 38 of the Rules of the Road for the Great Lakes.

The *R.* was coming down with the current, in a narrow channel of the St. Lawrence river, at the entrance to the Galop Canal, and the *B.* was coming up. The *R.* duly gave the required signals and, having the right-of-way under the rules, elected to pass to port next to the north shore. Her signals were answered by the *B.* At a point where there is a bend just outside of the canal the *B.* coming on without reducing speed, failed to give the *R.* sufficient room, and the *R.* in endeavouring to avoid collision with the *B.* grounded.

Held. That the *B.* in failing to reduce speed, and in not waiting in the inside of the canal until the *R.* had passed and neglecting to respect the right-of-way of the *R.* “neglected” some “precaution” which was required “by the special circumstances of the case” and is wholly to blame for the grounding of the *R.* and consequent damage sustained.

2. Where if two steamers keep their speed they would meet at a bend in a narrow channel, three hundred feet wide, it would be bad seamanship for the one navigating against the stream not to wait until the other has passed clear.

ACTION *in rem* for damages to the *SS. Royan* as a result of improper navigation by the steamer *Beechbay*.

Montreal, October 27, 1924.

Case now heard before the Honourable Mr. Justice MacLennan.

R. C. Holden for plaintiff.

Errol M. McDougall, K.C. and Charles Russell McKenzie for defendant.

The facts are stated in the reasons for judgment.

MACLENNAN L.J.A. now, this 4th day of November, 1924, delivered judgment.

This is an action *in rem* for damages suffered by the plaintiff’s steamer *Royan* as the result of the alleged improper navigation of the steamer *Beechbay* at the entrance to the Galop Canal, in the River St. Lawrence, on 4th May, 1924.

The plaintiff’s case is that the *Royan* grounded on the north bank, damaging her port bilge, in endeavouring to

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avoid a collision with the *Beechbay* while passing her just outside the upper entrance to the canal, and defendant's case is that the vessels met several hundred feet farther upstream, had passed clear and that the grounding of the *Royan* cannot be attributed to the *Beechbay*.

The plaintiff's steamer *Royan*, 250 feet long, 40.2 feet wide, loaded, drawing 14 feet, was coming down the River St. Lawrence with the current, a short distance above the upper entrance to the Galop Canal on the afternoon of 4th May, 1924, when the *Beechbay*, 225 feet long, 35 feet wide, light, drawing 3 feet forward and 12 feet 6 inches aft, was observed coming up the canal. When at a distance of three-quarters of a mile from the latter the *Royan* gave a two-blast signal, which was immediately answered by a similar signal from the *Beechbay*. There is a bend in the north bank of the river above the canal, and it is customary for vessels to keep as near as possible to the north bank in order to avoid a cross current which sets in from the bank across the entrance to the canal. The *Royan*, after having given the first signal of two blasts, was brought close to the north bank and continued her course ten or twenty feet from it. The *Beechbay* still in the canal was keeping close to the north bank and when the vessels had arrived at a distance from each other of five or six lengths a second signal of two blasts was given by the *Royan* and answered by a similar signal from the *Beechbay*. Both vessels were still close to the bank and, when a ship's length apart or less, the *Beechbay* began to change her course slightly to port and her stern began to swing to starboard. The *Royan* was swinging to starboard around the bend close to the bank and, when the bows of the two vessels had cleared by about ten feet, the *Royan* in order to avoid colliding with the *Beechbay* was given a kick ahead on her engines, 20 revolutions, her chief engineer says, with her helm put hard-astarboard, but being crowded she began to ground at her port bow and when the *Beechbay's* stern had cleared the *Royan's* bow, the latter's engines were put full astern so that she would not ground any harder than possible. My Assessor advises me that these movements of the *Royan's* wheel and engines were good seamanship. The stern of the *Beechbay*, if it did not collide with the side of

the *Royan*, came within one foot of her and so close that a deckhand on the *Royan* was able to touch her with his hand. While passing in this manner the *Royan* was aground on the bank and her port bilge was considerably damaged. It is admitted the grounding of the *Royan* happened just outside the entrance of the canal, her master says about 100 feet above the entrance. The width of the channel there and for some distance above and below, including the entrance of the canal, is 300 feet, which afforded ample room to manoeuvre with safety. According to the evidence of the plaintiff's witnesses, the grounding of the *Royan* took place while the vessels were passing. These witnesses were the master, first mate, second mate, watchman and three deckhands, all eye witnesses to what happened. Against their testimony there is evidence for the *Beechbay*, that the vessels passed each other between Red Gas Buoy 138 U on the north side of the channel and a black stake abreast of it on the south side of the channel, nearly a thousand feet from where the *Royan* grounded. If the vessels passed opposite the Red Gas Buoy, it is manifest that the grounding of the *Royan* cannot be attributed to the *Beechbay*. The first mate of the *Royan*, who was steering says that the first signal was given when his vessel was about the second red stake above Red Gas Buoy 138 U, and that place has been marked on the chart by another witness. The vessels were then three-quarters of a mile apart, which would put the *Beechbay* well down in the canal, and the *Royan* would be about 1,450 feet above the Gas Buoy and the *Beechbay* about 2,500 feet below it. The speed of the *Royan* with the current was greater than that of the *Beechbay* and it would be quite impossible for the vessels to meet and pass at the Gas Buoy. The master of the *Royan* has testified that when he passed the Gas Buoy the *Beechbay* had not yet got out of the canal. There is further evidence which shows that the passing could not have occurred there. The mate of the *Beechbay* marked on the chart about 400 feet inside of the canal the place where his vessel was when the second two-blast signal was given, when the vessels were five or six lengths apart. It is to be pointed out that the mate of the *Beechbay* later contradicted his evidence in this respect and stated that the

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point which he marked on the chart as the place of the second signal was where the first signal was given, and that the second signal was given after he had left the canal. The evidence of the first mate, second mate and one of deckhands of the *Royan*, is that the second signal was given while the *Beechbay* was still inside the canal. Five or six boat lengths would be from twelve to fifteen hundred feet and the distance on the chart from where the *Beechbay's* mate marked the position of his vessel at the second signal to the Gas Buoy is about 1,400 feet. The *Royan* would therefore be at the Gas Buoy while the *Beechbay* was still inside the canal, and this is strong corroboration of her master's evidence to that effect. It is impossible to accept the evidence on behalf of the *Beechbay* that these vessels passed at the Gas Buoy. I therefore find that the vessels passed just outside the entrance to the canal in accordance with the evidence of the *Royan's* witnesses.

The witnesses on board the *Royan*, three of her officers and four members of her crew were in a better position to know at what time their ship went aground than any one on board the other vessel could possibly be, and I therefore find that the grounding did take place while the vessels were passing.

The channel was 300 feet wide, the *Royan*, coming downstream with the current had the right to elect that she would pass to port next to the north bank, gave the proper signal at a proper distance and afterwards repeated the signal, both of which were answered by the *Beechbay*, but the latter failed to give the *Royan* sufficient room and crowded her to the bank, with the result that when the *Royan*, in a very narrow and dangerous place, starboarded to avoid collision, she went ashore.

The plaintiff submitted that the *Beechbay* failed to respect the right-of-way of the *Royan* as the descending vessel, that the speed of the *Beechbay* was improper and, if she had exercised reasonable care, no accident would have happened. Under the Rule of the Road the *Royan* had the right-of-way, the current was with her and was against the other. The *Beechbay* was going full speed against the current making three and a half to four miles an hour as she approached the exit of the canal into a bend of the river

where there was a current of three or four miles which set in as a cross current away from the north bank between the Red Gas Buoy and the entrance to the canal. The cross current is so strong that vessels going up and down at this place usually keep as close as possible to the north bank although the channel there is three hundred feet in width. The *Beechbay* took the chance of meeting the *Royan* in the bend when she could have reduced speed and waited inside the canal until the *Royan* passed clear.

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I am advised by my Assessor that it is an established practice for the upbound vessel at this place to wait in the canal until the downbound vessel is safely inside the cross current at the entrance to the canal and that, according to the ordinary practice of seamen, it would have been wise for those in charge of the *Beechbay* to have taken this precaution and that it would have been good seamanship on their part to have waited in the canal until the *Royan* had passed clear.

Marsden's Collisions at Sea, 8th Edition, p. 421, says:—

It is a prudent rule in a winding tidal river, in the absence of special regulations, for a steamship about to round a point against the tide to wait until a vessel coming in the opposite direction has passed clear, and a steamship was held in fault for disregarding this precaution in the Scheldt.

The case referred to was *The Talabot* (1), tried before Butt J., where it was held that

it is the duty of the steamer navigating against the tide to wait until the other steamer has passed clear.

The same principle was followed and adopted by Bargrave Deane J., in the case of the *Ezardian* (2). See also the *Ship Norwalk* (3), and *Walrod v. SS. Coniston* (4), where the same principle was applied. Rule 29 of the Rules of the Road for the Great Lakes provides that in channels less than five hundred feet in width, when steam vessels proceeding in opposite directions are about to meet in such channels, both vessels shall be slowed down to a moderate speed according to the circumstances, and Rule 38 provides that nothing in the Rules shall exonerate any vessel, or the owner, or master, or the crew thereof from the consequences of a neglect of any precaution which may be re-

(1) [1890] 6 Asp. M.C. 602.

(3) [1909] 12 Ex. C.R. 434.

(2) [1911] P. 92; 80 L.J. Adm. 81.

(4) [1918] 18 Ex. C.R. 330; 19 Ex. C.R. 238.

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quired by the practice of seamen, or by the special circumstances of the case. The *Royan* was proceeding at reduced speed, she had barely steerage way, and to further reduce her speed would have been a menace to her own movements. The *Beechbay* made no attempt to reduce her speed, but continued full speed ahead. It would have been good seamanship, in accordance with the principles laid down in the English and Canadian cases above cited and the advice of my Assessor, for the *Beechbay* to have reduced her speed and waited inside the entrance of the canal until the *Royan* had passed, and she did neglect some precaution which was required by the special circumstances of the case. It was a dangerous and difficult part of the river to navigate and the *Beechbay*, in not waiting for the other vessel, took the chance and risk of crowding the *Royan* on the bank in a channel 300 feet wide.

I therefore find that the damage to the *Royan's* port bilge when she went aground was due to the *Beechbay* trying to pass too close to the *Royan*, to the *Beechbay's* neglect to respect the right-of-way of the *Royan*, her excessive speed and neglect to wait in the canal until the *Royan* had passed clear.

There is no blame attributable to the *Royan* or those in charge of her.

There will therefore be judgment against the *Beechbay* and her bail for the damages claimed and for costs, with the usual reference to assess the damages.

Judgment accordingly.

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

Solicitors for defendant: *Casgrain, McDougall, Casgrain & Stairs.*
