

THE NOVA SCOTIA ADMIRALTY DISTRICT.

THE DOMINION COAL COMPANY, } PLAINTIFF;
 (LIMITED)..... }

1902
 Feby. 4.

AGAINST

THE STEAMSHIP "LAKE ONTARIO."

*Admiralty Law—Collision—Ship at Anchor—Anchor-light—Lookout—
 Weight of Evidence—Credibility.*

A collision occurred between the *A. L. T.*, a ship at anchor, and a steamship, the *L. O.*, proceeding in charge of a pilot to her dock, within the harbour of Halifax, N.S., at night in the month of January. The weather was blustering, and intermittently clear and cloudy. On arriving at the quarantine grounds the *L. O.* had signalled, by guns and whistles, for the medical officer of the port, and then proceeded up the harbour on the east side of George's Island. After passing the northern line of George's Island the *L. O.* changed her course westerly toward her berth, and in proceeding thereon passed between the lights of two vessels anchored on the northern side of that island. While doing so she suddenly came upon the *A. L. T.* lying at anchor, collided with and sank her. The only person on board of the *A. L. T.* was a caretaker, and while admitting that he was not on deck at the time, he swore that a proper anchor-light was burning on his ship. His statement as to the anchor-light was corroborated by the captain of a fishing schooner lying close by, and that of some boatmen and labourers on the wharves. On the other hand the pilot of the *L. O.*, the captain and first and third officers, boatswain and boatswain's mate, and four of the seamen, all swore positively that there was no light on the *A. L. T.* while they were approaching her, and that she was not seen by any one until their lookout called that there was something ahead. The evidence further showed that both the officers and crew were alert at the time of the accident, and anxiously working the ship through anchored vessels in the darkness and blustering weather.

Held, that the state of facts as substantiated by the evidence for the owners of the *L. O.* must be accepted as correct, and that being so, the collision and subsequent loss were wholly attributable to the *A. L. T.* in not keeping a proper light and lookout.

1902
 THE
 DOMINION
 COAL
 COMPANY
 v.
 THE
 STEAMSHIP
 LAKE
 ONTARIO.

Reasons
 for
 Judgment.

THIS was an action *in rem* for damages for collision.
 The facts are stated in the reasons for judgment.

June 26th, 1901.

The case came on for hearing at Halifax, N.S.

H. Mellish and *F. F. Mathers* for plaintiff;

A. Drysdale, K.C., and *W. H. Fulton* for the ship.

MACDONALD, (C.J.) L.J. now (February 4th, 1902),
 delivered judgment.

The collision from which this action resulted occurred in the harbour of Halifax, on the 26th January, A. D. 1900, about 10.15 p. m. of that day. The wind during the evening was squally with occasional showers of snow and its course varied during the evening from S. W. to N. W. While some of the witnesses declared the atmosphere to be clear at the time of the accident, the recollection of others made it dark with blustering winds. During the evening named several vessels were anchored in the harbour around the Northern side of George's Island. Among these was anchored the *A. L. Taylor*, a coal barge owned by the plaintiffs. Many, if not all, of these vessels had their regulation lights burning; and it is admitted that the defendant steamship struck and sank the *A. L. Taylor*. Substantially, the only question in this case is whether at the time of and shortly before the collision the *A. L. Taylor* had her regulation lights burning, as alleged by the plaintiffs and denied by the defendants. About 9 or 9.30 p.m. of the day referred to the R. M. S. S. *Lake Ontario* entered the harbour of Halifax, and on coming to the Quarantine Grounds between McNab's Island, made the usual signals for the Port physician. After waiting for sometime for a reply to her signals the steamer proceeded up the harbour on the East side of Geoge's Island toward her berth at Deep Water. The steamer,

after passing the northern line of George's Island, changed her course westerly toward Deep Water, and in proceeding passed between the lights of two vessels anchored as I have said on the Northern side of the island. While passing between these lights she suddenly came upon the *A. L. Taylor*, which, the steamer alleges, had no anchor, light displayed, and before the way on the *Lake Ontario* could be stopped she struck the *A. L. Taylor* on the port side about opposite the foremast. The question for decision, the only question, is whether the *A. L. Taylor* had her lights burning and a competent and sufficient lookout on board duly attending to his duties at the time the *Lake Ontario* struck her, or a sufficient time before the actual contact to give the defendant vessel warning of the danger in her path.

The chief witness called for the plaintiffs was McGillivray, who had been in the employ of the plaintiffs as master of the barge while engaged in transporting coal from Cape Breton to Halifax. His health broke down and he had to abandon his usual employment; and the plaintiffs when they determined to keep the barge as a coal hulk anchored in the harbour, charitably gave him the place of lookout or caretaker of the vessel.

Article Eleven of the Regulations of 1894 provides that a vessel under 150 feet in length (as this vessel was) when at anchor "shall carry forward where it can best be seen, but at a height not exceeding 20 feet above the hull a white light in a lantern so constructed as to show a clear uniform and unbroken light visible all around the horizon at a distance of at least one mile." See also Article Twenty-nine which says: "Nothing in these rules shall exonerate any ship or the owner or master or crew thereof from the consequence of any neglect to carry lights or signals or of any neglect to keep a proper lookout."

1902

THE

DOMINION
COAL
COMPANY.

v.

THE

STEAMSHIP
LAKE
ONTARIO.Reasons
for
Judgment.

1902
 ~~~~~  
 THE  
 DOMINION  
 COAL  
 COMPANY  
 v.  
 THE  
 STEAMSHIP  
 LAKE  
 ONTARIO.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

When a vessel under way comes into collision with a vessel at anchor exhibiting a proper light the onus is on her to justify her conduct. She cannot be excused when it is shown that she has not a sufficient lookout. The vessel at anchor is also bound to keep a competent person on watch, whose duty it is to see that the anchor light or lights are properly exhibited and to do anything in his power to avert or minimize a collision—if that person acts in error of judgment, when placed by the colliding vessel in a position of difficulty calling for instant decision, he is entitled to favourable consideration, and it must be shown that any alternative course would have prevented or mitigated the collision.

It is no excuse for not carrying lights, that they were being trimmed or went out by accident (1). The evidence in this case cannot be said to be free from contradictions. Few cases of collision, so far as my experience has enabled me to express an opinion, can be said to be free from difficulties arising from causes altogether outside any indisposition on the part of the witnesses to tell the truth, and we cannot, I think, have much difficulty in arriving at the true facts in this case. The two principal witnesses for the plaintiffs are McGillivray, the watchman, and McLean, the master of an American schooner, which was anchored close to the *A. L. Taylor* on the evening of the accident. The former makes it quite clear that his duties, as look-out and caretaker of the vessel of which he was in charge, sat very lightly upon him, and were performed in the most perfunctory manner. It is indeed a misuse of the term to call this witness a lookout or anchor watch in the sense in which the word is used in the decisions and the text books. He left the ship through the day to go ashore to get his meals, and to attend to any other

(1) Marsden on Collisions, 4th ed. p. 391 and cases there cited.

duties that required his attention. He had a bed in the cabin in which he slept, and perhaps occasionally throughout the night made an observation of the light. It was indeed impossible that he could have kept the watch contemplated by the rules and decisions of the courts, unless he could walk about the streets all day and about the decks of his ship all night. His duty could be performed only by a constant and careful lookout and watch; and if such a lookout had been kept on the night of this accident, it is impossible to say the collision would have occurred. The *Lake Ontario* it appears while at quarantine, only one or two miles from the *A. L. Taylor*, fired guns and blew her whistles till they were heard all along the water side, and if McGillivray had been on the lookout, or if any lookout had been kept on the ship, it appears to me impossible that the *Lake Ontario* could have approached her without being observed. When he seeks to establish the important fact in the cause in the face of strong contradiction, he cannot complain if, in view of the facts proved, his evidence be received with much reserve.

The next witness is the master of the American fishing schooner. This witness is evidently a smart, intelligent person, and he swears positively that he saw the anchor-light of the *A. L. Taylor* burning up to the time of the collision. I need not go over the evidence, but one observation is very obvious, that is, why the plaintiffs should not have corroborated this important witness when they had the material abundantly at hand, according to his story. He states on his direct examination that he was performing the duty of lookout on board of his own vessel on the evening in question, because his crew were ashore; but it turned out on further enquiry that not less than six of his crew were on board with him all the evening, three of them lying asleep in the cabin aside him

1902  
 THE  
 DOMINION  
 COAL  
 COMPANY  
 v.  
 THE  
 STEAMSHIP  
 LAKE  
 ONTARIO.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

1902  
 ~~~~~  
 THE
 DOMINION
 COAL
 COMPANY
 v.
 THE
 STEAMSHIP
 LAKE
 ONTARIO.
 ———
 Reasons
 for
 Judgment.
 ———

and three or four others in the fore-castle. It strikes me as unusual that, with so many of his men at hand, the master should be so anxiously performing their duty; and that not one of these men should have been called to corroborate the witness, or explain why they could not do so. The other witnesses were the boatmen and labourers about the wharves on the water front. I have no doubt that these men have stated what they believe to be true, but their opportunities of observation were not such as to enable us to rely with much certainty on their testimony. They could only speak of the position of the *A. L. Taylor* from observations made from the wharf during the day time, and considering the character of the weather on the night of the accident and the distance of these men from the place of collision, wide margin should be left, I think, for possible error or mistake. The only other evidence for the plaintiff necessary to refer to is that of Capt. Marks, of the ferry-boat crossing the harbour, and my only observation on his testimony is that while I am sure he is incapable of saying what he does not believe to be true, it is quite probable that on the all-important fact of the light and its condition at the time of the collision, he may be in error; at any rate it must be carefully compared with the mass of testimony from men on the spot before we accept Capt. Marks' testimony as conclusive. This is the evidence for the plaintiff, and undoubtedly a *prima facie* case is made. On the part of the defence the following witnesses were called, namely: Bayers, the Port pilot, who took in the ship; the master, and the first and third officers of the *Lake Ontario*, Webber, boatswain, and Weishman, boatswain's mate, Anderson, Vaughan, Latham and Hughes, able seamen, all of the *Lake Ontario*. The pilot complains that when his ship approached the light of the vessels anchored on the

north side of George's Island, going dead slow, he was an opening between two of the lights, and advised that the steamer take her course towards her wharf. This course was adopted, and although he was on the bridge with the captain of the ship and the third officer, and keeping a sharp lookout ahead until the collision, he says there was no light on the *A. L. Taylor*, nor was she seen by anyone till the lookout hailed that there was something ahead. The helm was immediately changed and the ship put full speed astern, but it was too late, and the collision occurred. This version is corroborated in every particular, as a perusal of the evidence will verify. All these witnesses are at least the equals of those for the plaintiff in intelligence, and their positions of trust in their ship justify us in assuming them to be men of as good character and regard for the truth as those who testified on behalf of the plaintiff. All these people were on the spot. They were anxiously working their ship through anchored vessels and a blustering, dark evening to their wharf. The whole crew were on deck and lookout duly placed. They all swear positively that there was no light on the *A. L. Taylor* when the collision occurred, or while the *Lake Ontario* approached her before the collision. They must have seen the light if there was one burning, as testified by the witnesses for the plaintiff. There is no reason why they should not, as in their case the reason that might excuse mistake, that is distance, could not apply to them; nor do I believe that these men, either officers or seamen, could be influenced to prevent the truth by the mere fact of their employment on board the defendant ship, which at any rate may only continue till the return of the ship to England. I think, therefore, that I must accept the account of the disaster given by the defendants' witnesses. I must do so, or find all these res-

1902
 THE
 DOMINION
 COAL
 COMPANY
 v.
 THE
 STEAMSHIP
 LAKE
 ONTARIO.
 ———
 Reasons
 for
 Judgment.
 ———

1902
 THE
 DOMINION
 COAL
 COMPANY
 v.
 THE
 STEAMSHIP
 LAKE
 ONTARIO.
 ———
 Reasons
 for
 Judgment.
 ———

pectable men guilty of perjury, and that I am not prepared to do. I need not discuss the question suggested by plaintiffs' counsel that the *Lake Ontario* was in fault in coming up to her wharf by the east side of George's Island. The facts, as proved, are against the contention, and there is no regulation, general or local, to support it. I find the collision and consequent loss occurred solely through and by the fault of the *A. L. Taylor*, and the action will be dismissed with costs.

Judgment accordingly (1).

Solicitor for plaintiffs: *F. F. Mathers*;

Solicitor for the ship: *W. H. Fulton*.

(1) REPORTER'S NOTE:—An appeal was taken to the Supreme Court of Canada, and on the 9th of May, 1902, judgment was rendered dismissing the appeal with costs.