

ONTARIO ADMIRALTY DISTRICT

1956
Jan. 5 & 6
Jan. 23

BETWEEN:

HONEY HARBOUR BOAT WORKS LTD. PLAINTIFF;

AND

GORDON WISHART DEFENDANT.

Shipping—Collision—Improper navigation of defendant's boat cause of collision—Judgment for plaintiff.

Held: That in an action for damage to plaintiff's motor boat by reason of a collision between it and a boat owned and driven by the defendant judgment should go for the plaintiff when such collision was caused by defendant's improper navigation of his boat.

ACTION to recover for damage caused plaintiff's motor boat.

The action was tried before the Honourable Mr. Justice Barlow, District Judge in Admiralty for the Ontario Admiralty District, at Toronto.

N. W. Allingham for plaintiff.

R. N. Starr, Q.C. for defendant.

BARLOW D.J.A. now (January 23, 1956) delivered the following judgment:

The plaintiff's claim is for damage to the plaintiff's motor boat sustained by reason of a collision between the water taxi 24-foot motor driven boat owned by the plaintiff and driven by one Lamoureux and a 20-foot motor driven boat owned and driven by the defendant on the 12th day of September, 1952, about 9 p.m. The defendant's boat struck the plaintiff's boat at right angles just back of the driver's seat with sufficient force to crash and stove in the hull of the plaintiff's boat.

There is some conflict of evidence as to where the collision took place. The evidence of the defendant did not impress me. He appeared to be too ready to give such evidence as would assist his cause and appeared to have carefully considered this. The demeanour of the plaintiff's witness Lamoureux impressed me and I accept it.

Lamoureux was on his way back to Honey Harbour from Cognoshene Lake where he had delivered a passenger. The defendant had come from Honey Harbour with a load of plywood, shingles, etc. and was on his way to his cottage. After Lamoureux rounded Cognoshene Point he saw the defendant's boat approaching at first without lights. The defendant's boat was on its own right side of the channel at this time. Later he turned to port and crashed into Lamoureux at right angles.

Even if I accepted the evidence adduced by the defendant I would find that it was the defendant's negligence which caused the collision. The defendant had been proceeding on a course with the land on his starboard. He says he changed his course slightly to his left. He admits that he saw the light of the plaintiff's boat on his right, and that he did nothing to avoid the collision.

1956

HONEY
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BOAT WORKS
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v.
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1956
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v.
WISHART
Barlow
D.J.A.

The rules of the road grant to the vessel on the right the right-of-way and require the other vessel to keep out of its way. The defendant did nothing to avoid the collision. The defendant says that he saw the light on the plaintiff's boat which he should have recognized as being the light on the boat. At this time the defendant, by the exercise of proper caution, could have avoided the accident. The defendant admits that he struck the plaintiff's boat at right angles.

A careful consideration of the evidence leads to only one conclusion, namely, that the defendant's improper navigation of his boat caused the collision.

Pursuant to the evidence adduced I assess the plaintiff's damages at \$1,642.04.

The defendant filed a counterclaim, but offered no evidence in support of the alleged damage.

Judgment will go for the plaintiff for \$1,642.04 and costs.

Judgment accordingly.