QUEBEC ADMIRALTY DISTRICT.

1896

April 18.

THE ACTIESELSKABET (THE COMPANY OF THE OWNERS OF THE) "*PRINCE ARTHUR*"..... PLAINTIFFS;

AGAINST

HENRY JEWELL, AND OTHERS, OWNERS OF THE TUG "*FLORENCE*"..... DEFENDANTS.

Maritime law—Towage—Injury to tow—Negligence of pilot of tow—Liability—Costs.

In an ordinary contract of towage the vessel in tow has control over the tug, and if the pilot of the tow negligently allows the tug to steer a dangerous course whereby the tow is injured the tug is not responsible in damages therefor.

2. Where a very great part of the blame is to be attributed to the tug the costs of the latter in defending the action may not be allowed.

THIS was action for the recovery of damages for the loss of a ship while under towage.

The facts of the case are stated in the reasons for judgment (1).

(1) The following is the opinion of W. H. Smith, R. N., Nautical Assessor:

I am of opinion that the W. S. W. magnetic course set and steered by the pilot of the *Prince Arthur*, when he went on board of her, was maintained up to the time that he approached the said light-ship and was also continued for some time after passing it, and that as the distance off the light-ship was not accurately ascertained, the W. S. W. course was unsafe and improper, even for a short time after passing the light-ship, as it took the vessel in a direction towards the shoal.

That there was no necessity for the vessels to pass so close to the light-ship as is stated, when there was a wide channel of five miles between Red Islet Reef and Green Island, upon the opposite shore and plenty of room to manœuvre in.

I am also of opinion that the course of the tug was not altered after she passed the light-ship, in accordance with instructions given by the first pilot before he left the deck.

It was therefore highly imprudent for the 2nd pilot in charge of the tug, to keep on a course in a direction so dangerous in its proximity to the shoal.

It must be observed that there

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A. H. Cook for plaintiffs;

C. A. Pentland, Q.C., for defendants.

IRVINE, L. J., now (April 18th, 1896) delivered judgment.

This action is brought by the owners of the Norwegian barque *Prince Arthur* to recover from the tug

was no other obstruction to the navigation of the vessel by passing ships, and the evidence does not show that the helms of the vessels were at any time altered for that purpose.

I am further of opinion that there was no competent person in charge of the deck of the tug, sufficient for her safe navigation, having a barque in tow, and no proper look-out was kept forward on board the tug.

The night was clear and fine, with light breeze from the eastward and smooth water, and it seems incredible that such a disaster should have occurred if proper measures had been taken in time for the safe and proper navigation of the vessels.

At night time it is always necessary that a look-out man should be upon the deck of a tug and stationed outside of the pilot house or any other deck-house, so as to give timely warning of the approach of passing vessels.

A tug employed towing a large vessel in a channel which is frequented by numerous steam and sailing crafts, requires to have a competent look-out man forward, who may occasionally cast his eyes astern and notice the appearance of any irregularity which might occur to the steering of the tow.

A proper look-out is a necessity on board a tug as it is on board of other steamers, and she is required to obey the same International rules as are applicable to all vessels, and it is necessary that a sharp look-out should be kept at night when it may become a duty for the tug and her tow to keep out of the way of a sailing vessel which might be crossing the tug's bow.

The watch on deck cannot be considered competent on board any steamer or tug, after sunset, without a proper look-out man at the bow, and the master and owners may not avoid their responsibility when such neglect in not having one, is shown

The 2nd pilot, the man at the helm, had to look ahead to keep clear of vessels, to notice the tow astern and to navigate the vessel and change the course as required.

The attention of a wheelman should be confined to steering the ship and watching the compass, and this was more especially necessary in the position in which the two vessels were placed when skirting along the edge of such a dangerous shoal, and he should have been fully occupied in attending

Florence the value of the ship, which, when under tow of the tug, was run ashore and totally lost on Red Island reef in the early morning of the 27th June, 1893.

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to such duties. One man in the wheel-house of a tug, with closed doors, is not sufficient to steer, to keep a look-out for passing vessels, and to watch the movements of the tow and attend to signals, or listen to orders, given 540 feet away.

In such a position, if the helmsman has sole charge, as in this case, and observes a light approaching, he must of necessity watch it closely to ascertain the course the vessel exhibiting it is making and the movement required to be made to keep clear of her ; he must also attend to the tow at the same time, and if a sudden change in the direction of the tug's head, or any communication is required, he being by himself, would have no means of signalling to the vessel in tow and would either have to leave the deck to call another man or make some signal for assistance.

The occupation of tugs is a most responsible one, as they frequently have charge of vessels with cargoes of considerable value to conduct long distances and through narrow and intricate channels where strong and irregular tides may be found, and it is necessary that some competent and careful person should be constantly in charge of the navigation, especially at night time, that person being entirely separate and distinct from the wheelman who is steering the craft.

The contract for towing was a written one and implied that the tug should be properly manned and those in charge should employ the accustomed diligence and care, notwithstanding there was a pilot on board the tow, and the fact of the tug passing inside of the buoy goes far to prove either that the second pilot was incompetent to navigate, or he was not paying the careful attention to the navigation of the tug which was necessary under the circumstances.

I am, however, of opinion that the pilot of the barque did not exercise that good judgment and caution which was required, and the action he took was not done in sufficient time to prevent the casualty and he was therefore in fault, but the cause of the accident should mostly be attributed to the careless navigation of the 2nd pilot of the tug.

I consider this case proves the necessity of having some properly arranged signals to be used by vessels in tow, and these should be printed and registered and placed in the hands of all pilots as well as of those persons in charge of tugs.

I am further of opinion that the designation of 1st and 2nd pilot is not correct, and therefore it is not properly understood by seafaring men, and such title does not exist in Great Britain or any of her colonies, except Canada, and then only in the Province of Quebec.

The 1st pilot is in fact the master, and the 2nd pilot the mate, of a tug, and the titles 1st and 2nd pilots are misleading and do not carry any pilot responsibility.

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The ship was on a voyage from Sydney, Cape Breton, to Montreal with a cargo of coals. At 9.30 a.m. on the morning of the 26th June, being then off Pointe des Monts, the vessel was taken in tow of the tug *Florence* and proceeded up the river towards Quebec. Arriving at Bic they signalled for a pilot and at 8 p.m. Charles Francis Brown, a licensed pilot for and below the Harbour of Quebec, came on board the barque and took charge of her. No understanding or communication of any kind seems to have taken place between the pilot and the tug as to the manner in which the pilot could, if necessary, signal to the tug, and they proceeded on what, the pilot says, was the correct course—west south-west by ship's compass—the tug proceeding on and not deviating from the same course. The weather was fine and clear, the wind a light breeze from the east. All the lights were distinctly visible. There should have been no difficulty whatever either for the pilot, who is a man of forty years' experience on the river, or the parties on board the tug, in so conducting the navigation of the two vessels as to lead them safely on their voyage up the river. They had in front of them, on their starboard side, the Red Island light and Red Island light-ship, and to the south, Green Island light, all perfectly clear and easy to be seen.

The second mate of the ship took charge of the watch shortly after the pilot came on board. The tug was manned by the first and second pilots, two engineers, two stokers and two deck hands. The first pilot of the tug, who was in charge when the ship was first taken in tow, went below shortly before they reached Red Island light-ship, and on going below he told the second pilot, who then took charge, to pass the light-ship at a good distance, and when he was clear of Red Island to steer S. W. half S., which is the usual

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course. This course is admitted by both the parties to be the correct one to undertake, and the chart shows that it would have carried the vessels well clear of the reef.

There can be no doubt that the loss of the ship under these circumstances shows that there must have been some gross culpable negligence on the part of the persons responsible for the safety of these vessels; and the duty of the court, in the present case, is to discover where the blame lies.

The law regarding the division of the responsibility between the pilot of the tow and the persons in charge of the tug is very clearly laid down in the case of the *Niobe* (1). Sir James Hannan said: "Under the ordinary contract of towage the vessel in tow has control over the tug, and is therefore primarily liable for the wrongful acts of the latter unless they are done so suddenly as to prevent the vessel in tow from controlling them." In that case the captain of the *Niobe*, said, in his testimony, that if he saw the tug taking a direction leading to danger she should be apprised of it, and that he should do so by altering his own course and this would be the effectual mode of doing it—girting the tug, he says, is a common manœuvre. The judge in that case distinctly laid down that:—"The authorities clearly establish that the tow has, under the ordinary contract of towage, control over the tug." I hold it to have been the duty of the pilot of the ship to have in the first instance taken such precautions as to prevent the accident that occurred. He says that for twenty minutes, or, between fifteen and twenty minutes, he saw that the tug was going on a wrong course and that he starboarded his helm and kept the helm a-starboard for that period, and was unable to succeed in compelling the tug to change her

(1) L. R. 13 Prob. D. 55.

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course; that he shouted and apparently was not heard, and finally put his helm hard a-starboard, which brought his vessel round seven points, but notwithstanding these efforts on his part, the tug continued on her way and finally dragged him on the reef.

The evidence of what occurred on board the tug seems to me to show that the second pilot, who was in charge of the tug, did not follow the instructions given to him by the first pilot—which was: to change his course on passing the light-ship S.W. half S.,—but kept on a different course which, instead of taking him away, as the proper course would have done, from the reef, led him directly unto it. While it must be admitted that the tug is under the control of the pilot of the tow, nevertheless vessels undertaking to tow ships up the River St. Lawrence must be supposed to be under the control of a person or persons reasonably acquainted with the river. The man at the wheel ought to have known enough to follow the instructions which he received as to the course he was to take on passing the light-ship, and when he found he was inside the buoy he should have known that he was in immediate danger of running on the reef.

It is also plain to me that there was not a sufficient look-out on board the tug. One man at the wheel, even if it be in more experienced hands than the man actually on duty, was not sufficient to watch the motions of the tow and look out for lights or passing ships. The evidence of the persons on board the tow, and specially the testimony of the pilot goes to show that the pilot perceiving himself in danger put his helm a-starboard so as to bring the bow of the ship towards the port, and thus indicate to the tug the necessity of keeping more to the southward and further away from the reef. This the pilot said he did as soon as he perceived he was in danger from being on the wrong course, and

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that he continued with his helm a-starboard until the accident occurred—and this during fifteen or twenty minutes. The man at the wheel says that the pilot shouted to the tug and put the helm hard a-starboard about ten minutes before the accident occurred, and that shortly before the accident he put the helm hard a-starboard, which the pilot says, brought the vessel round seven points. The man at the wheel of the tug says that up to immediately before the accident he had never perceived any change in the course of the tow.

After a careful consideration of the facts, as so testified, and the position in which the vessel would have been in, if the story of the pilot were true, I am satisfied that no reliance is to be placed on his statement. I am convinced that he never saw the danger until almost immediately before the accident, when he put his helm hard a-starboard, and it was then too late to avoid the reef. The answer given by the Nautical Assessor on this point shows that the story of the pilot is practically impossible, and therefore the accident could not have occurred in the way he described.

I am of opinion that the evidence shows that the pilot was negligent and grossly in fault throughout. His statement that twenty minutes before the accident, or even fifteen, he commenced to starboard his helm with a view of keeping the tug on the starboard bow of the ship, and continuing in that condition up to a period shortly before the accident, when he put the helm hard a-starboard, is entirely incredible. It is impossible that any such movement on the part of the ship would not have been at once felt by the man at the wheel of the steamer, and it is incredible to suppose that, after feeling the effect which such a motion on the part of the tow would have had on the tug, he should have continued his course without

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putting his helm to starboard; and the only result that I can deduce from the fact is that the pilot did not perceive his danger until he gave the order to the man at the wheel to hard a-starboard, when it was evidently too late to save the vessel from going on the reef.

I do not give an opinion in this case as to how far the owners of the vessel are responsible by the admissions of the pilot; but the excitement which he showed after the accident occurred, and his lamentations and self-reproaches seem to show that his confidence in his own conduct was not as clear then as it was afterwards when he gave his testimony in this case.

It is most unfortunate to have to believe that on a night so clear, a ship could not proceed safely up the River St. Lawrence in tow of what was supposed to be a well appointed steamer, and under the guidance of a branch pilot of long experience, and three brilliant lights in full view. Upon this part of the case it is not my duty to render any decision; but seeing the great importance of the safety of navigation of the St. Lawrence to the welfare of the whole of Canada, I think it only right to call the attention of those whose duty it is to regulate these matters to the circumstances of this case, and to the very important and very interesting report made by the Assessor which, although a little unusual, I have permitted to be filed in the case.

If I could have applied to this case the principles which govern the division of damage in cases of collision, I should have been pleased to do it; but as the statute which makes the rule applies it only to cases of collision it is not in my power to extend it.

The tow in this case being at fault through negligence of its pilot, however much the tug is to blame for the accident, the owners are not entitled to recover and their action will have to be dismissed, but seeing

that very great part of the blame is to be attributed to the tug the judgment will be that each party pay its own costs.

Judgment accordingly.

Solicitors for plaintiff: W. & A. H. Cook.

Solicitors for defendants: *Caron, Pentland & Stuart.*

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