

QUEBEC ADMIRALTY DISTRICT.

1958  
Dec. 22 & 23  
1959  
Jan. 20

BETWEEN:

OWNERS OF THE MOTOR VESSEL }  
LUBROLAKE ..... } PLAINTIFF;

AND

THE SHIP SARNIADOC ..... DEFENDANT.

*Shipping—Collision in St. Lawrence River—One ship at anchor—Anchor lights—Regulations for Preventing Collisions at Sea, Rules 11, 29—Rules of the Road, 14(2)—“Forepart” of ship—Anchor lights placed on forward part of vessel comply with Rule 11—Negligent operation of ship bound downriver sole cause of collision—Excessive speed and slackness of watch kept by defendant ship—Attempt to clear anchored ship at too close quarters inexcusable.*

In an action for damages resulting from the collision in the St. Lawrence River between the *Sarniadoc* bound downriver and the *Lubrolake* at anchor, the Court found the collision was brought about solely by the fault and negligence of those in charge of the *Sarniadoc*.

*Held:* That the anchor lights on the *Lubrolake* being placed forward of amidship were on the forward part of the vessel as opposed to her after part and so placed complied with Rule 11 of the *Regulations for Preventing Collisions at Sea*.

- 2. That under the circumstances even if the anchor lights of the *Lubrolake* were not so placed as to comply strictly with the rules this was not the cause of the collision which was brought about by the failure of the *Sarniadoc* to keep clear of the *Lubrolake* when by the exercise of ordinary prudence and good seamanship she might have done so.
- 3. That the *Sarniadoc* was proceeding at an excessive speed, and the slackness of the watch kept by her and the inexcusable attempt to clear the anchored vessel at too close quarters all contributed to the collision.

ACTION for damages resulting from the collision of two vessels in the St. Lawrence River.

The action was tried before the Honourable Mr. Justice Arthur I. Smith, District Judge in Admiralty for the Quebec Admiralty District, sitting with assessors, at Montreal.

*R. C. Holden, Q.C.* and *A. S. Hyndman* for plaintiff.

*Jean Brisset, Q.C.* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

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ARTHUR I. SMITH D. J. A. now (January 20, 1959)  
 delivered the following judgment:

This litigation arises out of a collision which occurred in the St. Lawrence River approximately 3000 feet below Buoy 5M on the south side of the channel and abreast of Lanoraie, Quebec, at about 0535 hours on October 30, 1956.

The *Sarniadoc*, a twin screw motor vessel of the canaller type of 2289.9 gross tons and 1719.56 tons net register, having an overall length of 253.2 feet and a breadth of 44 feet and manned by a crew of 23 all told, was proceeding downriver on a voyage from Lorraine, Ohio, to Quebec with a full cargo of coal. She was carrying a pilot. Her speed at full ahead was 12½ knots.

The *Lubrolake*, a twin screw tanker of 1622.44 tons gross and 1224.56 tons net register, 250.4 feet in length overall and 43 feet in breadth. She was manned by a crew of 27 all told. She was on a voyage from Montreal to Chicoutimi but was at the time of, (and had been for a period of about 3½ hours prior to,) the collision at anchor.

The case for the plaintiff is that about 0200 hours on October the 30th, shortly after clearing the Ile St. Ours channel, fog began to set in and the *Lubrolake* went to anchor slightly south of midchannel below Buoy 5M, the current at that point being approximately 1.7 knots. It is alleged that Signal Service was notified by radio-telephone and the anchored position of the *Lubrolake* was thereafter broadcast by Signal Service at regular intervals to all ships. The plaintiff alleges that after the *Lubrolake* had been at anchor several hours the lights of a downbound vessel (which proved to be the *Sarniadoc*) were seen at a distance of about 1000 feet and bearing on the starboard bow of the *Lubrolake*. Warning signals of one short, one long and one short blasts were given by the *Lubrolake*, but the *Sarniadoc* came on at speed and with her port bow struck the starboard bow and stem of the *Lubrolake* causing heavy damage, after which the *Sarniadoc* continued on fast and disappeared in the fog. It is alleged that the said collision and the resulting damage were caused by the fault and negligence of the *Sarniadoc* and those on board her, in that they failed to keep a proper lookout, their

owners failed to provide her with efficient radar or failed to maintain same in proper order and those on board failed to make proper and seamanlike use of the radar or of their radio-telephone and other navigational aids; they navigated the vessel at an excessive speed and failed to sound proper fog signals, failed to ease, stop or reverse their engines in due time or at all, failed to keep clear of the *Lubrolake* or to exercise the precautions required by the ordinary practice of seamen or the special circumstances of the case and failed to take in due time or at all the proper or any steps to avoid the collision. It is alleged that those in charge of the *Sarniadoc* failed to comply with Rules 15, 16, 22, 23, 27, 28 and 29 of the *Regulations for Preventing Collisions at Sea*.

On the other hand the case for the *Sarniadoc* is that, although light fog was encountered by her between Cap St. Michel and Verchères and her speed reduced, the weather then cleared and visibility abeam Verchères was over 5 miles. Under these conditions the engines of the *Sarniadoc* were put again at full ahead, the radar being on the 2 mile range. It is alleged that the vessel's navigation lights were burning brightly and that a sharp visual and aural lookout was being kept. The defendant avers that in these circumstances and while the vessel was being steered on the Ile St. Ours course, the lights of a number of ships at anchor ahead were sighted and in particular the lights of a vessel aground on the south side of the channel, the lights of a vessel at anchor almost abreast Buoy 5M on the north side of the channel and those of another vessel (which turned out to be the *Lubrolake*) below Buoy 5M and slightly to the south of midchannel. The defendant alleges that the *Sarniadoc's* course was altered to starboard to make the bend in the channel above flashing Buoy 5M and in order to come onto the Lanoraie Range Lights course from the Ile St. Ours Range Lights course and that as the vessel was approaching Buoy 5M it was noticed that fog was rising from the water ahead and the engines of the *Sarniadoc* were put on slow ahead and the order given to steer on 31° True. The pilot decided to manoeuvre the ship in order to bring her to anchor below the *Lubrolake*, which then was noticed to be exhibiting the anchor lights of a laker. It is alleged that in order to accomplish this the

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pilot decided to pass the *Lubrolake* on her portside and to do so he altered course to 41° True and when the anchor lights of the *Lubrolake* came to bear about 5° on the port bow of the *Sarniadoc* the wheelsman was ordered to go another 10° to starboard and to steer a course of 51° True in order to give the *Lubrolake* a better offing, it being estimated at that time that the vessels would clear port-to-port at a distance of about 100 feet. It is alleged that during all of this time the hull of the *Lubrolake* was enveloped in fog and could not be seen but her lake anchor lights were visible above the fog. Suddenly however the bow of the *Lubrolake* loomed out of the fog bearing dead ahead and so close that the collision was inevitable; the wheel was ordered hard astarboard and both engines full speed astern, with the result that the stem of the *Sarniadoc* cleared the stem of the *Lubrolake* but the *Sarniadoc's* portside by way of forecastle came into contact with the *Lubrolake's* stem; the engines were immediately stopped and the starboard engines then ordered full ahead in order to swing the stern of the vessel away from the stem of the *Lubrolake*, but there was a second contact further aft than the point at which the first collision occurred.

It is alleged that the collision and the damage occasioned thereby were caused by the fault and negligence of the *Lubrolake* and those on board her, in that the *Lubrolake* was not carrying the lights prescribed by Rule 11 of the Regulations for Preventing Collisions at Sea and, in particular, was not carrying the proper anchor lights for lake vessels, since her forward anchor lights were not installed forward on the ship but rather were just forward of amidship in contravention of Rule 14 of the *Rules of the Road for the Great Lakes*; the *Lubrolake* was not ringing her bell as prescribed by Rule 15 of the said regulations; she appeared to be lying partly athwart the channel and those on board her were not keeping a proper anchor watch. It is alleged that the *Lubrolake* contravened Rules 11, 15, 27 and 29 of the *Rules of the Road*.

The proof shows that the *Lubrolake* came to anchor at a point approximately 3000 feet below Buoy 5M and slightly south of midchannel and that she lay heading upstream but at somewhat of an angle inclining towards the south shore.

The *Sarniadoc* left Montreal at about 0250 hours and the weather then being clear she proceeded at full speed until she reached a point between Cap St. Michel and Verchères, where she encountered some fog and reduced her speed. As she passed Verchères however she left the fog behind and her engines again were put full ahead. Those on board the *Sarniadoc* admitted that as the vessel approached Buoy 5M, it was noted that there was considerable dense low lying fog ahead and above the fog the anchor lights of a laker (which later proved to be the *Lubrolake*) were seen slightly on the *Sarniadoc's* starboard bow. Shortly after leaving the Ile St. Ours channel the *Sarniadoc*, which had been on course of about 002°, was brought on 30° True and apparently the pilot had by then decided to pass the anchored laker to starboard and come to anchor below her. According to pilot Dussault the course of the *Sarniadoc* was altered 10° to starboard shortly after she had come onto course 30° and subsequently he altered a further 10° to starboard to bring her onto a course of 50° with the object of keeping the *Lubrolake* well to port as he passed her.

There is contradiction between the testimony of the pilot Dussault and the first mate of the *Sarniadoc* as to the speed of the *Sarniadoc* as she approached the *Lubrolake*. According to the testimony of the first mate however she continued on at full speed until about 1000 feet from the *Lubrolake* when half speed was ordered. The first mate, who was with the pilot in the wheelhouse, stated that when the hull or bow of the *Lubrolake* was first sighted it was only from 25 to 50 feet distant. The pilot estimated this distance at from 20 to 50 feet. Up until that moment only the anchor lights of the *Lubrolake* showing above the fog had been seen.

Although a number of faults were alleged against the *Lubrolake* I am satisfied that none of these have been established unless it is her alleged failure to carry the anchor lights prescribed by law. There is evidence that the *Lubrolake* blew fog signals and rang her bell when the lights of the *Sarniadoc* were seen approaching. In any event those in charge of the *Sarniadoc* were well aware of her presence, and of the fact that she was at anchor, when the *Sarniadoc* was still over half a mile upstream from her.

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The defence, in fact, based its case at the hearing solely upon the alleged failure of the *Lubrolake* to carry the anchor lights prescribed by law.

The second paragraph of Rule 11 of the *Regulations for Preventing Collisions at Sea* provides that:

A vessel of 150 feet or upwards in length, when at anchor, shall carry in the forward part of the vessel, at a height of not less than 20, and not exceeding 40 feet above the hull, one such light, and at or near the stern of the vessel, and at such a height that it shall be not less than 15 feet lower than the forward light, another such light.

Rule 14 (2) of the *Rules of the Road for the Great Lakes* is to similar effect, except that it requires two white lights on the forward part of the vessel at the same height and not less than ten feet apart arranged horizontally and athwartship.

The proof is that the *Lubrolake* carried two anchor lights at the same level on her foremast and two anchor lights on her aftermast, these being the lights prescribed by the rules governing navigation in the Great Lakes. The basis of the defendant's complaint however is that the anchor lights on the foremast, instead of being in the bow of the vessel, were approximately 92 feet abaft her stem and it was argued that this did not constitute compliance with the rules above quoted.

It appears to me that there are two questions arising from this defence: 1) were the anchor lights so placed as to comply with the said rules; and 2) if not, was the fact that they were not so placed the cause or a contributing cause of the collision.

Neither the *Shipping Act* nor the rules above cited define the "forepart" of a ship and, in the absence of any legal definition, it would appear just and reasonable to give the term "forepart" its ordinary connotation and interpret it to refer to that part of the ship leading towards the bow.

There is evidence that the distance from the stem at which the forward anchor lights are carried on lake vessels varies widely from vessel to vessel. Apparently the normal distance is approximately 50 feet, but the evidence shows that some vessels carry their forward anchor lights considerably further aft at distances of 75 feet or more from the stem.

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In the case of the *Lubrolake*, whose overall length is 250.4 feet, the forward anchor lights were 92 feet from the stem and therefore about 33 feet forward of amidship and hence on the forward part of the vessel as opposed to her after part.

As was pointed out by the Court of Appeal in the case of the *Philadelphian*<sup>1</sup> Smith A.L., the rule does not say that the forward light is to be carried at or near the stem, or that the after light is to be carried on the after part of the vessel. On the contrary, the rule stipulates that the after light shall be carried at or near the stern, while it is sufficient, according to the rule, that the forward light be placed on the forward part of the vessel.

After giving the matter the best consideration of which I am capable I am unable to conclude that it has been established that the *Lubrolake's* anchor lights did not meet the requirements of the rule.

The desirability of having the forward anchor lights closer to the vessel's stem would appear to be self-evident, and I can well imagine circumstances (particularly where vessels are compelled to navigate at night or in fog and at close quarters, e.g. in harbours, etc.) where the fact that the forward lights were so far from the stem as they were in the case of the *Lubrolake* might contribute to the danger of collision.

However, in the circumstances of the present case, I am convinced that even if the anchor lights of the *Lubrolake* were not so placed as to comply strictly with the rules this was not the cause of the collision which, on the contrary, was brought about by the failure of the *Sarniadoc* to keep clear of the *Lubrolake* when by the exercise of ordinary prudence and good seamanship she might have done so.

The anchor lights of the *Lubrolake* had been seen by those on board the *Sarniadoc* when she was approaching at a distance of approximately 3000 feet and at that time the *Lubrolake* was recognized as a laker at anchor. The river at that point is navigable over a width of about 2500 feet and I am satisfied (and I am so advised by the assessors) that in such circumstances there was ample time

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<sup>1</sup>[1900] P. 43

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and space for the *Sarniadoc* to have so directed her course so as to have met and passed the *Lubrolake* safely starboard to starboard. Although there was some suggestion that this might have involved difficulty having regard to a vessel anchored below the *Lubrolake*, the proof does not support such a proposition and pilot Dussault frankly admitted that this vessel was so far below the *Lubrolake* that it presented no difficulty whatever. Instead of passing to port of the *Lubrolake* (so as to leave her to starboard) the *Sarniadoc* elected to pass her to starboard which I am convinced (and I am so advised by the assessors) she had ample time and space to accomplish if she had altered course to starboard in time and had been proceeding at a speed consistent with the rules and good seamanship having regard to thick fog and other circumstances. (Rule 11 and Rule 29.)

Pilot Dussault testified that it was his intention to clear the *Lubrolake* at a distance of 25 feet. There is nothing in the evidence to excuse or justify the action of the *Sarniadoc* in attempting to clear the anchored vessel at such close quarters and, having regard to the heavy fog, the speed of the *Sarniadoc* and the fact that those on board her could not see the hull of the *Lubrolake* and therefore could not know how far her forward anchor lights were from her stem, the action of the *Sarniadoc* in attempting to do so was foolhardy and reprehensible.

In my opinion the proof amply justifies the conclusion not only that the course of the *Sarniadoc* was negligently laid in such a way as to needlessly bring her into too close proximity with the anchored vessel, but that the *Sarniadoc* was navigated at a speed which having regard to the fog was excessive and contrary to law. I am convinced moreover that the excessive speed of the *Sarniadoc* and the slackness of the watch kept by her indicated by the fact that the hull of the *Lubrolake* was only sighted at a distance of from 20 to 50 feet and that her fog signals were not heard by those on watch of the *Sarniadoc* were faults contributing to the collision.

I find therefore that the collision was brought about solely by the fault and negligence of those in charge of the *Sarniadoc*.



The plaintiff's action therefore is maintained with costs; and failing agreement by the parties as to the amount of damages sustained by the plaintiff there will be a reference to the Registrar for the purposes of having said damages established in accordance with the usual practice.

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*Judgment accordingly.*

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