

1923  
Dec. 29.

QUEBEC ADMIRALTY DISTRICT

GEORGE HALL COAL & SHIPPING } PLAINTIFF;  
CORPORATION .....

AGAINST

THE SHIP *LORD STRATHCONA*

*Shipping—Collision—Overtaking vessel—Article 24 of the Rules of the Road—Force of suction—Evidence—Negligence.*

1. *Held*: That applying the rule that ordinarily the testimony of one who testifies to an affirmative is to be preferred to that of one who testifies to a negative, where the evidence of those on board one vessel was to the effect that they saw the two vessels coming into contact, and felt the shock caused by the impact, while the evidence of those on board the other vessel was that no shock was felt and no impact seen, the court ought to hold that a collision did take place.
2. The collision took place on the St. Lawrence River below Champlain between the *S.D.*, plaintiff's ship, and the *L.S.*; the channel there being 400 feet wide. The *L.S.* was of greater size and draft than the *S.D.* and in overtaking and passing the *S.D.* attempted to pass too close to her, and the latter was drawn towards the *L.S.* by the force of suction until they came into collision.

*Held*: That having regard to the fact that the force of suction is a source of danger in close navigation, especially in shallow water, and as it was the duty of the *L.S.* as an overtaking vessel, under article 24 of the Rules of the Road, to keep out of the way and clear of the overtaken vessel until finally passed, she was, under the above facts guilty of negligence and responsible for the collision.

ACTION *in rem* for damages arising out of a collision between the steamer *Senator Derbyshire*, a steamer belonging to the plaintiff, and the steamer *Lord Strathcona*, in the St. Lawrence river on the morning of July 4, 1923.

November 29, 1923.

Case now heard before Honourable Mr. Justice MacLennan at Montreal.

*A. R. Holden, K.C. and R. C. Holden* for plaintiff.

*W. C. Nicholson* for defendant.

The facts are stated in the reasons for judgment.

MACLENNAN L.J.A. this 29th December, 1923, delivered judgment.

[His Lordship here states the pretensions and allegations of the respective parties, and proceeds.]

The *Senator Derbyshire* was a wooden steamer 220 feet long, 40 feet 6 inches wide and drawing 13 feet 4 inches forward and 14 feet 6 inches aft. She was loaded with pulpwood. The *Lord Strathcona* was a steel ship 475 feet long, 58 feet wide, loaded with coal, drawing 26 feet forward and 26 feet 6 inches aft. Both were coming up the river. The *Senator Derbyshire* was ahead going at full speed 7 to 8 miles an hour. The *Lord Strathcona*, which was following, gave a two blast signal which was answered by a similar signal. The *Lord Strathcona* then began to pass on the other's port side. The channel was 400 feet wide and the *Senator Derbyshire* was to the north side of the channel. She held her course and speed until she changed to starboard after the quarter of the *Lord Strathcona* came into collision with her port side forward of amidships. The first officer of the *Senator Derbyshire*, who was on duty, testified to the collision and a shock resulting therefrom which he says occurred at 2.05 a.m., on the morning of 4th July, 1923. The pilot of the *Senator Derbyshire* at the trial swore that the quarter of the *Lord Strathcona* hit his ship and caused a shock. He had previously made a written report that the vessels came very close together but did not come into contact and that no damage was caused to either. At the trial, however, he was positive in his testimony that there had been a collision. The wheelman, on duty on the *Senator Derbyshire*, testified that he

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felt the shock of the collision although he did not see the ships come together. The engineer, on duty in the engine room, testified that he felt the shock, and the master, the second mate and another wheelsman, not on duty, who were in bed at the time, all testified that they were wakened by the shock of the collision. The master says he immediately came on the bridge to inquire what had happened. The *Senator Derbyshire* was on a voyage from the Little Saguenay to Ogdensburg and from there she proceeded to Thorold, Ont. The first stop after the collision was at Montreal, at the entrance to the Lachine Canal, when the master notified plaintiff's manager by telephone that there had been a collision, and having been requested to make a written report he wrote a letter on 6th July, 1923, reporting that the covering board on the port side of the vessel had been damaged for at least 15 feet, also the two planks just below the covering board, and that the head of one of the rods running across the deck was broken off and the plate holding the rod on the side was gone and giving other details of the collision as he ascertained them from the pilot, mate and wheelsman on duty at the time of the collision.

The defence is that there was no collision, that the ships were not in contact and that no shock was felt on the *Lord Strathcona*. The latter's pilot does not appear to have paid any attention to the *Senator Derbyshire* after the ships were abreast and he says he felt no shock. The second officer of the *Lord Strathcona* was on duty on the bridge and he testified that he felt no shock or bump and that the vessels were not in contact. While the *Lord Strathcona* was passing, this officer stayed at the telegraph to give signals as required and it may be that he was not in a position to observe the starboard quarter of the *Lord Strathcona* come into contact with the port side of the other vessel. The master was in the chartroom but came out before the vessels had cleared. The chief engineer was in his berth and came out on deck when the *Lord Strathcona* was almost past. He says he felt no shock.

I am advised by my assessors that there was ample room to the south side of midchannel for the *Lord Strathcona* to have passed the *Senator Derbyshire* in safety and that

apparently the *Lord Strathcona* was directing her course on the range lights in the midchannel and came so close to the *Senator Derbyshire* that the ships were drawn together by the force of suction, the *Lord Strathcona* being a ship over twice the length and drawing 26 feet draft against the *Senator Derbyshire's* 14 feet 3 inches.

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I am also advised that the mate and pilot on the *Lord Strathcona* were not in a good position to observe whether or not the starboard quarter of their ship came into contact with the port side of the *Senator Derbyshire* forward of amidships. The bridge of the *Lord Strathcona* was over 200 feet from the poop where the impact took place.

The evidence of the witnesses on board the *Senator Derbyshire* is to the effect that each of them saw the two vessels come into contact or felt a shock caused by the impact, while the evidence of the witnesses on board the *Lord Strathcona* is to the effect that no shock was felt and no impact seen. The evidence shows, and my assessors have called my attention to the fact, that the mate and pilot on the *Lord Strathcona* were not in a good position to observe whether or not the starboard quarter of their ship came into contact with the port side of the other vessel forward of amidships. It is a rule of presumption that ordinarily a witness who testifies to an affirmative is to be preferred to one who testifies to a negative, and on this principle the evidence of the witnesses for the *Senator Derbyshire* is entitled to greater weight than the evidence of the witnesses called on behalf of the other vessel. I therefore hold that a collision took place, fortunately it was not very serious, but the vessels did come into contact.

The deep water channel where the collision occurred is 400 feet wide. The *Senator Derbyshire* was to the north of midchannel which left over 200 feet in which the *Lord Strathcona* could pass. The latter was the overtaking vessel and under Article 24 of the Rules of the Road, it was her duty to keep out of the way and keep clear of the overtaken vessel until she was finally past and clear. She failed to do so, evidently attempting to pass too close and, as she was necessarily going at a speed greater than the *Senator Derbyshire* and being of greater size and draft, the overtaken vessel was drawn towards her until they came into

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contact. Suction is a force that has been recognized as a danger in close navigation, especially in shallow waters, and always results from a too close approach. For these reasons, in my opinion, the *Lord Strathcona* is responsible for the collision, as she attempted to pass too close and failed to keep clear in violation of Article 24.

There will therefore be judgment against the *Lord Strathcona* and her bail for damages and costs, with a reference to the Deputy District Registrar with merchants to assess the damages.

*Judgment accordingly.*

*Messrs. Meredith, Holden, Hague, Shaughnessy & Heward,*  
 solicitors for plaintiff.

*Messrs. Cook & Magee,* solicitors for defendant.

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