

The Steamship "Hellen" - - - - - *Appellant*

v.

The Wm. Donovan Steamship Company (Incorporated) - - *Respondents*

FROM

THE SUPREME COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 16TH JUNE, 1927.

Present at the Hearing :

VISCOUNT HALDANE.
VISCOUNT SUMNER.
LORD SHAW.
LORD MERRIVALE.
LORD WARRINGTON OF GLYFFE.

Nautical Assessors :

ADMIRAL SIR R. NELSON OMMANNEY, K.B.E.
COMMANDER L. W. BAYLON, R.N.R.

[*Delivered by* LORD WARRINGTON OF GLYFFE.]

Shortly after 5 o'clock p.m. on the 10th April, 1924, near the mouth of the river Chehalis in the State of Washington, U.S.A. a collision happened between the motor vessel "Wm. Donovan" and the S.S. "Hellen," as the result of which the "Hellen" was damaged but slightly, the "Wm. Donovan" much more seriously.

The present action was commenced by the owners of the "Wm. Donovan" as plaintiffs against the owners of the "Hellen" as defendants in the British Columbia Admiralty District of the Exchequer Court of Canada a few days after the collision.

The action was tried before Mr. Justice Martin, sitting as local Judge in Admiralty and on the 15th December, 1924, he delivered judgment, finding both vessels to blame.

The defendants appealed to the Exchequer Court of Canada. The appeal was heard by the President, Mr. Justice Maclean, who on the 9th February, 1926, delivered judgment allowing the appeal, reversing the judgment of the local Judge, and finding the "Wm. Donovan" alone to blame.

The plaintiffs appealed to the Supreme Court of Canada, who, on the 11th October, 1926, by a majority (Anglin, C. J., and Idington, J., dissenting) allowed the appeal and restored the judgment of the trial Judge.

The respondents are content with the judgment of the Supreme Court, and the only question therefore is, whether that Court and the trial Judge were right in finding that the "Hellen" as well as the "Wm. Donovan" was to blame.

The collision having taken place within the territorial limits of the U.S.A., the Navigation Laws and Pilot Regulations of the U.S. apply. The relevant rules and regulations are as follows:—

"Art. 18, Rule VIII.—When steam vessels are running in the same direction and the vessel which is astern . . . shall desire to pass on the left or port side of the vessel ahead, she shall give two short blasts of the steam whistle as a signal of such desire, and, if the vessel ahead answers with two blasts, shall put her helm to starboard. . . . The vessel ahead shall in no case attempt to cross the bow or crowd upon the course of the passing vessel.

"Art. 21.—Where by any of these rules one of the two vessels is to keep out of the way, the other shall keep her course and speed.

"Art. 23.—Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed, or stop or reverse."

Art. 24.—"Notwithstanding anything contained in these rules, every vessel overtaking any other shall keep out of the way of the overtaken vessel . . . no subsequent alteration of the bearing between the two vessels shall relieve her [the overtaking vessel] of the duty of keeping clear of the overtaken vessel until she is finally past and clear.

"Art. 25.—In narrow channels, every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

"Art. 27.—In obeying and construing these rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger."

The place where the collision happened was an inland water, and the United States Pilot Rules for pilots of vessels navigating such waters were applicable. Rule 6 of such rules is in identical terms with Art. 18, Rule VIII, hereinbefore mentioned and need not be further set out.

For the purposes of the above-mentioned rules and regulations, the word "steam vessel" includes any vessel propelled by machinery.

The details of the two vessels are immaterial. It is enough to say that the "Hellen" was slightly larger than the "Wm. Donovan" and her speed was slightly higher. The "Wm. Donovan" was furnished with twin screws.

The tide was high, the weather was quiet. It was broad daylight, but there was occasional mist.

Under these circumstances, the two vessels left the neighbourhood of Aberdeen up the river, and proceeded by the north channel towards the open sea. The "Wm. Donovan" was ahead at the start.

The channel is marked by two sets of buoys—black can buoys on the north or right-hand side and red buoys on the south or left-hand side. The several buoys of each set are distinguished by numbers—odd numbers for those on the right and even for those on the left. The three buoys nearest the mouth of the river on each side are called "outer," the others are called "inner." It is only the "outer" buoys with which this story is concerned.

The channel varies in width from about 2,500 ft. to 1,200 ft. At the place of the collision it is about 1,200 ft. wide.

The "Hellen" then was following the "Wm. Donovan" down the river, gaining on her slightly. At a point the exact position of which is immaterial, she gave the two-blast signal prescribed by Art. 18, Rule VIII, set out above, indicating that she was desirous of passing on her port side. This was at once accepted by the "Wm. Donovan," and from the moment the "Hellen" overtook her and until shortly before the happening of the collision, the two ships proceeded on parallel courses at about 300 feet from each other, the "Hellen" being, of course, on the port side of the "Wm. Donovan." The "Hellen" remained the overtaking ship throughout. Both ships were on the port side of the said channel, and in that respect were violating Art. 25 above set out.

At the critical point the stem of the "Wm. Donovan" was a little abaft amidships of the "Hellen."

The collision happened in the neighbourhood of No. 4 outer buoy and to the northward of it. How far north is a matter of dispute and, in their Lordships' opinion, is not for the present purpose material.

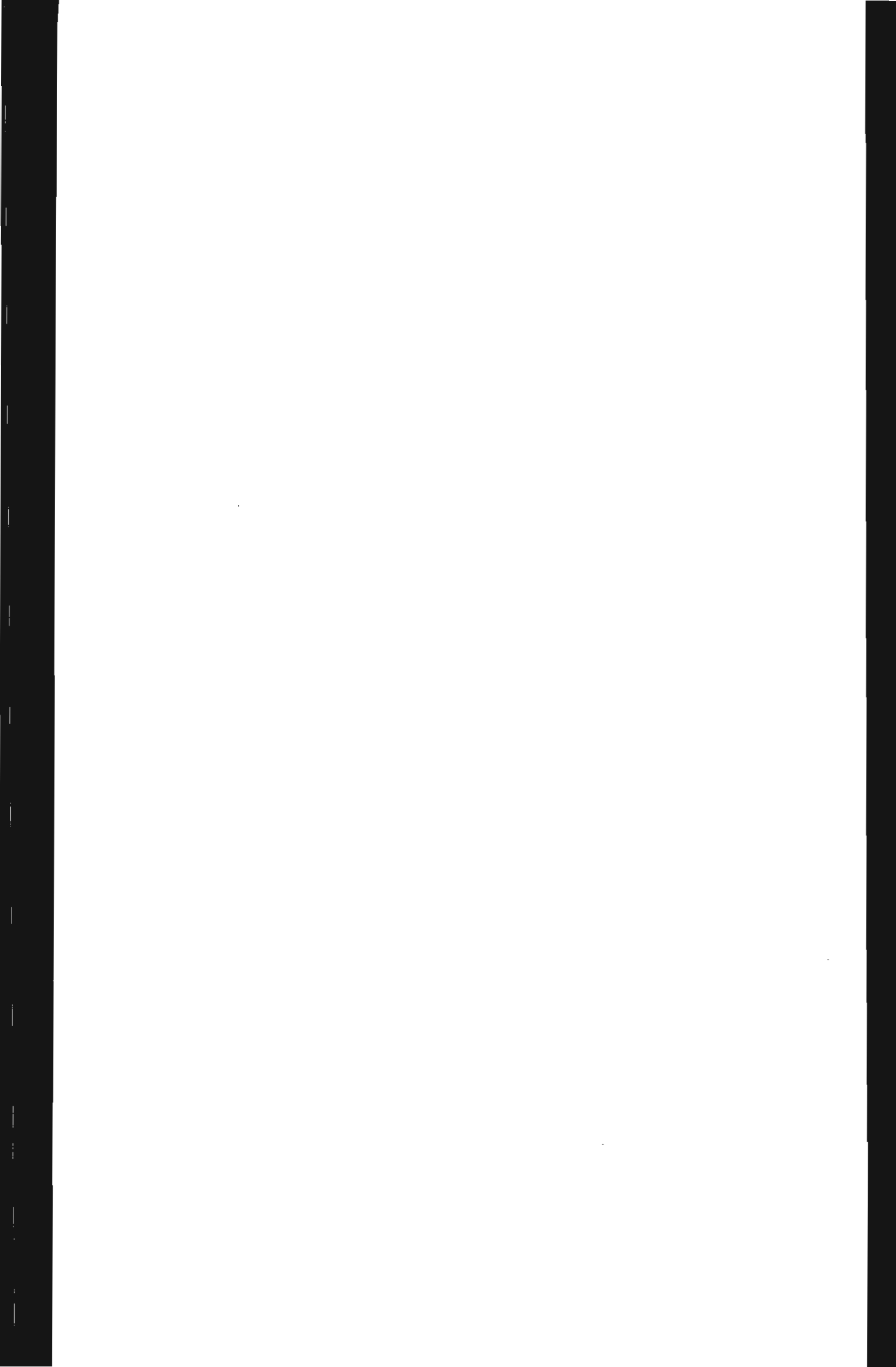
It must be borne in mind that in order to succeed the "Hellen" has to make out that she was innocent of all blame and that the "Wm. Donovan," and she alone, was responsible for what happened. It has also to be remembered that on the "Hellen," as the overtaking ship, was cast the obligation of keeping out of the way of the "Wm. Donovan."

The case of the "Hellen," from the original complaint made by her master on the evening of the day of the collision down to the trial of the action, was that the collision was occasioned by a sudden sheer to port on the part of the "Wm. Donovan," as the result of which she ran into the starboard side of the "Hellen" at an angle of 90° or thereabouts, or, as the master ultimately said, at an angle of 45°. This story has not found acceptance on the part of any of the Judges who have heard the case in Canada. It was deposed to by several witnesses on the part of the "Hellen." The master of the "Wm. Donovan" denied it, and he was not cross-examined on the point. No even plausible reason can be suggested for any such manœuvre on a

starboard helm on the part of the "Wm. Donovan" at the material time, and, in their Lordships' opinion, no such manœuvre took place.

What really happened seems to have been that between buoys numbered No. 6 outer and No. 4 outer the two ships were gradually drawing nearer to each other without such fact being observed by either side until it was too late. It is here that the obligation on the part of the "Hellen" to keep out of the way becomes of such importance. As was pointed out by Newcombe, J., in delivering the opinion of the majority of the Supreme Court, her pilot and master did not realise their duty in this respect, considering that they had already passed the "Wm. Donovan." It is true that owing to the mist the "Wm. Donovan" had been compelled for a short distance after passing buoy No. 6 outer to steer a compass course, and when at about five-eighths of a mile from No. 4 outer, her master found himself heading too far towards the south and put his helm half a point to port to correct this error. The approach of the two ships to each other may thus have been contributed to by the "Wm. Donovan," but there is no suggestion that this or anything else in her conduct, other than the alleged sharp turn to port, caused any crowding of the "Hellen," or in any way hindered her from keeping out of the way of the "Wm. Donovan."

On the whole, their Lordships agree with the opinion of the majority of the Supreme Court that the "Hellen" has not satisfied the burden resting upon her as the overtaking ship of excusing her collision with the overtaken ship. The result is that the Supreme Court was right in finding both ships to blame, and that the appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.



In the Privy Council.

THE STEAMSHIP "HELLEN"

vs.

THE WM. DONOVAN STEAMSHIP COMPANY
(INCORPORATED).

DELIVERED BY LORD WARRINGTON OF CLYFFE.

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