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JUDGMENT DELIVERED

IN FAVOR OF THE STEAMER CASPIAN.

Judge Hodgins Found That the Fulford Yacht Neglected to Observe the Recognized Rules of Precaution.

The judgment of Judge Hodgins, of the Admiralty court, in the case of the Lake Ontario Steamboat Co., of Kingston, vs. Mrs. Fulford, Brockville, will be of interest to marine men, and portions of it are herewith given. In opening, the judge states the case as follows:

This is an action brought by the plaintiff company against Mrs. Fulford, the life-tenant of the steam yacht *Magedoma*, for damages caused by the collision of the *Magedoma* with the steamer *Caspian* in Kingston harbor during the afternoon of Saturday, the 27th June, 1908.

The evidence proves that the steamer *Caspian*, which had been moored stern inwards on the north-east side of Swift's dock, steamed stern outwards on a semi-circular course from the wharf about five o'clock that afternoon, and after steaming a certain distance, commenced her voyage towards Lake Ontario, taking a semi-circular course under helm hard-a-starboard on a course to port so as to pass clear of the wharf. That about the same time

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the steamer *Kingston*, which had been moored at the other side of the wharf, also steamed stern outwards, taking a more direct course out, and then started on her voyage towards Lake Ontario, on the port side of the *Caspian*. The yacht *Magedoma* had been moored bow inwards at the same side of the wharf and between the *Kingston* and the shore.

After the two steamers, *Kingston* and *Caspian*, had left the wharf, and were backing out preliminary to commencing their respective voyages, the master in charge of the *Caspian* noticed that the *Magedoma* was commencing to back out from the wharf and thereupon the *Caspian* gave two whistles to warn the yacht that he was directing his course to port which was the proper course to enable him to clear the wharf; but notice was taken of the warning or any responsive whistle given by the *Magedoma*.

When nearing the wharf the *Caspian* was steaming at about ten miles an hour, and the master of the *Caspian*, seeing that the *Magedoma* was coming on towards the *Caspian* was taking, ordered the helm first amidships and then hard-a-port so as to steady her and prevent the *Caspian*'s stern swinging on to the *Magedoma*.

Then the *Magedoma* continued backing and impinging on the bow of the *Caspian*, and this fact is proved by Captain Johnston, of the *Magedoma*, who said that he gave the yacht two kicks astern to back her from the dock so as to turn the bow of the yacht, and both he and the seaman, Soderstrom, of the *Magedoma*, would not deny that there may have been stern way on the *Magedoma* from these "kicks astern," when the boats came together.

Both the preliminary act of the defendant, and the statement of the witness, allege that the collision was occasioned by the fault of the *Caspian*, the preliminary act stating that: "Shortly before the accident the master of the *Caspian* blew two whistles, which, to the master of the *Magedoma*, indicated that the master of the *Caspian* was to steady her and keep to port. The master of the *Caspian* did not carry out his signal, but acted opposite thereto and sent his helm to port, and kept to the right." The fifth paragraph of the statement of defence is substantially to the same effect. These whistles of the *Caspian* were not answered by the *Magedoma* as they ought to have been; for the rule is that the duty to answer a signal is as imperative as is the duty to give one.

This is confirmed by the evidence of the customs officer, Mr. Comer, the agent, Mr. Horsey, who were on the wharf, and Chief Engineer Leslie, of the *Caspian*, all of whom said that the *Magedoma* had not stopped up to the time of the collision; and that she was still going backwards; two of them adding that the *Magedoma* was moving to cross the bow of the *Caspian*. And it is proved that the captain of the *Magedoma* waved his hand to the captain and towards the lake.

This evidence that the *Magedoma* was moving has not been contradicted, but is confirmed by the evidence of the captain of the *Magedoma*, and one of the crew, both of whom said they would not swear that the *Magedoma* had gone stern way on her when the boats came together; and the force of the blow on the *Caspian*, which made a breach in her side aft of the paddle wheel of about three or four feet, and back about ten or twelve feet, confirms this.

The statement of defence further states: "Those in charge of the *Caspian* disregarded the provisions of the navigation rules adopted by order-in-council, on the 25th April, 1905, and amended on the 18th of May, 1906, and particularly articles 19, 27, 28 and 29."

Before considering these rules, it may be proper to cite here the view expressed by the supreme court of the United States on the right of a backing steamer as against a steamer on her regular course in mid-river. In giving judgment, the *Servia* (1892), 149 U.S., at p. 156, the court said: "The *Norland* (the backing steamer) was at no time before the collision, on a definite course as contemplated by the statute, and rules of navigation; and on the facts found she cannot claim she had the right of way against the *Servia*. The statutory and steering and sailing rules have little application to a vessel backing out of a slip before taking her course; but the case is one of 'special circumstances' under rule 24 (Canadian rules 27 and 29), requiring each vessel to watch and be guided by the movements of the other." See further as to "special circumstances" the *Tweeddale* (1882), p. 164, and the *Prince Leopold de Belgique* (1909), p. 108.

This view of the rule as to "special circumstances" did not appear to have been entertained by the captain of the *Magedoma*, who claimed before me that it was not his duty to go ahead and get out of the way of the *Caspian*; and so he allowed his yacht to continue her stern-way in backing towards the course the *Caspian* was taking that the speed proved, instead of making her engine move her ahead, and away from that course; and so giving the *Caspian* the right of way which his wave of the hand to her seems to have indicated. And as to the duty to exercise reasonable skill in such an emergency, see the *Sunlight* (1904), p. 100. And as to the duty where there is a "chance of escape from a collision," and an "actual necessity" for escape, it is admitted that a captain is justified in taking the benefit of a chance, although it necessitates a departure from the rules. See the *Benares* (1883), p. 9, p. 16.

In this case I find that when the possibility of a risk of collision was imminent, the *Caspian* was on her regular course, steaming at the rate of ten miles an hour, that she promptly steadied her course to prevent the swing of her stern causing her to strike the *Magedoma*, that after the *Magedoma*'s engine had been given two kicks to give her stern-way and to back out from the dock, it was not reversed so as to give her headway, and out of the course, intersecting that on which the *Caspian* was steaming at the rate mentioned, and that she neglected in the special circumstances of the peril then imminent, to observe the dictate of the highest prudence, and "especially the just and peremptory rules of precaution," which

the rules enforce; and that it was her duty to cause her engine to move her ahead so as to keep her out of the course the *Caspian* was taking as would clearly have averted the collision.

The defence contends that the damages claimed by the *Caspian* cannot include the loss of profits that might have been made had the *Caspian* been able to continue her voyage on the Saturday afternoon of the collision, then to Cobourg, and Port Hope and return to Charlotte and then back to Kingston. The Sunday continuation of the voyage is objected to by the defendants as being an "excursion." But this objection is not sustained by the Lord's Day Act for it allows "the continuation of their destination of grain and vessels in transit when the Lord's day begins, and work incidental thereto."

And as to estimated profits lost by the cancellation of the proposed voyage then just begun, I think they are allowable under the case of the *Arcton* (1888), 13 P.D., 61 and 191; and in appeal 14 A.C., 519, as the profits the *Caspian* might ordinarily and fairly be expected to earn on her advertised voyage, and which but for the collision might have been realized by the plaintiff's company.

I, therefore, assess the damages to which the plaintiffs are entitled against the defendant at \$460.76, costs to follow the event. The claim of the defendant for damages against the *Caspian* is dismissed.

CITY AND VICINITY.

A.O.H. Euchre Affair.

The regular fortnightly euchre was held in the A.O.H. hall on Tuesday evening, a large number being present. The first prizes were won by Mrs. J. Rochford and T. J. Daley. The consolation prizes fell to Miss Isabella Troy and Daniel Fitzgibbon. Dancing was indulged in after the cards.

Visits His Old Home.

Mr. and Mrs. W. G. McMahon and two children, of Winnipeg, are staying at the Randolph hotel for a few days. Mr. McMahon is a son of John McMahon, Wellington street, and was in business here years ago. He has been in Winnipeg quite a time, and is one of the leading men in that great western city.

New Cross in Place.

The new cross for St. Mary's cathedral, to replace the one struck by lightning last summer, was put into place, to-day, by Simmons Bros., who have the contract. The cross is twenty feet by eight, and it was quite a task to get at the work, as a special scaffold had to be erected. From the street the cross appears to be very small.

To Consider Agreement.

The regular meeting of the management committee of the board of education will be held to-night. The most important matter to come up will be the agreement with the School of Pedagogy. Some of the members of the board appear to be in favor of charging the faculty of education rental for the use of the schools, just as they do in Toronto.

Former Kingstonian Weds.

George Cutts, a former Kingstonian, and a member of the local police force, was married in Ottawa recently, and the members of the police department, and his many other friends, wish to extend congratulations to Mr. Cutts and his bride. The former Kingstonian is now a member of the dominion police force, at the capital, and is making good. Everyone wishes him all the success possible.

To Visit Montreal.

The members of the R.C.H.A., under Major Leslie, will leave for Montreal, on Wednesday, May 26th. The local corps will put on the musical drive at the military tournament. The men, under Sergt.-Major Bray, have been working for weeks and are in perfect condition. For the drive four gun carriages, drawn by six horses each, are used, and the equines are put through many dangerous and hair-raising manoeuvres. A large number of people gather at Artillery Park every day to witness the men do the drive.

Much Appreciated.

The official board of Wall street Methodist church, in a letter to Rev. Samuel Sellery (who in July begins his pastorate in Queen street church, Kingston) remarks: "During your four years of ministry you have given most excellent sermons, not only rightly interpreting the word of God, but also showing high mental ability as well as much thought and laborious study in their preparation, and which have been delivered in a clear, forcible and pleasing manner, making them not only interesting, instructive and entertaining, but spiritually beneficial." As a pastor his work was highly commended. The board regretted the itinerancy system requiring his removal.

LETTERS TO THE EDITOR.

14th F.W.O.R. Band.

Kingston, May 19.—(To the Editor): Last evening the citizens of Kingston proudly watched the 14th Regiment on its first public parade of the season and many were the praises as to the splendid appearance of the different companies. But withal there was something lacking—a lack that was extremely noticeable, namely, the absence of the band.

The 14th Regiment band has always been of the best of our Canadian militia, and one that the people of Kingston have been justly proud of. Now there seems to be a falling from its state of efficiency to one of inefficiency. Can nothing be done? Have the officers of the old 14th got the regiment enough at heart to look to this falling off? Get to it, 14th officers and have your hand in such a state, that no more disparaging remarks will be heard as were last night.—AN ENTHUSIASTIC ONE.

Miss "Kit" Daley, Wellington street, left to-day to visit friends in Hamilton. Jesse Strickler, Beamsville, got four months for highway robbery. Australian prisoners to be dined in Montreal by C.P.R. officials.

LIEUT.-COL. R. E. KENT

RECEIVES GIFT FROM 14TH OFFICERS.

The Ex-Commander of the Kingston Rifle Regiment Taken By Surprise—He Presents Sergt. Jamieson With Long Service Medal.

A pleasant affair took place at the armouries after the parade of the 14th Regiment on Tuesday evening. When the men arrived at the armouries and were lined up for dismissal, Lieut.-Col. Kent, retiring commanding officer of the regiment, appeared and presented Sergt. Jamieson with a long service medal. Col. Kent made a neat



LIEUT.-COL. R. E. KENT.

speech in presenting the medal, referring to the long and faithful service of the recipient.

After the men were dismissed, the officers retired to the ante-room, where another presentation was made, this time Col. Kent being the one remembered. Maj. George L. Starr, chaplain of the regiment, presented Col. Kent, on behalf of the officers, with a very handsome silver punch bowl, suitably engraved. The general ex-commander was taken completely by surprise and was visibly affected by the kindness of his former colleagues. However, he replied in a neat speech, thanking the officers very kindly for their gift and referring to the pleasure it always was to be connected with the 14th Regiment, which he had commanded for six years.

Col. Gordon and other officers of the Eastern Ontario command were present, and a social time was spent. Several speeches were made, and a very forcible one by Major Ross.

THERE SHOULD BE CORPS

Established in Local Schools and Queen's University.

The war scare in Britain has aroused the fighting blood of Kingston warriors, who declare that Germany would forever rue the day, should she think of pulling the lion's tail. There are others, however, who are not so confident. A citizen who has travelled in Germany, says it is wonderful to witness the patriotism of the German people, their devotion to the fatherland. They sing with tremendous fervor little patriotic songs, the nature of which Canadians wouldn't waste a thought upon. And the men and boys of Germany are all trained to bear arms.

"I tell you," said he, "the Germans would wipe England off the map were they ever to effect a landing."

"You're a liar!" exclaimed a little Englishman, who wore spectacles. "England would blow the Saarkraut to hell if they ever tried to put their blasted hoofs on the king's soil."

"Well, you may think so," was the retort, "but it wouldn't be easy. Germany is prepared for war, and you aren't. And furthermore, Germany hates England. I have heard them call the English pigs and cowards."

The prevailing opinion is that in Canada a start has not been made too soon to form cadet corps in the public and high schools. Every lad should be taught the rudiments of drill after he is ten years old. At the Collegiate Institute, till the present building was occupied, there used to be rifle drill, the 14th Regiment secured many of its recruits from Collegiate Institute ranks. Prizes used to be given at the collegiate for drill. The hope is that when the collegiate's new gymnasium is erected, the old rifle drill will be revived. There is no reason, too, why an infantry regiment should not be started in connection with Queen's University, as is being done at Toronto University.

AGED WOMAN GOES TO JAIL.

Woman Charged With Vagrancy Claims to Be 104.

Mrs. Sarah Ellen Carr, who claims to be 104 years old, but who is still hale and hearty, was, to-day, sent to jail, for a month, on a charge of vagrancy. Mrs. Carr has been an inmate of one of the local institutions for some time, but takes a notion every little while to wander about, and thereby causes herself to be classed as a vagrant. It was thought that a month in jail would be sufficient, and she will be well cared for. Mrs. Carr's eyesight is rather poor, but notwithstanding this she can sew and knit quickly, and during her term in the jail, will be given this class of work to do. She did not seem to mind going to jail, and when told that she would be able to knit, appeared to be greatly pleased. She was taken from the police station to the jail in a cab.

DAINTY TULIPS.

Magnificent Beds Seen in the Parks.

At the present time there are in the various parks and gardens throughout the city some magnificent beds of tulips out in full bloom. In the city park many of the blooms are at their height and attract the admiration of all who see them. Some of the beds, particularly those containing flaming red and yellow tulips, are best described by saying that they are gorgeous.

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STRIPED INDIAN HEAD SUITINGS, 15c, 20c, 25c.

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About 100 Remnants of Dress Goods, ranging in length from 2 yards to 6 or 7 yards, at exactly half price. Many of these are suitable for Children's Dresses. Also

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