

sions. The case therefore appears to me to be one which is precisely met by the 38th section of the Interpretation Act, and reference in the Gas Act of 1876 to the former Act of 1862 must for the future be read as reference to the later Act of 1892, containing in lieu of certain of its provisions those substituted by the subsequent Act of 1893.

LORD SKERRINGTON—I concur.

LORD MACKENZIE was not present.

The Court refused the note.

Counsel for the Complainers and Reclaimers—Constable, K.C.—Gentles, Agents—J. Miller Thomson & Company, W.S.

Counsel for the Respondent, the Sheriff of Fife—Solicitor-General (Morison, K.C.)—Morton, A.-D. Agent—Sir William S. Haldane, Crown Agent.

Counsel for the Respondent, the Provost of Cowdenbeath—Macmillan, K.C.—W. T. Watson, Agents—Morton, Smart, Macdonald, & Prosser, W.S.

Wednesday, January 27.

FIRST DIVISION.

[Sheriff Court at Glasgow.]

TRUSTEES OF THE CLYDE NAVIGATION v. WILHELMSSEN.

Ship—Collision—Narrow Channel—Firth of Clyde—Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60), sec. 418—Regulations for Preventing Collisions at Sea, 1897, Art. 25.

Held that the Firth of Clyde above a line drawn from the Cloch Lighthouse to the Gantocks Beacon is a narrow channel in the sense of Article 25 of the Regulations for Preventing Collisions at Sea, 1897.

The Merchant Shipping Act 1894 (57 and 58 Vict. cap. 60), sec. 418, gives power to His Majesty, on the joint recommendation of the Admiralty and the Board of Trade, by Order in Council, to make regulations for preventing collisions at sea.

The Regulations for Preventing Collisions at Sea, 1897, Art. 25, provides—“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.”

The Trustees of the Clyde Navigation, incorporated by Act of Parliament, 16 Robertson Street, Glasgow, *pursuers and appellants*, brought an action of damages in the Sheriff Court of Lanarkshire at Glasgow against W. Wilhelmssen, Tönsberg, Norway, owner of the steamship “Waterloo” of Tönsberg, Norway, *defender and respondent*, in respect of loss and damage sustained by them in consequence of a collision between the steamship “Hopper No. 6” of Glasgow and the said steamship “Waterloo” in the Firth of Clyde off Gourock.

The Sheriff-Substitute (FYFE) having

found both vessels in fault and refused to award damages the *pursuers* appealed to the Court of Session. The case is reported only on the question as to the proper navigation of steamships, in view of Article 25 of the Regulations for Preventing Collisions at Sea, 1897, in the Firth of Clyde.

Counsel for the *pursuers* (*appellants*) referred to the following authorities:—*Zihrul v. Cormack, et e contra*, July 20, 1904, 12 S.L.T. 294; *Screw Collier Company, Limited and Others v. Weir, et e contra*, July 19, 1906, 14 S.L.T. 465; *Kerr v. Screw Collier Company, Limited*, 1909 S.C. 561, 46 S.L.R. 338, and 1910 S.C. (H.L.) 25, 47 S.L.R. 99.

At advising—

LORD PRESIDENT.—. . . I now proceed to consider the question whether the *pursuers* have succeeded in proving the averment made in the sixth article of their condescence to the effect that the Firth of Clyde opposite Fort Matilda Pier is a narrow channel within the meaning of Article 25 of the Regulations for Preventing Collisions at Sea—an averment which is denied. I am of opinion that the averment is proved. The evidence of many skilled and experienced men is to the effect that at this part of the fairway of the Clyde the rule is invariably observed by traders inward bound passing traders outward bound. I should have been amazed had it been otherwise, for, as your Lordships are aware, this part of the fairway of the river is one of the busiest thoroughfares in the world, where innumerable traders inward bound for Glasgow and Greenock pass innumerable traders outward bound for all parts of the navigable globe.

One would think that if there was any channel to which the narrow channel rule ought to be applicable it was to this part of the river Clyde. The safety of the navigation, in my opinion, imperatively demands its application. It is nothing to the purpose to say that small vessels do not, and that vessels which have occasion to cross cannot, observe the rule. The applicability of rule 25 does not exclude the operation of the other rules for preventing collisions at sea. The fact that this is a narrow channel does not to any degree abrogate the rule for crossing vessels when the circumstances demand its application. It was, no doubt, contended to us on behalf of the defender that we could not affirm that the narrow channel rule was applicable to this part of the Firth of Clyde without carrying our finding further down the channel. I do not agree. We can, if we please, affirm that the narrow channel rule applies to this part of the fairway of the river, where the breadth is only half-a-mile from Fort Matilda Pier out to the Rose-neath Patch. But I am prepared now to hold—and I understand that your Lordships agree—that the narrow channel rule applies at least as far down the fairway as to a line drawn from the Cloch Lighthouse to the Gantocks Beacon, where the breadth of the fairway is about one mile and a-third. For my own part I am prepared to hold that the narrow channel extends much further down, and that the fairway of the channel of the

Firth of Clyde is a narrow channel, within the meaning of Article 25, from a line drawn from the Little Cumbræ Lighthouse to the nearest point of Bute commonly known as Garroch Head, where the width of the fairway is almost the same as between the Cloch Lighthouse and the Gantocks Beacon. . . .

LORD JOHNSTON—The decision in the present case is only important so far as it affects the nature of the fairway of the Clyde at or about the site of the collision. This took place at a point in the Clyde about 200 yards to the north-west of the Fort Matilda Pier. By article 25 of the Regulations for Preventing Collisions at Sea, issued in 1897, it is provided that "in narrow channels every steam vessel shall, when it is safe and practicable, keep to that side of the fairway or channel which lies on the starboard side of such vessel." This is provided in order that vessels going in opposite directions and meeting in a narrow channel shall be readily able to pass port to port. In other words, port to port is made the rule of the road in a narrow channel. As in driving along a highway it is no offence to take the middle of the road, or even the wrong side, when the road is clear, but only when there is other traffic on the road, so it is only in the case when there are other craft in the channel that it becomes the bounden duty of each passing ship to keep to starboard, so as to pass port to port. The ship which fails in this duty is in fault.

I think it is impossible to contend that the water off Fort Matilda Pier is not a narrow channel in the sense of the regulations. The whole width between Fort Matilda and the opposite shore at the narrowest point is barely a mile and a quarter, but a little more than half-way across is situated the sunken bank or reef known as Roseneath Patch, and the whole mercantile traffic of the Clyde at that point is confined to that part of the channel which lies to the south side of Roseneath Patch. Having regard to the traffic of the Clyde, it is, I think, really impossible to contend that this is not a narrow channel in the sense of the regulations. But I do not think that we should be justified in leaving the matter there. The river Clyde ends technically at Newark Castle, near the east end of Port Glasgow, but from that point the fairway, whether properly of the river or of the estuary, is confined to a comparatively narrow space between Greenock at what is known as "the Bank," the Tail of the Bank, or its seaward end, extending as far down as the point opposite Greenock. From the Tail of the Bank to Roseneath Patch is nearly one and a half miles, but though across that space there is a wide stretch of water between Greenock and Helensburgh at the mouth of the Gareloch, the real channel for outward and inward traffic lies on the south side of the Clyde, all inward and outward shipping passing between Fort Matilda and Roseneath Patch, and only local traffic navigating the stretch of water north of Roseneath Patch. In the same way, though the expanse of water widens considerably between Gourock and the mouth of the

Holy Loch, the outward and inward traffic, after rounding Whitefarland Point at Fort Matilda and Kempoch Point at Gourock, keeps on the south side of the Clyde, at any rate to and from the Cloch Lighthouse.

It is sufficient for this case to say that the Clyde is a narrow channel in the sense of the regulations, at any rate from Newark Castle to the Cloch. I am far from saying that it does not continue a narrow channel to a point much lower down, probably until the Cumbræes are cleared. But I do not think that it would be proper to pronounce any decision on that point until a case arises which would require the question to be considered on appropriate evidence. The conclusion to which I have come, in common I understand with your Lordships, it is satisfactory to find, is in accordance with very general practice as shown by the evidence led in the case. But I cannot accept the proposition that such a question depends on proof of custom.

Apparently the Clyde Trustees, for some reason which is not very apparent, are averse to having any definite pronouncement as to the nature of the channel in the neighbourhood of Greenock and the Tail of the Bank, which must include the *locus* in question. I fail to understand their attitude, and think that it is in the interest of navigation that shipmasters should know definitely that they must treat the area in question as a narrow channel in the sense of the regulations. If an inward bound master finds it necessary to lie at the Tail of the Bank, then, given a definite rule, he knows that his vessel is a crossing vessel and must manœuvre accordingly in terms of the regulation applicable to crossing vessels. . . .

LORD SKERRINGTON concurred.

LORD MACKENZIE was not present.

The Court recalled the interlocutor of the Sheriff-Substitute; found in fact, *inter alia*, "(2) that the collision took place on the Firth of Clyde at a point about two cables' length north-westward of Fort Matilda Pier, and about a cable length and a length off the shore; (3) that the Firth of Clyde at the place where the collision took place is a "narrow channel within the meaning of Article 25 of the Regulations for Preventing Collisions at Sea; and found in law that the defender was liable to the pursuers in damages.

Counsel for the Pursuers (Appellants)—Macmillan, K.C.—C. H. Brown. Agents—Webster, Will, & Company, W.S.

Counsel for the Defender (Respondent)—Horne, K.C.—Normand. Agents—J. & J. Ross, W.S.