

BRITISH COLUMBIA ADMIRALTY DISTRICT

1950

Feb. 27 & 28
March 1 & 2
March 28

BETWEEN:

GREATER VANCOUVER WATER DISTRICT, } PLAINTIFF,

AND

THE SHIP SPARROWS POINT and NATIONAL HARBOURS BOARD.... } DEFENDANTS.

Shipping—Damage to water mains owned by plaintiff caused by defendant ship's anchor—Failure of ship to comply with regulations governing operation of second Narrows Bridge at Vancouver requiring ship to "remain at a safe distance" until green light appears—"Safe"—Liability at common law—Costs incurred by co-defendant payable by ship.

Defendant ship in approaching the second Narrows Bridge at Vancouver, B C., failed to comply with the regulations governing the operation of the bridge which require a ship approaching the bridge to "remain at a safe distance" until the green light appears. She found it necessary to drop her anchor to take her way off. The anchor dragged across the water-mains owned and laid by plaintiff under statutory authority causing considerable damage.

Held: That "safe distance" in the regulations means a safe distance for every one concerned including any one affected by emergency measures.

- 2. That aside from the regulations at common law the ship would not be justified in proceeding against a barrier, having no assurance when it would be removed to a point where, if the barrier remained, she could not save herself except at the expense of a third party's property.
- 3. That defendant National Harbours Board having been added as a co-defendant by the ship any costs incurred by plaintiff to the National Harbours Board must be repaid it by the ship.

ACTION by plaintiff against defendant ship for damage to water-mains caused by ship's anchor: defendant National Harbours Board made co-defendant by the ship.

The action was tried before the Honourable Mr. Justice Sidney Smith, District Judge in Admiralty for the British Columbia Admiralty District, at Vancouver.

Douglas McK. Brown and R. E. Ostlund for plaintiff.

Alfred Bull, K.C., and D. S. Montgomery for defendant ship.

A. C. DesBrisay, K.C., D. M. Owen and J. I. Bird for defendant—National Harbours Board.

1950
 }
 GREATER
 VANCOUVER
 WATER
 DISTRICT
 v.
 THE SHIP
*Sparrows
 Point
 et al*

 Sidney
 Smith
 D.J.

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

SIDNEY SMITH, D.J.A. now (March 28, 1950) delivered the following judgment:—

At the end of the trial I gave judgment for the Water District against the ship, but found in favour of the defendant Harbours Board. I stated my reasons shortly, and promised to amplify them later. I now do so.

The plaintiff owns water-mains laid by statutory authority across the sea-bed of Burrard Inlet in an area paralleling the Second Narrows Bridge and 1,000 to 1,600 feet east of it. These mains are clearly marked on the chart, and the chart bears a warning against them. The various sailing directions for the locality also warn against them. Those navigating the defendant ship knew of them. This action arises out of the ship's damaging the mains by dropping anchor while trying to pass through the bridge, which is operated by the defendant Board. I will outline the events that led to this mishap.

The *Sparrows Point* (with a local pilot on board) was bound westward shortly after 3 a.m. on 26th of December, 1948. She whistled at Berry Point, one and a half miles from the bridge, to have the bridge-span raised. The visibility was then not too bad; for the ship could see the traffic lights on the bridge. But the weather was generally dark and hazy; there were fog banks; and I find that on the higher levels at the bridge at the relevant time the fog was denser and heavier than elsewhere, though at lower levels the visibility was relatively good.

The regulations that govern the operation of the bridge are authorized by Order-in-Council and bind all navigators.

They provide:—

36-H (10) (a) Every vessel desiring the lift span of the bridge to be raised shall give three prolonged blasts with her sounding device and repeat such signal until acknowledged by the bridge operator.

(10) (b)

- (ii) a red light on either side of the operating house indicates that the vessel's signal has been heard and understood;
 two red lights on the operating house, not less than ten feet apart vertically, indicates that the vessel must not approach the bridge;
 a green light on either side of the operating house indicates that the lift span has been raised.

(9) Every vessel which has signalled for the lift span of the bridge to be raised shall remain at a safe distance from the bridge until the bridge operator signals that the lift span has been raised.

1950
 {
 GREATER
 VANCOUVER
 WATER
 DISTRICT
 v.
 THE SHIP
*Sparrows
 Point
 et al*
 Sidney
 Smith
 D.J.A.

When the span is raised, the red light rises with it; and when the span is raised to the full extent needed, then the red light is replaced by a green light, showing that the ship may pass through. After the *Sparrows Point* whistled, the bridge showed its red light, so that the ship knew her signal had been heard. But until the green light appeared she was bound to "remain at a safe distance". Actually she crept closer to the bridge, and then found she must drop anchor to take her way off, because she still could see no green light. She did this when approximately 1,500 feet from the bridge. Her anchor dragged across the water-mains doing damage, claimed to be \$70,000.00. Right after this she saw the green light, hove in, and passed safely under the raised span at 4.35 a.m.

There was some contention about the strength of the ebb tide at the time, but I find this did not exceed $\frac{3}{4}$ knot and was not a factor. A master mariner was called and put the tide at 3 knots. But I do not accept this. While he was no doubt a competent navigator it was not shown that he had any special knowledge of tides at this bridge, or even that he had ever taken a ship through it. I accept the contrary evidence of the pilot and others used to passing through the bridge.

I also accept the evidence of the bridge-operators, who in the course of their duties noted in their logbook what occurred. They had been notified by telephone to expect the ship, and saw her when she whistled at Berry Point. In three minutes they had raised their span to its full elevation of 120 feet; the red light had changed to green, and all was in order for the ship to pass through. Unhappily the dense fog on the upper level prevented those on the ship from seeing the green light. The bridge-operators knew this, and several times tried to enlighten the ship by announcements through their loud-speaker that the bridge was open. Unluckily the ship could not hear them clearly. I do not think the bridge-operators were bound to do even this much; they certainly cannot be criticized for not doing more. I find they were not at fault.

1950
 GREATER
 VANCOUVER
 WATER
 DISTRICT
 v.
 THE SHIP
*Sparrows
 Point
 et al*
 Sidney
 Smith
 D.J.A.

I should here mention that witnesses from the ship testified that they continued to see the red light until they had dropped anchor. But I am satisfied that they were mistaken, and that since both the red and green lights rose with the span into the fog above, they could see neither. I should like to repeat what I said at the conclusion of the trial: that the pilot, undoubtedly a man of great experience, gave his evidence in a most satisfactory and seaman-like fashion; but that he, too, was mistaken in the matter of the red light.

It was argued that the lone red light, showing that the ship's signal was heard, was an invitation to come on so long as two were not shown. This claim ignores the role of the green light under the regulation. Under that, the ship, even when she knows her signal has been heard, must "remain at a safe distance" till the green light shows the span has been raised. The meaning of "safe" here has been queried. But the regulations are for seamen, and I cannot doubt that seamen would understand a safe distance as one safe for everyone concerned, including anyone affected by emergency measures. Here those controlling the ship knew that the mains were there, and that they must avoid any position of hazard that might force them to damage other property in order to save their vessel. They quite failed to preserve the proper margin of safety.

Even if the ship's story had been true, and the bridge had failed to give them the signal of safety when the way was really clear, I think the ship would still have been the culpable party. For if she had obeyed the regulations, and kept a safe distance till she saw the green light, then the damage would not have been done. It seems to me, moreover, that even at common law she would probably be liable. Even at common law she could not justify proceeding against a barrier (having no assurance of when it would be removed) to a point where, if the barrier remained, she could not save herself except at the expense of a third party's property.

I have examined the cases referred to me but, as I understood counsel to admit, they are not close enough in point to be really helpful.

I reserved one question of costs arising from the defendant Board's success. The writ was issued against the ship alone; later she had the Harbours Board added as co-defendant, over a preliminary objection of the plaintiff. In my opinion the ship should repay to the plaintiff any costs that it must pay to the Harbours Board.

The learned Registrar will assess the damages.

Judgment accordingly.

1950
 GREATER
 VANCOUVER
 WATER
 DISTRICT
 v.
 THE SHIP
*Sparrows
 Point
 et al*
 —
 Sidney
 Smith
 D.J.A.
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