

BRITISH COLUMBIA ADMIRALTY DISTRICT.

1917

Sept. 20.

BETWEEN

THE CLEEVE..... PLAINTIFF;

AND

THE PRINCE RUPERT..... DEFENDANT.*Shipping—Collision in harbour—Neglect to keep proper look-out—Failure to keep course and speed—Article 21, Sea Regulations.**Held:* That the making of a landing along the water-front of a busy harbour is a manoeuvre which ought to be accompanied by full precautions, the first of which is an adequate look-out.*Bryce v. Canadian Pacific Ry. Co.* (1907) 13 B.C.96; 6 W.L. R. 53; (1907) 15 B.C. 510, pp. 512-3; referred to and applied.

2. That a serious burden is imposed upon a vessel if she fails to "keep her course and speed" as required by article 21 of the Sea Regulations, and she lays herself open to attack by the "give-way" vessel by departing from the directions of the article and must be prepared to justify the departure by the proper execution of nautical manoeuvres, such as in dropping a pilot, or approaching a landing or drawing up to an anchorage, or to lessen the consequences of collision, to save life or otherwise.

S.S. Albano v. Allan Line Steamship Company, Limited, (1907), A.C. 193; 76 L.J., P.C. 33, at p. 40, followed.**ACTION** for damages by collision.

20th and 21st of June, 1917.

The case was heard before the Honourable Mr. Justice Martin, L.J.A., at Vancouver.

C. M. Woodworth, for plaintiff.*C. B. Macneill K.C.*, for defendant.

The facts are stated in the reasons for judgment.

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MARTIN, L. J. A. now this (20th September, 1917), delivered judgment.

This action arises out of a collision in Vancouver harbour on December 28th last, at about 3.45 p.m. when the high-powered steamship *Prince Rupert* (Duncan McKenzie, master), 320 feet in length, gross tonnage 3,379, registered 1,626, speed 18 knots, collided with the steam tug *Cleeve* (Wm. N. Coughlin, master), length 58 feet 6 inches, beam 15 feet, and caused considerable damage, her stern cutting into the *Cleeve's* port side about amidships. Both vessels had entered the Narrows, the *Cleeve* in advance, and passed Brockton Point and Burnaby Shoal, having the last behind them, with the *Cleeve* inside of it, the intention of the *Prince Rupert* being to make her landing at her owner's dock, the Grand Trunk Pacific, and that of the *Cleeve* to make the Hastings Saw Mill wharf, a short distance beyond said dock. It will thus be seen that their intentions, if carried out, having regard to the short distance to be travelled, would sooner or later result in converging and intersecting courses, dependent upon the rate of the speed of the respective vessels. The evidence is in certain important respects contradictory, but after an unusually careful consideration of it (necessitated by the fact that there is here the strange occurrence of a collision in broad daylight on a clear, calm day in a harbour) I find as a fact that the *Cleeve's* straight course was kept at a speed of about six knots from Burnaby Shoal towards her said destination and that it was not varied till "in the agony of an impending collision." At one time the *Prince Rupert* was admittedly as regards the *Cleeve*, an overtaking vessel, up to, at least, when abeam of Burnaby Shoal at 3.37 p.m., and after she, the *Prince Rupert* changed her

course, after passing said shoal to S. 50° E., and later to S. 25° E., to make a landing at said dock, she became a crossing, if not still an overtaking vessel, and in either case bound under articles 19, 22, or 24 to keep out of the way of the *Cleeve* which she had, I find, on her starboard side, and in such case there was under article 21 the correlative duty cast upon the *Cleeve* to "keep her course and speed," which duty I find she discharged. I am unable to take the view that the stopping of the *Prince Rupert's* engines and her slowing down on encountering the North Vancouver ferry changed her character as regards the *Cleeve* or lessened her obligations; it seems to me that relying on the fact that she was at half-speed, going six to eight knots after passing the shoal, she either thought she could afford to ignore the *Cleeve* and would have time to make her landing before the *Cleeve's* course intersected, or else she dismissed the *Cleeve* entirely from her mind on the erroneous and improper assumption that she was only going as far as the Canadian Pacific Railway Company's Australian wharf, a long way short of the Grand Trunk Pacific dock, or up Coal Harbour, which latter view is sufficiently supported by the evidence of her first mate, Roderick McKenzie. From either point of view this, in the circumstances, was a "neglect to keep a proper look-out" as required by the "good seamanship" (article 29), and it was not taking proper "precautions" to speculate upon and miscalculate the speed of the *Cleeve*, especially in ignorance of her destination. These misapprehensions as to speed and relative conditions lead to serious consequences as pointed out by the Lord Chancellor in *The Olympic* and H.M.S.

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Hawke (1). In my opinion the making of the landing along the waterfront of a busy and important harbour is a manoeuvre which ought to be accompanied by full precautions, the first of which is an adequate look-out. I draw attention to my observations upon the "proper precaution" of keeping "a general look-out" in Vancouver Narrows in *Bryce v. Canadian Pacific Ry. Co.* (2), which view was affirmed by their Lordships of the Privy Council, as reported in 15 B.C. 510, at pp. 512-3; 13 Ex. C.R. 394, wherein their Lordships said of the master of the *Chehalis*:

"The real cause of this unfortunate collision was that there was no adequate look-out on board the *Chehalis*. It seems almost incomprehensible that he should not have noticed her (the *Princess Victoria*) even before she rounded, and as she was rounding the (Brockton) Point, unless he never looked anywhere except straight ahead of his vessel."

These observations are, in my opinion, very appropriate to the circumstances of the case at bar, and I also refer to those in *Cadwell v. the ship C. F. Bielman* (3). I think that the attention of the *Prince Rupert* was, after passing the shoal, so engrossed upon the ferry that she became "strangely oblivious of the presence of the *Cleeve*," to adopt the language of their Lordships of the Privy Council in *S.S. Albano v. Allan Line Steamship Company, Limited* (4).

So far as the *Cleeve* is concerned, while her master had been aware for some little time of the presence and approach of the *Prince Rupert*, yet it was his duty

(1) [1913] 83 L.J., Adm. p. 113; [1914], 12 Asp. M.C. 580; 112 L.T. 49; [1915] A.C. 385. (3) [1906], 10 Ex. C.R. 155.
(2) [1907] 13 B.C. 96, at p. 101; 6 W.L.R. 53. (4) [1907], A. C. 193; 76 L.J., P.C. 33 at p. 34; 96 L.T. 335; 10 Asp. M.C. 365.

to obey article 21 and "keep his course and speed," and he was justified, in his position, in assuming that the *Prince Rupert* would conform to article 19 and keep out of his way, and he properly persisted in this line of conduct till the *Prince Rupert* was upon him, when "in the agony of impending collision" he tried ineffectually to escape from it by going astern and putting his helm to starboard, and though it was too late, yet no blame clearly can be attached to him for the failure of these final efforts.

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It was suggested that the *Cleeve* might have avoided the accident if she had earlier altered her helm, but the cases shew that it imposes a serious burden upon a vessel if she fails to conform to article 21, and she lays herself open to attack by the "give-way" vessel by departing from its directions and must be prepared to justify that departure by the proper execution of nautical manoeuvres, such as in dropping a pilot, or approaching a landing, or drawing up to an anchorage, or to lessen the consequences of collision—to save life or otherwise. See the late cases of the *Fancy* (1); and *The Echo* (2), on the point; and also those of *The Velocity* (3); *Steamship Arranmore v. Rudolph* (4); *S.S. Albano v. Allan Line Steamship Company, Limited*, supra; *The Roanoke* (5), and the *Olympic* and *H.S.M. Hawke*, supra.

In the *S.S. Albano* case, supra, their Lordships said, p. 40:

- (1) [1916], 86 L.J., Adm. p. 38; [1917] P. 13.
 (2) [1917], P. 132; 86 L.J., Adm. p. 121.
 (3) [1869], 39 L.J. Adm. 20; L.R. 3 P.C. 44; 6 Moore, P.C. (N.S.) 263.
 (4) [1906], 38 S.C.R. 176.
 (5) [1908] P. 231; 77 L.J., Adm. p. 115; 99 L.T. 78.

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“It must always be a matter of some difficulty for the master of a vessel which has to keep her course and speed with regard to another vessel which has to keep out of her way, to determine when the time has arrived for him to take action, for if he act too soon he may disconcert any action which the other vessel may be about to take to avoid his vessel, and might be blamed for so doing, and yet the time may come at which he must take action. Therefore he must keep his course and speed up to some point, and then act, but the precise point must necessarily be difficult to determine, and some little latitude has to be allowed to the master in determining this.”

Applying this language to the case at bar, I determine that the master of the *Cleeve* kept his course and speed up to a proper point and that the accident is solely attributable to the negligence of the *Prince Rupert* in failing to comply with the articles above cited.

The prior judgments of this court in *The Cutch* (1); and *Smith v. Empress of Japan* (2), confirm in general the conclusions I have arrived at.

Therefore let judgment be entered in favour of the plaintiff with costs, and if necessary there will be a reference to the registrar, with merchants, to assess the damages.

Judgment accordingly.

(1) [1893], 2 B.C. 357; 3 Ex. C.R. 362. (2) [1901], 8 B.C. 122; 7 Ex. C.R. 143.