BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN:

B. W. B. NAVIGATION COMPANY LIMITED,
PLAINTIFFS;

AND

THE SHIP *KILTUISH* AND OWNERS..... DEFENDANTS;

AND

BARNET LIGHTERAGE COMPANY LIMITED,
PLAINTIFFS;

AND

THE SHIP *KILTUISH* AND OWNERS.... DEFENDANTS.

Shipping and seamen—Lights on barges in tow—Article 5 Regulations for preventing collisions at sea.

Held: That barges being towed in the coast waters of British Columbia should comply with the provisions of Article 5 of the Regulations for preventing collisions at sea; and failing to do so will be held guilty of negligence and liable for damages due to collision with another vessel.

Action to recover damages due to a collision in the coast waters of British Columbia.

February 24th and 25th 1922.

Cases heard before the Honourable Mr. Justice Martin at Vancouver.

Reginald Symes and *Sidney Smith* for plaintiffs;

E. C. Mayers and *W. S. Lane* for defendants.

1922

B. W. B.
NAVIGATION
COMPANY
LIMITED
AND
BARNET
LIGHTERAGE
COMPANY
LIMITED
v.
THE SHIP
KILFUISH.

Statement
Facts.

On or about 3.15 a.m. on the 1st of November, 1921, the *"Projective"* a tug boat belonging to the Plaintiffs, the B. W. B. Navigation Company, Limited, having in tow the Barge *Pyrites* belonging to the Plaintiffs, the Barnet Lighterage Company, Limited, whilst on a voyage from Vancouver to James Island came into collision in Active Pass with the Steamship *Kiltuish*, belonging to the Coastwise Steamship and Barge Company, Limited, the Defendants. The *Projective* was carrying the regulation lights but the Barge *Pyrites* carried one bright white light at mast head but no side lights as provided for by Article 5 of the Regulations for Preventing Collisions at Sea, which is as follows:—

"A sailing vessel under way and any vessel being towed shall carry the same lights as are prescribed by Article 2 for a steam vessel under way, with the exception of the white lights mentioned therein which she shall never carry."

The Plaintiffs sued for $1,829.90, damages to the tug boat *Projective* and the Barge *Pyrites*, and the Defendants counterclaimed for $763.60 damages to the Steamship *Kiltuish*. At the trial the Plaintiffs endeavored to adduce evidence to show that it was not customary for barges in tow to carry side lights in coastwise waters, but the Learned Trial Judge refused to admit this evidence on the ground that it was not permissable to prove custom where custom conflicted with statutes or regulations.

MARTIN, L. J. A. now (this 22nd June, 1922), delivered judgment.

Largely owing to the conflict of evidence the questions raised in this consolidated action have occasioned me much reflection, and after a reconsideration of the whole matter I have reached the conclusion that both parties are to blame for the collision, the fault on the part of the *Kiltuish* being the neglect to stop and navigate with caution when the danger became apparent, and that on the part of the tug and tow being the misleading of the *Kiltuish* by failure to exhibit the regulation lights on the tow and also allowing the tow to drift too far across the channel. In all the circumstances I am of the opinion that this is a case where the liability should be apportioned equally under the Maritime Conventions Act, 1914, Can. Chap. 13, and each delinquent should bear its own costs— *Pallen* v *The Iroquois* (1).

I should perhaps say, to avoid misunderstanding, that in coming to this conclusion I have considered the liability of the tug and tow as being on the facts, inseparable, and that according to my very full notes of the argument, the Plaintiff's counsel did not contest the submission of the Defendant's counsel to that effect, but, if by chance I am under a misapprehension on this point the matter may be spoken to. If required, there will be the usual reference to the Registrar, with merchants to assess damages.

Judgment accordingly.

(1) (1913) 18 B.C.R. 76; 17 Ex. C.R. 185; 11 D.L.R. 41.