

BRITISH COLUMBIA ADMIRALTY DISTRICT

1959
Sept. 21, 22,
23, 24
Oct. 16

BETWEEN:

HER MAJESTY THE QUEEN PLAINTIFF;

AND

THE SHIP *M.V. ISLAND CHALLENGER*, THE BARGE *LORD TEMPLETOWN* AND THE SHIP *M.V. SWAN* } DEFENDANTS.

Shipping—Tug and tow—Collision with bridge—Negligent operation of tug—Inevitable accident no defence.

The action is brought by the Crown to recover for damage to the railway bridge at New Westminster caused by the barge *Lord Templetown* in tow of the tug *Island Challenger*. The Court found that the tow line was too long and that no instructions were given to the master of a following tug to assist.

Held: That the collision resulted from the negligent operation of the tug and tow in not anticipating a possible sheer and being late on the ebb.

2. That the defence of inevitable accident is not applicable.

ACTION by the Crown to recover damages to a bridge allegedly caused by the negligence of defendant tug and tow.

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

C. K. Guild, Q.C. and *F. U. Collier* for plaintiff.

C. C. I. Merritt and *J. I. Bird* for defendants *M.V. Island Challenger* and *Lord Templetown*.

Glen McDonald for defendant *M.V. Swan*.

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

SIDNEY SMITH D.J.A. now (October 16, 1959) delivered the following judgment:

In this case the Crown claims damages for damage done to the railway bridge at New Westminster in the following circumstances. The bridge is described in the Statement of Claim as follows:

The said bridge was and is a swing bridge with a swing span of approximately 190 feet from pivot to point, or a total of 380 feet long, point to point, with a protection pier below, which extends approximately

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a further 20 feet beyond the end of the swing span when open. With the swing span in the open position there are two channels formed for River traffic each approximately 180 feet in width, a Northerly Channel for upstream traffic and the Southerly channel for downstream traffic.

The damage was done by the barge *Lord Templetown* (formerly a sailing ship of 2,000-odd gross tonnage and 283' x 40' x 24') deeply laden with sawdust. This barge was in tow of the powerful tug *Island Challenger* (166 gross tons x 91' x 25'). There was a very much smaller tug, the *Swan* "hovering" astern of the barge. The visibility was good.

The defence was "inevitable accident". This was fully dealt with by Mr. Merritt and is to be found at pages 37 to 45 of Marsden's *Collisions at Sea*, 10th edition. It need not be further mentioned by me.

The barge had laden her load in a position approximately one mile upstream from the bridge and proceeded downstream without incident except at one point when the *Swan* went astern to slacken her speed. On board the tug were the Master and the owner of the *Swan* whom I shall refer to as the Pilot. The Pilot's duties were purely in an advisory capacity. This was made abundantly clear. He and his small tug the *Swan* were there to give service to the barge should it be needed in the loading, the passage down the river and through the span of the bridge.

Shortly before the south span was reached the barge took a sheer to starboard and with her bow struck the protection doing a great deal of damage. I have concluded that the collision was due to the faulty navigation of the tug.

I find the tide was ebbing and that she was late on the ebb. This caused the sheer. Even if this were not so a possible sheer might have been anticipated and proper precautions taken. To break the sheer the tug and barge both ported but it was too late to prevent collision in the narrow quarters in which they then were. This was because the tow line was too long. It was given as possibly 150 feet but it may have been longer. I was not quite satisfied with the evidence given either by the Master or the Pilot. They contradicted their discovery in some respects and seemed rather anxious to state their case much in their own favour.

I think the tow line should have been not more than 75 feet, as stated by the evidence of Captain Kinney which I accept. I am also of opinion that no instructions were given to the following *Swan*. Her Master was a youngish man, clearly ill at ease. He gave his evidence in a very hesitant and inconclusive manner. His plea that the tug and barge failed "to give any instructions or directions . . . to the tug M/V *Swan* or to anyone" was nevertheless fully made out by his own and other testimony. I have no hesitation in finding that the *Swan* was unattached to the barge and not in a position to render any assistance; that neither the Master nor the Pilot at the critical time knew at all accurately where she was.

I therefore find in favour of the plaintiff as against the *Island Challenger* and the barge and direct the Registrar to assess the damages. I dismiss the action against the tug *Swan*. I make no present finding as to costs. Counsel may speak to this later if they desire.

Judgment accordingly.

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