
BRITISH COLUMBIA ADMIRALTY DISTRICT
EVANS, COLEMAN & EVANS, LTD.....PLAINTIFF;
AGAINST
THE SS. ROMAN PRINCE

1923
Nov. 27.

Shipping—Negligence—Unavoidable accident—Forces of nature.

At about 1 o'clock on October 27, 1922, the *R.P.*, a steamer of some 10,000 tons net register, was attempting to dock on the east side of

(1) [1865] 34 L.J. Ch. 122.

(2) [1893] A.C. 429.

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Johnson Wharf on the south shore of Vancouver Harbour, which lies west of a wharf operated and owned by plaintiff, and at a distance of 300 feet. The ship was not under her own power, but had employed two tugs to bring her up to the wharf; tide was high-slack, weather clear with a breeze of considerable force from the west. The bow of the *R.P.* had entered the fairway between the wharves, when the pilot stopped the tug ahead, and ordered the other, which was lashed to the port quarter of the ship, to go astern and take the way off the ship, then proceeding at about one mile an hour. In so doing the tug carried away her headline and thereupon, the pilot dropped both anchors, bringing the vessel to a standstill. The vessel drifted upon the northwest corner of plaintiff's pier causing damage. The defence to plaintiff's action was one of unavoidable accident.

Held, that while no fault, in the abstract, could be found with the defendant ship's owners in employing the two tugs as they were employed, yet, on the above facts and considering the force and direction of the wind and its effect upon the ship, due care was not taken to approach the wharf in a proper and seaman-like manner. There was no good reason why necessary allowance for the forces of nature, to offset the leeway, should not have been made in approaching its berth under the restricted condition of a narrow slip, and that defendant was liable in the circumstances.

ACTION by plaintiff to recover damages suffered by reason of a collision with a wharf owned and operated by them.

June 28 and 29, and July 10 and 14, 1923.

Action now tried before the Honourable Mr. Justice Martin at Vancouver.

E. P. Davis K.C. and *D. N. Hossie* for plaintiff.

Martin Griffin and *Sidney Smith* for defendant.

The facts are partly stated in the head-note and in the reasons for judgment.

MARTIN L.J.A. now, this 27th November, 1923, delivered judgment.

In my note of 27th November last, directing judgment to be entered for the plaintiff herein, I said that my reasons would be handed down later (1), but pressure of work, and other causes, have delayed me till now in carrying out my intention.

Briefly, my view of the case is that while no fault in the abstract can be found with the defendant ship's owners in employing the two tugs in the way they were employed to move the ship to pier H and dock her on the east side

(1) NOTE: Reasons were handed down on Feb. 29, 1924.

thereof, yet having regard to the circumstances, in particular the considerable force and direction of the wind and its affect upon a ship of her size, and the situation of the piers between which the ship was entering, due care was not taken to approach them in a proper and seamanlike manner, though the defendants were in control of the situation in their attempt to moor the ship to an immovable object in the face of clearly apparent difficulties, and there was no good reason why the necessary allowance for the forces of nature, so as to offset the leeway was not made in approaching her intended berth under the restricted conditions of a narrow slip.

The defence of inevitable accident was not supported by the evidence and therefore fails.

As to the defences denying the plaintiff's title and that the dock was an unauthorized obstruction to navigation, and other objections taken, suffice it to say that, in my opinion, they were not established.

Judgment accordingly.

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