

QUEBEC ADMIRALTY DISTRICT

1930
Sept. 26.

REDERIET ODFJELL A/S PLAINTIFF;

vs.

STEAMSHIP VESUVIO DEFENDANT.

AND

SOCIETA ANONIMA PER L'INDUS-
TRIA E IL COMMERCIO MARI-
TIMO } PLAINTIFF;

vs.

STEAMSHIP OLDER DEFENDANT.

*Shipping and seamen—Collision—Negligence—Signals—Navigation—Har-
bour—Weight of evidence.*

A collision occurred between the *O.* and the *V.* on the 20th of September, 1928, at 10.15 a.m., in the channel of the St. Lawrence River, in the Harbour of Montreal, a little below gas buoy 194M. The weather was fine and clear, with a light northeast breeze, and with a current of between 3 and 4 knots. The *V.* was proceeding up the channel, on the north side, and the *O.* was coming down on the south side. On reaching buoy 193M. the *O.* turned to cut across the current to her berth at the upstream side of Laurier Pier. The *V.* observing the *O.* turning around buoy 194M., her bow getting abreast buoy 195M. into the channel, gave a signal of five blasts, with the order to stand by, followed by order of slow astern on the engine. The *O.* held her course across the channel and shortly after gave a signal of two blasts. Thereupon the *V.* replied by three blasts and put her engines full speed astern. The collision occurred shortly after, both vessels being on the north side of the channel, about 200 feet below buoy 194M., the *V.* then having no way upon her. When the *O.* was between buoy 195M., and 193M., she saw the *V.* leaving her dock, and saw her coming up, before she (*O.*) made her turn of buoy 193M., and when the five-blast signal was given, the *O.* could have reversed in time to allow the *V.* to pass. The master was not on the bridge.

Held, that, under the circumstances, the *O.* was guilty of negligence in not signalling before turning in to the channel at buoy 193M., and in attempting to cross the bow of the *V.* contrary to the rules of good seamanship, and was solely to blame for the collision.

- (2) That the five-blast signal does not necessarily mean that there is actual danger. It may mean a signal of attention, and the *O.* receiving this signal was bound by rules 21, 22 and 23 to avoid the *V.* and to go astern.
- (3) That as ships turning below buoy 193M. may be going to Laurier Pier or Tarte Pier, the *V.* was therefore justified in expecting the *O.* to pass astern and when the *V.* became uncertain of the *O.*'s movements the five-blast signal was the proper signal to give.

1930
 ODFJELL A/S
 v.
 STEAMSHIP
Vesuvio
 AND
 SOCIETA
 ANONIMA
 PER
 L'INDUSTRIA
 E IL
 COMMERCIO
 MARITIMO
 v.
 STEAMSHIP
Older.

(4) That the evidence of those on the ship who are responsible for its navigation, as to the signals given, is of greater weight with the court than that of outsiders who had no special reason to note the signals given.

ACTION and counter action to recover damages due to collision between the *Vesuvio* and the *Older*.

The actions were tried before the Honourable Mr. Justice Demers, Local Judge in Admiralty for the Quebec Admiralty District, at Montreal.

Lucien Beaugard, K.C., for the SS. *Vesuvio* and her owners.

R. C. Holden for the SS. *Older* and her owners.

The facts are stated in the reasons for judgment.

DEMERS L.J.A., now (September 26, 1930), delivered judgment.

These cases have been united for proof; hearing and judgment, and by consent have been submitted upon the evidence taken before the Wreck Commissioner, and also some evidence before the Court which will be referred to later on.

It appears that the collision between the *Older* and the *Vesuvio* occurred on the 20th of September, 1928, at 10.15 a.m., in the channel of the River St. Lawrence, in the harbour of Montreal, a little below gas buoy 194M.

There was a light northeast breeze. The weather was fine and clear. There was a current of about three to four knots.

The contention of the *Older* is as follows:

The *Older* was laden with grain and was proceeding down the Harbour towards a berth at the upstream side of the Laurier pier. As is customary for canal size vessels coming down and intending to cross to that berth, the *Older* came down outside and just to the southward of the line of buoys marking the south side of the channel, and on reaching buoy 193M her helm was put hard to starboard and she turned to cross the current and make her berth in the usual manner. The *Vesuvio* was manoeuvring off the end of the Laurier and Tarte piers, with the assistance of tugs, and after the *Older* had turned the *Vesuvio* got under way and started up the harbour. The *Older* gave a signal of two short blasts, and expected that the *Vesuvio* would answer with two blasts and would direct her course to port, but the *Vesuvio*, without giving any signal to indicate that she was doing so, put her helm to the right. Owing to the *Older's* position and the great strength of the current, which she was then partially stemming, there was nothing the *Older* could do except

keep her helm hard to starboard and keep on at full speed, with a view to getting out of the way. The *Vesuvio* could and should have avoided the collision, but she came on and struck the *Older*.

On the contrary, the collision is explained by the *Vesuvio* as follows:

As the SS. *Vesuvio* was proceeding forward along the channel, and on the north side, the SS. *Older*, which had been proceeding in the opposite direction south of the channel, was observed turning around Buoy 194M, and as her bow was getting abreast with Buoy 195M into the channel a danger signal of five blasts was given by those on board the SS. *Vesuvio*, and the order was given stand-by followed immediately by the order slow astern on her engine and the helm to the right so as to keep the vessel heading in the current straight up the river on her course. The SS. *Older* held her course towards and across the channel, and shortly after she gave a signal of two blasts. Immediately upon hearing the SS. *Older's* signal of two blasts the SS. *Vesuvio* immediately replied by three blasts and her engines were put full speed astern and her helm kept hard to the right to keep her straight. The SS. *Older* kept crossing the channel at right angles and crossing the SS. *Vesuvio's* bow, and shortly after the last signal had been given the collision occurred, both vessels being on the northern side of the channel and about 200 feet below Buoy 194M; the SS. *Vesuvio* having at the time of the collision no way upon her.

I am of the opinion that the version of the *Vesuvio* as to the signals is the correct one. She gave the five-blast signal first and the *Older* replied by two blasts and immediately after the *Vesuvio* replied by three blasts.

The *Vesuvio* on this point is corroborated by the Pilot of the *Older* who says that after his two blasts, he heard only the three-blast signal.

It is true that some disinterested witness brought before me, more than a year after, bring evidence favourable to the *Older's* contention, but one must not forget that the first question as to the credibility of witnesses is—who was in a better position to know? Evidently those who had the responsibility of the ships, not those who came before the Court over a year after and who had no special reason to remark the signals.

It is also to be noticed that the evidence of the *Older's* crew as to the signal is admittedly of no value. On the contrary, the evidence of the *Vesuvio* is quite satisfactory and it should be adopted.

This five-blast signal, as it has been often decided, does not necessarily mean that there is actual danger. It may mean and it meant, in my opinion, a signal of attention. After that signal, the *Vesuvio* kept her course and her engines were checked to slow speed. At that time, the

1930
 ODFJELL A/S
 v.
 STEAMSHIP
Vesuvio
 AND
 SOCIETA
 ANONIMA
 PER
 L'INDUSTRIA
 E IL
 COMMERCIO
 MARITIMO
 v.
 STEAMSHIP
Older.
 Demers
 L.J.A.

1930 *Older*, receiving such a signal, was bound by Rules 21, 22
ODFJELL A/S and 23, to avoid the *Vesuvio* and to go astern of her.

v.
STEAMSHIP *Vesuvio*
AND
SOCIETA
ANONIMA
PER
L'INDUSTRIA
E IL
COMMERCIO
MARTIMO
v.
STEAMSHIP
Older.

Ships turning below buoy 193M may intend to go to Laurier pier or Tarte pier; so that the *Vesuvio* at first evidently expected the *Older* to pass astern, and the moment she became uncertain, she gave the five-blast signal, and it was the proper course to do.

That was, in the opinion of the Assessor and in my opinion, the only thing to do.

Marsden on Collisions, page 303, says:

Demers
L.J.A.

If a ship sees another in a position that may involve risk of collision, but is unable to make out what course the other is on, she should keep her course, and not alter her helm, or take decisive step until she has ascertained the other ship's course.

The *Older*, against all rules of good seamanship, undertook to cross in front of the ascending ship without any regard for the other. Instead of obeying the signal of the *Vesuvio*, she continued at full speed. She contends that it was the only thing she could do to avoid the collision.

I quite agree that, after the three-blast signal of the *Vesuvio*, such was the position. At that moment, the accident was inevitable, but that was not the condition of affairs when the five-blast signal was given.

It must be added also that the *Older* previously had been very negligent. She was between buoy 195M and 193M when she saw that the *Vesuvio* was leaving her dock, and she saw also that the *Vesuvio* was coming up before making the turn of buoy 193 and she should have signalled before.

It is not to be denied that before starting to make the turn, she did not ascertain the position of the *Vesuvio*, that she recklessly attempted to cross in front of the ascending ship without any regard for direction. When she took particular notice of the *Vesuvio*, she kept on turning and later on crossing at full speed.

There is no doubt that the ship was navigated carelessly. The Master was not on the bridge and the Pilot was not attending, and when she received the five-blast signal, she could have reversed in plenty of time to have allowed the *Vesuvio* to pass up the river; then she could have proceeded to the intended berth in safety.

The faults of the *Older* cannot be denied.

We have to examine now what was the conduct of the *Vesuvio*.

It has been argued that the *Vesuvio* violated Rule and Regulation 11 for the River St. Lawrence, and at the argument it was pointed out that this accident occurred in St. Mary's current, then the *Vesuvio* was obliged to stop and that the *Older* had the right of way.

It is not proved that this accident occurred in St. Mary's current. On the contrary, map 1 shows that St. Mary's current is above this place at a narrow passage opposite St. Mary's Ward and Ile Ronde, but this collision occurred opposite Hochelaga wharf, and I see on the map also that the river is far wider at that place.

By the evidence also it is clear that the *Vesuvio* was navigated with care and prudence after giving the five-blast signal, and checked to slow speed. Seeing that the *Older* proceeded on her course, she blew three blasts and her engines were put full astern; being a left-handed propeller ship, if she had reversed sooner than she did after the attention signal was blown, she would have sheered slightly to the left and possibly have been nearer to the *Older* at the time of the collision.

It is proved that the ship was stopped over the ground at the moment of the accident.

The most serious reproach to be made to the *Vesuvio* is that she did not drop her anchor.

It is not proved that by the dropping of the anchor the collision would have been avoided or minimized, and my Assessor is of the opinion that the dropping of the anchor of the *Vesuvio* could not have helped to avoid the collision, as the anchor would not have had the chance to lead in the proper direction to do any good, to either stop the *Vesuvio* or keep her head in one direction.

Under the circumstances, the faults of the *Older* are clear; she having violated all rules of navigation. If there was a doubt, it was as to the dropping of the anchor, and the *Vesuvio* should have the benefit of the doubt. *Bryde v. Canadian Pacific Ry. Co.* (1)

1930

ODFJELL A/S
v.
STEAMSHIP
Vesuvio
AND
SOCIETA
ANONIMA
PER
L'INDUSTRIA
E IL
COMMERCIO
MARETIMO
v.
STEAMSHIP
Older.
—
Demers
L.J.A.
—

(1) (1913) Can. Rep. (A.C.) 472.

1930 For these reasons, the action of the Societa Anonima Per
 ODFJELL A/S L'Industria E Il Commercio Maritimo against the steamship
 v. *Older* shall be maintained, and the action of the Rederiet
 STEAMSHIP *Vesuvio* Odfjell A/S against the steamship *Vesuvio* shall be dis-
 AND missed with costs against the *Older*, and the Rederiet
 SOCIETA Odfjell A/S, and the same shall be referred to the Registrar
 ANONIMA PER
 L'INDUSTRIA for assessment of damages.
 E IL

COMMERCIO
 MARITIMO

v.
 STEAMSHIP
Older.

Demers
 L.J.A.

Judgment accordingly.