ON APPEAL FROM THE TORONTO ADMIRALTY DISTRICT

1925
July 8.

THE *GLENCLOVA* (DEFENDANT).....APPELLANT;

AND

JOHN F. SOWARDS (PLAINTIFF).....RESPONDENT.

*Shipping—Collision—Precaution—Signal—Turning ship in harbour—Practice of seaman—Risk of collision.*

*Held,* (varying the judgment of the Local Judge in Admiralty for the Toronto Admiralty District), that although a ship has received signals authorizing her to continue her course and speed, where she is aware of the other's intended manoeuvre and the time and space required therefor, and is not embarrassed by any doubtful movements on her part; if there is at any time reason to apprehend that to continue her course might lead to a collision, she is no longer justified in doing so, but, by the practice of seamen and prudent navigation is required to take such manoeuvres as will prevent collision, even where no danger signal is given by the other.

APPEAL from the judgment of the Local Judge for the Toronto Admiralty District dated the 7th April, 1925 (1).

Ottawa, June 17, 1925.

Appeal now heard before the Honourable the President assisted by Captains Demers and Dickson as nautical assessors.

*R. I. Towers, K.C.* for appellant.

*Francis King, K.C.* for respondent.

The facts are stated in the reasons for judgment.

MACLEAN J., now this 8th July, 1925, delivered judgment.

The facts are as stated in the judgment of the learned trial judge and need not I think be repeated. There is considerable conflict in the evidence, and portions of it are per-

(1) The reasons for judgment of the learned trial judge will be found at the end of this report, page 221.

1925

THE *Glenclova* v. SOWARDS.

Maclean J.

haps quite unsatisfactory as the learned trial judge himself remarked, but it is to be observed that a considerable time elapsed between the date of the collision and the trial, and such matters as the distances traversed in certain movements, the alterations of helm, course, and the different movements of the engine of the defendant ship, were not registered in a scrap log book, and I, together with my assessors, feel that much of the evidence, particularly as to distances and intervals of time, should not be interpreted too strictly and should in many instances at least be regarded merely as general recollections or impressions of such events. We think also that the distance the *Glenclova* manoeuvred from the shore is not after all of great importance, for whether it was one distance or another, neither necessarily affords a defence for either ship for other acts which were against the prescribed rules and prudent seamanship, and which might primarily be the cause of a collision. On the whole we think also that the statements and findings of fact made by the learned trial judge afford a reasonably accurate reconstruction of the events leading to the collision.

The learned trial judge held that under Rule 30 the *Jeska* was entitled to hold her course and speed; that the master of the *Glenclova* must have assumed that he could complete his turning movement in time to pass port to port, but finding that he was unable to do this without risk of collision owing to his ship's forward movement, he should have sounded his danger signal and reversed and gone astern. Disregarding for the moment the question as to whether Rules 30 and 32 applied and that the *Glenclova* was a crossing ship, I am quite of the opinion that the *Glenclova* was at least to blame. When a collision appeared imminent, or a risk of a collision was involved, it was clearly the duty of the defendant ship to sound an alarm signal with an immediate order of full speed astern, the effect of which, my assessors advise me, would have thrown her stern rapidly to port, hastening the turning movement towards the south and southwest, and permitting her to pass the *Jeska* port to port. As a ship departing from a dock, I think the *Glenclova* did not exercise a proper degree of caution. I therefore agree with the finding of the learned trial judge, as do my assessors, that the *Glenclova* was

blameworthy, and it is not therefore necessary to say more in respect of this ship.

The next question is, whether the *Jeska* was to blame or not. The defendant ship contends substantially that the *Jeska* knew that the *Glenclova* was turning, and that the *Jeska* had ample sea room and time to go to starboard, and thus avoid the collision. The learned trial judge found that the *Jeska* had plenty of room to sheer off and clear the *Glenclova,* had the latter given a danger signal.

The conduct of the *Jeska* was, I think blameless, and my assessors concur in this, up to the time that a risk of collision became imminent. It is admitted that the *Jeska* had ample time and sea room to starboard, and her master admits he could have done so, had the *Glenclova* intimated that she could not in time complete her turning movement and that there was a danger of collision. I do not think it is necessary to decide whether the *Glenclova* was a crossing ship under Rule 30. That is a most difficult rule to interpret in circumstances such as prevailed in this case. I think the liability of the *Jeska* can be determined without a decision upon this point. There was a moment of time when the *Jeska* must have known that the maintenance of her course and speed, involved a risk of collision, and there was a moment of time when the *Glenclova* was dangerously close to her intended course. It was then, I think, the imperative duty of the *Jeska* to port her helm as she had any amount of sea room on her starboard. However, she never changed her course or speed after first sighting the *Glenclova* up to the time of the collision. Supposing it were correct that the *Glenclova* under the prescribed rules or in the exercise of prudent seamanship should have turned nearer the shore or well within the line of the inside of the marked channel, or that she should have earlier ported or gone full speed astern, should that exculpate the *Jeska* after seeing, as she must have seen, that there was a risk of collision if she did not go to starboard? A very slight porting of helm of the *Jeska* would have clearly obviated the collision. Did the *Jeska* hold her speed and course longer than she ought to have done? I do not think a ship is justified in standing even upon her strictly technical rights, if a departure therefrom will avoid danger or the risk of a collision. And that observation is made upon the assumption

1925

THE *Glenclova* v. SOWARDS.

Maclean J.

that in this particular case, the *Glenclova* was a crossing ship, which as I say is not at all clear in my opinion, and that rules 30 and 32 applied. The precaution of the *Jeska* porting her helm, or stopping, or going astern, was in the circumstances required by the practice of seaman and prudent navigation, and rule 38 in my opinion applied. The *Jeska* assuredly knew that the *Glenclova* was turning, and that such a movement, considering the size of that ship, was attended with some risk and involved a risk of collision, when the *Jeska* was within close distance of the *Glenclova* and if the former persisted in her course and speed. Even if the *Jeska* thought that ordinarily under rules 30 and 32, she should keep her course and speed, and that the *Glenclova* should keep out of her way, still under rule 37 a departure from that course of action was quite proper and necessary to avoid immediate danger. It was a case where the rules of good seamanship applied: *The Llanelly* (1); *The Ornen* (2); *The Ranza* (3). The case of *The Hazelmere* (4) is not without interest in the same connection. The spirit of the note to rule 21 of the international regulations for preventing collisions, though not stated in express terms in the rules applicable to the Great Lakes, is to be found, I think, in rules 37 and 38. I would refer to pages 65 to 67 of Moore, fourth edition, on the Rules of the Road at Sea, and the authorities there referred to. Here the *Jeska,* if considered a crossing ship, was not embarrassed by any unascertained and doubtful movements of the *Glenclova,* that is to say, the former ship all along knew what the latter ship was trying to do, her exact location she being always visible, the probable time and space required, and the *Jeska* was not at any time in doubt as to all this, owing to any circumstances whatever. It is difficult to understand why the *Jeska* challenged a risk of collision or did not avoid a danger from which she could so easily have escaped. The critical moment was easily within her determination. A little assistance from the *Jeska* would have avoided the collision, notwithstanding the signals exchanged. As the learned trial judge himself states, a vessel whose master has received a signal which justifies her

(1) [1914] P. 40.
(2) [1910] 79 L.J. Prob. 23n.
(3) [1910] 79 L.J. Prob. 21n.
(4) [1911] P. 69.

continuing her course and speed is entitled to hold on, until she realizes there was danger. I am of the opinion that the *Jeska* is also to blame and with this conclusion my assessors agree.

Therefore I very respectfully am of the opinion that both ships were to blame.

* * * * *

*Judgment accordingly.*

REASON FOR JUDGMENT OF HODGINS L.J.A.

The *Glenclova* is a steel vessel of 1,902 registered tons, and is 250 feet long. She came up the St. Lawrence, light, and went to the pilot pier where she dropped her river pilot. She lay broad-side to the end of the pier, with her bow pointing northwest. The weather is stated in both preliminary acts to be clear and the time was 7 p.m. Standard time.

This pier is on one side of a channel, 600 feet wide, at the easterly edge of which is a shoal (Carruthers) marked on the inner side by a line of red stakes. The *Glenclova* then began to turn, holding on by her bow line, and throwing her stern out. When it was about 100 feet from the dock she began to move backward, her stern following an arc of a circle or as it was described a semi-circular movement toward the southwest till she reached a point off the southwest angle of the Collingwood Dry Dock Co's. pier. Between this pier and the pilot pier is what is called in the evidence the Centre pier. Her bow, as part of the manoeuvre, kept swinging to starboard, so that she could proceed westward into Lake Ontario when the turn was completed.

During this time the SS. *Jeska* was coming up the harbour from 4 mile point, so as to pass into and through the channel I have mentioned. According to the testimony on her behalf which I accept, she was holding a course slightly outside or to the eastward of the line of stakes, and in fact pointing across the shoal; the water over which was deep enough to allow her to navigate it safely. She is of wood, 104 feet long, of 300 tons burden, and with a speed of 6½ miles an hour. She was coal laden on this trip and draws 5 to 8 feet aft. Her engines are at the stern.

The plaintiff alleges that the *Glenclova* kept moving on while swinging and had got athwart the course of the *Jeska*, and struck her a severe and nearly direct blow with her stem, while the defence allege that the blow was only a glancing one, which was due to the *Jeska* failing to give her sufficient room while turning and thus herself colliding with the *Glenclova* while she was motionless, except for her swing, in the water.

The evidence given on behalf of the defendants was that at the close of the semi-circular movement under a reversed engine, the *Glenclova's* stern was from 210 to 250 feet off the end or southwestern point of the Collingwood Drydock pier and she was heading S.S.E. or in a line similar to that of the streets which on the chart (Ex. 1) run down toward the piers, the sides of which are on the same line. The stern of the ship, when the cast off from the Pilot dock was made, had been worked out 100 feet from it, so that she must, if that evidence is accepted, have

1925

THE *Glenclova* v. SOWARDS.

Maclean J.

moved her stern in her semi-circular movement, still further out by 100 to 150 feet.

In their pleadings the defendants assert that the ship completed this movement "coming to a stop as intended with her stern 50 or 75 feet from the dock." If so, that disposes of the argument that the ship could not safely approach the dock nearer than 250 feet.

The distance thus given agrees with the observation of the Master of the *Jeska* when he blew his passing signal. Geoghan who was on the centre pier says he saw the *Glenclova's* stern 50 feet from the Collingwood Dry Dock pier. The argument I have mentioned was founded on the evidence of the master of the *Glenclova* and of several witnesses, though Clark, a witness for the defence denies that at the time of the collision the *Glenclova's* stern was only 75 feet from the dry dock which is the situation set up in par. 4 of the defence. But the pleading must be regarded as an admission that during the turning movement the stern of the vessel was at one time within that distance of the dock.

There is also evidence which satisfies me that the *Glenclova* could have passed the end of the Collingwood Dry Dock pier and backed in west of it, as the sunken crib spoken of did not come within about 150 feet of the end of the pier. The second mate of the *Glenclova,* Greer, was not at the stern, which was his proper place during the turning movement, nor was any other officer or sailor there to give the master information as to her nearness to the dock. This, I take to be a fact of importance, as the master was on the bridge forward, and he could not judge with intelligence, as he in effect admits, how far he was off and how near he could still approach without danger.

If the *Glenclova* got into a position 250 feet from the end of the dry dock it would indicate that she had, in her manoeuvre to get clear of the dock, or in turning to starboard to proceed on her course, moved forward, while swinging, more than she need, or should, have done. As her length is 250 feet, she would occupy 500 feet of the 600-foot channel, or was at least that far out from the dock, while swinging. I must find the fact, which is established by the witnesses for the defence, that she did move forward as well as sideways.

The witnesses who say so are these following: Clark says the *Glenclova* when stopped was 250 feet out at the time of the collision, but doesn't know how she got there, and that if starting at 100 feet her stern could not be 250 feet out in completing her turn. Foote, her master, says he signalled full speed ahead when off the Collingwood Dry Dock pier to get way on the ship but says he got no headway on her, though he admits he had got 210/5 feet out from dock and the collision 250 feet. He admits he would have cleared *Jeska* if he had been 100 feet back. McLeod, 1st mate, says the *Glenclova* could have gone further astern but can't say how far, and that she might have moved a little ahead. Greer, 2nd mate, was not at the stern but says that had he been there he would not have called to the master until 100 feet off the dock. Daoust, a pilot, who was on the pilot dock, says the *Glenclova* was reversing till her stern got 250 feet from pier, and then got a "kick ahead" for two or three minutes and she went ahead 20 feet, and then reversed again. Also that 100 feet from the dock would not be dangerous. Malette, another pilot, on cross-examination admits that the *Glenclova* should have worked astern and let the *Jeska* go past, and that she must have had headway to get where she was when the collision took place.

This evidence agrees with that offered by the plaintiff as to the distance from the dock and of a forward movement before the collision.

The evidence of the engineer of the *Glenclova* was extremely unsatisfactory. He gave, in chief, a statement of the successive motions of the engines, but on cross-examination gave quite a different one. My impression was that he had no solid ground for his statements, no part of which was indicated in his log and that he really remembered nothing of the sequence of orders or motions nor of the space of time separating them. I entirely discard his evidence.

I find upon the conflicting stories and the events which happened that the *Glenclova* was further forward than she admits at the time of the collision and was forging ahead while swinging instead of going astern. Her speed forward, whatever it was, carried her far enough to cross the course of the *Jeska*. If she occupied 500 feet of the channel there was more than 100 feet left before she would intersect the course of the *Jeska* which was to the east of the line of stakes on the east side of the channel.

The results of the impact indicate to my mind very clearly a distinct forward thrust against the *Jeska*.

There remains the question whether the vessels under these conditions took what the President of this Court has called seasonable precautions. In *C.P.R.* v. *SS. Camosum* (1), he says:—

"Precautions required by law, to be taken when there is risk of collision, must be taken in time to be effective against such risk. In any event, in view of their respective courses, which is not questioned, the ships should have made known to each other by the whistle and otherwise, in ample time, their intention to observe this regulation then applicable to each. The obligation to observe this rule was all the greater as McKay Reach, in my opinion is a narrow channel."

His remarks in SS. *Fryer* and SS. *Westmount* (2) are somewhat apposite:

* * * "it appears to me that the *Westmount* is wholly to blame. Her failure to give the signal that she was to depart from her dock, the speed with which she swung across the channel, and generally her method of manoeuvring to get out of the slip, to the apparent exclusion or danger of other ships seeking entry to the slip, were each acts of negligence, the proximate causes of the collision."

and in reference to a ship engaged in a turning movement he says in the SS. *Hamonic* and SS. *Fryer* (3):

"The presence of the *Fryer* was known to the *Hamonic*, and the latter must have been cognizant of the fact that she was occupying a considerable space of the river channel. A ship proceeding down a narrow channel obliquely to or athwart the stream, as in this case, must produce a situation of embarrassment for an approaching ship awaiting the turning event, and as well a situation involving a possible risk of collision."

"Regulations are not merely made for the purpose of preventing a collision, but also to prevent the risk of a collision. They apply at a time when there is a probability of collision or when risk of collision can be avoided. The use of the danger signal long before it was used by the *Hamonic* was I think imperative."

During the turning movement of the *Glenclova* the *Jeska* gave her

(1) [1925] Ex. C.R. 39.

(2) [1924] Ex. C.R. 109.
(3) [1924] Ex. C.R. 102.

1925

THE *Glenclova* v. SOWARDS.

Maclean J.

a passing signal, one blast, which she answered by a similar blast. Those on the *Glenclova* admit these signals to be passing signals and the pleadings so treat them.

Under Rule 30 the *Jeska* was then entitled to keep her course and speed. It is obvious, I think, that the master of the *Glenclova* in giving that answer, assumed that he could complete his turning movement in time to pass port to port with the *Jeska* and that he expected her to keep carrying on as she was. If he found himself unable to complete in time, or in turning thrown out further than he intended, he had ample time and opportunity to give a danger signal. Had he done so the *Jeska* had plenty of room to sheer off and clear him. But the master did not do this, and whether from inattention or overconfidence, I think he neglected an obvious and prudent precaution in disregard of his duty as a navigator. If the master of the *Glenclova* was sure he could complete his movement in time and was in the act of swinging around to starboard, the *Jeska* should not be blamed for not anticipating his failure to do so. It was the coming forward at the same time that created the danger and the fact that it was the stem of the *Glenclova* that struck at the oblique angle described by the plaintiff's witnesses shows that a very few moments would have sufficed to avoid the blow. A vessel whose master has received a signal which justifies her continuing her course and speed is entitled to hold on until she realizes that there is danger. Those on the *Jeska* were watching the *Glenclova* and expecting her to reverse at any moment and her failure to do so forced the change in the *Jeska's* course when too late. I cannot find the *Jeska* to blame. The President of this Court in the *Hamonic* case expresses a view which I adopt.

"I do not think that one ship should be expected to know the navigating disabilities of another ship and thereon base her own conduct and, even if she did, the ultimate welfare of each will best be conserved by the observance of the regulations and practices which experience and good seamanship have established for the guidance of each."

A consideration of Rules 25, 26, 27, 30, 32, 34, 37 and 38 as applied to this case indicate sufficient to warrant me in holding that in the circumstances of this case the *Glenclova* must be held alone to blame.