

1953

BRITISH COLUMBIA ADMIRALTY DISTRICT

Jan. 6, 7, 8
& 9

BETWEEN:

Feb. 2

D. GRATSOS *et al* PLAINTIFFS,

AND

THE SHIP *BARANOF* DEFENDANT.

AND BETWEEN:

ALASKA STEAMSHIP COMPANY	}	PLAINTIFF,
OWNERS OF THE STEAMSHIP		
<i>BARANOF</i>		

AND

THE SHIP *TRITON* DEFENDANT.

Shipping—Collision action—Limitation of liability—Use of radar does not dispense with the International Regulations for Preventing Collisions at Sea.

The action arises out of a collision between two ships, the *Triton* and the *Baranof*, each ship alleging negligence on the part of the other and each claiming damages against the other. The Court found the *Baranof* solely to blame for the collision.

Held: That the owners of the *Baranof* are entitled to limitation of liability under s. 649 of the Canada Shipping Act 1934, 24-25 Geo. V, c. 44.

2. That the introduction of radar as an aid to navigation does not warrant the assumption that the International Regulations for Preventing Collisions at Sea are to be disregarded or are changed in any way.

CONSOLIDATED ACTIONS for damages sustained through the collision of two ships in the Strait of Georgia.

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

Alfred Bull, Q.C. and *J. R. Cunningham* for the ship *Triton*.

F. A. Sheppard and *F. U. Collier* for the ship *Baranof*.

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

SIDNEY SMITH, D.J.A. now (February 2, 1953) delivered the following judgment:

1953
 Baranof
 v.
 Triton
 —

The plaintiffs, owners of the Greek Steamer *Triton*, claim against the American steamer *Baranof* in respect of damage sustained by the *Triton* in a collision between the two vessels shortly after midnight on 25 July last in the Strait of Georgia. The owners of the *Baranof* in a separate action claim against the *Triton* for damage done to the *Baranof*. The two actions were consolidated. Each vessel accuses the other of being solely to blame for the collision. They were both very considerably damaged, and each provided the other with security in the sum of \$300,000. Two members of the *Triton's* crew lost their lives: at least one other was severely injured.

The *Triton* is a United States Liberty type of merchant vessel of 7,250 tons gross, 423 feet long, 57 feet beam. At the time of the collision she was laden with 9,600 tons of iron ore, and bound from Campbell River, B.C., to Japan, via way ports. The *Baranof* is a passenger and cargo vessel 4,990 tons gross, 360 feet long, 51 feet beam, and was on one of her regular voyages from Seattle, Washington, to Alaska with cargo and passengers.

During the critical time before the collision two officers were in charge of the navigation of each vessel: British Columbia Pilot Green and 2nd Officer Fatsis were on the bridge of the *Triton*, while Pilot Landstrom and 3rd Officer Flaherty were in the wheelhouse of the *Baranof*. Pilot Green gave evidence on the trial. So did British Columbia Pilot Simpson, also engaged by the *Triton*. He stood watch and watch with Pilot Green and retired below about half an hour before the collision. The testimony of nine other members of the ship's company was taken *de bene esse* at Vancouver while the *Triton* was undergoing repairs at Victoria. Two of these were produced by *Triton's* counsel at the request of, and for examination by, *Baranof's* counsel. One or two other witnesses testified for the *Triton* on the trial, but they need not now be particularly mentioned.

In the case of the *Baranof*, matters were rather different. On the trial I heard and saw only two of her officers, both of whom were below at the material times and so played no part in the incidents leading up to the collision, viz., Captain Ramsauer (the Master of the vessel) and 2nd

1953
Baranof
 v.
Triton
 —
 Sidney
 Smith
 D.J.A.
 —

Officer Woodard. Neither of her navigators appeared before me. Their testimony, with that of five crew members, was taken *de bene esse* at Seattle and read into the record on the trial. Pilot Landstrom had left the company and was living in Seattle. I was told he refused to come to Vancouver to give evidence, though on his *de bene esse* examination he had expressed himself otherwise. There was nothing said about the whereabouts of 3rd Officer Flaherty.

It seems to me the issues involved are entirely of fact. I have to decide which of the two different accounts given is the true account of what happened. I formed the impression that the *Baranof* was relying rather on alleged weaknesses in the *Triton's* case than on the strength of her own. The *Triton* left Campbell River shortly after 4 p.m. on the 25th, Pilot Simpson and a ship's officer then being on the bridge. Her clocks were on daylight-saving time but I use standard time throughout, as did the *Baranof*. Pilot Simpson was relieved at 11.50 p.m. by Pilot Green who was on the bridge with 2nd Officer Fatsis until the collision. The voyage southward from Campbell River was normal. The Gyro compass had been out of order for some days and the ship was being steered by the standard magnetic compass on the upper bridge. I find this compass was in good order and that on the voyage south the various courses were carefully checked by the Pilot on duty as the ship proceeded from point to point. About 8 p.m., in the vicinity of Cape Lazo, an azimuth bearing was taken by the officer on watch. This bearing gave a deviation of 3.7° westerly and due allowance was made for this in the courses steered, which were made good. I have no hesitation in holding that the vessel was equipped with all proper navigational instruments, and that she was navigated throughout at a speed of 10 knots in a careful and seaman-like manner. It is perhaps worth noticing that the coast from Campbell River to Entrance Island is particularly well lit, and that in a distance of some 75 miles there are over 20 shore lights. There are no hidden dangers on the way. Even without a compass, in the fine weather then prevailing, a navigator would find his way by going from light to light, keeping a safe distance off each. Throughout the

night the sea was smooth, the visibility excellent. There may have been a light wind and some ebb tide at the vital time, but these were not of much consequence.

There was criticism of the *Triton's* regulation lights, and this is the first crucial question in the case. These were claimed in the *Baranof's* pleadings to be "improper", "dim", "obscure." The evidence of her witnesses was that they were "dim". This contention however was not pressed upon me in argument, though I do not suppose it was abandoned. On the evidence I have no doubt that her lights were in good order and at the material times burning brightly.

The starting point of the matter is the sighting of the *Baranof* by Pilot Simpson and 2nd Officer Fatsis, at about 11.45 p.m., at a distance of approximately 12 miles, and bearing 1 to 1½ points on their starboard bow. These are all approximations and at the time there was no reason for particularly noting them. The *Baranof* was then roughly in the neighbourhood of Thrasher Rock and, as it turned out, proceeding at a speed of 13 knots on a course of 302° True. Her two masthead lights were sighted, and when the vessels were about 5 miles distant her green side light was also seen. The 2nd Officer watched her closely through binoculars and concluded, rightly, that the two ships were in a position to pass each other safely starboard light to starboard light, had each maintained her course. The enquiry must therefore be as to what change took place so as to bring them together some quarter of an hour later. This is the second crucial question in the case. It is clear that one or the other took helm action at the wrong time and to too great an extent, for otherwise there would have been no collision. The *Triton* says the *Baranof* in the circumstances mentioned, wrongly starboarded; the *Baranof* says the *Triton* was on the *Baranof's* port hand and was on a course to pass safely port to port, and that she wrongly ported. These are the opposing contentions. In my respectful opinion the balance of probabilities weighs heavily in favour of the *Triton's* case. Her witnesses gave substantially the same account of the incidents. I heard and saw the two *Triton* pilots. In my opinion they were skilled pilots and trustworthy witnesses. I accept their evidence, as I do that of 2nd Officer Fatsis.

1953
 Baranof
 v.
 Triton
 —
 Sidney
 Smith
 D.J.A.
 —

1953
 Baranof
 v.
 Triton
 —
 Sidney
 Smith
 D.J.A.
 —

The *Triton* was abeam of Entrance Island light distant $2\frac{1}{2}$ to 3 miles, on a course of 114° True at 0015 on the 26th. The *Baranof* was then about two miles away with her bearing changing normally for a starboard passing. She was being continuously watched by both Pilot Green (who had relieved Pilot Simpson) and the 2nd Officer. The Pilot estimated they would pass each other at a distance of less than half a mile. But something intervened, namely, a change of course to starboard on the part of the *Baranof*. This was approximately two minutes after the *Triton* had passed Entrance Island and was indicated by a closing of the *Baranof's* masthead lights. At that time Pilot Green thought the vessels were a mile, or slightly less, apart. What occurred then is described by him in these words:

Q. Then what happened after you saw this change of course to starboard? Just relate as you remember it, what happened.

A. I made a remark to the officer there as to "What is that fellow trying to do?"

Q. You made the remark?

A. I made the remark, and I could see him alter and come some more, and finally swing very hard, and then I ordered hard-a-port, two short blasts on the whistle, and stand-by on the engines.

Q. When you did that, are you able to translate it into time before the actual impact?

A. Well, it was just shortly before.

Q. Well, shortly might be five minutes sometimes, or a matter of seconds.

A. It was in between the two minutes. There was an interval of time, from the time I first saw him alter course until I did it, because I thought he might be altering for a log, or some such thing. It was a fine night and you could see very well.

The *Baranof's* stem struck the starboard side of the *Triton* at an angle of approximately 90° just abaft of amidships at 0019. (*Triton* time). This caused a gash in her shell-plating through which the water quickly flooded the engine-room, stopped the engines, extinguished all lights, leaving the vessel quite helpless. At daylight she was towed to an anchorage near Nanaimo, and some days later to Esquimalt, where repairs were carried out in due course.

The *Baranof* story is one of some uncertainty. She puts the collision at 0021. As I have said, on watch in her wheelhouse from shortly before midnight were Pilot Landstrom and 3rd Officer Flaherty. The *Baranof*, like the *Triton*, carried two pilots but, unlike the *Triton* pilots, these were permanent ship's officers. There would seem

to have been a lack of co-operation between the 3rd Officer and the Pilot, and their explanations differed from time to time. There is no evidence of any word being exchanged between them touching the navigation of the ship until the 3rd Officer reported seeing the *Triton's* green light. The Pilot seems to have been pre-occupied with the radar apparatus—unduly so. The pleadings say that he was on a course of 302° True and first saw the *Triton* as a target in the radar screen 5° on his starboard bow, and 3 miles distant. He thereupon altered course to 312° T. Later he noticed visually two dim white lights (the *Triton's* masthead lights) about 1½ miles away, bearing 5° on his port bow, so that the vessels were in a position to pass each other safely port to port. A little later when they were one mile or so apart the *Triton* altered her course to port, crossed athwart the bows of the *Baranof*, showing for the first time an obscure green light and creating imminent danger of collision. Thereupon the *Baranof* starboarded, then hard-a-starboarded, went full astern on her engines and almost immediately after collided in the manner already mentioned. At no time did she give a whistle signal. Such is the story disclosed in the pleadings, which differs in material respects from the evidence. But there is this significant fact to be noted: Although it is claimed that the two vessels would have safely passed port to port, no *Baranof* witness testified that he at any time saw the red light of the *Triton*. Nor was this pleaded.

At the preliminary Coastguard enquiry held at Seattle a few days after the collision the Pilot's memory of the incidents was at its best. He then testified that he saw the *Triton* target in the radar 3 miles away, and 5° on his starboard bow. He noticed that this bearing did not change (but on *de bene esse* examination he stoutly held that it narrowed on the bow and that for this reason he altered course), so when 1½ miles distant he altered course 10° right, looked out and suddenly saw two dim white lights close together, very dim lights. They did not change their bearing (then on the port bow) so he gave 5° more to the right, and when there was still no change in bearing he put the helm hard over to the right. As he got closer he saw her green light, went full astern, and so matters remained until the collision. This is substantially what was seen by

1953
 Baranof
 v.
 Triton
 —
 Sidney
 Smith
 D.J.A.
 —

1953
 Baranof
 v.
 Triton
 —
 Sidney
 Smith
 D.J.A.
 —

the navigators on the *Triton's* bridge. The 3rd Officer of the *Baranof* gave much the same evidence except that he said he saw the *Triton's* masthead lights at 4 miles—a distance he sought to reduce on his *de bene esse* examination to $2\frac{1}{2}$ or 3 miles. He did not tell the Pilot about seeing these lights, nor did the Pilot tell the 3rd Officer why he starboarded 10° . But it was this starboarding that caused the 3rd Officer to look through the glasses and pick up for the first time the *Triton's* green light, as he says, 2 or $2\frac{1}{2}$ points on the port bow. All this happened within a very few minutes, for it is important to remember that the vessels were approaching each other at a joint speed of 23 knots.

In view of my finding on the *Triton's* lights it is manifest that the *Baranof's* navigators failed to keep a vigilant and competent lookout. This would seem to dispose of the case. I hold that the *Baranof* proceeded at full speed towards an approaching vessel of which she knew little or nothing, committing herself to starboard and still more starboard wheel action, without even whistling to show what she was doing; whereas, as her Master testified, had she simply maintained her course the two vessels would have passed each other in safety starboard to starboard. As indicative of their total lack of appreciation of the on-coming danger, it should be noticed that the Pilot, when asked how the collision occurred, gave this hopeless answer:

The only idea I have is that he cut across my bow, where he came from and how he got there I don't know. What he was doing I don't know.

And at another time when asked how long it was before the collision when he became aware that there was another vessel there, answered:

I have no knowledge as to the minutes. The distance possibly was roughly about 500 feet away from her.

Although on other occasions he said he concluded that the radar target was a vessel when they were $1\frac{1}{2}$ miles apart.

The evidence for the *Baranof* was voluminous, conflicting and difficult to understand. But I think her Master indicated to me the true explanation for the strange misapprehensions of her navigators. I think the Pilot was conning the ship by means of the radar and, without saying so, left the matter of look-out to the 3rd Officer who failed

him there. It is true the Master did not agree with this suggestion and that the Pilot repudiated it when put to him. But I think the evidence as a whole shows that it was so. I may be allowed to quote this paragraph from an article by Mr. James H. Hamilton, under the pseudonym of Captain Kettle, in *Harbour & Shipping* of January 1953, p. 17:

In a recent collision case in the United States courts the judge made the remark that radar "is a very good working cane but a very bad crutch". His intention was no doubt to call to mind the fact that the introduction of radar as an aid to navigation did not warrant the assumption that the international "Regulations for Preventing Collisions at Sea" are by-passed or in any way changed by reason of the additional and valuable assistance which radar provides.

That this is radar's true function is the view of Captain Ramsauer of the *Baranof* and it is also my own. I think the Pilot was at fault, on that fine summer's night, in paying so much attention to radar, and so little to what his eyes could have seen ahead of his vessel. Again it seems that the fatal mistake they made when they did see the *Triton* was to conclude that she was going in the same direction and that they were overtaking her. This is what the Master gathered from the information the Pilot gave him an hour after the collision, though he added that the Pilot did not expressly say so. The Pilot repudiates this view also. But in my opinion it affords the most probable explanation of the event. It seems to me the significant fact that emerges from the evidence as a whole is that this collision could not have happened but for the wrongful starboarding of the American vessel within one mile or so of the Greek vessel.

Commander Leonard formerly of the United States Navy, gave instructive expert evidence for the *Baranof*. But his testimony on cross-examination was all in favour of the *Triton*. The views he expressed in chief cannot be accepted because they were not based on given data in accordance with my findings herein. The further testimony he gave in re-examination was founded (as directed by counsel) on merely approximate bearings and distances marked on a chart by a witness, and so also unacceptable. I may add that I have not overlooked the evidence of the other *Baranof* witnesses, in particular that of the look-out man.

1953
Baranof
 v.
Triton
 Sidney
 Smith
 D.J.A.

1953
 Baranof
 v.
 Triton.
 ———
 Sidney
 Smith
 D.J.A.
 ———

I think this witness might easily be mistaken in his belief that he saw the *Triton's* light where and when he says he did.

The Pilot was 70 years of age on 1st January last. One must regret that he ends an otherwise successful career at sea on this note of tragedy.

It was submitted that the collision could have been averted had the *Triton* gone astern on her engines or taken different helm action. But the heading of the ship only altered about half-a-point to port, and in my view the vessels were so close that no engine or other action on the part of the *Triton* would have done any good. Indeed it might well have worsened the situation, and caused infinitely more damage and perhaps loss of life to the *Baranof* with her large number of passengers and crew. But should I be wrong in this I would apply the well-known rule in the *Bywell Castle* (1). It may be worth while repeating what was there said by Cotton, L.J. at pp. 228-9:

For in my opinion the sound rule is, that a man in charge of a vessel is not to be held guilty of negligence, or as contributing to an accident, if in a sudden emergency caused by the default or negligence of another vessel, he does something which he might under the circumstances as known to him reasonably think proper; although those before whom the case comes for adjudication are, with a knowledge of all the facts, and with time to consider them, able to see that the course which he adopted was not in fact the best. In this case, though to put the helm of the *Bywell Castle* hard a-port was not in fact the best thing to be done, I cannot hold that to do so was under the circumstances an act of negligence on the part of those who had charge of that vessel.

The owners of the *Baranof* claim limitation of their liability under sec. 649 of the Canada Shipping Act. This is resisted by the *Triton's* owners, on the ground of incompetency of Pilot Landstrom, which was known or should have been known to the ship-owners. It was pressed upon me that this would have been demonstrated had the Pilot appeared on the trial. That may be so, but I must take the evidence as I find it. And it would seem, on the evidence before me, that the assumption is purely conjectural and the whole line of argument too speculative to permit of my drawing any safe conclusion. One or two other grounds for disentitling the owners in this respect were set up in the pleadings, but they were not seriously

(1) (1879) 4 P.D. 219.

pressed in argument, and I am unable to give effect to them. The *Baranof* was equipped with all the latest navigational instruments and they were all in good order.

I hold the *Baranof* solely to blame for this collision, but I also hold that her owners are entitled to limit their liability under the Canada Shipping Act. If necessary, the learned registrar will hold a reference to assess damages.

There will be judgment accordingly.

Judgment accordingly.

1953
} *Baranof*
v.
Triton
—
Sidney
Smith
D.J.A.
—