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ADMIRALTY DISTRICT OF NOVA SCOTIA.

Mar. 16.

L. VANVERT, *et al.*.....PLAINTIFFS;

VS.

M. M. DE ARROTEGUI.....DEFENDANTS.

The SANTANDERINO.

*Collision—Arts. 18 and 21 of the Navigation Act, R. S. C. c. 79, sec. 2—
Undue rate of speed for steamer in public roadstead—Negligence in
taking precautions to avert collision, responsibility for collision where
such occurs.*

The steamship *S.* was proceeding up the harbour of Sydney, C.B., at a rate of speed of about 8 or 9 miles an hour. When entering a channel of the harbour, which was about a mile in width, her steam steering-gear became disabled and she collided with the *J.*, a sailing vessel lying at anchor in the roadstead, damaging the latter seriously. It was shown that the master of the *S.* had not acted as promptly as he might have done in taking steps to avoid the collision when it appeared likely to happen.

Held, that even if the breaking of the steering-gear—the proximate cause of the collision—was an inevitable accident, the rate of speed at which the *S.* was being propelled while passing a vessel at anchor in a roadstead such as this was excessive, and that, in view of this and the further fact that the master of the *S.* was not prompt in taking measures to avert a collision when he became aware of the accident to his steering-gear, the *S.* was in fault and liable under Article 18 of sec. 2 of R. S. C. c. 79.

Held, also, that the provisions of Article 21 of sec. 2 of R. S. C. c. 79, should be applied to roadsteads of this character, and that inasmuch as the *S.* did not keep to that side of the fair-way or mid-channel which lay on her starboard side, she was also at fault under this article, and responsible for the collision which occurred.

THIS was an action for damages arising out of a collision.

The facts of the case are stated in the judgment.

The case was heard before the Honourable James McDonald, C.J., Local Judge for the Admiralty District of Nova Scotia, on the 17th November, 1892.

W. B. A. Ritchie for the plaintiffs;

A. Drysdale for the defendants.

MCDONALD, (C.J.) L.J. now (March 16th, 1893) delivered judgment.

The barque *Juno* was at anchor in the roadstead of Sydney harbour, when at 11.30 A.M. on 3rd July, 1892, she was run into and seriously injured by the Spanish steamship *Santanderino* then entering Sydney harbour. The *Juno* was anchored near the middle of the channel, about 9 cables W. by N. from Gillivary Point, and a little more than 9 cables S. by E. from Capel Point,—the navigable channel being about one mile in breadth, and the position of the *Juno* about $3\frac{1}{4}$ miles from Flat Point, where the *Santanderino* stopped at 10.45 A.M. and took on board a pilot on the way into the harbour. The weather was fine and clear, the wind blowing a fresh breeze from the S. W., and the tide about half-flood. The *Juno* was sighted by the master of the *Santanderino* when the pilot was taken on board, and the attention of the latter was called to her position by the master of the steamer, with a caution to be careful of the barque. The steamer continued her course up the harbour, after taking her pilot, at a speed of about 8 or 9 knots an hour, and when on the port side of the *Juno*, distant about 200 yards, she suddenly turned as if under a port helm, and struck the *Juno* on her port side just abaft the forerigging.

It is not disputed that the *Juno* was not in any way to blame for the disaster. The burden of proof to relieve herself from responsibility is therefore thrown upon the *Santanderino*. (1).

(1) The *Schwan* P. D. (1892,) 419-427.

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The defendants meet the case of the plaintiffs with the contention that the collision was the result of inevitable accident; and that accident they say arose from the fact that while the steamship was pursuing her course up the harbour of Sydney and at a safe distance from the *Juno*, the steering-gear of the steamship suddenly broke down, that all control over the course of the ship was lost, and although everything in the power of the master and crew was done to prevent it, the *Santanderino* collided with the *Juno* as stated. There is no other defence asserted, and we are now to enquire whether the plea of inevitable accident has been established by the defendants. In the *Virgil* (1), the court said:—

In my apprehension an inevitable accident in point of law is this, viz., that which the party charged with the offence could not possibly prevent by the exercise of ordinary care, caution and maritime skill. If a vessel charged with having occasioned a collision should be sailing at the rate of eight or nine miles an hour when she ought to have proceeded only at the speed of three or four, it will be no valid excuse for the master to aver that he could not prevent the accident at the moment it occurred if he could have used measures of precaution that would have rendered the accident less probable.

This definition is cited and affirmed in the *Marpesia* (2), and the court adds:—

Here we have to satisfy ourselves that something was done or omitted to be done, which a person exercising ordinary care, caution and maritime skill in the circumstances either would not have done or would not have left undone, as the case may be.

In the case of the *Merchant Prince* (3), Fry, L.J. thus states the same doctrine:—

The burden rests on the defendant to show inevitable accident. To sustain that the defendants must do one or other of two things. They must either show what was the cause of the accident and show that the result of that cause was inevitable, or they must show all the possible causes, one or other of which produced the effect, and must further

(1) 2 Wm. Rob. at 205.

(2) L. R. 4. P. C. 220.

(3) P. D. (1892), 189.

show with regard to every one of these possible causes that the result could not have been avoided. Unless they do one or other of these two things, it does not appear to me that they have shown inevitable accident. (1)

The defendants here allege that the cause of the accident was the breaking of a pin forming part of the machinery or steering-gear which rendered the people on board the steamer helpless to control the course of the ship, and that when and after this misadventure occurred, everything possible was done to avoid the collision or mitigate its effects. The plaintiffs reply that the accident to the steering apparatus was not the only fault of the steamer tending to produce the result complained of.

It is alleged 1st. That the speed of the steamer in a narrow roadstead where other vessels were at anchor was too great, so great as to put it out of the power of the master to avoid danger in the event that has happened, or any other similar misadventure, and that the excessive speed negatived the exercise of "ordinary care, caution or maritime skill" under the circumstances. 2ndly. That in passing the *Juno* the steamer approached dangerously near to a vessel at anchor, without necessity for doing so and at too great speed. 3rdly. That the defendants' vessel violated Article 21 of the regulations for preventing collisions at sea, by not keeping, in sailing up the channel, to the side of the mid-channel which lay on her starboard side. That Article is as follows:—

In narrow channels every steamship shall, when it is safe and practicable, keep to that side of the fair-way or mid-channel which lies on the starboard side of such ship.

A large mass of evidence was read at the trial on the part of the defendants, in affirmance of their contention that the break-down in the steering machinery

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(1) See also *The Swan*, supra.

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was an accident over which the master and officers of the ship had no control, and to which they did not contribute by any negligence on their part. In this contention I think they have on the whole succeeded, —that is, they have established the fact that the steering-gear was made under a patent recognized by ship-owners and engineers as well constructed and serviceable machinery, that it was used in the *Santanderino* for a considerable time with satisfactory results and without accident; that before the ship's departure from Liverpool for St. John, the machinery was carefully inspected and repaired by competent persons; that on the arrival at St. John, and before leaving that port for Sydney, the steering-gear was carefully inspected by the engineers of the ship and found in good order; that it was used in steering the ship on the voyage from Liverpool to St. John, and from St. John to Sydney, and worked with entire satisfaction until it suddenly broke down while entering Sydney harbour as described. The cause of the collapse in the steering-gear has also been proved to be owing to the fracture of a small iron or steel pin connecting two parts of the machinery, and I am not able to say that the fracture of this iron pin, and consequent collapse of the steering power was owing to the absence of ordinary care, caution or maritime skill on the part of the master and officers of the *Santanderino*. As the evidence shows, the *Santanderino*, when loosed from the control of her rudder, was on the port side of the *Juno*, and about 200 yards distant, and going at the rate of 8 to 9 knots an hour, she sheered suddenly toward the *Juno*, and at the rate she was then steaming would reach and strike her in less than two minutes' time. It was therefore the imperative duty of the master of the *Santanderino* to take the most prompt and immediate measures to meet the obvious danger of collision. Did he perform

this duty? This is Capt. Lurzenage's account of what then took place:

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We went on all right until we were about two lengths of the ship from the barque; the officer said to me that there was something wrong with the wheel. At the moment when the officer informed me that there was something the matter with the wheel, the rudder, I immediately went myself to the wheel to see if it was possible to manage the wheel, and seeing that the wheel was obstructed, I immediately gave orders to the second and third officers to go down and see what was the matter, and to advise and inform the engineer at the same time, that I myself went to the telegraph to start the engine and to give orders to anchor.

Q. And was that done? A. Yes.

Q. Immediately? A. Yes, immediately. After letting go the anchor and ordering the engines back, in about a minute we had the collision.

And on cross-examination he was asked:

Q. You went to the wheel and tried it, and what did you do then?

A. I told the two officers at once to go and see what it was, and to communicate with the first engineer, while I myself went to the telegraph in order to stop the engines, to anchor and reverse.

The officers whom the master instructed to ascertain the cause of the difficulty give much the same account of the circumstances as he does himself. The pilot of the ship, John S. Laffin, an intelligent man, gave the following evidence:

All at once the man at the wheel said something in Spanish to the master. I did not understand what was said. The master immediately sprung to the telegraph and signalled to stop the ship, before that order could be complied with he telegraphed to reverse and full speed astern. I could see the telegraph on the bridge, one side of the telegraph was marked in Spanish and one in English. Immediately after the steersman spoke to the captain the ship began to change her course towards the *Juno*. The steamer, when she struck, had changed her course 6 or 7 points. The captain then gave orders to let go the port anchor. The speed at the moment of collision was about four knots. The speed had been reduced by letting go the anchor and reversing the engines. The captain telegraphed before he went to the wheel. The captain went to the wheel and I went with him, we tried the wheel. He went to the wheel after telegraphing to the engine-room to stop and go full speed astern.

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This evidence is important, because it is quite clear that it was the master's duty, instantly, to stop and reverse, and do what else he could to avoid the collision. The pilot's evidence does certainly more than corroborate that of the master. According to the evidence of the latter, and of his officers, most valuable time was lost by the master and his officers in the endeavour to ascertain the cause of the accident instead of taking instant measures to obviate its effects, while according to the pilot's evidence the master acted most promptly and in the right direction. It may be that the fact of the master and his officers speaking through an interpreter may have occasioned the discrepancy. However that may be, it is clear that if the captain's evidence be adopted as the true statement of the occurrence, he was guilty of want of promptitude, foresight and seamanship, as well as a violation of rule 18, which under such circumstances required him to stop and reverse at once,—while if we accept the pilot's version, the master acted with commendable promptness and coolness in the emergency. The burden of proof in this as in other points connected with this accident lies upon the defendants, and I am not prepared to say on the faith of the pilot's statement, against that of the master and his officers, that they have met that requirement, and I am advised by the competent assessor who sat with me at the hearing, that in his opinion, "the master did not act with promptness immediately the third officer informed him that there was something wrong with the steering-wheel, and the helmsman could not move it," and that "if he had reversed the engines instantly and rung the alarm bell, in all probability the collision would not have happened, and even if the vessel had been struck by the steamer the blow would have been so slight that no serious damage would have

“occurred to the *Juno*.” In considering this point of the case, the rate of speed of the steamer must not be lost sight of; she was entering a comparatively narrow channel, where other vessels besides the *Juno* were using the waters, and I concur in the opinion of the assessor, that, under the circumstances, the speed of 8 or 9 knots, nearly the full speed of the ship, was too great. Had the speed been reduced to the more careful and reasonable rate of 4 knots, it cannot be doubted that after the steering-gear broke down, the collision could have been prevented or its consequences very much minimized. It only remains to consider the objection under rule 21. The roadstead in which the *Juno* was anchored is the channel entrance to Sydney harbour, and is about a mile wide. We need not discuss whether the accident could or might not have happened if the *Santanderino* had obeyed the rule, and entered and continued her way through the channel on the side lying on her starboard side, because disobedience of the rule brings disaster to the ship in fault, whatever might have been the result of her observance of the rule,—she has collided with the ship guilty of no fault, and if she has violated the rule she must be declared in the wrong. In the *Tirzah* (1) Sir R. Phillimore said :

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Now this section has undergone much discussion, both in this court and before the judicial committee of the Privy Council, and the result of the cases is to establish the law to be that in any case where an infringement of the regulations could by any possibility have caused or contributed to the collision, the ship infringing the regulations is brought under the section to which I have referred.

My only difficulty has been whether the rule applies to a channel such as this. There is no doubt the rule was originally intended to facilitate the navigation of rivers and narrow tidal estuaries,—the history of the

(1) 4 P. D. at 37. See also 6 P. D. 80; the *Magnet*, L. R. 4 A. & E. 417.

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rule will be found in *Marsden's Law of Collisions at Sea*. But I have arrived at the conclusion that the rule is applicable to such a channel as that in which the *Juno* was anchored, as it would be, I think, to the narrow channel between George's Island in the harbour of Halifax and the city wharfs. On this ground, therefore, as well, I think the *Santanderino* to blame. I find the *Santanderino* solely to blame for the collision with the *Juno*, and decree accordingly. There will be the usual reference to the Registrar and Merchants as to damages.

Solicitors for plaintiffs: *Borden, Ritchie, Parker & Chisholm.*

Solicitor for defendants: *Blowers Archibald.*
