BRITISH COLUMBIA ADMIRALTY DISTRICT.

1903
July 30.

THE BANK SHIPPING COMPANY.....PLAINTIFFS;

AGAINST

THE STEAMSHIP "*CITY OF SEATTLE.*"

Collision—Negligence — Application of Regulations — Ship at Wharf— Lights—Fog-Signals.

Articles 11 and 15 (*d*) of the Imperial Collision Regulations of 1897, do not apply to the case of a ship made fast to a lawful wharf in a harbour.

Held, on the facts, that a vessel which ran into another so moored was guilty of negligence.

ACTION for damages for collision.

The case is reported chiefly on the point of the applicability of the Collision Regulations to vessels moored to a wharf.

The steamship *City of Seattle*, in a fog, about 4.30 a.m. on March 16th, 1903, ran into the barque *Bankleigh* which, while discharging cargo, was moored to Evans, Coleman & Evans' wharf in Vancouver Harbour, with her starboard side to the west side of the wharf, and with her stem a few feet, and her bowsprit over 20 feet, beyond the end of the wharf. The witnesses differed as to the exact distance that her stem projected beyond the wharf, but that fact was immaterial as will be seen from the judgment.

The position of the wharf was defined by three fixed and well-known lights known as the "wharf lights"; two of these lights were red, one at the N. W. corner of the northerly extension of the wharf and the other nearer the shore on the west side at the projecting corner of the original wharf, and the third was a green

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Statement of Facts.

one at the N. E. corner. The wharf was in a lawful position as regards navigation in Vancouver Harbour, *i.e.*, within the wharf-head line as fixed by-order in council of February 28th, 1903. She displayed two white lights—ordinary ship lanterns—one forward on the fore-topmast stay, and one aft on the port quarter at the round of the stern; she sounded no bell, but had a watchman on duty who hailed the *City of Seattle* as soon as he saw her approaching close to the *Bankleigh*. There was a very slight southerly wind and the weather was misty, with fog lifting and thickening at irregular intervals from about 2 a.m. The *City of Seattle* had usually docked at Evans, Coleman & Evans' wharf for some seven years, and was at that wharf that night close to the *Bankleigh* till 11.30 p.m, loading freight, when she went to the Canadian Pacific Ry. Co's wharf, some 500 yards distant to the west for some freight and in returning from that wharf, in endeavouring to make her way out of the harbour on a supposed N.E. course, she ran into the *Bankleigh* and with her stem struck her on the port side near the mizzen hatch, inflicting considerable damage.

In explanation of this occurrence the defendant sets up that it was occasioned by a thick fog settling down within three minutes after the *Seattle* left the C. P. R. wharf, and that she proceeded thereafter under slow and half-speed bells till the *Bankleigh* loomed up suddenly through the fog, and that thereupon the engines were immediately reversed, but too late to avoid a collision. The reason assigned for being out of her course was that she had during the fog been caught in an unusual tide-current, and the defence of inevitable accident was consequently set up. Negligence was attributed to the *Bankleigh* because of (1) insufficient look-out; (2) insufficient lights; (3) no fog-bell.

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Trial at Vancouver before Mr. Justice Martin, Local Judge of the British Columbia Admiralty District.

E. P. Davis, K.C. and *D. G. Marshall* for the plaintiffs.

Argument of Counsel.

The *City of Seattle* ran down our barque when she was moored to a wharf in a lawful position; she was thus for purposes of navigation part of a fixed and permanent object, and not in any way a vessel "at anchor" in the sense that term is used in articles 11 and 15 (*d*); those provisions do not apply to her, and it was not necessary for her to have had lights in the exact position therein specified or to sound a fog-bell. If all the ships so moored in the harbour were to ring bells it would not only not aid but disturb and mislead mariners, who would assume the sound and lights came from vessels at anchor in the fair-way. On the face of it, the *City of Seattle* has been guilty of gross negligence and the reason why no case can be cited on the exact point is that this is the first time a ship, which had so run down another, ever thought seriously of defending such bad seamanship. The case is determinable on the same principle as a ship running down a wharf or break-water. (*The Uhla* (1); *Roscoe's Admiralty Practice* (2).) Here the onus has been thrown upon the defendant ship and there must be a full explanation of what the alleged invitable accident was. *The Merchant Prince* (3); *Roscoe's Admiralty Practice* (4). She should have dropped her anchor when the fog came on; *City of Pekin* (5). As to the evidence, it shows that so far as this harbour was concerned the knowledge of the captain of the *City of*

(1) 19 L. T. N. S. 89; 2 Ad. & Ecc. at p. 29.
(2) 3rd ed. 205.
(3) [1892] P. 179; 7 M. L. C. N. S. 208.
(4) 163, 168, 172.
(5) 58 L. J. P. C. 64; 6 M. L. C. N. S. 396.

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Argument of Counsel.

Seattle was defective, and he was not a mariner of ordinary skill or competency. As to the alleged unusual tide-current, there is no evidence that it was other than normal at that stage of the tide and time of the year. The *City of Seattle* could not have been on a N E. course, and the accident in all probability arose from her failing to distinguish between the two red lights on the wharf and picking up the inner one instead of the outer.

J. A. Russell and *B. P. Wintermute* for the *City of Seattle*.

This is a case of inevitable accident and everything was done on the *City of Seattle* that was possible to avoid the accident, and all due skill and care used in navigation. The evidence shows that the collision was attributable to the fog settling down upon that ship almost immediately after she left the C. P. R. wharf, and while in that fog she was carried by a strong current into the *Bankleigh*. I rely upon the cases of *The Virgil* (1); *The Marpesia* (2); *The William Lindsay* (3); *The Westphalia* (4); *The Buckhurst* (5); and *The Industrie* (6). The *Bankleigh* should have exhibited the lights of a ship aground in a channel quite apart from the regulations. Even if she was moored to a dock, she should have rung her bell at intervals as her position was tantamount to a ship at anchor under article 15 (*d*).

[*Per Curiam*. When a ship is tied up at her lawful wharf, in a harbour, is she not in a position somewhat analogous to that of a man in bed in his own house, that is, she is "at home" and entitled to assume she is in a place of safety? Are not the four states of a vessel contemplated by the regulations thus set out in

(1) 2 W. Rob. 201.
(2) L. R. 4 P. C. 212.
(3) L. R. 5 P. C. 338.
(4) 24 L.T. 75.
(5) 6. P. D. 152.
(6) L. R. 3 Ad. & Ec. 303.

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the preliminary article, viz.: (1) under way; (2) at anchor; (3) made fast to shore, and (4) aground? As to the meaning of "under way" or "at anchor," see *The Dunelm* (1), and *The Romance* (2). In what way did the position of the *Bankleigh* resemble that of a vessel "at anchor" under Articles 11 and 15 (*d*), or "a vessel aground in or near a fair-way" under Article 11? The two lights she did show were, apart from the regulations, sufficient in the circumstances.]

I admit that I have no case which is like the present, but the *Bankleigh* was in a position analogous to that of a ship at anchor, and should have given the fog-signals customary under such circumstances. She was in the fair-way practically, for her stern and bowsprit projected beyond the wharf. Though she had two lights out as was necessary when over 150 feet in length, yet her stern light was admittedly too low down.

Per Curiam: There is no reason why judgment should be deferred in this matter. It is the practice of this Admiralty Court that cases should be decided as speedily as possible.

In the first place, it is necessary to dispose of the question as to whether or not the Collision Regulations, or Sea Rules as they are often called, apply to the ship *Bankleigh*, and if she is to be condemned for a breach thereof. Now, there is no ground at all for finding that the ship in any way infringed those regulations. I have no hesitation at all in deciding that point in her favour. Her position there was tantamount to that set out by the preliminary act, that is to say, being "fast to the shore;" and she was not a ship "at anchor" or "under way" within the proper meaning of those terms as understood by seafaring men. Neither of those nautical expressions applies to the

(1) 9 P. D. 164. (2) [1901] P. 15.

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situation of the ship at that time. She was moored to, and discharging her cargo at, that wharf in a position of safety and entitled to assume that she was safe and the two lights she showed were a sufficient warning to competent mariners. In regard to the point taken that her bow-sprit projected some twenty feet beyond the north end of the wharf, nothing turns on that. I must assume, there being no evidence to the contrary, that the wharf as constructed conformed to the official regulations in that behalf; and she was, I say, properly berthed there; and though her bow-sprit did project some considerable distance, and part of her stem for a small number of feet beyond, or a few inches, as you may take the evidence, it does not concern the present question, and I do not propose to go into it, because the damage did not arise in this case from the fact that she projected, but from the fact that she was struck aft of amidships towards her mizzen hatch, the consequence being that the point of collision was 153 feet, from the north end of the wharf.

Then, in the second place, as to the facts. The principle upon which this case is decided in regard to inevitable accident, which is really what the defence is here, is so well laid down in the case of *The Merchant Prince* (1) that it seems unnecessary to refer to it again, counsel having already cited the parts which are peculiarly appropriate to this case.

The facts that the *Bankleigh* was in the position I have referred to and that she was run down, as aforesaid, establish such a *primâ facie* case of negligence against the defendant ship that the rule of law set out in the case of *The Merchant Prince* is properly invoked against her. That is to say, the defence has failed to sustain the plea of inevitable accident, because to do so it was necessary to show what was the cause

(1) [1892] P. D. 179.

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of the accident, and that, though exercising ordinary care and caution and maritime skill, the result of that accident was inevitable. That is the principle which seems to apply to such a case as the present, and the fact that counsel on both sides have been unable to discover any case like it shows what a very unusual state of facts this is. The *primâ facie* case established against the defendant ship is of an exceptionally strong nature. I find that the defence has failed to sustain the plea of inevitable accident, and I find that there was bad seamanship in the way the *City of Seattle* was handled, and there is no valid excuse for the collision which occurred. It seems to me, on his own admission, that the captain of the *City of Seattle* has shown himself to be—for the purpose of this harbour at least—not a competent mariner, and it would have been well for him to have taken some other precautions, in the light of the unsettled state of the weather to which he referred, than those he did; either, as suggested by one of the pilots, stayed at the wharf until the weather cleared, or certainly, when he found he was liable to run into a bank of fog, have had his anchor ready beforehand, or by reversing his engines so as to bring his bow further to the north. It is very difficult to believe his statement in regard to the state of the tide; but even if it were setting in that way, in the face of what the pilots say, that would not under the circumstances, in my opinion, exonerate him for not having taken the precautions to which I have alluded. Every case must be judged by its circumstances. Here we have a steamer, having left Evans' wharf a few hours before where it knew a ship was lying in a certain position, going to a neighbouring wharf only 500 yards away—and here I may remark the captain made a very considerable mistake in the distance, the difference between 500 and 800

yards—and having landed at that wharf, purporting to return near the first wharf. One would think he would take such precautions, under such circumstances known to him, which would have prevented an accident like the present. Evidently the captain also did not understand the tides of Vancouver harbour, which, as Mr. Russell very truly says, are peculiar, but at the same time it must not be overlooked that there was not a particle of evidence to show that on that particular night there was anything exceptional in the state of the tide. Therefore, the inference I am asked to draw, that there was something very peculiar, cannot be drawn.

I believe that the real explanation of the accident is the mistake about the light of which the mate and the captain gave evidence. The captain proceeded on the assumption that there was only one red light on the wharf, that he only saw one, and he must have picked up the wrong one. It seems to me that is the real explanation of what otherwise seems to be inexplicable.

It is unnecessary to add any more. I formally find all relevent issues of fact in favour of the plaintiffs, and those of law are likewise determined. There will be a reference to the Registrar and two merchants to assess the damages.

Judgment for plaintiffs, with costs.

Solicitors for the plaintiffs: *Davis, Marshall & Macneill.*

Solicitors for the defendant ship: *Russell & Russell.*