

BRITISH COLUMBIA ADMIRALTY DISTRICT.

CANADIAN PACIFIC RAILWAY } PLAINTIFFS;
COMPANY..... }1910
Feb. 14

AGAINST

THE TUG *BERMUDA**Shipping—Collision—Tug and Scow—Narrow Channel—Departure from Rules—Justification.*

Held, that while a channel, admittedly difficult of navigation under certain conditions, might properly be used by a ship, she is under an obligation to take all precautions to avoid collision with another ship.

2. Where prudent seamanship precludes a tug, in charge of a laden scow, from following certain of the regulations, she will be exonerated from blame in departing therefrom.

ACTION for damages caused by collision. The facts appear in the reasons for judgment.

The trial took place in Victoria, B.C. on the 8th and 9th December, 1909, before the Local Judge for the British Columbia Admiralty District; Captain J. F. Parry, R.N. and Captain P. C. Musgrave sitting as Nautical Assessors.

E. P. Davis, K.C. and *J. E. McMullen* for plaintiff.

J. A. Russell and *H. B. Robinson* for Tug.

Judgment in favour of the *Bermuda* was handed down on 14th February, 1910.

MARTIN, L. J.

In this action the owners of the steamship *Charmer* seek to recover damages from the owners of the tug *Bermuda* because of a collision which occurred between the two vessels about 12 or 15 minutes after one o'clock in the afternoon of the 3rd December, 1908, in the First

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Narrows at the entrance to Vancouver Harbour. The day was clear and calm, with a flood tide of about two knots.

The *Bermuda* had a large barge, containing 510 tons of coal, secured to her port bow, projecting forward, and came up the channel towards Brockton Point on her proper course, viz: a little south of mid-channel, at a speed of about three knots, or with the tide, five knots over the ground. The *Charmer* left her wharf in Vancouver Harbour two minutes after one by her time, and in entering the Narrows between Burnaby Shoal and Brockton Point, on a course N.W. by N. $\frac{1}{2}$ N., so as to cross mid-channel and go out on the N. side of the Narrows, she admittedly got a little too near the kelp on Burnaby Shoal for safety, upon which, as her master says, he hauled off to port and "ran a little bit to get clear of it and then straightened up again...the same as before."...The *Bermuda* was first sighted about three cables distant and bearing about two points off the *Charmer's* port bow, the *Charmer's* speed being about nine knots, or seven over the ground. At this juncture sound signals were necessary according to Article 28, but a strange and embarrassing dispute here arose (doubtless owing to an intervening tug, the *Edith*) regarding the signals blown by the respective vessels, the *Charmer* contending that she blew one blast for the *Bermuda*, and the *Bermuda* answered with two blasts, a cross signal; but the weight of evidence supports the contrary contention of the *Bermuda* that she blew two blasts and the *Charmer* answered with one, which I find to be the fact. This unfortunate mistake of the *Charmer's* master about the signals is also important in showing not only that he was confused on the point but that he had the intention of directing the *Charmer's* course

contrary to that course which she actually signalled, and consequently it becomes very difficult to place reliance upon his evidence as regards her course after the signals, or upon the means he took to avoid the collision, or his opinion as to the relative positions and courses of the two vessels. In such circumstances it is hard to say what his exact intentions were, seeing that his mind was working on the very important erroneous assumption that he had blown two blasts, instead of one. His contention is that after the *Bermuda* blew her two blasts the *Charmer* put her helm hard-a-starboard and began to swing to port and continued so to swing till the time of the collision, and that if the *Bermuda* had continued on her port course, pursuant to signals, after the *Charmer* began to swing there would have been no collision, but that it was caused by the *Bermuda* again changing her course from port to starboard when about 60 or 70 yards distant from the *Charmer*. Both vessels towards the last reversed their engines, but too late to avoid the collision, the corner of the scow striking the *Charmer* on her starboard side about 40 or 50 feet from her stem. The reversal of the *Bermuda's* engine necessarily had the effect of bringing her back to her original course. Just before the moment of impact the *Bermuda* properly went ahead (to avoid swinging crosswise to the channel) on the chance of reducing the tangent and sliding past, in which she was nearly successful, but not quite. The *Charmer's* master admits that after he blew his whistle for the *Bermuda*, he shifted his helm a little to port so as to swing off to starboard, but contends that the *Charmer* did not have time to swing before the *Bermuda* blew. Here is clearly where serious difficulty first arose, because in the first place there is the error about the *Bermuda's* whistle, which

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was, I find, blown first, and in the second place the *Charmer's* master underrated and in his evidence unduly minimized the effect of porting his helm in the flood tide. I am advised by the Assessors that if the *Charmer* had continued under a port helm as indicated by her one blast (in reply to the *Bermuda's* two blasts) she would undoubtedly have run clear of any possibility of collision. When her helm was eventually put to starboard, having regard to the swinging of the ship under port helm augmented by the flood tide on her port bow, it was too late to turn within a sufficiently small circle to avoid the *Bermuda*.

I am further advised by the Assessors that seeing that the *Bermuda* was on her proper course (a little to the south of mid-channel) in a narrow channel, and having a very unhandy scow, much longer than herself, secured on her port side, and heavily laden with 510 tons of coal, and being on a correct course to clear Burnaby Shoal and proceed up harbour, she, in view of her unwieldy tow and the proximity of Burnaby Shoal, with a flood tide of two knots, was, in the circumstances, precluded, as a matter of prudent navigation, from either using the channel between Burnaby Shoal and Brockton Point, or altering her course to starboard. Therefore her action in blowing two blasts and then starboarding her helm was justified, and the above specified indecisive action of the *Charmer* after said signal was given justified the *Bermuda* in reversing her engines at the time she did.

I am further advised that while the channel between Burnaby Shoal and Brockton Point is a recognized and navigable channel for light draught vessels of moderate dimensions, and proper at that time for the *Charmer* to use (though not so now since the regulations of July 17th, 1909, passed subsequent to the

collision) yet it is of such a nature that in using it to enter the Narrows, especially on a flood tide, as here, it is necessary to be prepared to take precautions to clear incoming vessels.

With respect to the signals it seems desirable to observe that the *Charmer* should have promptly blown two blasts to indicate her change of course to port, because the failure to do so withheld information from the *Bermuda* of the *Charmer's* change of course which would have been more valuable than the master of the *Bermuda* appears to have appreciated, according to his evidence, it being not quite clear what he means to convey by the statement that he was not "confused by the omission."

I am entirely in accord with the advice of the Assessors, and the case appears to me to be eminently one to be decided by practical seamanship.

It is also to be noted that neither ship gave the prescribed signal for going astern, though neither ship alleges that it was affected by that oversight.

The omission of the plaintiff to call the quartermaster who was on duty in the *Charmer* at the time of the collision, whose evidence would have been of great value to this Court, is something which was not satisfactorily explained and is to be regretted.

With regard to the alleged custom of vessels in the Narrows, it is not necessary, in view of the foregoing, that I should consider that matter, because, apart from it, the *Charmer* in my opinion must in all the circumstances be held to be solely responsible for the collision.

There will be judgment for the *Bermuda* on the claim and counter-claim, with the usual reference to

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THE damages.
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TUG Solicitor for Plaintiffs: *J. E. McMullen*.
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Judgment