

BRITISH COLUMBIA ADMIRALTY DISTRICT.

1917

December 22.

THE CLEEVE..... PLAINTIFF;

VS.

THE PRINCE RUPERT..... DEFENDANT.*Shipping—Collision—Damages.*

The master and engineer of the *Cleeve* spent 3 days before the Wreck Commissioner's Court of Investigation, held under the provisions of the Shipping Act, to investigate this collision in all its aspects, and claimed \$105.00 for time lost by the vessel whilst they were so engaged—as well as a sum of \$157.50 for solicitor's and counsel's charges for attendance at rehearing thereof ordered by the Minister of Marine. The registrar refused to allow these items in assessing the damages, and motion was made to the court to vary his report.

Held: That the above items of damages were too remote, and were not the direct consequence of the collision, and that the Report of the registrar should be confirmed.

MOTION to vary report of the registrar, fixing and assessing the damages.

December 22, 1917.

Motion now heard by the Honourable Mr. Justice Martin at Vancouver.

C. M. Woolworth, for the motion.

F. W. Tiffin, contra.

The facts are stated in the reasons for judgment.

MARTIN L. J. A. now (December 22nd, 1917), delivered judgment.

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THE
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THE
v.
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Reasons for
Judgment.

Martin L.J.A.

This is a motion to vary the report of the registrar on the assessment of damages arising out of a collision of these vessels wherein the *Prince Rupert* was adjudged liable for the whole damage. The registrar disallowed two items of damage, the first being a charge of \$105 for three days at \$35 per day, during which the plaintiff tug was laid up while her master and engineer had to go to Victoria in January last to attend the wreck Commissioners' Court of Investigation held under the Shipping Act, (ch. 113, R.S.C. 1906), to investigate the collision in all its aspects, including the conduct of the ship's officers involved, and fix the responsibility therefor upon said officers. The second item is a charge of \$157.50 being solicitor's and counsel's charges in connection with the subsequent rehearing of the investigation which was ordered by the Minister of Marine under sec. 806, and upon which the said officers of the plaintiff's ship were represented by counsel.

With respect to the first item, it is submitted that as the vessel was a small one with only a crew of three men all told, it was impossible to get officers to run her for a short period of three days, and yet that delay and loss of profit were inevitably occasioned by her officers having to attend said court at Victoria (being summoned on five days' notice) which was a *direct consequence* of the collision, which should be recovered against the defaulting ship. I am of opinion, however, that it cannot properly be so regarded, because whatever else may be said of the matter, it was the duty of the master, at least (and presumably the engineer) to attend said court of investigation as a personal matter to explain and, if necessary, defend his own reputation and conduct which might lay him open to the grave penalty of cancellation or suspension of

his certificate. That court has power by sec. 794 to "make such order as it thinks fit respecting the costs of such investigation," but has not seen fit to do so. While it may, in the circumstances, be a hardship that the delay has caused the laying-up of this small tug, yet if I sanctioned such a charge the same principle would have to be applied to the case of a big ship chartered for a daily great sum with a large complement of officers and crew, which would clearly be going too far. I think therefore, in the absence of any authority in his favour, that the applicant can get nothing on this item and must resort to the expenses for witnesses and costs as provided by the Shipping Act.

The same reasoning applies also to the second item, which is likewise disallowed.

It follows that the report of the registrar is confirmed at \$1,650.51 and the motion to vary it dismissed with costs.

Judgment accordingly.

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