BRITISH COLUMBIA ADMIRALTY DISTRICT.

BETWEEN

1917
Sept. 21.

THE CANADIAN PACIFIC RAILWAY COMPANY..... } PLAINTIFF;

VS.

STEAMSHIP *BELRIDGE*..... DEFENDANT.

Shipping—Collision—Excessive speed in snow-storm—Article 16, Sea Regulations—The Maritime Conventions Act, (4-5 Geo. V Ch. 13)—*Default of two vessels—Division of damages.*

Held: A ship is not entitled to run through fog and snow at a speed which is safe for herself but immoderate and dangerous for others. *Pallen* vs. *The Iroquois* ([1913] 18 B.C. 76; 23 W.L.R. 778.), followed.

2. In apportioning damages resulting from a collision between two ships, where the evidence does not establish that a clear preponderance of culpability rests upon one ship, the division of damages should be half and half. *The Peter Benoit* ([1915] 13 Asp. M.C. 203; 85 L.J. Adm., p. 12.), followed.

ACTION by the plaintiff, as owner of the steamship *Empress of Japan* for $30,000 damages, against the steamship *Belridge* occasioned by a collision which took place off Trial Island, near Vancouver Island, B.C., on the 31st January, 1917.

June 19th, 20th and 22nd, 1917, case tried before the Honourable Mr. Justice Martin, L.J.A., at Vancouver, B.C.

J. E. McMullen, for plaintiff.

E. C. Myers, for defendant.

The facts are stated in the reasons for judgment.

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MARTIN L. J. A., now (21st September, 1917, delivered judgment.

On January 31st, 1917, about half-past four (Victoria time) in the afternoon, the British twin-screw steamship *Empress of Japan* (W. Dixon Hopcraft, Master), length 455 feet, gross tonnage 5,940, collided with the Norwegian steamship *Belridge* (Nels Olsen, Master), length 450 feet, gross tonnage 7,020, in the Strait of Juan de Fuca, between Trial and Discovery Islands, the *Empress of Japan* being inward bound for Vancouver pursuing a course from Trial Island to round Discovery Island, and the *Belridge* outward bound pursuing a course from Discovery Island to round Trial Island, which are about three miles and six cables apart. The tide was at slack and the state of the weather, according to the preliminary act filed by the *Belridge*, was "heavy snow-storm, very thick," with a varying north-westerly wind about 20-25 miles, and according to the *Japan*, a "snow-squall," with a "northerly moderate wind;" the latter vessel admits she was going at a speed of twelve knots and her best speed, her pilot says, was 16¼, while the former alleges, erroneously, I find, that her speed was only "about three or four knots." The *Japan* alleges she first saw the *Belridge* "about half a mile distant ahead," and the *Belridge* first saw the *Japan* "two to three ship lengths about one point on the port bow." The ships came together about amidships on their port sides and both sustained damage.

For some time before as well as at the time of collision both vessels had been sounding fog signals, as had also the lighthouse at Trial and Discovery Islands.

So far as the *Japan* is concerned the case is very simple. She was on her own shewing clearly violating article 16 by not going at a "moderate speed" in the snow-storm (which speed was maintained till the Belridge came in sight) within the principles fully considered by me in *The Tartar* vs. *The Charmer* (1907), Mayers' Admiralty Law and Practice, p. 536; and *Pallen* vs. *The Iroquois* (1) to which I refer, and also to *The Counsellor* (2). In the second case the contention that a ship is entitled to run through fog or snow at a speed which is safe for herself but immoderate and dangerous for others is disposed of.

Then as to the *Belridge*. She, after passing Discovery Island, continued to go, I find, through the snow-storm at a speed of upwards of eleven knots, but upon hearing a ship's fog signal to the southwest, apparently forward of her beam in the direction of Trial Island, reduced her speed to half, making at the least six knots, and shortly thereafter upon hearing the same whistle repeated almost ahead changed her course one point to the westward, but did not for three or four minutes after half speed reduce to "slow," not till after she had heard two more whistles from what she then knew was the *Japan*, and after going "slow" for two or three minutes sighted the *Japan*, and put her helm hard aport and engine full speed astern, but too late to avert the impact. This is putting the matter in as favourable light as possible for the *Belridge*, based on admissions of her pilot and officers, and yet it clearly shews that she also violated article 16 in two respects, not going at a moderate speed at eleven knots, and not having stopped her engines and navigated with caution when she heard

(1) (1913), 18 B.C. 76; 23 W.L.R. 778

(2) (1913), P. 70; 82 L. J., Adm. 72.

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the signal of another vessel, apparently forward of her beam, whose position was not ascertained. No satisfactory reason was given for her failure to comply with the requirements of the article, and at the very least I cannot understand why she did not reduce her speed to "slow" earlier than she did, especially in that frequented locality. Her case, therefore, is also covered by the two authorities already cited. I have only to add that it seems an unaccountable thing that none of the witnesses for the *Japan* will admit that he heard any fog signal from the *Belridge* though the independent witness H. J. Austin, who was waiting for her in his launch off Brotchie Ledge and saw the *Japan* pass him, says, and I believe him, that he heard her signals for some considerable time, nearly an hour, approaching from about Ten Mile Point, passing Discovery and Trial Islands on her course past the Ledge, about three miles from Trial Island.

It remains, then, to consider the application of the Maritime Conventions Act, 1914, Can. Stats. 1914, Cap. 13, Sec. 2, which came into force on July 1st of that year: Canada Gazette, 6th June, 1914. The relevant portions of the section follow:

"Where, by the fault of two or more vessels, damage or loss is caused to one or more of those vessels, to their cargoes or freight, or to any property on board, the liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault:

"Provided that—

"(a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally; and

"(b) nothing in this section shall operate so as to render any vessel liable for any loss or damage to which her fault has not contributed; and . . . ."

This is the first time, I may say, that I have found it necessary to consider the effect of this section, but it has been considered several times in England, beginning with *The Rosalia* (1) where the degree of liability was apportioned at 60 and 40 per cent; *The Bravo* (2) at four-fifths and one-fifth; *The Counsellor* (3) at two-thirds and one-third; *The Cairnbahn* (4) equally apportioned; *The Llanelly* (5) and *The Umona* (6) at three-fourths and one-fourth; *The Ancona* (7) at two-thirds and one-third; *The Kaiser Wilhelm II.* (8) equally apportioned; and *The Peter Benoit* (9) equally apportioned. There is a discussion of the question in this last and leading case, in the House of Lords, and it is there laid down, p. 207, by Lord Atkinson that where "the evidence does not establish that a clear preponderance of culpability rests upon one ship, the division of the damages should be half and half."

How the apportionment should be arrived at is thus viewed by Lord Sumner, p. 208:

"The conclusion that it is possible to establish different degrees of fault must be a conclusion proved by evidence, judicially arrived at, and sufficiently made out. Conjecture will not do; a general leaning in favour of one ship rather than of the other will not

(1) (1912), P. 109; 81 L.J., Adm. 79; 12 Asp. M.C. 166.
(2) (1912), 12 Asp. M.C. 311; 29 T.L.R. 122; 108 L.T. 430.
(3) (1913), P. 70; 82 L.J., Adm. 72.
(4) (1913), 12 Asp. M.C. 455; 83 L.J., Adm. 11; 110 L.T. 230.
(5) (1913), 83 L.J., Adm. 37; 110 L.T. 269; 12 Asp. M.C. 485, (1914), P. 40.
(6) 1914), P. 141; 83 L.J., Adm. 106; 111 L.T. 415; 12 Asp. M.C. 527.
(7) (1915), P. 200; 84 L.J. Adm. 183.
(8) (1915), 31 T.L.R., 615; 85 L.J. Adm. 26.
(9) (1915), 13 Asp. M.C. 203; 85 L.J. Adm. 12.

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do: sympathy for one of the wrongdoers, too indefinite to be supported by a reasoned judgment, will not do. The question is not answered by deciding who was the first wrongdoer, nor even of necessity who was the last. The Act says, 'having regard to all the circumstances of the case.' Attention must be paid not only to the actual time of the collision and the manoeuvres of the ships when about to collide, but to their prior movements and opportunities, their acts, and omissions. Matters which are only introductory, even though they preceded the collision by a short time, are not really circumstances of the case but only its antecedents, and they should not directly affect the result. As Pickford, L.J., observes: 'The liability to make good the damage or loss shall be in proportion to the degree in which each vessel was in fault.' That must be in fault as regards the collision. If she was in fault in other ways, which had no effect on the collision, that is not a matter to be taken into consideration."

I feel that I should say in this case, as Lord Atkinson said in that (p. 207):

"There is not, in my opinion, any such preponderance proved in this case. Both vessels were to blame; and, in my view, the evidence leaves it very uncertain which was most to blame."

There will be a reference to the registrar, with merchants, if necessary, to assess the damage. As both ships are to blame, each will bear her own costs, in accordance with the rule laid down in *The Bravo case, supra.*

Let judgment be entered accordingly.

Judgment accordingly.