

BRITISH COLUMBIA ADMIRALTY DISTRICT

1921

April 26.

ROSS R. PEERS, AND OTHERS..... PLAINTIFFS;

v.

THE SHIP *TYNDAREUS*..... DEFENDANT.

Shipping and Seaman—Towage—Collision—Negligence—Unsuspected obstruction to the view—Lights—Judicial observation.

On the 15th August, 1920, about 1.00 a.m. off Port Atkinson, B.C., the S.S. *Tyndareus*, a large ship collided with a crib, in tow of the tug *Alcedo*.

The crib was 90 feet long and 40 feet wide and stood about 15 feet out of water at the top of the shingle bolts, and was about 600 feet astern of the tug. The weather was calm and the night clear, but dark and hazy with a low-lying cloud bank of smoke in places which might conceal one vessel from another at water level. The tide was nearly slack on the ebb, at the point of collision. The *Alcedo* was proceeding east at about one knot an hour, when the *T* suddenly appeared on her quarter 25 yards from the *Crib* into which she crashed before anything could be done to avoid collision.

No signals were given by either vessel, and neither changed their course or speed.

Both vessels were displaying proper lights and bright look-outs were kept.

Held: 1. That, on the facts, the defendant was not guilty of any negligence; the collision being due to the vessels not discovering each other in time, because of the unsuspected obstruction to the view caused by the low-lying smoke cloud aforesaid, or to the entire absence of, or inadequate, lights on the *Crib*.

2. *Judicial Observation*:—That the light on a boom or crib being towed should be of at least the same visibility as a ship's white light (5 miles,) as required by Article 2 (a) of the Sea Regulation for "Bright white lights" in general, if not indeed of greater visibility because of its lying so much nearer to the water.

ACTION to recover damages due to collision between the ship *Tyndareus* and the tow of the *Alcedo* off Port Atkinson, B.C.

1921

February 4th, and 7th, 1921.

PEERS

v.

TYNDAREUS.

Case is now heard before the Honourable Mr. Justice
Martin, at Vancouver.

Reasons for
Judgment.

Martin L.J.A.

E. C. Mayers and R. M. Maitland, for plaintiff.

E. A. MacDonald. K.C., and *A. C. DesBrisay*, for
defendant.

The facts are stated in the reasons for judgment.

MARTIN L. J. A. now (April 26th, 1921) delivered
judgment.

This is a collision action to recover damages against the S.S. *Tyndareus* (length 535 feet; tonnage *circ*, 14,000; E. B. Francis, master) for the loss of a crib with shingle bolts off Point Atkinson, which was being towed by the tug *Alcedo* (John A. Seeley, master) towards Prospect Bluff, about 1 a.m. on the 15th August last. The weather was calm and the night was clear but dark and hazy from smoke in places towards the north shore of English Bay, and the tide at the point of collision was nearly slack on the ebb. The crib which was 90 feet long, 40 feet wide, and stood about 15 feet out of water at the top of the shingle bolts, was being towed about 575-600 feet astern of the tug, and it is alleged that while the *Alcedo* was proceeding on a course east magnetic at a rate through the water of one knot an hour, a large ship (the *Tyndareus*) suddenly appeared on her port quarter about 25 yards from the crib into which she crashed before anything could be done to avoid the collision. No signals were given by either vessel nor did either of them change her course or speed till after the collision. The *Tyndareus* contends she was on a true west course to clear Port Atkinson, *en route*

for Union Bay, at a speed of something over twelve knots, and her story in brief is that despite a bright look out, both forward and from the bridge, she saw nothing to indicate the presence of a vessel in dangerous proximity and there was no light near her except one white light, first noticed about half way between Prospect Bluff and Point Atkinson, about half a point on her port bow which she later took to be the stern light of a small steamer heading in a southerly direction, and shewing no other lights, and that this was the apparent state of things for 8 minutes before the collision, when suddenly, just before the impact, the vessel ahead swung round till she shewed her port light forward of the port beam of the *Tyndareus* which passed the vessel but ran into the crib beyond her which could not be seen and had no light upon it. It is obvious that if the two accounts of the courses taken are correct there could have been no collision, and the case, apart from the important question of the adequacy of the light on the crib, really comes down to a question of fact upon very conflicting evidence.

It is a strange case and has occasioned me much difficulty because I am satisfied that each vessel had the proper lights displayed and it seems incredible that if they were on the courses alleged they could not have seen one another in ample time to avoid a collision, unless they were temporarily obscured from view by a low-lying cloud bank of smoke coming imperceptibly from the north shore, smoke from that quarter being spoken of by the signal operator at Prospect Bluff from which elevation of 250 feet he could easily see the outstanding high light at Point Atkinson and yet vessels at water level might be concealed from one another by such a smoke cloud as aforesaid.

1921

PEERS
v.

TYDAREUS.

Reasons for
Judgment.

Martin L.J.A.

1921

PEERS
v.

TYNDAREUS.

Reasons for
Judgment.

Martin L.J.A.

I have no doubt whatever that a bright look-out was kept on the *Tyndareus* to which at least 5 creditable witnesses have testified, nor have I reason to doubt the statement of the mate of the *Alcedo* to the same effect. I am inclined to think, however, that the light on the crib had by some means become extinguished or dislodged so as to become invisible from the *Tyndareus*, very shortly before the collision, the evidence, both positive and negative, of several witnesses on the *Tyndareus* that there was no light on the crib at the time of the impact is almost irresistible. But if it had been burning I am not satisfied that it was sufficient for the purpose, having in mind my observations on the point in *Paterson Timber Co. v. S.S. British Columbia* (1). Here the light was only an ordinary cold blast lantern with a visibility of "about two and a half or three miles," which I do not think conveys that reasonable intimation of the true state of affairs" that I held was necessary in the *Paterson case* as a matter of good seamanship and safe navigation apart from any regulation on the subject of boom or crib lights. (I pause here for a moment to express my regret that nothing has yet been done to regulate such lights though the necessity for it was pointed out at p. 90 of said case, and the present action confirms my observations). In the case at bar I cannot help thinking that the accident might well have been avoided if there had been a light on the crib of the same visibility, 5 miles, as that required by Art. 2 (a) for "Bright white lights" in general. I can see no good reason why a boom or crib light should not be of the same visibility as a ship's white light;

(1) (1913), 18 B.C.R. 86.

indeed, there is more reason why it should be of greater power, if anything, because of its lying so much nearer the water, with a consequent reduction in visibility.

As to the submission that if the tug is to be considered as an overtaken ship then Art. 24 requires the overtaking vessel to "keep out of the way," I am unable to find that in fact the *Tyndareus* was an overtaking vessel, though she thought she was for a time; and then she did in fact clear the tug but ran into the boom the existence and position of which she was unaware for reasons which I am unable to find were negligent on her part. There is in my mind uncertainty about the position of the tug and I am inclined to think she was not where her mate and master have deposed to, but probably drifted laterally with the tide, while going at so slow a speed, in an imperceptible manner. As to the position of the *Tyndareus* I can entertain no doubt in view of the cross-bearing taken just after the collision, viz., one mile south from Point Atkinson.

On the whole case, without attempting to state more than in outline the principal facts which have engaged my prolonged consideration and re-consideration (having found it indeed one of the most perplexing and difficult in all my experience) I can only come to the conclusion that I am unable to find the *Tyndareus* guilty of negligence and therefore the action against her must be dismissed. In so doing I feel bound to say, in the unusual circumstances, that I do not wish it to be understood that I doubt the integrity of the witnesses on behalf of the *Alcedo*; indeed, I am glad to be able to say that I was much and pleasantly impressed by the evident sincerity and good faith of

1921

PEERS
v.

TYNDAREUS.

Reasons for
Judgment.

Martin L.J.A.

1921
PEERS
v.
TYADAREUS.
Reasons for
Judgment.
Martin L.J.A.

the witnessess on both sides, and I am satisfied that, except as to the boom light, every reasonable precaution was taken that good seamanship suggested, and yet, despite the assistance of able counsel on both sides, who conducted their respective cases exceptionally well, and expeditiously, I am unable to understand how each of these vessels failed to discover the true position of the other in due time, unless it was because of the unsuspected obstruction to the view caused by the low-lying smoke cloud already referred to. It follows therefore that judgment should be entered in favour of the defendant ship and the costs will follow the event as usual.

Judgment accordingly.
