

BRITISH COLUMBIA ADMIRALTY DISTRICT.

1913

Feb. 28

PATERSON TIMBER CO., LTD.....PLAINTIFF;

v.

THE S.S. "BRITISH COLUMBIA".....DEFENDANT.

Collision—Tug and tow—Boom of logs—Lights.

In an action against defendant ship for having run through and scattered a boom of logs belonging to the plaintiff while being towed by plaintiff's steam tug, the collision having occurred at night at a difficult point of a channel:

Held, that the collision was occasioned by the tug's negligence (1) in showing misleading lights; (2) having too long a tow; (3) displaying insufficient lights on the boom; (4) and losing control of the boom and blocking the channel.

Also, that a boom of logs is not a vessel within the meaning of the regulations

ACTION *in rem* to determine liability of defendant ship colliding with and scattering a boom of logs belonging to plaintiff company.

Tried before Mr. JUSTICE MARTIN, Local Judge of the British Columbia Admiralty District, at Vancouver, November 4, 1912.

Craig, for plaintiff; *W. B. A. Ritchie*, K.C., for defendant.

MARTIN, L. J. (February 28, 1913) delivered judgment.

This is an action against the cargo s.s. "British Columbia" (Gustave Foellmer, master; length 170 feet) for having run through and scattered a boom of logs belonging to the plaintiff company while being towed by its steam-tug "Erin" (Robert W. McNeill, master), at the northerly entrance to Porlier Pass from the Gulf of Georgia about one o'clock a.m. on December 15, 1911. The weather was clear, occasionally overcast; wind, light S.E.; tide on the last of the flood about $\frac{1}{4}$ or $\frac{1}{2}$ hour before high water slack, setting out towards the Gulf at about one and a half knots an hour. The boom was of 22 swifters, 1,500 feet in length with a tow line of 240 feet, total length, exclusive of tug, 1,740 feet, and the tug and boom had been in the neighbourhood and a little to the east of the red bell buoy at the entrance to the channel since about 11.30,

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holding that position waiting for the strong tide to slacken, the tug being past the buoy, and the boom stretching behind, considerably beyond the buoy, on to which the tide sets, both flooding and ebbing. As the tide slackened the tug gradually crept up till at the time of the collision the boom was about half way past the buoy. The towing lights carried by the tug were 2 bright white lights in a vertical line, ostensibly under art. 3, and a white light 6 feet high about 40 feet from the end of the boom. This last light was not "a bright white light" within the definition of art. 2 (a), but merely an ordinary ship's lantern with a range of visibility not deposed to exceed $1\frac{1}{2}$ miles instead of "at least five" as the article requires a bright white light to have.

A boom of logs is admittedly not a vessel within the meaning of the regulations, and there is unfortunately no article, strictly speaking, which provides for the lights that should be carried when a steam vessel has such a tow, and, apart from the boom light, the proper inference to be drawn from such lights as were here displayed would be that the tug had in tow a vessel or vessels not exceeding 600 feet in length. The nature of the scene of the accident may best be gathered from the following extract from the Admiralty "British Columbia Pilot," 3rd ed., 1905, p. 130, put in by consent:—

"Porlier Pass into Georgia Strait, though short (not "exceeding one mile from its southern entrance until fairly "in the strait) is narrow, and is rendered still more so by "sunken rocks; the tidal streams run from 4 to 9 knots, "and overfalls and whirling eddies are always in the north- "ern entrance.

"CAUTION:—In consequence of the numerous dangers "existing in Porlier Pass, mariners are advised to avoid "that passage."

This being admittedly a locality to be avoided it was incumbent upon those who elected to use it to exercise a degree of caution commensurate to the circumstances, and obviously it was a place where it would be difficult to handle a long boom, and only a few booms a year are taken through it, though used constantly by tugs with barges. The master of the "Erin," who on two prior occasions had fouled the

bell buoy with a boom, seems to have realized this because on approaching the bell buoy he shortened the scope of his tow line from 120 to 40 fathoms, but even at the reduced length I am satisfied that the tug and tow were still far too long for safety; even 1,200 feet would have been unsafe in the circumstances.

When the "British Columbia" opened the pass at its southern end she saw the tug, about $1\frac{1}{2}$ miles off, apparently heading across the channel behind Race Point on the west side thereof showing the two towing lights (in addition to the customary lights which were duly shown by both vessels), but did not see the boom light, and proceeded at a speed of $7\frac{1}{2}$ knots (her full speed being $9\frac{1}{2}$) on the usual course, keeping a little to the westward of the two fixed "leading lights" bearing S. 5° E, on Galiano Island set up for the purpose of leading a vessel through the northern entrance into the Gulf a little to the east of the bell buoy. Keeping a little to the westward of that range course so as to be sure to clear the tug, and after exchanging certain signals, which do not affect the matter, she came up to the "Erin" and passed between her and the bell buoy, in the belief, as the master and first officer testify, that the tug was towing a vessel or vessels not longer than 600 feet, and never expecting to encounter a boom, the light on the end of which they did not observe till after they had passed the "Erin," which by this time had advanced a little with the boom so that about half of it was past the bell buoy. They were keeping a proper look out, and when they saw the boom light it showed as beyond and to the westward of the bell buoy, and broad on the port bow, about 4 points, and was taken to be that of a fishing boat, and as they thought they had passed the tow they proceeded and did not notice the boom till they were almost upon it, the logs not being visible for more than 50 feet or so in the water, and had only time to stop the engines before crashing through it.

The evidence was somewhat conflicting as to the position of the boom, the master of the "Erin" contending that no part of it was within 300 feet of the bell buoy, but his evidence is contradicted by one of his own seamen, William Macdonald, who on cross examination admitted that the

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tail of the boom had become twisted in towards the bell buoy, and as this important statement corroborates the evidence of the "British Columbia's" officers I accept their contention that the channel had become blocked by the boom. It was urged that even so, the "British Columbia" was in fault for not having slackened her pace, or stopped, or gone to the westward of the bell buoy, and I was at one time impressed by this submission, and for that reason have given this matter much attention, with the result that having regard to the condition of affairs that really existed, and that which the "Erin" led the "British Columbia" to believe existed, no blame can be attributed to her. If the boom light had been of such a description and so situated, or if the vertical lights had been of such a description that it or they conveyed a reasonable intimation to the "British Columbia" of the true state of affairs, then I should have found that she had negligently contributed to the collision, but as the matter stands I am forced to the conclusion that she was misled as to the nature and length of the tow, and also that the channel was, unknown to her, improperly and dangerously blocked against her. The point is that the officers of the "British Columbia" were never placed in the position of being compelled to consider the taking of any other steps than those they did take on the facts as they were unfortunately made to appear to them. I can only reach the conclusion that this collision was occasioned by the "Erin's" negligence in four particulars, viz.: (1) showing misleading lights (cf. *The Devonian*);¹ (2) too long a tow; (3) insufficient lights on the boom; and (4) losing control of the boom and blocking the channel, as to which this case is stronger against her than that of the "*Athabasca*;"² wherein that vessel was held justified in breaking through a raft 1,200 feet long, in daylight, in the River Ste. Marie. Some apt cases on this question of the duties and responsibilities attendant upon the towing of booms, rafts and low lying craft, are: the "*Alicia A. Washburn*;"³ The "*John M. Hay*,"⁴ The "*Gladiator*;"⁵ *Consolidation Coal Co. v. The "Admiral Schley*;"⁶

¹ (1901), P. 221.² (1890) 45 Fed. 651.³ (1884) 19 Fed. 788.⁴ (1892) 52 Fed. 882.⁵ (1897) 79 Fed. 445.⁶ (1902) 115 Fed. 378.

*The "Patience;"*¹ *N.Y.O. & W. R. v. Cornell Steamboat Co.;*² *Harb. Commrs. of Montreal v. The "Universe."*³

As to the light that was carried on this boom, I have decided only that it was insufficient and have said nothing as to the number of lights that should have been carried on it, or on booms or rafts of varying lengths in these waters, because that is not a matter for me to decide, but is one to be brought to the attention of the Federal Government by those interested, and this case shows the importance, and indeed urgency of the matter, not only for the benefit of mariners, shipowners and lumbermen, but for the protection of the travelling public.

Judgment for defendant.

Solicitor for plaintiff: *Craig.*

Solicitor for defendant: *W. B. A. Ritchie, K.C.*

¹ (1908) 167 Fed. 855.

² (1911) 193 Fed. 380.

³ (1906) 10 Can. Ex. 352.

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