

BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN:

WILLIAM ROBERTSON PLAINTIFF;

AND

THE OWNERS OF THE SHIP *MAPLE* } DEFENDANTS.
PRINCE AND OLAF NELSON }

1955
Apr. 29 & 30
May 2
May 26

Shipping—Collision—National Harbour Regulation No. 35(3)—Failure to place a light as required by Regulation 35(3)—No contributory negligence.

In an action arising out of a collision in Vancouver Harbour between the *Sarawak II* and defendant the Court found that defendant's negligence was the sole cause of the collision.

Held: That the failure of defendant to keep a proper look-out was negligence on its part.

2. That there was no contributory negligence on the part of the plaintiff since defendant had failed to comply with National Harbour Board Regulation No. 35(3) governing the placing of navigation lights.

ACTION for damages for loss of plaintiff's vessel.

The action was tried before the Honourable Mr. Justice Sidney Smith, District Judge in Admiralty for the British Columbia Admiralty District, at Vancouver.

C. C. I. Merritt for plaintiff.

John I. Bird for defendant.

Glen McDonald for Master of the *Maple Prince*.

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The facts and questions of law raised are stated in the reasons for judgment.

SIDNEY SMITH D.J.A. now (May 26, 1955) delivered the following judgment:

This case concerns a collision in Vancouver Harbour between the plaintiff's seine fishing vessel, the *Sarawak II* and the railway car barge *York No. 4* which, with car barge *York No. 5* was being towed alongside the tug *Maple Prince*, on March 25, 1953. I am glad to be able to say that I thought all witnesses dealt fairly with the Court; and while I am unable to accept the whole of their evidence, I regard any discrepancy as being due to dim recollection of incidents happening over two years ago. In saying this I do not overlook that some memoranda of evidence were no doubt taken shortly after.

About 4.30 that morning, in darkness, and in rainy, cloudy weather, the vessels left their respective wharves:— the *Sarawak II*, left the National Harbour Board's fishing dock; the *Maple Prince*, the Great Northern Pier. The collision followed just after. But while the former was running free on a voyage to Victoria and thence to the fishing grounds on the west coast, the *Maple Prince* had in tow the two barges. These were made fast "end on" to each other, the No. 4 being the leading barge. The tug was secured to the after end of barge No. 5, and had that barge on her starboard side. The speeds given were merely estimates, but for what they are worth were stated as being 2 knots for the *Maple Prince* and 4 to 5 knots for the *Sarawak II*.

The wharves in question are situated on the south side of the harbour and their head-line runs roughly east and west. The tug was bound in a north-easterly direction and therefore had the line of wharves on her starboard side with the two barges between her and the wharves. This is of paramount importance in the case, because owing to the height of the railway cars on the barges the tug lights were completely hidden from any vessel approaching the unit from its starboard side. And it was thus with the *Sarawak II*. Both fishing vessel and tug carried the regulation navigation lights. The crux of the controversy is whether the barge *York No. 4*, as claimed, exhibited, on the fore starboard

corner of *York No. 4* or at all, the white light required by National Harbour Regulation No. 35(3) which reads as follows:

(3) Every vessel being towed and lashed alongside the towing vessel shall—

- (a) when the view from the wheelhouse of the towing vessel is obstructed by the tow, carry a lookout man on her outboard side;
- (b) between sunset and sunrise, display a white light on her outboard side.

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Robertson, the Master and owner of the *Sarawak II*, left the Great Northern Pier and had nothing to do but get on his course westerly for the First Narrows Bridge and keep a good look-out. His mate was occupied astern putting things ship-shape. On the other hand, the Master of the *Maple Prince* had much to do before he could set his course for the Second Narrows Bridge and his destination up Burrard Inlet. The fish dock lies about 300 feet to the east of the Great Northern Pier and so these courses were crossing, the tug being the give-way ship. Her Master had to attend to the coupling of his two barges "end on"; he had to manoeuvre away from the dock; he had to stay on his two barges and give instructions by whistle to the engineer who was then in the wheelhouse performing the double function of engineer (the tug had wheel-house control) and helmsman; and he had to check by a neighbouring lighted wharf, the course of his vessel to make sure there was no undue deviation of the compass caused by the railway cars on the barges. The third man on duty was the deck-hand and he was occupied with the coupling-up of the barges.

Just after having straightened out on his first course to the eastward, the Master of the *Maple Prince* rounding the port forward corner of barge No. 4 saw ahead the stern of the *Sarawak II* 20 feet away from the starboard forward corner of the barge and heading for that corner. Collision was then inevitable. As a signal to his tug he blew three blasts—one to stop, the other two to go full astern. Before way was lost the collision happened. By an unfortunate circumstance gasoline caught fire on the fishing vessel and she was almost immediately devoured in flames. The two men onboard were rescued by those on the barge.

It is plain that the *Maple Prince* was not keeping a good look-out, or indeed any look-out at all on the unit's starboard side. I think those on board, with all the other duties

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they had on hand, simply forgot there might be other vessels in the vicinity though all knew traffic was to be expected. But she pleads that the *Sarawak II* was guilty of contributory negligence in that she too failed to keep a good lookout. I have given this submission my prolonged and anxious consideration. In the end I have concluded that it is unwarranted. I was impressed by the straightforward manner in which the plaintiff gave his evidence. I think the light on barge *York No. 4* was not so placed on the deck that it could be seen by him. There was conflicting evidence on the exact position of this light and whether it had been moved by the Master or deck-hand. Whatever its exact position I am of opinion that it could not be seen at the crucial time by the *Sarawak II* and that no blame can be attached to that vessel. As I have pointed out, she could not see the navigation lights of the tug *Maple Prince* because these were obscured by the bulk of the box-cars carried on the barges being towed alongside. With no light visible it was too dark to see the unit. Much was made of Robertson looking at the tachometer. But this was only a passing glance and without significance. He concedes there would have been no collision had the white light required by Regulation 35(3) above been properly displayed. The plaintiff applied to amend the answer to question 9 of his Preliminary Act by inserting "40 feet" instead of "25 yards". In the circumstances I grant this. He had some criticisms of the defendants' Act but I need not deal with these.

I find therefore for the plaintiff. The Master of the tug was quite properly joined as a co-defendant. There will be judgment against both defendants. Damages will be ascertained by the learned Registrar.

Judgment accordingly.
