

NOVA SCOTIA ADMIRALTY DISTRICT.

ALEXANDER RUDOLPH, FREDERICK W. RUDOLPH, JACOB RUDOLPH, JAMES C. RUDOLPH, WELSFORD P. RUDOLPH, GEORGE E. FRANCKLYN AND JAMES MORROW..... } PLAINTIFFS;

1906
May 16.

AGAINST

THE STEAMSHIP *ARRANMORE*.....DEFENDANT.

Maritime law—Shipping—Collision—Vessel changing course in order to avoid collision—Liability.

When a collision is inevitable, the vessel not in fault is justified in changing her proper course with the object of avoiding, or lessening the effect of, the collision.

ACTION for damages for collision in Halifax Harbour.

The facts of the case are sufficiently stated in the report of the nautical assessor and the reasons for judgment.

April 10th and 24th, 1906.

The case was heard before the Local Judge for the Nova Scotia Admiralty District.

W. B. A. Ritchie, K.C., for plaintiffs;

A. Drysdale, K.C. and *H. McInnes* for defendant.

At the trial the Local Judge was assisted by Commander E. B. Tingling, Nautical Assessor.

The nautical assessor's report to the court is as follows :—

“After carefully considering the evidence given by various witnesses, also the arguments used by counsel relating to the collision between *S. S. Arranmore* and the schooner *Alexander Rudolph* in Halifax Harbour, on April 2nd, 1906, I beg to state that in my opinion the loss of

1906
 RUDOLPH
 v.
 STEAMSHIP
 ARRANMORE.
 Statement
 of Facts.

schooner and cargo rests entirely on the *Arranmore*. The reasons for this finding are based on the fact that the *Arranmore*, by the evidence of Captain Couillard, (which is very plain and straightforward) saw a green light about three points on the port bow (exonerating the schooner from not complying with Article 10 as the *Arranmore* was not an overtaking vessel). On seeing the light, although the *Arranmore's* helm was starboarded to allow her to pass astern of the schooner, thereby bringing her a little on the *Arranmore's* starboard bow, yet by meeting her with port helm and then giving her port helm he acted unwisely, thus bringing about the collision. Stopping the *Arranmore's* engines to prevent going too far to westward when he altered his course was correct, but the fact of his placing the engines full speed astern within such a short period of stopping shows that he found himself so close to the schooner that he apprehended danger of a collision. Doubtless, by rule 21, the nongiving-away-vessel has to keep her course, yet there are occasions when a vessel finding herself in imminent danger has to depart from this rule. (See Article 27). In this case the schooner cannot be held in default for putting her helm down and coming into the wind, as although she did not escape the collision, yet the fact of her receiving the blow on the port side of her stern shows that had she kept her course the blow would have been delivered on her starboard side—a point entailing greater danger for the saving of the crew.

One part of the evidence endeavours to show that the *Alexander Rudolph* was filling on the starboard tack and had acquired stern way. The evidence to the contrary of this must be accepted, as a heavenly laden vessel would carry headway for a considerable distance whilst in stays, and if on starboard tack would be headed somewhere W. by N., bringing her port side to the *Arranmore's* bow.

Previous to the new edition of the rules and regulations for the prevention of collisions it was optional for vessels to use sound signals when in sight of one another, but the amendment of 1896 makes this rule compulsory. The *Arranmore* ought to have sounded two (2) blasts of her whistle and then abided by the same. Halifax does not come under the heading of a narrow water. Nowhere, except passing George's Island, is the channel less than half a mile wide.

Not seeing the *Arranmore* reflects on the lookout kept on board the *Joseph Rudolph*, but does not materially bear on this case, as the sole cause of this disaster was the improper use of port helm on board the *Arranmore*."

MACDONALD, L. J. now (May 16, 1906) delivered judgment.

This is an action tried before me in the Admiralty Court at Halifax, in April last, in which the plaintiff seeks to recover compensation from the steamer *Arranmore*, and owners, for damages and loss by collision alleged to be caused by the negligence and default of the master and crew of the *Arranmore*. The collision took place in the Harbour of Halifax on the night of the first of April, 1906, when the plaintiff's schooner *Alexander Rudolph* was sunk by the *Arranmore*. The night, according to the evidence, was clear and fine, and the respective vessels were in sight of each other while going up the harbour, and until the time of the collision. I had the benefit of the assistance of Captain Tingling, R.N., on the trial, as an assessor, and he has returned his report to me in the case to be filed with the minutes. It will be seen from the assessor's statement, and it appears clearly from the evidence in the cause, that the question turns entirely on the propriety of the handling of the respective vessels, immediately before and resulting in the collision. Captain Tingling, on these purely technical

1906
 RUDOLPH
 v.
 STEAMSHIP
 ARRANMORE.
 ———
 Reasons for
 Judgment.
 ———

1906
RUDOLPH
v.
STEAMSHIP
ARRANMORE.
**Reasons for
Judgment.**

points, gives the reasons for the conclusion at which he has arrived, that the *Arranmore* is solely to blame for the collision. In the opinion arrived at by the assessor I concur, and there will be judgment for the plaintiff with costs. The damages will be assessed by the registrar and merchants.

*Judgment accordingly.**

Solicitor for plaintiff: *W. H. Fulton.*

Solicitor for defendant: *H. C. Borden.*

* Affirmed on appeal to the Supreme Court of Canada. See 38, S. C. R. 176.