

1924
 Dec. 15.

BRITISH COLUMBIA ADMIRALTY DISTRICT

THE WM. DONOVAN STEAMSHIP }
 COMPANY } PLAINTIFF;

AGAINST

THE SHIP *HELEN* DEFENDANT.

Shipping—Collision—Narrow channel—Apprehension of danger.

The *D.* and the *H.* were both going out to sea, down the north channel of the Chehalis river, the *D.* preceding. When the *D.* was between 600-700 yards ahead, the *H.* going at 8 knots over ground slightly faster than the *D.* she signalled her intention to pass to port, which was answered by the *D.* The *H.* had not "passed" the *D.* at any time before collision, though 45 minutes elapsed between her signal and the collision, though she could have done so if she chose. Both were on the wrong side of the channel, viz., the south side, (Art. 25). At buoy 6, they were practically abreast, running parallel courses with no danger of "crowding," the channel being here 2,200 feet wide, but quickly narrowing, being only 1,200 feet, $\frac{1}{4}$ of a mile away. The weather had become "misty," and from here both made for the same point to clear No. 4 on the north, and they came into collision almost immediately before said buoy. Each blames the other for bearing down upon her.

Held: On the facts, that the collision herein was due to the unseamanlike conduct of both vessels in misconceiving, instead of promptly appreciating the dangerous position that had come upon them when abreast and about to enter a quickly narrowing channel, but primarily to both being on the wrong side of the channel, and that both vessels were equally to blame.

ACTION for damages by the owners of the *Wm. Donovan* arising out of a collision between the *Wm. Donovan* and the ship *Helen*.

Vancouver, August 20, 21, and 22, 1924.

Action now tried before the Honourable Mr. Justice Martin L.J.A.

E. C. Mayers for the plaintiff.

W. M. Griffin and *Sydney Smith* for the ship *Helen*.

The facts are stated in the reasons for judgment.

MARTIN L.J.A., now, this 15th day of December, 1924, delivered judgment.

This is an action for damages brought by the owners of the U.S. motorship *Wm. Donovan* (length 243 feet twin screw, Malmgren, Master), against the Norwegian SS. *Helen* (length 413 feet, Ommunsden, Master), arising out of a collision between the two vessels near Point Chehalis

Gray's Harbour, state of Washington, U.S.A., on the 10th of April last about 5.15 in the afternoon.

It appears that both vessels were going down the north channel of the Chehalis river out to sea, the *Donovan* preceding and at about 4.15 the *Helen* gave the proper signal to the *Donovan* then about 600-700 yards ahead, that she intended to pass her on the port bow, which signal was properly responded to, and the *Helen*, which was going at a speed of about 8 knots over the ground, slightly faster than the *Donovan*, did overtake the *Donovan* at No. 2 red buoy upon rounding the spit, but the exact position of the vessel then is so much in dispute, though not very material, that all I am satisfied of is that the *Helen* at most had not in the meaning of Art. 18 "passed" the *Donovan* at any time before the collision, despite the fact that she had given the passing signal about 45 minutes before, and could have done so if she chose, which is one of the two outstanding and material peculiarities of this case, the other being that for some unexplained reason both ships were on the wrong side of the narrow channel, i.e., the south instead of the north as required by Art. 25 (Vide *Bryce v. Canadian Pacific Ry. Co.* (1), and although neither of the ships attacked the other on this breach of the regulations, during the course of the trial, probably because it was mutual, yet it has a very important bearing upon the solution of the difficult question which has arisen.

At the time the vessels were at No. 6 red buoy their position was that they were practically abreast, the *Helen* being within 40-50 feet of the buoy and the *Donovan* about 300 feet further out in the channel and running on courses practically parallel, and that situation was beyond question, without danger to either ship. Up to that time no "crowding" had occurred on either side and none was even complained of. But there then arose the apprehension of danger because the channel at a short distance ahead, about $\frac{3}{4}$ of a mile, at No. 3 Can buoy, became greatly contracted narrowing down to 1,200 feet from 2,200 at No. 6 and so continuing till No. 4 buoy (a $1\frac{1}{4}$ m. from No. 6) and greater caution would have to be observed, emphasized by the fact that the weather had become "misty" as the defendant

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(1) [1909] 13 B.C.R. 96 & 446; 15 B.C.R. 510; 13 Ex. C.R. 394.

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says, or "hazy with rain" according to plaintiff, in their respective preliminary acts, to such an extent that the *Donovan's* officers assert that they could not see No. 4 buoy as she passed No. 6 buoy, and she had on account of the haze, been on a course S.W. by W. $\frac{1}{2}$ W. after passing Can buoy No. 5, which was altered to W.S.W. about $\frac{1}{3}$ of a mile after passing No. 6, when No. 4 was at least clearly seen, which course, if laid, would bring her clear to the north of No. 4 and of the *Helen*; but from the *Helen*, in a more southerly position, her officers assert that No. 4 could be plainly seen from No. 6, and so their ship was held persistently steady on a course for that buoy but so as to clear it on her port side.

It will be thus seen that both vessels being on the wrong side of the rapidly narrowing channel were admittedly heading for the same point the situation being complicated by the fact that while the *Helen* had assumed the obligation of a passing ship she was not discharging it, and was pursuing a course which, if both ships maintained their speed, would bring her into dangerous proximity at least to the *Donovan* if they both continued to keep to the wrong side of the channel, though by Art. 24, it was her (the *Helen's*) duty to "keep out of the way of the overtaken vessel." On the other hand, the *Donovan* could not in the circumstances of the constantly varying courses of the narrow channel properly insist on keeping her original "course" as well as her speed (which latter she was doing), within the true meaning of Art. 21 as regards the other technically, though not actually a "passing vessel," under Art. 18, Rule VIII even though she was placed in a position of uncertainty by her strange conduct; the truth is that by a common violation of Art. 25 the ships had created a situation not contemplated for or provided for by the articles.

Each side attributes the collision to the other ship bearing down upon her suddenly almost immediately before No. 4 buoy was reached, the collision occurring almost abreast of it and about 280-350 feet to the north, and, after a careful study of the evidence I find it impossible to attempt to reconcile the conflicting body of testimony given in support of the respective contentions or to accept in entirety either of the irreconcilable accounts of what occurred. The case is a very unusual and perplexing one which has caused

me corresponding consideration with the result that the only conclusion that I can arrive at, satisfactory to myself at least, is that the collision was caused by the unseaman-like conduct of both vessels is misconceiving instead of promptly appreciating the dangerous position that had quickly come upon them at No. 6 buoy, primarily caused by their being on the wrong side of the channel, and the other circumstance above mentioned, and in not having promptly taken proper steps to avoid such danger which there was ample time for both parties to take, by *e.g.*, slackening speed and sheering off adequately or otherwise as the circumstances might require, and it is incomprehensible to me why they were not so taken, instead of continuing to blunder along towards obvious danger till too late for extrication, the belated attempts to accomplish which, while not then open to criticism, unfortunately came too late. In such circumstances the only appropriate decree to make is that both vessels are equally in fault and consequently should bear the damage thereby occasioned in like proportion, as well as the costs of this action.

Judgment accordingly.

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