

ON APPEAL FROM BRITISH COLUMBIA
ADMIRALTY DISTRICT.

THE UNION STEAMSHIP CO.

v.

THE "WAKENA."

1917
Oct. 31*Collision—Rule of road—Narrow channel—Fog.*

Where a vessel, finding herself on the wrong side of a narrow channel during a fog, improperly steers out of her course to get to the proper side of the channel in order to extricate herself from a dangerous position, she is liable for a collision with another ship which is properly on her course.

APPEAL from the judgment of Martin, L. J., of the British Columbia Admiralty District, dismissing an action for damages caused by a collision.

The appeal was heard before the Honourable Mr. Justice Audette on July 30, 1917.

F. E. Meredith, K.C., and *A. R. Holden*, K.C., for appellant; *Aimé Geoffrion*, K.C., for respondent.

The judgment appealed from is as follows:—

MARTIN, L. J. (March 22, 1917). This is an action arising out of the collision which took place shortly after midnight on February 24, 1916, between the Steamship "Venture," 579 registered tons (John Park, master) and the gasoline barge "Wakena," 316 registered tons (John Anderson, master) near the entrance to Burrard Inlet, in the First Narrows, inside Prospect Bluff. The night was calm with a dense fog and the tide on the ebb (for nearly 2 hours) at about $1\frac{1}{2}$ knots. The result of the collision was that considerable damage was done to the port bow of the "Venture" which was struck by the stem of the "Wakena," but the damage to the latter was of so slight a nature that it was not the subject of address to me by counsel during the argument, and, therefore, I am entitled to disregard it.

The only fault attributed to the "Wakena" is that she was out of her course and steering across the Narrows: the allegation that she had also violated art. 19 was withdrawn.

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As against the "Venture" it is alleged that she did not enter the Narrows with caution, or so navigate after entry thereof, and that she ran at an excessive speed, and did not take proper efforts to avoid collision after hearing the "Wakena's" fog-signals. It is conceded that neither ship is at fault as regards fog-signals, lights, or lookout, or for anything that occurred after they came in sight.

I shall first deal with the charge against the "Wakena" because if that is not sustained it will be unnecessary to consider those against the "Venture."

By some misadventure in the fog the "Wakena," after passing the light at Prospect Bluff, in endeavouring to pick up the fog-bell at Brockton Point on a supposed E. by S. course, found herself at midnight over on the north shore of the Narrows, near the water pipe line there, close to the dolphins, and touching the ground. It has been held by me and approved by their Lordships of the Privy Council that "the First Narrows from Prospect Point to Brockton Point (a distance of approximately one and a quarter sea miles) must be deemed to be a narrow channel within the meaning of said art, 25." *Bryce v. Canadian Pacific Ry. Co.*¹ Consequently, the "Wakena" was on the wrong side of the channel and directly in the track of any outgoing vessels. Under these circumstances the master determined to get over to the right (south) side of mid-channel as quickly as possible and then proceed on her proper course towards Brockton Point, and after manœuvring about a few minutes, so as to get clear from her dangerous position on the beach, she proceeded cautiously to cross over to her proper side, and in so doing crawled, literally, through the fog at a dead slow speed—just sufficient to keep steerage way on her, having regard to the tide. (Vide *The Zadok*²). I do not think that, from the time she started from the beach at a stand-still until she first heard the "Venture's" signal on her starboard bow, she was going more than a knot an hour, if so much. This first signal gave no intimation of immediate danger to her master, and the second one, which did indicate that the vessels were coming closer, was followed up so instantly by the sighting of the "Ven-

¹ 13 B.C.R. 96, at 103; 15 B.C.R. 510, at 514.

² (1883), 9 P.D. 114.

ture's" lights that he had only time to do what he did—viz: reverse his engines. The engineer of the "Wakena," who was a satisfactory witness, explained that with her flat bottom and spoon shaped bow she is very easily affected by wind or tide when light and on that occasion she was down by the stern, and I have no doubt that "so far as the circumstances of the case admitted," art. 16, she was navigated with due caution. It was not, indeed, alleged against her that there was any lack of caution in the method of her navigation other than the fact that she should not have crossed the channel. This is recognised by the master of the "Venture" (which was undoubtedly proceeding at a much faster rate than the "Wakena") when he said in his examination: "We were going as slow "as we could, and with the tide running out if we had "stopped altogether we would have gone ashore with the "tide running. We had to go slow, and keep our steering "way on her and in a proper position in the channel."

In this attempt to get back as soon as possible into her proper side of the fairway the "Wakena" within about 2 minutes from the time she left the beach (the engineer says 1½ minutes before he got the reverse signal) came into sudden collision with the "Venture," while both vessels were sounding the proper signals, at such a short distance that though the engines of both ships were reversed after their lights were seen, the impact could not be averted.

It is urged by the plaintiff's counsel that the "Wakena" had no right to thus cross the Narrows back into her proper channel on the starboard side of the fairway (as to which see *The King v. The Despatch*,¹ and that she should have taken a diagonal inbound course, approximately E.S.E., from where she grounded, to Brockton Point. But this would also involve her crossing the channel, at a long angle, and in the attempt to do so she would be proceeding for at least half a nautical mile on the wrong side of the channel, before she could get into her proper water, and for this long distance she would not only be in a position of danger herself but to other vessels, whereas by crossing at once to the south side she would get into her proper water very quickly because the width of the fairway at the water pipe

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¹ Ante p. 319, 28 D.L.R. 42, 22 B.C.R. 496.

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line is only about a cable and a quarter and she would only have half that distance to go in a direct line to be in her proper position. As the Privy Council said in the *Bryce* case (p. 514) speaking of a collision in the same channel, which has frequently been before this Court (*cf.* also *The "Charmer v. The "Bermuda,"*)¹ "the configuration of the locality and the circumstances with regard to tide, etc., have to be considered," and I have come to the conclusion that "the course taken by the "Wakena" was justified by the circumstances." She was in a dangerous position and it was her duty to extricate herself from it in a manner which would cause as little danger to other vessels as was possible and I feel myself quite unable to say, after very careful reflection, that in so doing her master did not conduct himself as a prudent navigator. The position taken by the plaintiffs' counsel is that judging by the signals the "Venture" was entitled to assume that the approaching vessel on her port bow was an outbound one on the north side of the fairway, and reliance was placed upon the case of "*The Saragossa*,"² but that collision took place in the North Sea when the weather was "fine and clear and moonlight," and the principal point of the case at bar is that events were happening in a tideway in a narrow channel in a dense fog and in such circumstances those in charge of a vessel are not entitled to make and act upon assumptions which would be otherwise justifiable. The point was precisely dealt with by Mr. Justice Gorell Barnes in the "*Germanic*,"³ wherein he laid it down as follows:—

"It was argued by counsel for the "Germanic" that taking "the precautions which were adopted with regard to lookout "and with a speed of 7 knots through the water and only "5 over the ground, she was not going too fast under the "circumstances, and that those on board of her were entitled "to expect to meet nothing if they were on the right side "of the channel. But I must observe that the speed through "the water is that which has to be considered with regard to "vessels in motion, and that the argument as to not expect- "ing to meet anything, if pressed to its extreme, would justify

¹ 15 B.C.R. 506.

² (1896), *Smith's Leading Collision Cases*, 104.

³ (1892), 7 *Asp. M.C.* 289.

"the vessel in going at full speed. Moreover, it is fallacious, "for in addition to vessels which may possibly be on the "wrong side of the channel, owing to the difficulty of keeping "on the right side in thick weather, there may be sailing "vessels working up and crossing the channel, and vessels at "anchor, or being overtaken, any of which might be in the "way of the vessel."

In the case of "*The Tartar*" v. "*The Charmer*"¹ I have cited some leading authorities upon the uncertainty of sounds in a fog, and in my opinion the unfounded assumption by the "Venture" of the course of the "Wakena" is the real cause of the collision. In this view of the case it becomes unnecessary to consider the charges brought against the "Venture" because in the special circumstances of the case I hold the "Wakena" is not to blame and, therefore, the action should be dismissed with costs.

The appeal was heard before the Honourable Mr. Justice Audette on July 30th, 1917.

AUDETTE, J. (October 31, 1917) delivered judgment.

This is an appeal from the judgment of the Local Judge of the British Columbia Admiralty District pronounced on March 22, 1917.

I may say that I approach the determination of this case with some diffidence, inasmuch as it is an appeal from the decision of a judge whose learning and experience in such cases are everywhere acknowledged. To state this much is to recognize the wisdom and justice of Lord Langdale's observation in *Ward v. Painter*,² viz.—

"A solemn decision of a competent judge is by no means to be disregarded, and I ought not to overrule it without being clearly satisfied in my own mind that the decision is erroneous."

In reaching my conclusions upon the facts in this case I have had the assistance of Captain Demers, a gentleman of high standing and of experience in nautical matters, who sat with me as assessor, and I am pleased to know that his views as such assessor are in accord with my findings.

This is an action arising out of a collision which took place shortly after midnight, on the morning of February

¹ (1907), reported in Mayers Adm. Law, 536, 538.

² (1839), 2 Beav. 85.

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25, 1916, viz., 12.08 a.m., between the steamship "Venture" (579 registered tons, 182 ft. length, 32 ft. beam) and the gasoline barge "Wakena" (316 registered tons, 116.5 ft. length, 25.7 ft. beam) in Burrard Inlet, in the Province of British Columbia, and near the first narrows, inside of Prospect Bluff.

Both vessels were inward bound for Vancouver harbour.

It is common ground that the collision happened in a narrow channel: *The King v. The Despatch*,¹ and that the weather was perfectly calm but foggy at the time of the collision.

From the testimony of Captain Park, Master of the "Venture," it would appear that at about 11.15 o'clock on the evening of February 24, 1916, the "Venture" came past Point Atkinson, about 5 miles west of the Narrows. After passing Point Atkinson the captain states that it cleared up nicely and he could see "clear up to Prospect Bluff," where he observed a vessel going into the Narrows. The "Venture" was then going full speed, which was maintained until about a mile from the Narrows, when the fog shut down thick, and she then went on a "slow" bell. He kept his ship at "slow" for a while, stopped "and one thing and another," coming to Prospect Bluff, until he got into a good position off the light-house, and before coming there he put on half-speed owing to the tide running out. When well inside of Prospect Bluff he put her on slow-speed again, while his fog-whistle was kept blowing at proper intervals. Before going into the Narrows, at Prospect Bluff, he heard a gasoline whistle, from the "Wakena," right over on the north Vancouver side and this whistle was kept on being sounded by her. This fog whistle was on the port bow of the "Venture" and kept broadening as they were coming in. When the "Venture" came up to the water-works, the boat that had been blowing over on the north Vancouver side seemed to those on board the "Venture" to be coming closer; and all of a sudden her mast-head light came out on the port bow of the "Venture," and immediately afterwards the captain saw her green side-light only about 60 ft. away from the "Venture." Then he put his helm hard aport, both engines full steam astern,

¹ Ante, p. 319, 28 D.L.R. 42; 22 B.C.R. 496.

when, he says, the "Wakena" struck her abreast of the fore-hatch, head on, which swung the head of his ship in towards the south shore.

The lights on board the "Venture" were in perfect order. She had two men on the look-out, and the first officer was down on the fore-deck, while the captain stood on the bridge by the telegraph doing the signalling. Moreover, there was a man at the wheel. She was proceeding at a "moderate speed" allowing her to keep her headway in a falling tide: *The Campania*.¹

Now, the captain of the "Wakena" states that when he took the Narrows he picked up the light on Prospect Bluff, the fog having not set very thick at the time; and that he ran his course right for Brockton Point by his compass, leaving Prospect at full speed. After running her thus for about ten minutes, he slowed her down to half speed with the object of picking up the bell at Brockton. The fog was pretty thick by that time. He ran her at half-speed for a short while and then ran full speed for five minutes, slowed down again, ran very slow for a little while, and then stopped her. The first thing he then knew, he says, "we fetched over against the dolphins on the north shore." He then says he backed her away from the dolphins, and that brought the *stern in shore*.

From the pilot-house of the "Wakena," where the captain was at that time, he could not, on account of the noise from her engine, hear the whistle of a steamer for any distance. When the "Wakena" thus fetched over against the dolphins on the north shore, Glasscock, the mate, who was then in bed, was called up by the captain, as he puts it, "*in a case of emergency to keep a look-out*"—it was foggy weather—"to help the master." The mate says he told the captain where he thought they were—it was not the regular place. The stern was touching bottom and her bow was headed south. The captain gave the signal to go ahead and she moved very slowly past the dolphins. Then the mate says he heard a fog-whistle, which he located on the *starboard* bow, and reported it to the captain; and before the collision he heard several short toots, he heard the whistle several

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¹ 9 Asp. M.C. 177.

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times at regular intervals before the collision took place. The "Wakena," the mate says, was moving slowly at the time of the collision, but he had no definite means of knowing how fast; and adds that from the dolphins he would have run the "Wakena" *far enough to get off from the shore, "on a falling tide, line her up in the channel,"* and that "if they had not gone so far over to the south there would have been no collision." It was not necessary to run to the southern danger line of the fairway. To these statements I will refer hereafter.

Coming back to the evidence of the captain of the "Wakena" he says, that up to the time he started to get away from the dolphins, on the north shore, he had not heard any whistle or heard any report of any whistle. That may be quite true, and yet does not displace the fact that signals were actually given which ought to have been heard either by him or by some one on board the "Wakena." As far as the captain is concerned, we have it in evidence that, on account of the noise of the engine, he could not hear the whistle when he was in the wheel-house; and if the signals from the "Venture" were not heard on the "Wakena," through the want of a proper look-out, it cannot be invoked as an excuse. Now, it was at the time he fetched his vessel on the north shore, near the dolphins, that he called out for the mate whose summary version we have above. The captain says, after they left the dolphins the mate reported to me a boat was *coming in the Narrows*, and he added, "That is some boat coming in, look out." Then the captain stopped and listened, put his head out of the pilot house to enable him to hear, "to try and locate that," and then he heard the whistle whereby he could tell she was coming.

It is well to note here that the evidence discloses that the first whistle he heard was the one reported by the mate when they were leaving the dolphins. The evidence does not shew whether or not there was any look-out on the fore-deck before the mate came up; and if no fog-whistle had been reported to the captain, who was inside the pilot-house where he could not hear, it must have been because there was no look-out, or if there was one he was manifestly not attending to his duty.

In a moment the headlights of each ship suddenly loomed in the fog, the vessels being about 60 ft. away from one another. Danger signals were given and both vessels reversed full-speed astern and the collision took place—the “Wakena” coming across the Narrows with her bow at a slight angle to the east, striking the “Venture” a glancing blow, but end on.

Speaking of the compass on board the “Wakena” the captain says it was not magnetic, and he could not say when it had been last corrected. He was further asked in that respect and answered, as follows:—

Q. Have you any idea how much out your compass was?

A. Why in some courses is *probably* a quarter of a point, and another course is half a point.

Q. And you ventured to come into the Narrows on a foggy night, where you can't pick up the echo, and you have a compass that you don't know how far it is out, on that course?

A. That is because you see in a few trips if you steer the same course, I had my course, steered the same course that she always goes in. She goes in on the E. by S.

Now it must be found that the “Venture,” properly equipped, travelling by her compass entered the narrow channel and pursued her course therein with proper seamanship; that she was going at slow speed at the time of the accident, going through the water at a speed about equal to the pace of a man walking leisurely, at $2\frac{1}{2}$ to 3 knots. She was going in against an ebb tide estimated at $1\frac{1}{2}$ to 2 knots by witness Tollefsen. and at $1\frac{1}{2}$ knots by Captain Park. I therefore find that the “Venture” complied with Art. 16, and was going at a “moderate speed,” and that “as far as the circumstances of the case admit” (having to travel against a tide which would have thrown the vessel to a close shore had he not kept her under way) she was manoeuvring with proper seamanship. She was travelling, being an in-going vessel, on the starboard side of the narrow channel, on the southern danger line of the fairway, as she should do, and that she had every reason to believe the signals given by the “Wakena” on the north side of this narrow channel were from an outgoing vessel on her proper course.

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Now let us examine the course of the "Wakena" after she found herself on the wrong side of the channel. Did she proceed properly to extricate herself from that position? That brings us to an inquiry into the cause of the collision, and the negligence or fault from which the collision resulted.

It was held in *The "Cape Breton,"*¹ that if a steamer is following a course which may possibly appear unusual to other steamers, although she is justified by special reasons, she does so at her own risk and *ought to signal her intentions, for the others have the right to assume that she will conform her course to the ordinary rules.* See also *The "Lancashire."*²

Counsel for the defendant contends that the "Wakena" had a right to be on the north shore—that may be true in the abstract; but as an in-going vessel in a narrow channel (Art. 25) she must be held to blame for the very grave fault of navigating on the wrong side of the channel, 37 *American Law Review*, 865. All of that, indeed, seems to be but one link in the long chain of mismanagement on board of the "Wakena" in the course followed by her before the accident. She had an unreliable compass, and the captain thought that because he had gone up the Narrows before in clear weather, he could still do so in the fog with such a compass and moreover he does not impress me as if he really did understand his compass. Had he a proper compass he did not use it properly; had he an unreliable compass he was negligent in navigating with it under such circumstances. From the time he went by Prospect Bluff on the south shore to the time he fetched up aground on the north shore, his vessel seems to have gone all over the points of the compass. Had the captain fallen asleep at the wheel? Then the first whistle he says he heard from the "Venture" is the one noted by the mate who was called on deck when the "Wakena" was on the north shore among the dolphins. From the reading of the evidence the view has impressed itself upon me that Captain Anderson did not know much about the deviation of his compass, which seems to be the principal factor in placing his vessel next to the dolphins on the wrong side of the channel, and his testi-

¹ 9 Can. Ex. 67 at 116. and 36 Can. S.C.R. 564 at 579, [1907] A.C. 112.

² 2 Asp. M.C. 202.

mony does not convey the impression that he was a reliable navigator.

While the "Venture" had a right to assume with a fog-whistle on her port bow and broadening there, that such whistle was from a vessel going out of the Narrows on the north shore, her proper side of the channel, the "Wakena" had warning from the blasts of the "Venture" that the latter was coming up on the south shore. The "Wakena" knew she was off her course and she had to navigate with extra caution, and with proper signals and keep out of the path of this inbound vessel properly signalled to her as an incoming vessel.

All of these facts, coupled with the want of evidence establishing a proper look-out, although perhaps the latter did not contribute to the accident, lead to the presumption that there was also careless management of the vessel before the accident, before she fetched up aground on the north shore; and that from the time the vessel left the dolphins on the north shore, her manoeuvring was also marked with the same carelessness and want of good seamanship. Is not the management of the "Wakena" before she found herself on the north shore enlightening as to her management thereafter?

Moreover, as put by one of the nautical experts:—

A. Yes, If I heard the regular navigation whistle of a steamer, fog signal, going in or out, and the tide easy, I would go—I would consider it safe to go in, because I would look on it as only being a parallel course could be steered there in the Narrows, that is, South 74, East, or North 74 West would be the courses out and in. I would not expect any other course except in a parallel course with my own, going out or in at the Narrows.

And also:—

We expect that the vessel going either way and steering a parallel course with your own, and no other.

A nautical expert heard on behalf of the "Wakena," gives the following testimony:—

Q. Now as a navigator, coming in at the Narrows, would you be thinking for a moment that you would find a boat crossing, a steamer crossing right from the Stanley Park shore to the south? A. Oh, I wouldn't.

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Q. You would never expect that, would you? A. It would be a pretty hard thing to assume, but——

Q. A pretty rank thing to assume, wouldn't it? A. No, I wouldn't want to assume that a boat was coming "right across."

His reckless and careless manœuvring up to the time she went aground on the north shore implies a continuance of similar poor seamanship from that time on to the collision. Applying the decision in the case of the "*Cape Breton*" (*ubi supra*) she followed an unusual course—she had transgressed Art. 25—and she had at *her own risk* and with proper signals, under the circumstances, to right herself back into the fairway or middle of the channel: the "*Glengariff*."¹ The blundering navigation which took her to the north shore without proper signals did not justify her in becoming a menace to the safety of other vessels navigating these Narrows, and she did not become excused from the responsibility involved in such manœuvring because through such want of seamanship, she had lost her way for a time before she went aground on the north shore.

Therefore, the "Wakena" having found herself on the wrong side of a narrow channel, Art. 25, came within the provisions of Art. 15 (e), being "*a vessel under way unable to manœuvre*" as required by these rules, and should, under the circumstances of being on the wrong side of the channel and travelling across the channel, "*instead of the signals prescribed in sub-divisions (a) and (c)*" of Art. 15, "*at intervals of not more than 2 minutes, sound three blasts in succession, viz., one prolonged blast, followed by two short blasts.*" Now, had the "Wakena" given such signals when crossing over from north to south, the "Venture" which was under perfect management would have understood the position and would not have been misled in taking the "Wakena" for an outgoing vessel on the north side and would have guided herself accordingly.

If the contention be correct no fault should be found in the manner the "Wakena" was trying to extricate herself from a false position, she should at least have notified the other vessels navigating in the Narrows.

¹ 10 Asp. M.C. 103, [1905]. P. 106.

Then the collision took place on the southern danger line of the fairway. If the "Wakena" was leaving the north shore to come on the proper side of the channel, there was no necessity for her to follow her course right across to the other shore of the channel and, to ascertain she was there, by going aground on the south shore. When in the fairway or middle channel after leaving the north shore she should have lined up the fairway and followed a parallel course to that of the "Venture," and before endeavouring to get beyond the southern danger line of the fairway. Had she followed this reasonable course, the collision would not have taken place.

And what does the mate of the "Wakena" say, when asked what was the proper navigation to get away from the dolphins to the proper channel? He says, "We had to get back into midchannel to get on our course." A manœuvre he could very well have executed with a proper compass. Then he says: "I would run into the channel far enough to get off from the shore on a falling tide and I would line up into the channel," and the "Wakena" would not have collided with the "Venture" had she not gone so far over.

Again, from the mouth of Erasmus Johnson, a nautical expert, with an experience of 20 years running in and out of Vancouver, heard on behalf of the "Wakena," we find an actual condemnation of the latter's course. He says, he "should not think there was any difficulty after the 'Wakena' had picked up the lights at Prospect Bluff to take her course for Brockton." Then he is asked:—

Q. Well, having got over among the dolphins, supposing you were navigating her, coming from there for some reason or other—you know where the dolphins are? A. Yes.

Q. And you know the depth of the water in front of them? A. Yes, I know.

Q. Now suppose you got over there with a boat such as the "Wakena," a flat bottomed boat, and you wanted to get into Vancouver. A. Yes.

Q. In a dense fog? A. Yes.

Q. —and you started to go out? A. Yes.

Q. Your boat is stern to the shore and you are headed out in the channel, and just as you start you hear a boat

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coming in on the starboard side of the channel, as a careful navigator would it be careful navigation to run your boat straight across channel? Would you think of doing it? A. Well, I would *line her* up for her course going in.

Q. Yes, you would line her up but you wouldn't go across channel would you? A. Not if I could help it.

Q. Well, you could help it you know, there would be nothing to take you across. All you would have to do would be to run your boat out from the shore far enough to get into deep water, wouldn't it? A. Yes.

Q. And then when you got into deep water, now captain, what would you have done, hearing a boat going in, what would you have done? A. Well, I would—

Q. I want to shorten it. A. If you have got the position coming west—

THE COURT:—What? A. I would try to locate her coming in, that is by the sound of the position.

Q. You would try to locate her? A. Yes, and then steer my course for the Narrows you know, providing for the way that was running.

Mr. Macneill:—Q. You would be turned round the same direction as the approaching boat was running? A. Yes, providing she was going in.

Mr. McLellan:—Q. What did you mean, captain, by lining the boat up? A. Well, shaping my course for—suppose I was going in, you know, I would shape my course—I would line her up for Brockton Point.

Q. Yes, to get on your course? A. To get on my course, yes, that is the idea.

All of this evidence, taken from the testimony of witnesses brought in by the defendant ship goes to show that while the "Wakena" (admitting she was going slow—not against the tide but across—was leaving the north shore, where she should not be as an ingoing vessel), had no reason, if properly managed, to go right across the whole fairway to pick up her courses again; but had only with the help of her compass to get into the fairway and line up. Moreover, having heard the whistle of the "Venture" on her starboard bow (a vessel coming up on the south, from the very place towards which the "Wakena" was manœuvring) and thus being apprised of an approaching vessel (she

being herself on a wrong course) had reason to take her to be an incoming vessel on her right course, and had no excuse or justification in pursuing her own course towards such incoming vessel, and should at least have lined up in the fairway until she had ascertained from the whistle of the "Venture" that the latter had gone by. Therefore, it must be found:

1. That the "Wakena," as an ingoing vessel, was to blame for being on the wrong side of the channel.

2. Whether the captain of the "Wakena" had a reliable compass, and did not use it properly; or whether he had an unreliable compass in either case he was guilty of negligence in navigating as he did, in a narrow channel in foggy weather.

3. That, being an ingoing vessel on the wrong side of the channel, the "Wakena" became unable to navigate as required by Art. 25; she had to signal under the provisions of Art. 15 (e) her course across the channel, because otherwise the vessels navigating the Narrows had a right to assume that she would conform to the ordinary rules, and to take her for an outgoing vessel, on the north or starboard side of the channel. She had to right herself at her own risk. The "*Cape Breton*,"

4. That it was unnecessary for the "Wakena" to run across this narrow channel so far as the ordinary southern danger line thereof, a course which would perhaps have taken her aground again, but on the south shore.

5. That the captain of the "Wakena" exhibited careless seamanship in persisting in running the "Wakena" across the channel and towards the signals and whistles of an incoming vessel on her proper side of the channel, and failing to line up his own vessel, under compass, in the fairway until the whistles or blasts of the "Venture" would have carried the information that the latter had gone by, allowing the "Wakena" to then take a parallel course or to follow in the wake of the "Venture."

From mismanagement and want of proper seamanship in her course from the dolphins to the time of the collision, as above set forth, the "Wakena" became the sole cause of the accident and is solely to blame. Therefore the appeal is allowed with costs.

Appeal allowed.

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