BRITISH COLUMBIA ADMIRALTY DISTRICT.

BETWEEN :

CITY OF NEW WESTMINSTER....PLAINTIFF.

1913
Nov. 30.

AND

S. S. *MAAGEN*.....DEFENDANT.

Shipping—Collision between vessel and bridge belonging to City—Negligence—Regulations—Right to damages where obstructions are placed across navigable waters—"Railway Bridge".

Apart from any statutory regulations as to lights, those who place obstructions across navigable waters, even though lawfully authorized to do so, cannot complain if damage is done to their works by collision, brought about by the fact that a prudent navigator, proceeding with due care, was unable at a crucial moment, because of the absence of lights, to define his exact position in relation to such obstruction. *Bank* v. "*City of Seattle*" (1903), 10 B.C. 513, distinguished.

Quaere: Whether a bridge, not originally built for railway purposes, but over which rails were laid (it was not shown by whom) and used by a street railway company occasionally for construction purposes, is to be regarded as a "railway bridge" under the provisions of the Order in Council of 20th June, 1910 (Stats. Canada, 1911, p. cxii)

ACTION for damages arising out of a collision between the defendant's ship and a bridge belonging to the plaintiff corporation. The facts appear in the reasons for judgment.

The case was tried at Vancouver, B.C., on September 10th and 11th, 1912, before the Honourable Mr. Justice Martin, Local Judge for the British Columbia District.

W. G. McQuarrie, for plaintiff;

C. M. Woodworth, for the Ship.

MARTIN, L. J., now (November 30th, 1912,) delivered judgment.

1913

CITY OF NEW WESTMINSTER v. STEAMSHIP MAAGEN.

Reasons for Judgment

This is an action for damages for injury done by the steamtug *Maagen* (65 feet long; 18 foot beam) with a scow 90 x 32 feet in tow, laden with gravel, to the plaintiff's bridge commonly known as the "North Arm Bridge" connecting Twelfth Street and Lulu Island, such injury being alleged to be due to the negligent and improper navigation of the *Maagen*.

The defences set up were (1) that the bridge was placed in an improper manner across the stream so that the span and openings were not in the centre of the channel; and (2) that the bridge was not properly lighted.

With respect to the first defence it is sufficient to say that no evidence to which any weight could be attached was submitted in support of it.

With respect to the second, reliance was placed by plaintiff's counsel on the order in council of 29th of June, 1910, (Stats. Canada, 1911, cxii) establishing "Regulations to govern draw or swing bridges over navigable waters other than railway bridges", and the point is taken that this is a railway bridge and therefore excepted from the regulation requiring certain lights to be exhibited as therein specified.

There were cited the following references on the difficult question as to what is meant by a "railway bridge" in this regulation, no definition of it being given (1). The evidence here does not show that this bridge was built for railway purposes, though there were rails laid across it which have been used occasionally by the B.C. Electric Railway in running gravel cars over it for construction purposes on their suburban line. No other railway company, electric or otherwise, is shown to have made use of it, nor

(1) B. C. Ry. Act, R.S.B.C. 194, sec. 28; Stroud's Jud. Dic. 2nd ed, vol. 3, p. 1648; *Toronto Railway v. Regina* (1896) A.C. 551; Cap. 28, secs. 6 and 21 Stat. Can. 1909 Dom. Ry. Act., cap. 37 R.S.C. secs. 230-4.

is there any evidence as to who put down the rails, or of their nature. On such evidence I should hesitate to say this was a railway bridge within the meaning of the regulations, but it is not necessary to decide the point from the view I take of the matter which is, shortly, that on the evidence before me, no negligent or improper navigation has been established. The evidence of the master of the *Maagen* on this point, which has not been displaced in essentials and which was reasonable and consistent, discloses nothing on which I can place my finger and say that in this or that respect he was guilty of negligence. The night was dark and he was and had been proceeding with due care and caution, but despite that he made a slight miscalculation, very pardonable in the circumstances, of his true distance from the north abutment and was carried across by the current to the main abutment with which the scow collided. The truth is, apart from all regulations, that if there had been a light at the north abutment he would have been able to approach closer to it with safety and the accident would have been avoided. Quite apart from any statutory regulations as to lights those who place obstructions across navigable waters, even though lawfully authorized to do so, cannot complain if in the carrying out of their powers damage is done to their works by the fact that a collision occurs owing to a prudent navigator, proceeding with due care, being unable at a crucial moment, because of the absence of lights, to define his exact position in relation to such obstruction. The case of *Bank Shipping Co. v "City of Seattle"* (1) is clearly distinguishable from this one, which is really a case of inevitable accident on the part of the master.

There will be judgment in favour of the defendant.

Judgment accordingly.

(1) (1903) 10 B.C.R. 513.