

BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN :

SHERMAN ET AL.....PLAINTIFFS;

AND

THE SHIP GOOD HOPE II.....DEFENDANT.

Shipping—Collision—Both vessels to blame—Damages.

In an action for damages brought by the plaintiffs for the sinking and total loss of their ship as a result of a collision with defendant vessel the Court found both ships negligent.

Held: That defendant vessel being three-quarters to blame and plaintiffs' ship one-quarter to blame judgment would go accordingly.

ACTION for damages for loss of plaintiffs' vessel.

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

W. S. Owen, K.C. and *J. I. Bird* for plaintiffs.

Roy W. Ginn for defendant ship.

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

SIDNEY SMITH, D.J.A. now (January 12, 1950) delivered the following judgment:

This is a suit for damages brought by the plaintiffs for the sinking and total loss of their ship *Paul D* following upon collision with the defendant vessel *Good Hope II*. The area of controversy is not large due in great measure to the commendable frankness with which the master and owner of the *Good Hope II* gave his evidence.

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The *Paul D* is a fishing vessel, 20 gross tonnage, 40 feet in length, of a speed of 9 knots, and at the material time was trolling for salmon, at a speed of 1½ to 2 knots, with a crew of two, viz., the plaintiff Paul Sherman (Master and joint owner) and a deckhand named Robinson.

The *Good Hope II* is also a fishing vessel of 21 tons gross, 44 feet long, having a speed of 10 knots, and at the time of the collision was proceeding from one fishing ground to another, with all her nets on board. I find her speed then was 6 knots through the water. Due to a favourable tide her over-the-ground speed may have been somewhat more, but not to any significant extent.

The collision occurred at about 10 a.m. (summer time) on the 11th July, 1949, at the entrance to Juan de Fuca Strait, about 5 miles E.S.E. of Pachena Point. The wind was negligible, there was some westerly swell, and the weather was foggy. The vessels were on crossing courses, that of the *Good Hope II* being west, magnetic, and that of the *Paul D* being N.E. magnetic.

There was a conflict on the visibility. The master of the *Paul D* gave it as 1200 feet. The master of the *Good Hope II* at 150 feet. These figures were necessarily merely estimates, but on the evidence I find that that of the master of the *Good Hope II* (very much the more experienced mariner) was the more correct of the two. On a careful re-consideration of the evidence as a whole, I think the visibility was not more than 500 or 600 feet. An independent witness, master of another fishing vessel, the *Cape Norman* lying at a distance of six miles to the eastward, and who had discontinued fishing operations on account of the fog, stated the visibility in his position as being 150 feet. At the material times the lighthouse keeper at Pachena Point, five miles to the westward, reported "dense fog" and the lighthouse keeper of Carmanah Point, ten miles to the eastward, reported "fog". In this finding I have not overlooked the photographs taken later while the *Paul D* was under tow, but these have to be considered with caution, and do not over-weigh the other evidence.

I have no doubt that the fog was such as to call for strict observance of the Articles requiring sound signals to be given in fog. But these requirements were ignored by

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both. In like manner the elementary seamanlike precaution of keeping a lookout received scant attention from either vessel. The master of the *Paul D* was engaged in his cockpit attending to his fishing lines; his deckhand was engaged in the galley wheelhouse cleaning fishing spoons, having no order to keep a lookout and keeping none. The master of the *Good Hope II* was indeed in his wheelhouse, but at the critical time was looking up data on his charts: his two deckhands were busy mending nets in the cockpit. Fishing vessels have no special dispensation to disregard the rules. They must obey them like all other vessels or take the consequences.

Both vessels were being steered by automatic steering devices. These serve a useful purpose but they may impart a false feeling of confidence and may lessen the vigilance of the look-out. This is all the more true in small vessels and I am satisfied that they did so in the present case.

From first to last the *Good Hope II* was neglectful of her navigation. She was proceeding in fog at too great a speed: she failed to sound any fog signals; she failed to keep a proper look-out: the first thing she knew of the *Paul D* was when her stem was on the point of colliding with the *Paul D*'s starboard quarter. The *Good Hope II* cannot escape liability.

But neither can the *Paul D*. The case for her was that her master, engaged with his fishing operations in the cockpit, saw plainly the *Good Hope II* proceeding towards him on a bearing of 4 points on his starboard bow and at a speed of 8 knots or better; that had she continued her course she would have passed ahead of him, but that she swerved first to starboard, then to port; that this made him apprehensive and that he dashed into the wheelhouse, sounded his whistle (not heard by the *Good Hope II*) then shouted, but that collision was then inevitable; that he then put his engines at full speed and starboarded in an effort to make the impact less direct and more of a glancing blow and that the angle of collision was about 45°.

The two masters were agreed on there being a practice in this fishing fleet, fishing there, for the unencumbered vessel to give way to another vessel actually fishing. For the present case I accept this without comment, and with-

out passing on its validity, since the master of *Good Hope II* said that had he seen the *Paul D* sooner he would have known at once that she was engaged in fishing and would have avoided her. But here fog conditions prevailed and Article 16 was the controlling Article.

I have already dealt with the questions of speed and visibility. I do not accept the plaintiff master's version of the "verging" of the *Good Hope's* course. I think what he saw was no more than usual minor alteration due to the scend of the swell. He said 2 minutes elapsed between his sighting the *Good Hope II* and the collision, of which he spent 1 minute in the cock-pit and the other in the wheelhouse. I think these periods should be much shortened, probably by one half, if not more.

I am not prepared to hold that the whistle he gave was such as could have been heard by the *Good Hope II*. Only a few seconds elapsed between the alleged whistle and the shout. The *Good Hope II* heard the latter, but not the former. It is incredible that she should not have heard it had it been of proper volume; and her master gave such candid evidence that I accept his denial in this respect. It is moreover not without significance that in his preliminary act the master of the *Paul D* stated that at a distance of 150 yards the *Paul D* blew her whistle continuously. In the light of his evidence at the trial this was simply untrue. I think he failed in his duty by not sounding fog signals and thus intimating his presence to other vessels in the vicinity; and by not keeping a proper look-out. Had this look-out been kept, he would have been in a better position to appreciate the danger and take evasive action to avert the collision; for, even relying on the practice, he should still have taken proper care that the *Good Hope II* saw him and was keeping clear; as it was he took no action and only whistled and shouted when all was too late. However, he was going very slowly which reduced the hazard to other vessels.

In my judgment the *Good Hope II* must be held $\frac{3}{4}$ to blame and the *Paul D* $\frac{1}{4}$ to blame. There will be judgment accordingly with corresponding costs. There will be a reference to the Registrar to assess the damages.

Judgment accordingly.

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