

TORONTO ADMIRALTY DISTRICT.

C. W. CADWELL.....PLAINTIFF;

1906

March 8.

AGAINST

THE SHIP *C. F. BIELMAN*.*Shipping—Collision—Negligence.*

In a dangerous and crowded channel the captain of a vessel, especially going down stream, must slacken speed, and, if overtaking another vessel, is bound to pass at such a distance that no harm will result to the other vessel from suction or displacement waves.

The lookout man must devote himself solely to that duty, and if engaged at other work so that his attention is divided it is not a proper compliance with the rule as to a proper lookout.

ACTION for collision by the plaintiff, the owner of the ship *G. T. Burroughs*, against the ship *C. F. Bielman*.

The case was tried at the Town of Sandwich on the 24th, 25th, 26th and 27th days of January and the 1st day of February, 1906, and judgment was reserved.

The facts are fully set out in the reasons for judgment.

E. H. Wigle and *J. H. Rodd*, for the plaintiff;

A. R. Bartlett, for the defendant.

HODGINS L. J. now (March 8th, 1906), delivered judgment.

The collision in this case occurred on the night of the 30th May, 1905, in that part of the St. Clair River known as the "Great South Bend," at the locality which the evidence warrants me in finding is called "Joe Beddore's Landing," and where the channel is about 700 feet wide. The collision was between the sand-sucker *G. T. Burroughs*, a steamer 109 feet in length, 27 feet beam, and 9 feet draft, and the *C. F. Bielman*, a freight steamer of 305 feet in length, or 291 feet keel, 42 feet beam, and 18 feet

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draft, both heavily laden, the former with sand and the latter with 3,303 tons of iron ore. The river at this place is very winding, and has been designated by witnesses as "dangerous." The captain of the *G. T. Burroughs* described it as "'Collision Bend' because accidents happen there." And the captain of the *C. F. Bielman* said: "You must exercise great care in navigating this bend. The river is dangerous, and so this bend is as dangerous as other places. There are three dangerous places, and this is one of them." And it appears from other evidence given by the defence, that there were seven vessels in the locality about the time of the collision, the plaintiff steamer, the *G. T. Burroughs*, the defendant steamer, *C. F. Bielman*, towing the barge McLaughlin, a passenger side-wheel steamer *Awana*, a steel steamer, and a steam barge towing a lumber barge. Of these the passenger steamer *Awana* was going up the river, and all the others were going down the river. One steamer is said to have passed four seconds before the accident and another three seconds after the accident. It appears therefore that this river bend was a dangerous and crowded channel, yet the captain of the defendant steamer *C. F. Bielman*, after stating that the ordinary speed of his ship was 9 miles an hour, and that he was going down stream, said that he continued at that rate to the time of the collision, and that he did not reduce the speed of the *C. F. Bielman* until the accident was about to happen. This speed in a dangerous channel was condemned in the *Blenheim* (1).

In *Spencer on Collisions*, it is stated (2): "An overtaking and passing vessel is bound not only to avoid colliding with the vessel passed, but is bound to pass at such a distance that no harm will result to the other from the suction produced by her passage through the water, or from her displacement wave; and she is

(1) 14 Fed. R. 797.

(2) Sec. 72.

bound to know the effect of her swell, and to pass at a distance sufficient to avoid danger therefrom, or to reduce her speed to such a degree that a displacement wave will be avoided." "In navigating rivers and harbours where small boats are accustomed to ply, and may reasonably be expected, steamers are bound to navigate with the utmost caution, and at a rate of speed sufficiently slow to avoid damage from her attending swell. It is negligence in a large and powerful steamer to work her wheel in a narrow and crowded slip, whereby a current is produced sufficient to injure other craft lawfully there." And the governing rule has been thus stated: "It must be presumed that the master of a large steamer must know the effect of frontal and side waves made by such steamer when going at her ordinary rate of speed in narrow channels, and he should therefore regulate or moderate the rate of speed and keep sufficiently out of the way of an overtaken vessel."

The evidence of the captain of the steamer *G. T. Burroughs* is that he was keeping her to the American side of the river, her proper starboard side of the fairway; and that when he found the *C. F. Bielman* abreast of him, and the suction caused by her speed beginning to operate and swing his vessel to port, he put his wheel hard-a-port and backed, and gave three whistles to the *C. F. Bielman* to check her speed, and also gave several short blasts as a danger signal, none of which were answered by the *C. F. Bielman*. The effect of putting his wheel hard-a-port is described by several witnesses for the defence. The Captain of the *C. F. Bielman* said that after the side wheeler passed, the steamer *G. T. Burroughs* sheered away from the *C. F. Bielman* to starboard about a point, towards the American shore, and that she then sheered round towards the *C. F. Bielman*, and struck her about amidships by her stem at an angle of about 75 degrees. He also stated that after the

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steamer *G. T. Burroughs* started to sheer, just appreciably, he heard her engine bells. The mate of the *C. F. Bielman*, who had charge of her navigation at the time of the collision, said: "After the passenger boat passed, the sand-sucker *Burroughs* went over to the American shore." And added that he heard the whistles to the engine room to check down the engine. The engineers of the *C. F. Bielman* confirm this sheering of the steamer *G. T. Burroughs*, and the hearing of the bells in her engine room; and the mate of large *McLaughlin* said that the steamer *G. T. Burroughs* sheered about fifty feet towards the American shore, after passing the side-wheel steamer.

One of the expert witnesses for the defence described the effect of suction and displacement waves caused by a large steamer passing a smaller steamer on the same course. He said that when a large steamer was overlapping a smaller one the water thrown from the bow of the larger steamer would force the stern of the smaller one way from her, and would bring their bows together; or, as he said later, would bring the bow of the smaller one to impinge on the larger. The evidence for the defence shows that the height of the waves caused by the speed of the *C. F. Bielman* was about one foot and a half at seven miles an hour, that the speed of nine miles an hour would add about three inches more, and he added that waves of about two feet three inches high might have been created by her.

The finding on the evidence must therefore be that the suction and displacement waves caused by the *C. F. Bielman* overlapping the steamer *G. T. Burroughs*, notwithstanding the effort of the Captain of the *Sand-Sucker Burroughs* to counteract and get away from her displacement waves and suction, by putting his helm hard-a-port and sheering towards the American shore on her starboard side, as proved by the witnesses for the defence,

forced the stern of the steamer *G. T. Burroughs* away from her parallel course, and caused her bow to swing towards the *C. F. Bielman* and to strike her amidships at about an angle of 75 degrees; and that the blow forced the cross beams in the bow of the steamer *G. T. Burroughs* to bulge out at the other side and bend one of the iron plates at her stern backward towards her stem; and thereby opened her seams, and caused her to sink.

There has been in this case the same conflict of evidence as to the estimated distance between the two steamers when the *C. F. Bielman* got abreast of the steamer *G. T. Burroughs*, as there was in the case of *The City of Brockton*, (1). In that case the witnesses varied in estimating the distance between the two vessels at 75 feet, 100 feet, 250 feet, and 300 feet. The steamers in that case were somewhat smaller than the steamers in this case; but the court held that it was something other than the wheel of the smaller vessel which caused her to get off her course; and that a force was present—the force of currents created in the water by the powerful action of the propeller of the larger vessel driving her at such speed. In this case the witnesses similarly vary in their estimates of the distances between the vessels at 75 feet, 100 feet, 200 feet and 250 feet.

The general rule applicable where there is a conflict of evidence in Admiralty cases, is that the court must be governed chiefly by certain undeniable and leading facts, and this especially applies to estimates of distances between vessels. As said in the *Great Republic* (2), “Under the most favourable circumstances it is impossible to measure distances on the water with accuracy, but in time of excitement there is very little reliance to be placed on the opinion of any one on this subject, and especially is this so where the condemnation of a boat may depend upon it.”

(1) 37 Fed. R. 897.

(2) 23 Wall. at p. 29.

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There is here no evidence to negative Captain Allen's statement that when the displacement waves or suction caused by the *C. F. Bielman* began to operate on his vessel, he put his wheel hard a-port and backed. On the contrary he is confirmed by several of the witnesses for the defence that as soon as the side-wheeler passed the steamer *G. T. Burroughs* sheered away from the *C. F. Bielman* and towards her starboard side of the narrow channel; and the only thing against the Captain's statement is the supposition of Captain Montgomery of the *C. F. Bielman* that he attributed the collision to the steamer *G. T. Burroughs* putting her wheel the wrong way or to her steering gear being disabled. He admitted that he had heard Captain Allen's evidence and that he had no means of showing that he did not do as he said. I must therefore find that Captain Allen's evidence has not been impeached or disproved.

But there is another fact which I must find against the *C. F. Bielman* on the evidence of her captain. He says as to the outlook that at the time of the accident the mate was in charge of the navigation of the ship, that there was no look-out on the deck with him, and that on the night of the collision the mate had charge of the navigation and the look-out. The look-out man was on deck with the pilot, but was on the main deck, and had been sent back to do something about the towing machine, and he was engaged at that up to the time the accident happened. And to this there is proof by six witnesses that when the collision was imminent the captain of the *Burroughs* gave three blast signals by whistle, and also several short blasts as a danger signal, but four of the defendant's witnesses, who were questioned as to these signals, denied, or did not remember, hearing any of these signals from the deck of the steamer *G. T. Burroughs*.

This also affects the question of a proper lookout on the night of the collision. The non-observance of the duty to keep a proper lookout was considered in the case of *The Twenty-one Friends v. J. H. May* (1), where in consequence of the mate and lookout man dividing their attention between the lookout and reefing sails, it was held that a proper lookout had not been observed. This was followed in *St. Clair Navigation Company v. The D. C. Whitney* (2), where it was held that the mate and the lookout man dividing their attention between the lookout and preparing the ropes for mooring the ship, was not a compliance with the rule as to a proper lookout. And the *City of New York* (3), shows that the non-hearing by the officers of the *C. F. Bielman* of the blast and danger signals given by the steamer *G. T. Burroughs*, must be held to be "conclusive evidence of a defective lookout."

And the same case decided that the duty of a steamer to answer a signal given by an approaching vessel is as imperative as the duty to give one, the court thus defining the duty: "Ordinary prudence demands that an obligated steamer, proposing by whistle to deviate from the customary course, shall receive an immediate reply, so that her wheel may be put to starboard, or port, as the exigencies of the case may require. A delay of even a few seconds may seriously embarrass her as to the intention of the preferred vessel."

To these must be added the duty of the *C. F. Bielman*, as the overtaking steamer, to observe Article 13 of the Act of 1886, R. S. C. c. 79, now amplified in Articles 23 and 24 of 1905, but which in the former Article tersely reads thus: "Every steamship, when approaching another ship, so as to avoid risk of collision, shall slacken her

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(1) 33 Fed. R. 190.

(2) 10 Ex. C. R. 1

(3) 175 U. S. 187.

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speed and stop and reverse, if necessary." See also Articles 20, 21 and 22.

On this review of the law applicable to the facts which I find to be proved in this case, I must hold that the plaintiff is entitled to the decree moved for and costs. Reference to the Deputy Registrar at Windsor to assess the damages, the District Registrar to tax the costs of the action and reference.

Judgment accordingly.