

BETWEEN :

JOHN E. CRADDOCK.....APPELLANT;

AND

THE MINISTER OF TRANSPORT.....RESPONDENT.

1948
March 4
May 14

Shipping—Appeal from decision of Commissioner—Canada Shipping Act, 1934, s. 569 (3)—Order in Council P.C. 333, Jan. 18, 1944—Failure of master of ship in performance of duty—Appeal dismissed.

Appellant's Certificate of Competency as Master was suspended for a period of six months following a formal investigation into the circumstances surrounding the stranding and loss of the ship he commanded.

Held: That P.C. 333, January 18, 1944, providing that on the hearing of an appeal, in addition to the evidence in the Court below, this Court may receive further evidence on question of fact either orally or by affidavit in effect makes the appeal a trial de novo.

2. That it was appellant's duty to be on the bridge of his ship in the absence of instructions to the mate and of a look-out and his default and failure to comply with that duty together with negligence on the part of the mate caused or contributed to the stranding of his vessel.

APPEAL under the Canada Shipping Act, 1934.

The appeal was heard before the Honourable Mr. Justice O'Connor, with assessors, at Ottawa.

C. L. McAlpine, K.C. for appellant.

L. A. Kelley, K.C. for respondent.

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

O'CONNOR J. now (May 14, 1948) delivered the following judgment:

A formal investigation into the circumstances attending the stranding and subsequent loss of the M.V. "Gulf Stream" near Powell River, B.C., on October 11, 1947, with loss of life, was held before the Honourable Mr. Justice Smith, Commissioner, assisted by two assessors.

The Court found that the stranding of the vessel was caused or contributed to by the wrongful act or default of John Edward Craddock, Master, and Raymond Charles Ketchum, Second Mate, and suspended the Certificate of Competency No. 16792 as Master in the Home Trade, held by the said John Edward Craddock for a period of six months from November 12, 1947, and suspended the Certificate of Competency as Mate in the Home Trade held by the said Raymond Charles Ketchum, for a period of four months from the said date.

From such decision the said John Edward Craddock appeals under the provisions of Section 569 (3) of the Canada Shipping Act, 1934, which provide that an appeal shall lie from the decision to the Exchequer Court of Canada on its admiralty side.

The facts, relevant in this appeal are not in dispute and may be summarized as follows:—

The M.V. "Gulf Stream" was a yacht type freight and passenger vessel; tonnage 335.74; length 134.58 feet; breadth 22.97 feet; depth 13.89; draft 9 feet 6 inches; speed 14 knots; 15 tons cubic capacity. At 1.30 p.m., Saturday, October 11, 1947, the vessel left Vancouver, B.C., with passengers and express cargo on her usual week-end run up the coast to Van Anda, Westview, Savary Island, Lund, Bliss Landing, Refuge Cove and Blind Creek in Cortez Island, where she was due to arrive at 10.30 p.m., and where she would normally have spent the night, returning on the southward trip early next morning. The ship reached the wharf at Westview and completed the unloading at that point and on the departure of the ship from Westview at 7.30 o'clock that evening the Master, John

Edward Craddock, took her away from the wharf. Captain Craddock stated that the ship was lying at Westview wharf, at the port side to—on the southeast end of the dock and was backed out with the rudder hard to starboard and the engines hard to stern, a good 500 feet before stopping the engines, and coming half ahead and then hard aport with the helm to come around on our course. The ship was steadied up on the course of 285° by the steering compass and he stated that he was satisfied that the ship was on her course. He said that he was on watch for approximately five minutes after the ship left the position at Westview, and then the Second Officer (Ketchum) came up on the bridge to relieve him so that he would be able to go down and have a sandwich and a cup of coffee before they got up in the Islands. He stood by the Second Officer Ketchum approximately five minutes until he was certain he could see and his eyes were used to the lights and he then gave him the course of 285° and was sure he thoroughly understood that course and then departed from the bridge. Captain Craddock then went below first to the galley with a passenger for coffee and then to the stateroom of another passenger who was preparing to disembark at the next stop, viz., Savary Island. He intended to return to the wheelhouse some forty minutes later when approaching Mace Point, which is about 12 miles from Westview and forms the easterly point of Savary Island; and must be rounded to get to the wharf hard-by.

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The general conditions existing and continuing on the run from Westview to the stranding on Dinner Rock were:

The night was dark and overcast, the visibility normal but variable, and at times there was rain. The wind was southeasterly (a following wind), force about 15 m.p.h., the sea was moderate (also following); the tide was about two hours ebb on a small run out, but not of such significance as to interfere with the speed of the ship which was 14 knots.

The area and the channel are clearly and concisely described in the reports as:—

The coast-line on the starboard hand from Westview to Hurtado Point (which is opposite to Mace Point previously mentioned; the channel between being a little over a mile in width) runs fairly evenly in a general direction of West-North-West. About one mile and a half below Hurtado Point and about one-fifth of a mile from the shore lies

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Dinner Rock. This Rock rises 65 feet above the surface at high water and is approximately circular in description with a diameter of say 500 feet. It is prominently marked on the chart and is mentioned in the British Columbia Pilot. A vessel has to be very close inshore indeed to strike it. Opposite Dinner Rock there is a reef running E.S.E., from Mace Point. The distance between the Rock and the nearest edge of the reef is approximately one mile and a quarter. A mid-channel course therefore takes a vessel at least $\frac{1}{2}$ mile clear of all dangers. To this short description need only be added the circumstance that the first land on the port hand, after leaving Westview bound North, is a large island known as Harwood Island, the Northerly point of which is $5\frac{1}{2}$ miles from Westview. Between this point and the main shore on the starboard hand is a distance of one mile and a third.

The Mate, R. C. Ketchum, said that it was the regular practice for him to take over the watch at that particular time and that when he did so on the night in question he saw the silhouette at Harwood and the lights of Powell River, and that in his judgment the ship was in the proper position when he took over at 7.40 p.m. Two minutes later he decided that, "we were, as far as I could judge, that we were still in a proper position in connection with looking at the Sliammon village lights". He made a check by turning on the searchlights but he did not pick up anything. It was still raining a little.

What happened from there on is set out in his evidence:

Shortly after that the rain stopped and the wind seemed to me to increase a little at Shearwater Passage, I think it is—that is through Shearwater Passage.

Through Shearwater Passage?

Yes, there was a heavy overcast from west of Harwood Island right past Cortez and Don Islands. I could not make out any silhouettes ahead. I carried on for—I had it figured at 14 minutes after we had been at Harwood I should pick up Ragged Island light. That would be 35 minutes after Westview.

I took a couple of glances at the clock and when it came around to 14—after I didn't pick up the lights, and I figured we were either quite a little too close or there must have been a squall ahead that obliterated the light or it was not burning. There were several things in my mind at that moment. I carried on for a while and still no light. It must have been about five or six minutes afterwards, maybe a little more when I spotted the rock straight ahead—that would be Dinner Rock dead ahead at about 50 to 75 yards. It looked like a white patch across the bow and I could not figure out what it was for a couple of seconds.

Just at that time the helmsman must have glanced up and seen it and said, "What is that". At the same time as that I realized it was a rock and gave him an order hard to port, which he did. She was swinging around on that, with the helm hard to port when we struck and bounced up onto the next ledge and bounced again and went right up on the

rock, and capsized right over to port, with the bottom up in the air. I don't know how to describe its position. It is in the pictures there, I believe.

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He also stated that he had not seen Hurtado Point, Mace Point or Savary Island and that he had not at any time picked up Ragged Islands light, and that he knew they might have been hidden by Hurtado Point. He stated that the Ragged Islands light should have opened up at a point 2.1 miles from Dinner Rock and that the Rock was 3/10 to half a mile off the proper course. He also stated that he took no steps to fix the position of the ship after passing Harwood and that—"No, I didn't even consider using the chart", and—"There is no real way you can fix the position except by Ragged Islands light or have your observation of the coastline", and that he had not picked up the coastline.

The Court said as to Ketchum:

His mind, we think, was not alive to the fact that he was in dangerous waters in charge of the watch on a high-powered 14 knot passenger vessel; and that neither did he grasp the full significance involved in his failure to see Ragged Islands Light; he failed to realize that the time for wondering had passed, that the time for immediate action was imperatively at hand, and that he must come to a swift and peremptory decision.

In discussing the cause of the stranding the Court said:—

But taking the course as it was given, (285°), what caused the ship to deviate therefrom and to strike Dinner Rock? Many matters may have contributed to that end, for pilotage is not an exact science and never will be. Pilotage is simply the art of determining the correct courses when working a ship along a coast or in the neighbourhood of navigational dangers. A distance of 2,000 feet is not much to be out, one way or the other, at the end of a 10 mile run. An expert witness, Captain Landheim, said that with wind and tidal conditions as they were, a set-in toward the shore, caused mostly by the wind, might be expected. That alone would explain it.

The Court also said:—

We think therefore that there should have been a seaman posted on the look-out, and whose sole duties were to keep a look-out. This might have saved the ship.

We might add in this concluding paragraph that if a prudent Master Mariner were asked what caused the casualty in this case, we think he would reply that it was caused, firstly, by the vessel being set on too fine a course that left too narrow a margin of clearance off Dinner Rock, and secondly, by her being left in charge of a young officer with insufficient instructions as to the navigational dangers involved in the prevailing conditions; and who failed to keep a vigilant look-out; and that on the facts both Master and Second Officer failed in their duty; such at least is the unanimous opinion of this Court and it is to this opinion that we are bound to give effect.

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I do not find it necessary to deal with or to pass on these statements of the Court below, because there is another ground that satisfies me that the appeal should be dismissed. While this is termed an appeal, Order-in-Council P.C. 333, January 18, 1944, provides that on the hearing of the appeal, not only is the evidence taken before the Court below, before this Court, but, in addition, this Court has full power to receive further evidence on questions of fact either orally or by affidavit. And, in addition, evidence may be given by special leave of this Court as to matters which have occurred since the date of the decision from which the appeal is brought. While no additional evidence was given here, I point out these provisions to show that they provide for an appeal which is, in effect, almost a trial de novo.

The position was this,—the ship was proceeding at 14 knots in dangerous waters. At the end of a ten-mile run she would pass between Dinner Rock and the reef running E.S.E., from Mace Point. If the coastline could not be seen, and the Mate said he did not see Hurtado Point, Mace Point or Savary Island, then the position of the ship could only be definitely fixed for the first time by the light of Ragged Islands. This light was the main guide for the clearance of Dinner Rock. If the course were made good the ship would pass about 2,000 feet from Dinner Rock and as the Court below stated, a distance of 2,000 feet is not much to be out, one way or the other, at the end of a ten-mile run under the existing circumstances.

I am advised by the experienced assessors who have assisted on this appeal that, in these circumstances, the time when the light from Ragged Islands was due to open up was of the greatest importance, and that it was essential that the position of the ship be ascertained at that time.

That being so, then it was clearly the duty of Captain Craddock to be on the bridge at that time so he could, himself, ascertain whether the course set had been made good, and, if not, take the necessary action. Even assuming that the course was not too fine, it was sufficiently fine to warrant the exercise of great care. Assuming that the Mate required no instruction, and that it was not necessary to post a look-out, the fact that the Mate had no instructions and there was no look-out made Captain Craddock's presence on the bridge all the more essential.

Had Captain Craddock been on the bridge at the time the light was due to open up, he would no doubt have taken the proper steps when the light failed to open up.

It was his duty to be on the bridge at that time and he failed in that duty. His default and the negligence of the Mate caused or contributed to the stranding of the vessel.

The appeal will be dismissed with costs, which will include the fees of the assessors pursuant to Rule 114 of the Rules in Admiralty.

Judgment accordingly.

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