

BRITISH COLUMBIA ADMIRALTY DISTRICT

1959
Apr. 7, 8, 9,
10 & 13
Apr. 14

BETWEEN:

NEW ENGLAND FISH COMPANY OF }
OREGON and LEO A. WOODS } PLAINTIFFS;

AND

BRITAMERICAN LIMITED, Owner of }
the Ship BRITAMERICAN and THE }
BRITISH AMERICAN OIL COM- } DEFENDANTS.
PANY LIMITED

Shipping—Collision between two ships—Narrow channel—Ships equally to blame—Negligent navigation.

In an action arising out of a collision between the *Ocean Cape* owned by the plaintiff company and the *Britamerican* owned by the defendant company the Court found the two vessels equally to blame.

Held: That that part of Johnstone Strait between Pender Island and Ripple Point where the collision occurred is a narrow channel within the Collision Regulations.

- 2. That at all material times the *Britamerican* was on the wrong side of the channel, and also carried on at full speed, when it should have reduced speed, until collision was inevitable.
- 3. That the *Ocean Cape* though on the right side of the channel was navigated negligently; a proper lookout was not kept and the deck-hand in charge at the time of the collision should have called the Master, who was only a few yards away from him, when he sighted the *Britamerican*.

ACTION for damages resulting from a collision between two ships.

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

J. R. Cunningham and *N. A. Drossos* for plaintiffs.

J. I. Bird and *A. F. Campney* for defendants.

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

SIDNEY SMITH, D.J.A. now (April 14, 1959) delivered the following judgment:

This litigation arises out of a collision which took place in Johnstone Strait in the reach, running east and west, between Rock Point and Ripple Point; and particularly that part to the west of Pender Island, the most easterly of the Walkem Islands. The vessels involved were the diesel motor vessel *Ocean Cape*, 48.9 feet long, 15.6 feet beam and of 28 tons register; and the oil tanker *Britamerican* 125 feet long, 43.2 feet beam and of 485 tons register.

The owner of the *Ocean Cape* was the plaintiff, New England Fish Company of Oregon; and the *Britamerican* Limited was the owner of the *Britamerican*. Both vessels were under bare-boat charter, the former to Leo A. Woods of Seattle and the latter to the British American Oil Company Limited. Counsel agreed that in effect the controversy is one between the *Ocean Cape* and the *Britamerican* and that the determination of this issue (apart from the question of limitation of liability) would settle the matter.

At the relevant times the *Britamerican* was proceeding westward and the *Ocean Cape* to the eastward. The collision took place in that part of Johnstone Strait between Pender Island and Ripple Point. I have no hesitation in finding such part a narrow channel within the *Collision Regulations*. I also find on the evidence as a whole that the *Britamerican* at all material times was on the wrong side of the channel. Her Master (who gave his testimony as a Master should) said his vessel was "approximately mid-channel". The Chief Officer said that he was following

1959
NEW ENGLAND FISH
Co. OF
OREGON
et al.
v.
BRIT-
AMERICAN
LTD. *et al.*

1959

NEW ENG-
LAND FISH
CO. OF
OREGON
et al.
v.
BRIT-
AMERICAN
LTD. *et al.*

Sidney Smith
D.J.A.

a normal course but that does not necessarily mean that such normal course was on the starboard side of the mid-channel as it should have been. The Preliminary Act is silent on this point but the Statement of Claim says the *Britamerican*, when the *Ocean Cape* was first observed, "was maintaining a course about in mid-channel". This is far from precise. Finally, the estimated points of collision as marked on the chart by both parties are somewhat to the south of mid-channel. There are three such points marked. I shall not be far wrong in adopting the centre of the three as being the most likely point. All distances given were estimates only—sometimes nothing more than a guess.

The case for the *Britamerican* is that she was proceeding on her normal course of 263° mag. from Rock Point with the white mast headlight and the green side light of the *Ocean Cape* close on her port bow. At Pender Island she altered to her normal course which was 14° to starboard. Later she altered 4° to starboard to give the other vessel more room, and three minutes later she again altered course another 7° to starboard and blew one short blast. Almost immediately afterwards she went full astern.

I find this blast was given but I also find it was not heard by those on board the *Ocean Cape*. The *Britamerican* proceeded with the *Ocean Cape* continuing to show her green side light and twice showing, in addition, glimpses of her red light. Those on the *Britamerican* were expecting her to alter her course to starboard and so pass port to port. But this she did not do. Very shortly the after blast the *Britamerican* put her helm hard-a-starboard and immediately she switched on her searchlight. The *Ocean Cape* then appeared to alter her course to port. The *Britamerican* sounded a series of short blasts (these also were not heard on the *Ocean Cape*), stopped her engines and put them full astern. Very shortly thereafter the *Ocean Cape* crossed ahead from port to starboard and the *Britamerican* crashed into her starboard side at about right angles. What followed was all in the tradition of good seamanship. The *Britamerican* remained in the hole in the crashed side of the *Ocean Cape*, put a line on board, assured herself that no one was hurt and stood by until satisfied another fishing vessel, the *Cape George* (that

had been following behind the *Ocean Cape* a mile or so away) had taken charge of the *Ocean Cape* (then half submerged) and had beached her in Knox Bay. As to this, the *Ocean Cape* asked for and obtained advice and instructions from the Chief Officer of the *Britamerican*.

But the previous navigation of the *Britamerican* was not so satisfactory. It will be observed that for some six or seven minutes she saw the green light of the *Ocean Cape* on her port bow and as she progressed saw glimpses of her port light as well. From this she knew that the *Ocean Cape* was close on her port bow heading directly towards her. It is true she starboarded 4°, then held on for a little over two or three minutes. Then when only one-half to three-quarters of a mile away she again altered course 7°, gave one short blast, and carried on. Soon afterwards her helm was put hard-a-starboard and she switched on her searchlight. This disclosed little more than the *Ocean Cape's* lights already had indicated, namely, that the *Ocean Cape* was heading into the *Britamerican*. Then the *Ocean Cape* appeared to alter course to port and crossed her bow, and the collision ensued. I think the showing of the searchlight in the manner shown was a grievous and wrong thing to do, as was readily admitted by her Master.

I am of opinion that the *Britamerican* should have realized the danger sooner. She was proceeding at 9 knots plus a 3 knot tide and so 12 knots over the ground. She did not know the speed of the other vessel but ought to have had a very good idea of it. In fact the speed of the *Ocean Cape* was 9 knots through the water and 6 knots over the ground. The combined speed of the two was 18 knots, so that the situation was one calling for the greatest care from the moment the *Ocean Cape's* green light on the *Britamerican's* port bow was observed. Timely action was not taken. At or just after Pender Island, they should have slowed down to steerage way only and remained thus, sounding danger signals, until the situation was clarified. They cannot be excused for carrying on at full speed, as they did, till collision was inevitable. The vessel was on the wrong side of the channel, the Master was in the wheelhouse whence he had gone to note the weather conditions. He testified the first officer

1959
 NEW ENGLAND FISH
 CO. OF
 OREGON
et al.
 v.
 BRIT-
 AMERICAN
 LTD. *et al.*
 Sidney Smith
 D.J.A.

1959
 NEW ENG-
 LAND FISH
 Co. OF
 OREGON
et al.
 v.
 BRIT-
 AMERICAN
 LTD. *et al.*
 Sidney Smith
 D.J.A.

remained in charge and gave all orders; but the Master, without saying a word, took over when the searchlight was exhibited. In my opinion this is not good practice in such circumstances. It should always be definitely understood by the spoken word who is in charge. I think this might well be the subject of a standing order together with a re-consideration of the mid-channel courses along the area in question.

The *Britamerican* was a well-found and well-manned ship with all necessary navigational appliances. So was the *Ocean Cape* according to the standards of her sister fishing vessels. She was on a voyage from Alaska to Seattle with five men on board. The deckhand, Mr. Rorabeck, was in charge at the time. He was a 19 year old lad whose education included one year at the university and who had had some previous experience on the coast. Another deckhand was in the galley and the Master was there too, immediately at hand.

Rorabeck said he passed Ripple Point a quarter of a mile away and then steered a course for Rock Point of 093°, mag. I do not doubt this, though in the course of his cross-examination he gave some curious answers. His trouble was that he talked too much without pausing to think over what he was saying and how others would construe it. But I formed the view that he was trying to tell me the truth as he saw it. In my opinion he did not "keep close to the beach" as he said. On the contrary, due to lack of awareness on his part, his vessel, perhaps due to tidal conditions or lack of care, set to the southward having all the time the *Britamerican* close on his port bow (not starboard as he said) or ahead. He saw from time to time all three lights of the *Britamerican*, occasionally only the white and green lights. It would seem the two vessels were not far from being end on to each other with the *Ocean Cape* fluctuating somewhat. In any event, when the searchlight of the *Britamerican* was shone upon him, and continued so, he was blinded and lost control of his ship and must have ported his helm. This is in conformity with the evidence of the *Britamerican*, to the effect that they flashed on the searchlight and then the *Ocean Cape* appeared to alter her course to port. As I have said, he was blinded by the

searchlight and the collision ensued. The Captain points out, in his letter of October 1, 1958, to his owner's agents, this feasible explanation:

That part of the channel at that stage of the tide is subject to fairly heavy tide swirls, and the only logical conclusion I can come to regarding the behavior of the *Ocean Cape* prior to the collision is that he was not under proper control, and that just prior to our putting the helm hard to starboard he had run into a tide swirl which caused him to sheer to port.

Although on the right side of the channel, his navigation was negligent. He ought to have kept a better lookout and should have called the Master who was only a few yards away. Fault must be attributed to the *Ocean Cape* not less so and not greater than to the *Britamerican*. I find the two vessels equally to blame with corresponding costs.

The *Britamerican* is entitled to limit her liability under the provisions of the *Canada Shipping Act*. There will be judgment accordingly.

Judgment accordingly.

1959
NEW ENGLAND FISH
CO. OF
OREGON
et al.
v.
BRIT-
AMERICAN
LTD. *et al.*

Sidney Smith
D.J.A.