

1925  
Nov. 27.

ON APPEAL FROM THE BRITISH COLUMBIA ADMIRALTY  
DISTRICT

H. M. WRANGEL AND COMPANY A/S } APPELLANT;  
(PLAINTIFF) .....

AGAINST

THE SHIP STEEL SCIENTIST (DE- } RESPONDENT.  
FENDANT) .....

*Shipping—Collision—Crowded harbour—Tide and fog—Ship at anchor—  
Burden of proof—Inevitable accident.*

The A. entered Vancouver harbour at 8.30 A.M. bound for B. pier, but it being then not clear, she was forced to anchor between 250 and 300 yards off. She complied with all the precautions prescribed by the regulations, and was duly and properly anchored. There was a flood tide running and the weather was foggy and misty. A little later the SS. with pilot, entered the harbour at reduced speed. She had heard the bells from the A. and when about 800 or 900 feet away sighted the A. She stopped her engines and drifted forward at four knots, heading across the A's bow. Her master admitted that she could have then stopped and backed, but decided to go ahead intending to cross the A's bow about 200 feet ahead of her. The SS. then hearing three whistles on her starboard side and a starboard and port bell and seeing a ship loom up out of the fog, put her engines astern. Her headway being taken off she drifted with the tide towards the A. and a collision occurred. The SS. pleaded inevitable accident.

*Held* (reversing the judgment of the Local Judge in Admiralty), that the introduction of another ship as aforesaid should have been anticipated by the SS. and was one of the accepted risks in attempting to proceed as she did, in the fog. That it was upon the SS. to show that no other course was open to her; and having failed to do so, and having failed to use the proper precautions open to her to prevent danger, she must be held solely to blame for the collision.

2. That in a case of collision in daylight, between a ship under way and one at anchor in a proper place, the burden is upon the former to show she was not in fault. It is the bounden duty of a vessel under way to avoid, if it be possible with ordinary care and with safety to herself, any collision with an anchored ship.
3. It is an "inevitable accident" where one vessel doing a lawful act without any intention of harm and using proper precautions to prevent danger, happens to run into another vessel.

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APPEAL from the decision of the Local Judge in Admiralty dismissing plaintiff's action for damages due to a collision with plaintiff's ship.

Vancouver, September 28th, 1925.

Appeal now heard before the Honourable Mr. Justice Maclean assisted by Commander W. Dixon Hopcraft, R.N.R., and Captain A. R. Bissett, as nautical assessors.

*S. A. Smith* for the appellant.

*E. C. Mayers* for the respondent.

The facts are stated in the reasons for judgment.

MACLEAN J. now this 27th November, 1925, delivered judgment (1).

This is an appeal from Hon. Mr. Justice Martin, Local Judge in Admiralty for the District of British Columbia, dismissing the plaintiff's action for damages ensuing from a collision with the defendant ship.

The appeal was heard by me at Vancouver with two nautical assessors, Commander W. Dixon Hopcraft, R.N.R., and Captain A. R. Bissett.

The plaintiff's steamer *Augvald*, of Norwegian registry, and of 4,811 net tonnage, en route from an American port on the Pacific Coast to the Orient, came into Vancouver harbour at about 8.20 a.m. on November 29th, 1923, bound for the west side of Ballantyne pier, there to complete her cargo. On approaching this pier, and at about thirty yards distance, she was advised that the berth intended for her was not clear, and she then backed out and anchored from 250 to 300 yards off the north end of Ballantyne pier, or possibly abreast of the Great Northern pier, which is immediately east of the former pier. The evidence is not

(1) Affirmed by the Privy Council on July 16, 1926. For full text see end of this report.

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quite clear upon the point, but it is immaterial I think. She swung with the tide, parallel to both of these piers, and pointing in a westerly direction. There was a flood tide running at the time of from two and a half to three knots an hour. That the weather was foggy or misty in the harbour is not seriously in dispute. The precautions prescribed by the regulations in such circumstances were complied with by the *Augvald*, an anchored ship in foggy weather, insofar as the ringing of the bell and lookout were concerned.

The defendant ship, the *Steel Scientist*, of United States registry, 3,741 net tonnage and 442 feet in length, was later observed approaching the *Augvald* at a distance according to the plaintiff, of about 1,000 yards, about four points on her starboard bow, and on a course to cross her bow. The speed of the defendant ship at this point is in controversy, though perhaps not in a material degree, but it may be said that the master of the *Augvald* states that speed to be five or six knots; generally the evidence would fix it at about four knots. With the flood tide on her starboard quarter, the plaintiff's evidence is to the effect that the *Steel Scientist* was proceeding ahead and when about 500 yards distant she stopped her engine, but with her headway proceeded until she was about 200 or 300 yards from the *Augvald*, on her starboard bow. Then the defendant ship reversed her engine, in the meanwhile drifting sideways, east and northeast, towards the bow of the *Augvald*. The next manoeuvre of the *Steel Scientist* was to put her engine ahead and starboard her helm, but this was apparently too late, and she drifted down on the bow of the *Augvald*, causing the latter damage. Just what happened subsequent to the impact is not in my opinion important as to the issue, and need not here be related, though it may be briefly stated that the defendant ship passed down on the port side of the *Augvald*, around her stern, and anchored on her starboard side.

The plaintiff's case is that the *Steel Scientist* was navigating at too great a speed considering the fog or mist, and was not under proper control at the time of sighting the *Augvald*; that had she kept her course after first observing the *Augvald* she would have passed the bow of the *Augvald* at a distance of about 200 to 250 feet; that she should

not have stopped her engines which caused her to drift sideways down upon the *Augvald*; and that the *Steel Scientist* should not have attempted in the circumstances to cross the bow of the *Augvald* in view of the strong flood tide, but should have gone to anchorage on the starboard side of the *Augvald*.

The *Steel Scientist* entered Vancouver harbour with a pilot, under orders to proceed to anchorage, just a little later than the *Augvald*. Her master states that when he passed Brockton Point at the entrance to Vancouver harbour, at 9.33 a.m., the weather set in hazy and foggy, and speed was reduced to half speed, then to slow. He heard a ship's bell after he had reduced to slow, about a point and a half or two points on his port bow and saw a ship looming up, which proved to be the *Augvald*. He states that he could see some 600 to 700 feet towards the shore, when he was west of the *Augvald*. After first actually sighting the *Augvald* at a distance of 800 or 900 feet, he stopped his engines, which permitted the *Steel Scientist* to drift forward at about four knots, and heading across the bow of the *Augvald*, and he states that he had hoped to cross the *Augvald* at about 175 to 200 feet ahead of her. At this point, the master says he could have stopped his ship and backed if he had decided so to do, but his decision was to cross ahead of the *Augvald*. He categorically admitted upon the trial that other courses were open to him. He could have stopped and backed; he could have proceeded forward under the ship's momentum; he could have ported his helm and kept farther off from the *Augvald*; he could have starboarded his helm and proceeded around the stern of the *Augvald* to anchorage, or he might have anchored his ship. He elected to go ahead, and his manoeuvres up to this point were as I have already stated, namely, slow ahead and then engines stopped.

The only further point that should here be mentioned, is that the master of the *Steel Scientist* states, that just as he was in line with the *Augvald* and presumably steering to cross her bow, though the engines were stopped, he heard three whistles out of the fog on his starboard side, and a starboard bell and a port bell, and at the same time saw two lighters with a gasoline launch on his port bow about 325 feet inside the *Augvald*. Upon hearing the

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three whistles, the *Steel Scientist* replied with three whistles, and then put her engines astern, this being done because he says he saw a ship looming out of the fog, and apparently backing out of a dock on his starboard bow, at a distance of 600 to 700 feet. This ship turned out to be the *Princess Ena*, which apparently was docking at the Great Northern Pier, and it is suggested that she had ported her helm and was backing out in order to straighten up, prior to landing at her berth. While her engines might be going astern it is suggested she was not making sternway. The evidence is not clear about the movements of the *Princess Ena*, but this hypothesis was not controverted upon the hearing of the appeal, and would appear to be quite possible. In the meanwhile the headway being taken off the *Steel Scientist* by her stern movement, she drifted towards the bow of the *Augvald*, and the collision occurred at 9.55 A.M. Just prior to the collision, and when the sternway was taken off, the order full speed ahead with a starboard helm was given by the *Steel Scientist*. This was merely to diminish the impact, her master states.

There are contradictions in evidence as to distances, visibility, and movements of ships, but on the salient point, whether the action of the *Steel Scientist* after sighting the *Augvald* at anchor, was prudent and in accord with good seamanship, the variations are not in my judgment of prime importance.

It is a well established principle of maritime law, that in the case of a collision in daylight between a ship under way and another at anchor in a proper place, the burden is upon the other ship to shew she was not in fault. It is the bounden duty of a vessel under way, to avoid if it be possible with ordinary care and with safety to herself, any collision with an anchored ship. Such principle hardly needs any reference to authority, and appears indeed quite obvious.

It is conceded that the *Augvald* is blameless and did everything in the circumstances that the regulations required, or practical seamanship might suggest. Has the *Steel Scientist* then displaced the *prima facie* evidence of negligence on her part? The defendant ship pleads inevitable accident by reason of the described and unex-

pected movements of the *Princess Ena*, and that no other course of action was available to her than that adopted. Inevitable accident is where one vessel doing a lawful act, without any intention of harm, and using proper precaution to prevent danger, unfortunately happens to run into another vessel.

I think the real question for decision is whether the *Steel Scientist* in the circumstances prevailing at the time, exercised proper and reasonable precaution in her movements.

The whole conduct of the *Steel Scientist* in crossing so closely the bow of the *Augvald*, and in heading towards the line of the piers into a restricted area of water where there was always at least the liability of encountering other ships or crafts of one kind or another, seems strange indeed. The introduction of the *Princess Ena* or any other ship into the situation was something that should have been contemplated, and was one of the accepted risks in attempting to proceed to the anchorage grounds by passing between the *Augvald* and the piers, and under unfavourable atmospheric conditions. Such a manoeuvre required the utmost control of the *Steel Scientist*, and the most careful navigation. It appears to me that in all the circumstances and with the manifest risks attending such a course of action, the defendant ship must shew practically that no other course was open to her in order to sustain the defence of inevitable accident.

My assessors most unequivocally advise me that the *Steel Scientist* is clearly to blame for the collision. In the first place they advise that she failed to reduce speed sufficiently and in time, considering the prevalence of fog, the numerous fog signals around her, the probable traffic, the narrow waters into which she was moving, and her proximity to the piers. They advise me that there were several courses open to her, some one of which she could and should have pursued. When she first heard the bell of the *Augvald* she should have slowed down to steerage way only, and should have made ready to let go her port anchor at any moment. Then when she sighted the *Augvald*, her helm should have been placed hard astarboard, and her engines put full speed ahead, or at half speed as seemed

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necessary, and if she did not promptly respond then to drop anchor under foot.

My assessors also advise me that the *Steel Scientist*, having decided to cross the bow of the *Augvald*, should have maintained more speed and stood in readiness to adopt the same action in the use of the anchor, after crossing the bow of the *Augvald*, if necessary, thus turning sharply to port and avoiding a collision with the *Princess Ena* or any other craft that she might unexpectedly encounter, in the area between the *Augvald* and the piers. They advise me also that there can be no doubt that the *Steel Scientist* could have passed on the starboard side of the *Augvald* and to anchorage, and thus have avoided any risk of collision. Again it was open to the *Steel Scientist*, my assessors advise, to stop and anchor when first hearing the bell of the anchored ship, or after first sighting her.

I think it is quite clear that all such courses were open to the *Steel Scientist*, in fact the master of that ship has conceded this, and that in all the circumstances bad judgment was exercised in the navigation of the defendant ship, and I have no difficulty whatever in adopting the views and advice of my assessors as I have just expressed them, and it is needless for me again to repeat the same in any other form, or at greater length. In fact I see no other view which can reasonably be sustained. Attempting to cross, as she did, the bow of an anchored ship, with quite a tide and fog prevailing, the *Steel Scientist* assumed the risk of navigating in restricted waters and in close proximity to the piers, and in which waters she should have anticipated the possible or probable movement of other ships or craft. In such circumstances every available precaution should have been exercised against every possible risk of collision. Having decided upon following the course that in the end produced the collision, namely crossing the bow of the *Augvald*, and having encountered the unexpected movements of the *Princess Ena* as she did, the use of the anchor was one line of action at least that might reasonably be expected, and which in my opinion would have avoided the collision. Other courses were also earlier open to the *Steel Scientist* to adopt and which would have avoided the collision. I think that upon no ground what-

ever is the defence of inevitable accident open to the *Steel Scientist*.

I am of the opinion that the defendant ship disregarded article 16 in not exercising the proper degree of caution in approaching the anchored ship in foggy weather. She disregarded also articles 22 and 23 and articles 27 and 28.

I am therefore very respectfully of the opinion that the *Steel Scientist* is to blame for the collision and accordingly I allow the appeal with costs here, and the plaintiffs' action with costs below.

The case will be remitted to the court of first instance to be there dealt with as the right of the parties under this judgment may appear to the said court.

*Judgment accordingly.*

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL DELIVERED THE 16TH JULY, 1926.

*Present at the Hearing:*

THE LORD CHANCELLOR,  
LORD PHILLIMORE,  
LORD JUSTICE WARRINGTON.

*Nautical Assessors:*

ADMIRAL SIR R. NELSON OMMANNEY, K.B.E.  
COMMANDER C. A. SMITH, C.B.E.,  
R.D., R.N.R.

*Delivered by LORD PHILLIMORE.—*  
In this case, in which the ship *Steel Scientist* came into collision with the steamship *Augvald* in the Harbour of Vancouver on the morning of the 29th November, 1923, the Lord Judge in Admiralty absolved the *Steel Scientist* from liability, but the President of the Exchequer Court, who heard the case with the assistance of two nautical assessors, reversed this decision, and found the *Steel Scientist* alone to blame for the collision. It is from this decision that the present appeal is brought.

Their Lordships, after hearing counsel for the appellants, are of

opinion that the decision of the Exchequer Court cannot be disturbed. As was pointed out by the President, there were several matters in respect of which bad navigation could be charged against the *Steel Scientist*, and on which his assessors advised him that she should be held to blame. Some of these charges may have been displaced, but, broadly speaking, the assessors whose advice their Lordships have had agree with the assessors in the court below; and, independently of such advice, their Lordships are of opinion, as was the President of the Exchequer Court, that the *Steel Scientist*, if properly navigated, need never have come into collision with the *Augvald*. Indeed, those who defend her action are in a dilemma. If the conditions of the foggy weather and tide and the proximity of other vessels navigating made it in any degree dangerous for the *Steel Scientist* to come into the anchorage ground for which she was making, she ought either to have stopped and waited outside, or to have come in with great precaution at a slow speed, with a vigilant look-out and her anchor ready to drop at any moment. If, on the other hand, it was safe for

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her to approach the anchorage, then nothing supervened for which she ought not to have been prepared. Making all allowances for the mist and the smoke from the factories, she saw, or ought to have seen, the *Augvald*, and made out that she was riding to her anchor, in time for her to elect which of two courses she should take: either she could starboard her helm and pass down the starboard and outer side of the *Augvald*, or she could cross the bows of the latter as she was riding to the tide; and inasmuch as in their Lordships' opinion she could easily have taken the former course, and as the latter course was a risky one, she must be held responsible for any supervening incident which terminated the risk unfavourably.

It is said on her behalf that if the third ship, the *Princess Ena*, had not unexpectedly appeared and backed astern, she would have been in no difficulty. Here again her owners were on the horns of a dilemma. They do not say that the *Princess Ena* was wrongly navigated or was herself to blame. If, then, the state of the atmosphere towards the shore and on her starboard hand was such that vessels might be moving in it without being observed, and in such a manner as to make the manoeuvre of crossing the bows of the *Augvald* dangerous, the *Steel Scientist* ought not to have been taken by those in charge of her in such a danger-

ous direction. If, on the other hand, it was possible to discover in time and to act for the movements of the *Princess Ena* and yet avoid collision with the *Augvald*, it follows that those navigating the *Steel Scientist* did not take proper steps.

It may be that when the *Princess Ena* was observed it was too late to take any steps to avoid the collision, or it may be that if, instead of reversing her engines, the *Steel Scientist* had held on and starboarded her helm, she would have swung herself clear of the stem of the *Augvald* without thereby bringing herself into collision with the *Princess Ena*. But in truth there was no consistency in her navigation; she started by preparing to cross the bows of the *Augvald*, she reversed her engines in order to keep to the north and outside the *Augvald*, and then she put her engines on again, while the tide was all the while carrying her down upon this anchored vessel.

No fault being alleged against the *Augvald*, the burden was upon the *Steel Scientist* to excuse herself for coming in daylight into collision with an anchored vessel duly ringing her bell as a precaution for fog; and this burden has not been discharged.

Their Lordships will, therefore, humbly recommend His Majesty that this appeal should be dismissed with costs.