

1891
 May 18.

VICE-ADMIRALTY COURT OF BRITISH COLUMBIA.*

THE CITY OF PUEBLA.

Collision—Navigation of dangerous channel—Rules to be observed when two vessels in same channel.

Two steamers of considerable length and draught, the one entering, the other leaving the port of N., signalled to each other that they both proposed to take the same channel, which, though short, was narrow and tortuous. The one steamer being fully committed to the channel, it was, under art. 18 of R. S. C. c. 79, the duty of the other steamer to remain completely outside until the first had passed completely through.

2. Where a collision appears possible, but as yet easily avoidable, neither vessel has a right to adopt manœuvres which place the other vessel in a position of unnecessary embarrassment or difficulty. The wrong-doer is solely responsible for damages from a consequent collision.

THIS was a case of collision.

The facts of the case are stated in the reasons for judgment.

May 6th, 7th, 8th, 15th and 18th, 1891.

The case was tried before Sir Matthew B. Begbie, C. J., Judge of the Vice-Admiralty Court for British Columbia,—Capt. Turner, R. N., and Lieut. Musgrave, R. N., sitting as Nautical Assessors.

Bodwell and Irving for the *Eton* ;

Davie, Q.C., and Helmcken for the *City of Puebla.*

Sir MATTHEW B. BEGBIE (C J.), J.V.A., now (May 18th, 1891) delivered judgment.

About 9 a.m., on the 22nd of January last, on a fine, calm morning, the *Eton*, about 310 feet long, and with 4,000 tons of coal on board, left the wharf at Nanaimo

*This case was decided before 54-55 Vic. c. 29 (*The Admiralty Act*, 18. 1) came into operation.

to proceed to sea by the north channel. This is a narrow and rather tortuous channel about 900 or 1,000 feet long, between Middle Bank on the south and Satellite Reef and Three Fathom Patch to the north. It lies nearly E.N.E. and W.S.W., the west end, next the wharf, being environed by shoals, the east end being quite open and free from any danger. The *Eton* left on a port helm, moving about from about N. W. towards north and east, until near the Black Buoy, No. 7, when she headed N.E., looking almost, but not quite, clear down the north channel. At this point she seems to have been for the first time aware of the approach of the *City of Puebla* coming in from the Gulf of Georgia to coal at Nanaimo. This vessel is 340 feet long, and was almost fully loaded, having about 3,000 tons of cargo on board. On observing her approach, the *Eton* gave one whistle, which the *Puebla* answered also with a single blast. Both vessels thereby intimated their intention of passing each other, port side to port side (1). This gave the *Eton* distinct notice that the *Puebla* was intending to take the north channel—the only other access to Nanaimo wharf being by the south channel, in taking which the vessels would have passed starboard to starboard, and the *Puebla* must have seen that the *Eton* was already committed to the north channel. Indeed, the *Puebla* seems, according to the *vivá voce* evidence, to have seen the *Eton* while still lying at the wharf, at a distance of two and a half to three miles, and to have been aware of her subsequent movements. The *Puebla's* preliminary act, however, alleges that the *Eton* was first sighted about seven or eight lengths (about four cables) away.

At this distance from each other, at all events, both vessels were fully aware that they were about to meet "end-on," so that there was a risk of collision. Both ves-

(1) *The Dominion Navigation Act*, R.S.C. c. 79, s. 2, art. 19.

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sels were, therefore, bound to take all the steps required by "skilful and careful navigation" to avoid collision. There are three stages in a collision: 1st. When it appears possible, there being merely a chance of a collision occurring; 2nd, when a collision is imminent; 3rd, when it is inevitable. In the last two stages, certainly in the last stage, skilful and careful navigation requires, at least permits, each commander to look after the safety of his own vessel exclusively. In the first stage, skilful and careful navigation requires each commander to take such steps as are requisite for the safety and convenience of both vessels. Neither vessel has a right to thrust the other vessel upon a shoal, or to necessitate the other to have recourse to difficult or embarrassing manœuvres in order to avoid a catastrophe (1).

The gentlemen whose assistance we are fortunate enough to have been able to secure in this case are of the opinion, in which I fully coincide, that skilful and careful navigators would not dream of taking two vessels, of the length and draught of these two steamers, to pass each other in the north channel; but that one of the two ought to have waited for the other. They are further of opinion that careful and skilful navigation on board the *Eton* required her not to wait off the Black Buoy, No. 7, where she sighted, and (according to the preliminary act) was sighted by the *Puebla*, but to go on through the north channel, to which she was then fully committed. Further, that a skilful person on the *Puebla* must have known the difficulties of the *Eton's* position—and especially the captain of the *Puebla*, who had been often through that channel.

He deservedly praised his own vessel, saying how powerful, and how handy she was; and yet in the

(1) See s. 1 and arts. 18, 23 and *Navigation Act*, R.S.C., c. 79.  
 24 of s. 2 of *The Dominion Navigation Act*.

north channel he had, as often as not, found it necessary to reverse his course and his screw, and found that her great draught diminished the power of her rudder. Unless, therefore, he assumed the *Eton* to be much more manageable than his own ship, which a sailor is not apt to do, he must have known that she might be obliged to have recourse to the same dilatory measures. It follows, necessarily, that, in their opinion, skilful and careful navigation (which is required by the statute) required the *Puebla* to stop, not her engines merely, but her way, and to remain stationary (1) off or near Gallows Point, until the *Eton* had at least got entirely through the north channel. The rule laid down by the Conservators of the Thames (2) is the rule of common sense for all narrow channels—“Where two vessels, moving in opposite directions, sight each other across a point, the vessel going against the tide shall remain stationary until the other shall have passed clear,” which, in that case, is decided to mean “clear of the stationary vessel.” And this is the course dictated by ordinary care in navigation, even when it is not, as in the Thames, a written law.

The *Puebla's* measures are somewhat variously stated. In the preliminary act, in answer to the inquiry, as to the measures which were taken, and when, to avoid collision, the defendant simply said: “Backed full speed;” without saying “when,” or “where.” In the opinion of my assessors, with whom I am happy to say I agree throughout, this backing was only adopted after a collision had become imminent, and indeed, unavoidable, looking to the speed of the *Puebla*, although, no doubt, by this time much reduced, and to the proximity of the two ships. According to the *vivá voce* evidence for the defendants, the *Puebla*, at first, acted with perfect prudence. While still outside

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(1) R.S.C. c. 79, s. 2, art. 18. (2) The *Libra*, L. R. P. D. 139.

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the harbour, she slowed her engines, and, before entering, had stopped them altogether—but she came in, swinging past the entrance buoys (which are about two cables only from the east end of the north channel—the scene of the collision) at the rate of six or seven knots. This is the estimate in the defendants' own preliminary act, and the estimate also of the four or five quite independent witnesses who happened on this calm, bright morning, from five or six points on shore, to be watching the whole drama. Capt. Debney also, in the witness box, estimated his speed, on entering the harbour, at six knots. The defendants attempted, by the *vivâ voce* evidence of some of the crew, to cut down this speed to four knots, or even less—but, even if they could be permitted to vary the statement in their pleadings, the great preponderance of the evidence is that the speed was six or seven knots. Having ported her helm, so as to head "square" for the north channel, as one witness expressed himself, and having by her whistle clearly intimated that she intended to take that channel, from which she was but four hundred yards distant, or thereabouts, she does not appear, by the unanimous testimony of all the independent witnesses, to have checked her speed, or deflected her course, or taken any measures at all, with a view either to prevent or mitigate the collision, or otherwise. She was simply allowed to run on by her own impetus, as if the north channel had been quite clear, until within about 300 feet of the *Eton*, which was slowly but surely advancing towards her. Then she reversed her screw, but the collision was then inevitable, and the steps taken by the *Puebla*, according to the statements made by her captain immediately afterwards, were not directed to the avoidance of a collision, which by this time, no human force or skill could prevent, but simply to the

protection of his own vessel. Instead of going to starboard, which would infallibly have thrown his port bow on the stem of the *Eton*, he turned to his port hand, and ran his stem into the starboard side of the *Eton*, nearly amidships.

In the defendants' preliminary act, and also by evidence at the hearing, the defendants alleged the *Eton* to be in fault in not keeping a course to her starboard side, as indicated by the single whistle. And both Captain Debney and his pilot, Ettershanks (on the bridge but not in charge, not being a Nanaimo pilot), declared that while the ships were in collision, Captain Debney shouted to Captain Newcomb: "Why did you not go to starboard?" and that the latter answered: "She won't answer her helm." There must be some mistake here, for, if there is one thing quite clearly proved and admitted on all hands, it is that the *Eton* was moving, and never ceased moving, to starboard, the whole time after leaving the wharf up to the moment before the collision. All the plaintiff's crew, all the independent witnesses, even Capt. Debney himself, and Ettershanks, his pilot, agree in this: That the *Eton* was turning to starboard the whole time up to the time when the *Puebla* reversed her screw; in order to give the blow instead of receiving it. Under these circumstances, it seems quite incredible that either the exact question, or the exact answer, should be as the defendants' witnesses now allege.

Both parties must have meant, and understood each other as saying: "Why don't you go to starboard faster?" and answering "She won't answer any better;" which as Captain Debney himself points out; might be due either to the very slow speed of the *Eton* at the time, one and a half knots to two knots, or the shoalness of the water. He excuses the *Puebla*, an exceedingly handy vessel, for not going to starboard,

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by observing that she was going less than six knots. But that Captain Debney, who saw the *Eton* going all the time to starboard, however slowly, should ask simply why she did not go to starboard, or that Captain Newcomb, who was trying all he could to send her to starboard, and was sending her to starboard, as he saw and as everybody saw, should reply that he could not make her go to starboard, is, of course, quite incredible, except on the supposition that they had both, in the excitement of the collision, failed to perceive the meaning of their words.

It was suggested, but there was no evidence on the point, that the undue hurry of the *Puebla* was due to her anxiety to "beat the record." This anxiety has, undoubtedly, lost many a ship.

It seems clear, however, that if the *Puebla* had stood still for a single minute, or, at most, a minute and a half by the clock, off Gallows Point, there can scarcely be a doubt but that the *Eton* would have passed completely through the channel and got round well to the southward, and the *Puebla* would have made better time to the wharf. However this may be, I am advised, and I find, that the collision was wholly due to the imprudent navigation of the *Puebla*; that the *Eton* neither did anything careless or unskilful that contributed to the collision, nor omitted to do anything which could have prevented or mitigated the collision; and I give judgment accordingly, condemning the *City of Puebla*, and her bail in damages and the costs of this action. There will be the usual reference to inquire as to damages, and all proper directions.

*Judgment accordingly.*

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