

NOVA SCOTIA ADMIRALTY DISTRICT.

1918
Nov. 80.THE SOUTHERN SALVAGE COMPANY, LTD.,
PLAINTIFF;

AND

THE SHIP "REGIN" AND FREIGHT,
DEFENDANT.*Collision—Rule 16 of Regulations for avoiding collisions at Sea.*

At about 9 o'clock a.m. on June 15, 1917, a collision occurred at the entrance to Halifax Harbour between the ship "Deliverance" and the defendant ship "Regin" in a dense fog. The "Deliverance" was yoked up to the S.S. "Belaine" and was outward bound engaged in mine sweeping in the Harbour, and the "Regin" was coming in.

Held, that in as much as the "Deliverance" admittedly heard the fog signals of the "Regin" well forward of her beam and still kept on at her speed into the fog, she violated the provisions of Article 16 of the rules of the road and was at fault.

2. That such fault was the proximate cause of the collision and she was wholly to blame therefor.

THIS is an action taken by the owners of the "Deliverance" against the "Regin" for damages to the former alleged to be due to improper navigation of the "Regin" and to its negligence.

The plaintiffs in their Preliminary Act declare they took the following measures to avoid accident: The course of the "Regin" when first seen appeared as if she were attempting to cross the bows of the "Deliverance" and the engines of the "Deliverance" were ordered full speed astern. Immediately thereafter when it appeared that the "Regin" might pass astern, the engines were ordered full speed ahead. These orders were given in such quick succession

REPORTER'S NOTE.—Since going to print the judgment in the Supreme Court has been rendered allowing the appeal with costs to the extent of declaring the ships equally liable for the collision. No costs in court below.

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that the speed of the "Deliverance" was not affected. The "Regin" on the other hand, violated Article 13 in that she neglected the international signals; the "Deliverance" was mine sweeping and carried the cones, flags, and balls, authorized by the regulations made in that regard; and Article 15 (e) in that she disregarded the signals of the "Deliverance" that she was unable to manoeuvre and ran into the "Deliverance" in foggy weather; and that she came up Halifax Harbour in foggy weather at a high rate of speed; and also Article 16, Article 19, Article 23, Article 28 in that changing her course to starboard she did not indicate by her whistle that she was so doing; and Article 29; and no lookout was maintained.

Defendant in its Preliminary Act at No. 12 says: in answer to question "The measures which were taken, and when, to avoid the collision"; having heard, apparently forward of her beam, fog signals of several vessels, the positions of which were not ascertained, the engines were stopped. Shortly after the "Deliverance" was first seen through the fog, there being then danger of collision, not apparently avoidable by the action of the "Deliverance" alone, the engines were put full speed astern and the helm put hard aport. The signals prescribed by the Regulations were duly sounded at proper intervals on the steam whistle of the "Regin", to wit: prolonged blasts at intervals of not more than two minutes.

And at 14 says that "the 'Deliverance' was at fault because (a) the 'Deliverance' and 'Regin' were crossing ships within the meaning of article 19 of the Regulations for preventing collisions at sea, and the 'Deliverance', having the 'Regin' on

“her own starboard side should have kept out of the way of the ‘Regin’, should have avoided crossing ahead of the ‘Regin’ and should have slackened her speed or stopped and reversed.”

(b) “The ‘Deliverance’ being bound to keep out of the way improperly starboarded her helm when in sight of the ‘Regin’, thereby directing her course across the bow of the ‘Regin’.”

The case came on for trial before the Honourable Mr. Justice Drysdale, at Halifax, on June 28, 1917, and November 8, 1917.

H. Mellish, K.C., for plaintiff.

W. A. Henry, K.C., for defendant.

The plaintiff alleged the occupation of “Deliverance” at the time; how mine sweeping is done; that the cable connecting the ships has the effect of turning the ship’s head towards her companion ship. The object of this sweeping was to secure any mines planted by enemy mine layers.

That the “Deliverance” carried all signals required by the Admiralty to show the ship’s occupation, and that she is not under command.

The defendant, they admit, gave the required fog signals, but they claim she maintained full speed of 8 or 9 knots and did not stop her engines when she heard the signals from the “Deliverance”.

They moreover argue that the “Deliverance” being engaged in the special work of mine sweeping with consequent inability to manoeuvre, she had special privileges, and was not obliged to stop her engines.

Defendant alleges the general facts above given, and that the “Deliverance” was going at full speed and maintained the same until immediately before

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collision. He claims that she violated articles 16, 19, 22 and 23. These articles are printed below for ready reference as well as 13, 15E.

They moreover allege that if the "Deliverance" had reduced speed earlier, the ships could have located each other in the fog and passed in safety; that defendant gave the fog signals, which were heard by the "Deliverance"; that she reduced speed, having stopped her engines five minutes before seeing the "Deliverance", and having reversed them three minutes before collision.

That the ships were crossing ships within the meaning of article 19 and it was the duty of the "Deliverance" to keep out of the way. Knowing that she was part of a cumbersome aggregation of apparatus occupying a front of 400 yards it was all the more incumbent upon her to navigate with exceeding caution, especially if, as it would appear was the case, it was desirable to keep vessels from passing over the wire. The officer on her bridge knows for twelve minutes that a steamship is ahead in the fog in such a position that if she is on the proper course up the Harbour, she is either dead ahead or she is going to cross his course at a fine angle, and that ordinary prudence, to say nothing of the Regulations, would dictate cautious navigation until the position and course of the approaching steamship are ascertained. That the "Deliverance" had the "Regin" on her own starboard side.

A collision being imminent unless the "Regin" took some action to prevent it, the "Regin" was not bound to keep her course and speed under article 21, but was justified (under the Note to that article) in the measures she took to avoid collision.

Finding that the "Deliverance" was going to port so as to cross her bows it is seen that if she keeps her course and speed, the "Regin" will cut into her about amidships, and not having room to go to starboard and clear her, the engines are reversed and the helm put hard-a-starboard to bring the courses more nearly parallel. This manoeuvre was frustrated by the "Deliverance" porting just before the collision.

It is not pretended that the marks carried by the "Deliverance" were authorized by the International Regulations, and no knowledge of them was brought home to the Master of the "Regin". No satisfactory authority for exhibiting the marks was established. Some person, supposed to be a British Naval Instructor, gave what were apparently verbal instructions to some person unknown, who, presumably, passed them on by word of mouth to Captain Brannen. There is no pretence that these marks were notified to foreign Governments or that Norwegian ship masters, for instance, were bound to know them.

The Judge's reasons for judgment are very short, but he apparently found that the "Regin" stopped and reversed engines as stated by her and that the "Deliverance" notwithstanding that she admitted hearing the fog signals, did not slacken speed nor reverse her engines, and that she violated rule 16 of the rules of the Road to avoid collisions at sea and that this act was the proximate cause of the collision.

DRYSDALE, L.J.A. (November 30, 1918), delivered judgment:

In this case the Defendant Ship cut down and sank the "Deliverance", a mine sweeper, off Chebucto Head.

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Reasons for
Judgment.

The "Deliverance" was, at the time, yoked up to the "Belaine" mine sweeping, and was going out in a dense fog; the "Regin", a Norwegian steamer, was coming in.

I think the "Deliverance" admittedly heard the fog signals of the "Regin" apparently well forward of the beam of the "Deliverance", and when she so heard such signals should have stopped her engines. This she did not do, but kept on at her speed into the fog.

I am compelled to conclude that the "Deliverance" was in fault in directly violating article 16 of the Rules of the Road, and I also think that such violation was the proximate cause of the collision.

I find the "Deliverance" solely to blame for the collision and there will be a decree accordingly.

Judgment accordingly.

Solicitor for plaintiff: *W. H. Fulton*, K.C.

Solicitor for defendant: *W. A. Henry*, K.C.