

NOVA SCOTIA ADMIRALTY DISTRICT.

1896

Mar. 19.

RONALD McMILLAN, HUGH Mc- } PLAINTIFFS;  
MILLAN AND JOHN McMILLAN, }

AGAINST

THE OWNERS OF THE SHIP "CUBA," DEFENDANTS.

*Maritime law—Collision—Narrow roadstead—Rules of road—R. S. C. c.  
79 Art. 21—Infraction.*

On the 25th September, 1895, two steamships, the *C.* and the *E.*, were in the outer roadstead of the harbour of Sydney, C.B., the *C.* proceeding seaward, the *E.* toward the port of Sydney. The time was 7 o'clock p.m., the night fine and clear. Both ships had their proper lights burning, and those in charge of each ship descried the other sufficiently early to have prevented a collision if the rules prescribed by R. S. C. c. 79 had been complied with. Upon entering the roadstead the *E.* had taken the starboard side of the fairway in compliance with Article 21 of such rules, but, noticing the lights of the outward bound *C.* about one or one and a half points on her (the *E.*'s) port bow, her pilot ported her helm to give the approaching steamer more room to pass clear on the port side—red light to red light. When the ships were one-quarter of a mile apart the red light of the *C.* disappeared from the view of the *E.*, indicating that the former had starboarded her helm and was approaching the latter. Thereupon the *E.* put her helm hard to port with a view to averting collision. In a short time the *C.* blew two blasts, indicating, under Art. 19, that she was going to port. Then she was only a cable's length from the *E.* The engines of the *E.* were going full speed ahead, but when collision appeared unavoidable her engines were reversed full speed. It being immediately seen on board the *E.* that the head of the *C.* was falling off to starboard, although she had signalled that she was going to port, the engines of the *E.* were again put full speed ahead in an unsuccessful attempt to pass the *C.* by crossing her bows. The *E.* was struck amidships and badly damaged.

*Held*, that as Article 21 applied to the roadstead in question, the *E.* was on the proper side of the channel, and that the *C.*, having had ample room to take and keep her proper position relative to the fairway, was at fault in leaving it and solely to blame for the collision.

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 of Facts.

**ACTION** for damages arising out of a collision in the harbour of Sydney, C.B. The facts of the case are stated in the reasons for judgment (1).

The case was tried at Halifax, N.S., before the Honourable James McDonald, C.J., Local Judge of the Nova Scotia Admiralty District, on the 22nd November, 1895.

*R. E. Harris*, Q.C., for the plaintiffs;

*H. Mellish*, for the defendants.

(1) It was thought that the publication of the opinion of the Nautical Assessor, Captain W. H. Smith, R. N. R., might be helpful towards a clear understanding of the facts of the case. It is as follows :

After a most careful examination of all the circumstances in connection with this collision, and having reviewed the evidence taken before the Registrar, Mr. Louis DesBarres, on the 13th and 20th November, 1895 ; also having read over the depositions of several witnesses examined by consent of the contending parties at Pictou, taken before John U. Ross, Commissioner, I am of opinion that the course of the steamer *Cuba* was safe and proper immediately after leaving the Victoria Pier, and as far as the buoy situated near the S.E. Bar Shoal.

The action of those in charge of the said vessel in starboarding the helm to pass under the stern of the steamer showing a green light was correct ; but in the position in which the *Cuba* was situated, with a steamer two or three miles away in the direction she was going, being inward bound, showing her masthead and red (port light) light, indicating she was making

for her proper side of the channel, it would have been more prudent for the pilot of the *Cuba* to have ported his helm directly after passing the steamer to go under the stern of the *Elliott*, when by that action he would have been directing his course to his own side of the fairway. He would then have shown the red light of his steamer to the red light of the *Elliott*, and red light to red light would have passed clear of each other, and no doubt the collision might have been avoided.

I am further of opinion that it was a wrong action on the part of the pilot and master of the *Cuba* to persistently starboard the helm of their ship to a crossing vessel, when they ought to have known by the red light of the *Elliott* being continuously in sight that the port side of that steamer was presented to them, and that the said vessel was steering towards the western shore to get on the proper side of the fairway.

The evidence appears to prove that the masthead and red lights of the *Elliott*, and no other, were seen all the time from the *Cuba*, and the masthead and side lights of the *Cuba* were in sight from the *Elliott* for ten or fifteen minutes

MCDONALD, (C. J.) L. J., now (March 19th, 1896)  
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before she starboarded her helm and shut out the port light and displayed the green light.

I am still further of opinion that the *Cuba* kept persistently starboarding her helm, which wrong action caused her to follow up the course of the other vessel, while those on board were attempting to get on their own side of the channel, and it would have been impossible for the three lights of the *Cuba* to be seen for so long a time from the *Elliott* if the *Cuba* had kept on one steady course. It is also admitted that her head was afterwards kept off N.E.

When the collision appeared to be inevitable, both vessels should have stopped and reversed their engines at once as risk of collision was then involved, according to Article 18.

As the night was clear with very little wind and the water smooth, objects being observed from the deck of the *Cuba* and the lights of that vessel being seen from on board the *Elliott* at a distance of nearly three miles, it seems incredible that the two steamers should have come into collision when there was plenty of room to manœuvre in, and there could have been no difficulty in each vessel keeping upon her own side of the channel.

The arguments in favour of the witnesses on board the *Cuba* are based on Article 16 :—"If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way of the other." And Article 22 :—"Where by the above

rules one of two ships is to keep out of the way, the other shall keep her course." And great stress appears to have been placed upon the fact that the ships were in that position as crossing ships. The *Cuba* acknowledged that she had a right to keep out of the way and those on board were endeavouring to do so, and probably would have gone clear, if the other vessel had obeyed the rule and kept upon her course.

I am of opinion that these conditions did not exist at first, but were afterwards brought about by the wrong action of the *Cuba* in persistently starboarding her helm; and even if the vessels had been placed in such a position, it was not proper seamanship for the *Cuba* to have attempted to cross the bow of the other steamer going at full speed, but her course should have been directed to go under that vessel's stern.

I have, therefore, to express my opinion that the wrong action of the *Cuba* was the cause of placing the *Elliott* in a perilous position; and I consider that as those in charge of the latter vessel did their best to extricate their ship from it up to the time of their close proximity to the position in which the two vessels collided, it is sufficient proof to show on which side of the channel it occurred, and the fault of the casualty should be attributed to the carelessness of those in charge of the navigation of the *Cuba*. The severity of the blow, however, might have been lessened, had both vessels stopped and reversed their engines in time.

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This is a suit by the owners of the steamship *Elliott* of 227 tons burthen, against the steamship *Cuba* of 453 tons, to recover damages caused by a collision of these vessels through the alleged fault of the *Cuba*. The *Cuba* in her defence denies any fault on her part, and throws the blame on the *Elliott*. The collision took place in the outer roadway of the harbour of Sydney, C.B., about 7 o'clock p.m. of the 25th Sept., 1895. The width of the navigable channel, a roadway from Low Point at its outer entrance to the mouth of the harbour proper, is about one or one and a half miles. The course from the harbour entrance to the outer entrance of the roadway is N.E. by E. magnetic, for a distance of about two and a half miles. The outer entrance is known as Low Point, although marked Flat Point on the chart. The *Elliott* was on a voyage from Charlottetown, Prince Edward Island, to Sydney, and when she arrived at Low Point about six o'clock p.m., stopped for a pilot. The ship, while waiting for the pilot, was about half a mile from the shore, and her head during that interval fell off somewhat from her course. It was but a few minutes till the pilot came on board, and the ship was put on her course W. by S. up the channel. The course indicated W. by S. while following the channel, was in a direction to the side of the channel opposite to Low Point, and would place the ship on that side of the fairway lying on her starboard side, thus obeying rule 21, which requires that: "In narrow channels every steamship shall, when it is safe and practicable, keep to that side of the fairway or midchannel which lies on the starboard side of such ships."

While proceeding on this course the masthead light of a steamer was observed, which the master of the *Elliott* supposed to be crossing the inner harbour in a northern direction, coming from a position near the

Victoria Pier, inside the south bar light-house. After going some distance, the steamer appeared to stop, and then as some of the witnesses phrased it, "she appeared to angle down the channel." Immediately afterwards her three lights, masthead, red and green lights, were seen apparently coming end-on to the *Elliott*, the lights showing about one or one and a half points on the *Elliott's* port bow. Up to this time the *Elliott* had kept the course on which the pilot put her when leaving Low Point, namely W. by S., but, noticing that the other vessel was coming down the channel, the pilot directed the helm to be ported, thus giving the approaching steamer more room, if required, to pass clear on the port side, red light to red light. This steamer proved to be the *Cuba* outward bound. The lights of both steamers were at this time burning brightly, and the three lights of the *Cuba* had been seen by those on board the *Elliott* for about ten or fifteen minutes after the former had squared on her course down the channel.

When the *Elliott's* helm was ported according to the pilot's orders, it was found the ship fell off about two points to starboard, and the lookout on the *Elliott's* bow states that the *Cuba's* lights were a point on the port bow of the *Elliott* for 15 minutes before that time. It also appears from the evidence that at the time, or about the time, the *Elliott's* helm was ported and her course altered more to the northward, the red light of the *Cuba* disappeared, indicating that the *Cuba* had starboarded her helm and was approaching the *Elliott*. The ships were at this time about a quarter of a mile apart. Those in charge of the *Elliott* became anxious and her helm was put hard to port, hoping they could pass close to the *Cuba*, and their helm was not again changed till the collision had taken place. Just about this time the *Cuba* blew two blasts of her whistle

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indicating under rule 19 that she was directing her course to port, an intention, however, which had already become apparent to the *Elliott* from the disappearance of her red light and the appearance of her green light on the *Elliott's* port bow; she was then only a cable length distant from the *Elliott*. The engines of the *Elliott* were still going full speed ahead when the *Cuba* blew the two blasts, and the master of the *Elliott* says it would have been impossible to avoid a collision, as they were going ahead through the water, and the *Cuba* being under her starboard helm was following the *Elliott* up as the latter endeavoured to evade her under her port helm. When the collision was seen to be inevitable orders were given on board the *Elliott* to reverse the engines full speed, but it was immediately observed that the head of the *Cuba* was falling off to starboard, although she had signalled that she was going to port, and the engines of the *Elliott* were instantly put full speed ahead, hoping to clear the other vessel by crossing her bows. The *Elliott*, however, was struck amidships. So far, it would appear that the *Elliott* had committed no error. The channel through which she was passing is one to which the precautions required by rule 21 are particularly applicable. She was on her proper side of the channel under that rule, and she was there under circumstances which apparently made it impossible for the *Cuba* to mistake the position of either vessel, while she had ample room by keeping her own side of the channel, or even keeping the midchannel of the fairway, to go on her course without danger to either vessel.

We must now consider the defence of the *Cuba*, which, as set out in her pleadings, is succinctly as follows:

In the circumstances aforesaid, those on board the *Cuba* saw the red and masthead lights only of a steamship, the *Elliott*, from two to three miles off on the *Cuba*'s starboard bow, and bearing about E.  $\frac{1}{2}$  S. from the *Cuba* by her compass, or E. by N. magnetic. The *Elliott* continued to show her red and masthead lights only, and to avoid risk of collision the helm of the *Cuba* was starboarded, when the *Cuba* was about one and a half miles from the *Elliott* and the course of the *Cuba* was then directed about N.E. by her compass, or N.E. by N. magnetic—in ample time to avoid all risk of collision had the *Elliott* kept her course. The *Elliott*, however, then ported her helm when she was about a mile or three-fourths of a mile from the *Cuba*. The helm of the *Cuba* was then forthwith put hard to starboard, and two short blasts blown on her whistle, indicating that the *Cuba* intended to clear the *Elliott* by such manœuvre; and as the *Elliott* continued to go at full speed under a port helm, attempting to cross the *Cuba*'s bows, and causing risk of collision, the *Cuba*'s engines were reversed at full speed, and three short blasts were blown on the *Cuba*'s whistle. The *Elliott* did not slacken her speed, and the ships collided, the bow of the *Cuba* striking on the side of the *Elliott* about midships. It is admitted that the masthead and red lights of the *Elliott* were seen by the officers of the *Cuba* at a distance of three miles, being E.  $\frac{1}{2}$  S. from the *Cuba*. That the *Elliott* continued to show her masthead and red lights only. That the *Cuba* starboarded when about  $1\frac{1}{2}$  miles from the *Elliott*, and she pleads that the *Elliott* brought on the disaster by porting her helm. This is practically the whole defence, and the facts to which I have referred in considering the case of the *Elliott* are not at all shaken by the evidence for the *Cuba*. It was argued by Mr. Mellish

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that the *Elliott* must be considered a crossing ship, because when first seen at a distance of three miles her lights indicated that she was on that side of the fair-way where, under the rule referred to, she ought to be, or was then on her course for that position. I would require the opinion of the Nautical Assessor, I think, to reject this contention, when it is apparent that the *Cuba* clearly understood, from the position of the *Elliott* and her then course, and when it must have been as apparent to the master of the *Cuba* as it is now to me, that to make the position of both ships perfectly secure he had only to port his helm a point or two to make a collision impossible. Indeed, if he had kept his course as it was when the *Elliott* saw his three lights, while she showed her masthead and red lights only, a collision would have been impossible, as it is not contended that there was not ample sea-room to enable the *Cuba* to port her helm and take the place on the one side of the channel which the *Elliott* had properly sought on the other. I am advised by my assessor that it is a maxim well known among seamen: "Never to starboard to red light of a crossing vessel when she is only a point or two on the starboard bow," and in this case the *Cuba* had nothing to gain by it, as by porting her helm a couple of points or less she would have passed clear, and would have regained her position on the right side of the channel without any fear of collision. I hold, therefore, that the *Cuba* was wrong in starboarding her helm when she did, that by doing so she brought on the catastrophe which happened, and is solely to blame for the collision of these two vessels. The opinion of Captain Smith, R.N.R., is in accordance with the conclusion I have announced, and I will file his memorandum with this judgment. The *Cuba* is condemned in damages and



costs. The usual reference to the registrar and merchants is ordered, and on payment of the damages and costs the *Cuba's* bail will be released.

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*Judgment accordingly.*

Solicitor for plaintiff: *W. A. Henry.*

Solicitor for defendants: *H. Mellish.*

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