

Privy Council Appeal No. 56 of 1926.

The Ship "Steel Scientist" - - - - - *Appellant*

v.

H. M. Wrangell and Company, A/S. - - - - - *Respondents*

FROM

THE EXCHEQUER COURT OF CANADA.

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 Local 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 appellant, 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 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 manœuvre 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 dangerous 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 nor'ard 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.

In the Privy Council.

THE SHIP "STEEL SCIENTIST"

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H. M. WRANGELL AND COMPANY A/S.

DELIVERED BY LORD PHILLIMORE.

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