

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Canadian Pacific Railway Company v. Robert Henderson Bryce, deceased (now represented by his Executor, William Henry Johnson), and others, from the Supreme Court of British Columbia; delivered the 30th July, 1909.

Present at the Hearing :

LORD MACNAGHTEN.

LORD COLLINS.

LORD GORELL.

SIR ARTHUR WILSON.

Nautical Assessors :

ADMIRAL SIR ARCHIBALD L. DOUGLAS,
G.C.V.O., K.C.B.

COMMANDER W. F. CABORNE, C.B., R.N.R.

[*Delivered by Lord Gorell.*]

The Appellants in this case are the Canadian Pacific Railway Company, the owners of the steamship "Princess Victoria" which came into collision about or near the Parthia Shoal off Brockton Point near Vancouver at about 2.20 p.m. on the 21st July, 1906, with the steamer "Chehalis," and in consequence the latter vessel sank, and some of her passengers and crew were drowned. Six actions were afterwards brought in the Supreme Court of British Columbia against the Appellants by certain passengers and members of the crew of the

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“Chehalis” or their personal representatives to recover damages for loss of life and personal injuries and loss of effects, on the alleged ground that the collision was caused by the negligent navigation of the “Princess Victoria.”

The Appellants denied that the collision was caused or contributed to by any negligence in the navigation of the “Princess Victoria.”

The actions were consolidated and tried in February, 1907, before Mr. Justice Martin, the local Judge in Admiralty for British Columbia, assisted by two Nautical Assessors, and on the 22nd May, 1907, the learned Judge, after a very long trial, held, with the concurrence of the Assessors, that the collision was caused solely by the negligent navigation of the “Chehalis,” and he dismissed all the actions with costs.

On appeal to the Full Court of the Supreme Court of British Columbia, sitting without Assessors, it was held by a majority of the Judges that the “Princess Victoria” was to blame for the collision, and damages and costs were awarded to all the Plaintiffs except the Plaintiff Cyril James Eldridge House, the Master of the “Chehalis,” whose appeal was dismissed.

The Chief Justice held that the “Princess Victoria” was solely to blame. Clement, J., held both ships to blame, and Irving, J., held the “Chehalis” was solely to blame. House’s Appeal failed, because he was responsible for the navigation of the “Chehalis,” and the result of the judgments was that he could not recover, and he has not appealed against this decision.

The facts are simple, and it is difficult to understand why the trial should have lasted so long as it did.

The “Princess Victoria,” a twin-screw steamship of 1,943 tons gross register, left the wharf on the south side of Vancouver Harbour bound

to Victoria, with passengers, mails, and baggage, and a crew of about 100 hands, at about 2.5 p.m. on the day of the collision. The weather was fine and clear. A strong tide about two hours' flood was setting to the eastward through the Narrows of Burrard Inlet. The "Princess Victoria" proceeded at a speed of about 14 knots through the water, between Burnaby Shoal and Brockton Point, and rounded the point under starboard helm so as to straighten down the Narrows.

The "Chehalis" was a small screw tug of about 54 tons register, with a crew of six hands, House being her master. She left the wharf at Vancouver about 1.20 p.m. with passengers, and, after crossing to North Vancouver and picking up some more passengers, left that place at about 2.5 p.m., bound to the westward through the Narrows for Blunden Harbour. House was in charge, and was at the wheel in a closed wheel-house, steering, giving such orders as were required, attending to the whistle and keeping the look-out. There was no one else on the look-out. The "Chehalis" proceeded at about nine knots through the water down the inlet, being steered by the land and not by any compass course.

The Appellants' case was that, after rounding the point, the "Princess Victoria" was steadied so as to pass to the northward of a steam launch and to the southward of the "Chehalis," which was then proceeding on the starboard bow of the "Princess Victoria" some distance off on a course nearly parallel to that of the "Princess Victoria;" that two blasts were then sounded on the "Princess Victoria" to indicate that she was intending to pass to the southward of the "Chehalis," but that the "Chehalis" suddenly came off to port towards the "Princess Victoria," causing risk of collision; that thereupon both

engines of the "Princess Victoria" were put full speed astern, and her helm hard-a-starboard, and that the "Chehalis" came rapidly to the southward, and, although she ported at the last moment, she struck the starboard bow of the "Princess Victoria" and afterwards sank, and 7 persons were drowned.

Broadly stated, the case on the other side was that the "Chehalis" was proceeding on her course out of the Narrows, and that, after she had passed Brockton Point, her Master heard a whistle behind him, and on looking through a stern window in his wheelhouse, saw the "Princess Victoria" coming down on him, that he saw she was coming right into him, and that he threw his helm hard-a-port and gave a short blast of the whistle, but that in a few seconds the "Princess Victoria" struck his vessel.

The main question in the case was purely one of fact, viz.: whether the "Chehalis" starboarded or was improperly allowed to swing over to port across the course of the "Princess Victoria," or whether the latter vessel came too close to the "Chehalis" and ran into her, or was allowed to be sheered into her by the tide.

The learned Judge who tried the case and saw the witnesses accepted the account of the officers of the "Princess Victoria" as being substantially correct. He found that, beyond doubt, there was ample room for her to have passed between the launch and the "Chehalis," and in the course of his judgment said,

I am satisfied that the officers in the pilot house of the "Princess" did keep a proper and continuous look-out and that at the time the two blasts were blown she, having just then freed herself from the anticipation of any danger from the launch close to her port bow, which had caused a momentary but immaterial deviation from her course, was steadied on a course W. by N. $\frac{1}{2}$ N., within a quarter of a point, so as to just clear Prospect

Point and take her straight down the Narrows, which course was, roughly, parallel to that of the "Chehalis." Had these respective courses and speeds been maintained, there was at that time no reason to anticipate any danger of collision, though the courses would probably have ultimately converged. . . . But I find that while said blasts were being blown, or immediately thereafter, the "Chehalis" suddenly altered her course at least three to four points from west to southward, thus bringing herself across the bows of the "Princess." . . . I have very little, if any, doubt that it was owing to the fact that Captain House, as he admits, only kept a look-out ahead, and I believe he was startled when he heard the signal and made a wrong movement of his wheel at a critical moment in the strong tide. There must have been something of the kind, for House did not take the position that he was thrown out of his course by an unforeseen eddy or current or otherwise.

The learned Judge further held that the "Princess Victoria" had not committed a breach of any of the Regulations for preventing collisions in Canadian waters, which are similar to those made under the Imperial Act, though the statutory sanction is different (*cf.* sec. 916 of Revised Statutes of Canada, 1906, chap. 113, and sec. 419(4) of the Merchant Shipping Act, 1894). In particular upon the point which appears to have been much discussed, that is to say, whether the "Princess Victoria" had broken Article 25 of the Regulations—the narrow channel rule—he stated that, having regard to the relative positions of the three vessels after the "Princess Victoria" had rounded the point, the mid-channel course which she took was the only proper one for her to take as a matter of good seamanship, as he was advised, consistent with her own safety, and it would have been unreasonable to expect her to have gone to the north of the "Chehalis," already on the northerly course, and under her stern.

On the Appeal to the Full Court the Chief Justice differed from the finding of fact by

Martin, J., that the "Chehalis" altered her course across the bows of the "Princess Victoria," and he considered that that vessel was to blame under Articles 22, 23, 24 and 25 of the Regulations. Clement, J., held that he could not, having due regard to the principles which should guide an appellate tribunal in reviewing a judgment as to matters of fact, say that the learned Judge was wrong in finding Captain House to blame, *i.e.*, guilty of contributory negligence; but he held that the "Princess Victoria" had broken Article 25, and that that was "the larger inducing cause of the catastrophe." Irving, J., supported the judgment on all grounds.

There are two different matters to consider in this case. The first is, what were the facts? and the second, upon the facts, whether either or both of the vessels were to blame?

Their Lordships consider that the facts appear to have been very fully and carefully investigated by Martin, J., with the assistance of Assessors, and that no adequate ground has been shown for an appellate court to take a different view of the facts from that taken by the learned Judge. He had the great advantage of seeing and hearing the witnesses, and unless it could be shown that he had taken a mistaken or erroneous view of the facts, or acted under some misapprehension, or clearly came to an unreasonable decision about the facts, he should not, in accordance with well recognized principles, be overruled on matters of fact which depended mainly upon the credibility of the witnesses.

An examination of the evidence in this case shows that, not only was the learned Judge entitled to come to the conclusions of fact at which he arrived, but that the weight of the evidence is in favour of those conclusions, and that the real cause of this unfortunate collision was that

there was no adequate look-out kept on board the "Chehalis," and that her Master was unaware of the presence of the "Princess Victoria" until she was about to pass him, and improperly put his helm to starboard, or allowed his vessel, which had just entered the part of the Narrows where he began to feel the full effect of the tide, to fall off her course towards the "Princess Victoria." Broadly speaking, there can hardly be the least doubt that, if House had seen and been aware of the presence of the "Princess Victoria," the collision would never have happened. It seems almost incomprehensible that he should not have noticed her even before she rounded, and as she was rounding the point, unless he never looked anywhere except straight ahead of his vessel.

The finding of the learned Judge upon this point really makes an end of the case, but it is desirable to deal briefly with the other points made on this Appeal.

It was urged that the "Princess Victoria" broke Articles 22, 24, 25 and 28.

Article 22 is the crossing rule, and Article 24 is the overtaking rule. The 24th Article is that which was applicable, for the "Princess Victoria" was an overtaking ship, but the charge is disposed of by the finding that there was ample room for the "Princess Victoria" to pass the "Chehalis," and that there would have been no collision but for the improper action of the "Chehalis" and her breach of Article 21, according to which she was bound to keep her course and speed.

Article 25 is the narrow channel rule, which provides that

"in narrow channels every steam vessel shall, where it is safe and practicable, keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel."

The collision took place somewhere about

midway across the Channel, which their Lordships consider has been correctly stated to be a narrow channel within the meaning of the Article. Then the configuration of the locality and the circumstances with regard to tide, &c., have to be considered. The learned Trial Judge held that the course taken by the "Princess Victoria" was justified by the circumstances, but the Chief Justice and Clement, J., appear to have considered that she should have gone outside the Burnaby Shoal, or at any rate under the stern of the "Chehalis."

The "Princess Victoria" appears to have followed the usual course in passing through the narrow channel between the Burnaby Shoal and Brockton Point, and to have rounded the Point in a proper course to prevent herself from being swept out by the very strong tide which she would have had on her port broadside, if she had attempted to pass directly across to the north side of the Channel leading outwards, and a similar effect would have been produced upon her if, having regard to the position of the vessels, she had proceeded to attempt to pass under the stern of the "Chehalis."

Their Lordships are advised by the experienced Assessors who have assisted them on this Appeal that the "Princess Victoria" pursued a proper course having regard to the locality and tide, and was, in the circumstances, justified, as a matter of good seamanship, in taking the mid-channel course between the two other vessels, and therefore they do not agree with the views expressed on this point by the majority of the Full Court. They further do not consider that the course pursued by the "Princess Victoria" can be held to have caused or contributed to the collision, which was solely brought about by the improper action of the "Chehalis."

With regard to Article 28 the point made under it against the "Princess Victoria" was that she did not sound her whistle when she began to round the point, and improperly failed to indicate by whistle signals the course she was taking. There does not seem to have been much, if any, argument on these points in the Courts below. It is to be noticed that when proceeding to round the point, the "Princess Victoria" was acting in the ordinary course of navigation, and that it has been but faintly suggested that she did anything wrong at a later time with regard to her whistle. A breach of the Article does not seem to their Lordships to be made out in the circumstances.

The conclusion at which their Lordships have arrived is that the decision of Martin, J., was right and should be affirmed. It would seem from the Order of the Full Court that some dealings have taken place between the Appellants and the Plaintiffs William James Crawford and Ruby Crawford with regard to withdrawing the Appeal of these Plaintiffs to that Court, and any arrangement between the parties should remain unaffected by His Majesty's Order.

Their Lordships will therefore humbly advise His Majesty to allow the Appeal, to set aside the Judgment of the Full Court dated the 18th February, 1908, except so far as it relates to House, to restore the Judgment of Martin, J., dated the 22nd May, 1907, and to order that the present Respondents do pay to the present Appellants their costs of the Appeals to the Full Court, but that His Majesty's Order be without prejudice to any arrangement which may have been made between the Appellants and the said William James Crawford and Ruby Crawford.

The Respondents who have contested this Appeal must pay the Appellants' costs thereof.

