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ORIGINAL

IN THE HIGH COURT OF AUSTRALIA.

FREDERICK LEYLAND AND COMPANY LIMITED

THE SHIP V "KAIRANGA"

and
UNION STEAM SHIP COMPANY OF NEW
ZEALAND LIMITED

V.
THE SHIP "EMPIRE STAR".

REASONS FOR JUDGMENT.

Judgment delivered at MELBOURNE

on MONDAY 17TH MARCH 1941. and

Leave and Judgment to
date from 1st April 1941.
(See Single Justice Minute Book No. 1
page 48).

FREDERICK LEYLAND AND COMPANY LIMITED

v.

THE SHIP "KAIRANGA"

and

UNION STEAM SHIP COMPANY OF NEW ZEALAND LIMITED

v.

THE SHIP "EMPIRE STAR".

DECREE.

Pronounce the collision in question in these Consolidated Suits to have been occasioned by the default of the Master and crew of the motor vessel "Empire Star" and by the default of the Master and crew of the ship "Kairanga" and pronounce that the loss or damage caused by the collision ought to be apportioned equally between the respective owners of the said two ships or vessels.

Condemn the owners of the "Empire Star" in a moiety of the damage or loss caused to the "Kairanga" and the owners of the "Kairanga" in a moiety of the damage ^{or loss} caused to the "Empire Star" by the collision.

Refer it to the Principal Registrar to assess such loss or damage and report the amounts thereof.

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FREDERICK LEYLAND AND COMPANY LIMITED

v.

THE SHIP "KAIRANGA"

AND

UNION STEAM SHIP COMPANY OF NEW ZEALAND LIMITED

v.

THE SHIP "EMPIRE STAR".

JUDGMENT

DIXON J.

FREDERICK LEYLAND AND COMPANY LIMITED.

v.

UNION STEAM SHIP COMPANY OF NEW ZEALAND LIMITED.

These are consolidated suits in Admiralty between the owners of the Motor Vessel "Empire Star" and the owners of the ship "Kairanga". The former are to be considered plaintiffs and the latter defendants in the proceedings.

The two ships collided in Sydney Harbour on the night of 7th March, 1940, and the responsibility for the collision is the matter for determination. It happened at about seven or eight minutes past eleven, somewhere in the water between Millers Point and the Harbour Bridge. The "Empire Star", a large vessel about 524 feet long with a displacement, as then loaded, of 13,500 tons, was outward bound and had come from Darling Harbour round Millers Point. The "Kairanga", a smaller vessel about 324 feet in length and then displacing perhaps 6000 tons, was inward bound and had passed under the Bridge just before the collision. The night was clear and fine.

If each vessel had been pursuing a strictly proper course the outward bound "Empire Star" would have kept to the Southern side of the channel and the inward bound "Kairanga" to the Northern side. They would have passed red light to red light, with ample water between them.

The middle of the Harbour Bridge is fixed by a red light and, rightly or wrongly, mariners appear to accept this as marking for practical purposes the midline of the channel between Dawes Point and Milsons Point.

The light is said to be in fact a little South of the middle distance between the limits of the deep water on either side.

But it is to be noticed that the flashing white light on Goat Island has a sector of 10° as a lead up the fairway and that the centre line of the sector passes through the position of the red light upon the Harbour Bridge.

The fairway to Darling Harbour is, of course, not straight. An inward bound vessel must swing from a course at the Bridge nearly West to one due South in order to get into Darling Harbour.

The exact position of the point of collision is variously placed by the parties and their witnesses.

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For the "Empire Star" a position is contended for closer alike to the Harbour Bridge and to the Southern shore than the place where the contention for the "Kairanga" puts it. But, stating the respective cases for the parties very generally, the explanation which is given by the former vessel for the collision is that the "Kairanga" began to cut across into her wrong water and that the "Empire Star", in spite of swinging further to starboard, i.e. to the South, was unable to avoid her; while for the "Kairanga" it is said that the "Empire Star" steered an unduly Northerly course and got in her wrong water, so forcing the "Kairanga" to put her helm to port in an attempt to pass on the Southerly side, a manœuvre which proved unsuccessful, partly because the "Empire Star" altered her own course to the Southward.

For each ship a claim is made that by the moment of impact such a reduction had been effected in its way that it had come almost to a standstill. They did not meet head on, but at an acute angle. The stem of the "Empire Star" struck the starboard bow of the "Kairanga" a few feet from the latter's stem. Great damage was done to the "Kairanga". Her stem broke off, together with the few feet of her starboard plates forward of the

blow. On the port side all her plating back to the well of the deck, if not further, was carried away with her stem. The stem with this forward plating fell or turned over in the water, remaining still attached to the keel. Her forecastle, forepeak, chain locker and foreward hold were exposed. Her port anchor with three fathoms of cable attached was found in the Harbour and some distance away the rest of the cable was recovered. It seems that the stem of the "Empire Star" broke the port cable of the "Kairanga" and smashed and carried away the winch. The Master said that the starboard anchor was found in the starboard forecastle.

It may be that one or conceivably both ships were swinging at the moment of impact, but in any case some force must have been needed for the stem of the "Empire Star" to tear away the nose and port side of the "Kairanga". Over an area with a radius of about 400 feet the floor of the Harbour was found strewn with wreckage.

The "Kairanga" did not sink but managed to make her way to Goat Island. At what stage in her movements after the collision the things found fell from the "Kairanga" cannot be certain, and even if no doubts

Fort Denison and before coming abreast of Kirribili^l.

As a result I think that she went under the Harbour Bridge at a speed of about 4 knots. She passed under it on the northern side of the red centre light of the Bridge; probably the distance of the port side of the ship from the vertical line from the western light was between fifty and one hundred feet. She then had the flashing light on Goat Island very fine on her port bow. Her course was perhaps 277° or 278°. She was navigated by the Master, and with him on the ship's bridge was the Third Officer at the telegraphs, an A.B. at the helm and, standing on the port side of the wheel house, a seaman whose duty it was to keep a lookout. As the ship's bridge passed clear of the Harbour Bridge, the Master gave an order to port. The helm was put at least half over to port and the ship responded by swinging somewhat to port. Almost immediately after giving this helm order, the Master noticed the starboard side light and the mast head light of a ship between him and Goat Island. They were navigation lights of the "Empire Star". I think that his own ship, the "Kairanga", had begun to swing as he noticed the lights of the "Empire Star" so that their position on his port bow was diminishing.

But ~~X~~ I

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think that the line of sight would run through the middle of Goat Island, or somewhat North of the middle. If it were necessary to fix a bearing, I would estimate it at 268°. The Master of the "Kairanga" gave an order to stop her engines, which the Third Officer telegraphed to the Engine room, where it was carried out. Shortly after this order had been given, perhaps 45 seconds to a minute later, one short blast from the "Empire Star" was heard. Notwithstanding this indication of that vessel's starboarding, the Master of the "Kairanga" replied with two blasts and I think gave a further order to port. He then put his engines full astern. They had been stopped for about a minute. The "Empire Star" was swinging to starboard and, in a final effort to escape, the Master of the "Kairanga" gave an order to starboard. The helm was put over to starboard and the "Kairanga's" swing to port was checked. There is some disagreement as to the sound signals next given by the "Kairanga". There is no dispute that she gave three blasts to show that she had put her engines astern, but there is some evidence that a short blast was first given to indicate that her helm had been put to starboard and this is alleged by the "Empire Star's" preliminary act, though not by her

pleading. It does not seem to me to be of any importance, but I do not think the single short blast was given. A minute after the order to put the engines astern the ships struck. At the moment of impact I think that the "Kairanga" had lost almost all her way and was not swinging. The blow she received from the "Empire Star" rotated her to port and when the vessels drew apart I think that she lay with her head considerably more to the South than at the moment of impact. At that moment I would estimate the bearing of her fore and aft line as about 256° or 258°.

The starboard side light and mast head light of the "Empire Star" had passed clear of any obstruction to the vision from the bridge or forecastle head of the "Kairanga" at least two minutes before they were actually seen by the Master of that ship. No one else saw them before he did and I think that he noticed the "Empire Star's" lights before anyone on the "Empire Star" saw the "Kairanga" or her lights.

Those navigating each ship failed to see the other until very shortly before the collision, not more than two minutes, and this fact partly explains the casualty. The "Kairanga" had no one stationed on the

forecastle head.

On the "Empire Star", to which I now turn, the Chief Officer, a cadet and the bosun were stationed on the forecastle head. The ship was under the charge of a pilot and also on the bridge were the Master, the Second Officer, who operated the telegraphs, the Fourth Officer, who recorded the Engine room orders, and the helmsman. The ship was swung in Darling Harbour whence she emerged, according to the Engine room book and the Bridge book, with her engines at dead slow. While in Darling Harbour she gave a prolonged blast on her siren, a sound that, on board the then distant "Kairanga", was either not heard or not noticed. As the "Empire Star" came to Millers Point the pilot missed the usual light on Blues Point which, for some unexplained reason, was out on that night. He called the Master's attention to the non-appearance of the light, and it is evident that it was a matter which interested him, and that he either dwelt upon or recurred to the subject. He did not, I think, keep close in to Millers Point and Walsh Bay wharves, as he went round on a starboard helm to go under the Harbour Bridge. There was no reason why he should not have done so; but, on the

other hand, there was not much reason for doing so. X

Under war conditions, ships seldom come up the Harbour

at night, and he might expect to have the waters to

himself. As appears from what I have already said,

I think that his swing was sufficiently far to the North

to make the "Empire Star's" green light show along a

line or bearing from at least the middle of Goat Island

to a point on the Harbour bridge very little North of

the centre red light. In fact I think her swing

took her green light even further North before shutting

it out from a line of vision from the centre of the Harbour

Bridge.

At a time somewhat over two minutes, but probably

not more than two and half minutes, before the actual

collision, the pilot gave an order for the port engine

to go half ahead.

He did this to quicken the

ship's swing to starboard and it would be a natural order

to give if he felt that he was swinging rather wide,

that is to the North.

The engine and bridge books show

that the port engine was left half ahead for a minute and

that "slow ahead both" was not given until about a minute

and a half before the collision.

I do not believe

that the "Kairanga" or its lights had been seen, when that

order was given.

But almost at once the Master

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of the "Empire Star" saw the lights or the ship or

both. He exclaimed "My God ! There's a ship !"

He says that it was because he looked through his

glasses that he sighted the "Kairanga". On hearing

the Master's exclamation, the Pilot~~x~~ and indeed the

others on the bridge say that they then saw the ship

or her lights. One blast was given and the helm

was starboarded. At the same time I think that an

order was given to put the starboard engine astern.

The single blast was answered with two, whereupon the

"Empire Star" gave another single blast. The engine

order "full astern both" was then given, but I am inclined

to think that the collision took place before it could

be carried into effect. It is not easy to say what

the speed of the "Empire Star" was at the moment of

impact, but I estimate it at about 4 knots.

I think that the ship was swinging to starboard

when she struck the "Kairanga", but probably at the

instant of collision the centre lines of the ships, if one were

produced, would have been made an angle of about 20°.

At the time when the Master of the "Empire Star"

ejaculated "My God ! There's a ship !", I think that the

"Kairanga's" port side light was visible to him, but that

she was swinging and that almost immediately it was shut out and only the green was open. But I cannot think that the "Kairanga's" red was on the "Empire Star's" port bow.

It is clear, however, that in any case the ships were very close. The distance was estimated by the Master of the "Empire Star" as two ship's lengths, or 1000 to 1100 feet. The Chief Officer on the fore-castle head did not see the "Kairanga" until his own ship sounded a blast, but when he did see her he regarded a collision as inevitable and gave the order to "jump clear". I think that the Master of the "Kairanga" sighted the "Empire Star" probably as much as a full minute before the Master of the latter sighted the former. The "Kairanga" was under a diminishing speed but had been carried some distance beyond the Harbour Bridge. I have said that her Master sighted the "Empire Star" almost immediately after giving his order to port on emerging on the western side of the Harbour Bridge. But I feel that the witnesses for the defendant have generally tended to put events and positions too close to the Bridge. The tug, the "Theresa Ward", which awaited the "Kairanga" was probably further West and the ferry boat which passed

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between the two ships probably did go astern of the tug. Doubtless she did deviate to do so, but not to the extent represented. The deviation would be natural if the Master of the ferry boat expected the tug to follow or proceed alongside her intended tow. For many reasons the place of the collision appears to me to be somewhere about the position where the anchor was raised. That is I think satisfactorily fixed as 598 feet from the North West corner of the wharf at Dawes Point, (No.1 of Walsh Bay) on a bearing $337^{\circ}08'$. It is an approximate distance of 970 feet from the centre light of the Harbour Bridge on a bearing of about 273° or 274° .

Upon the foregoing view of the facts, the first matter for consideration is why the navigators of neither ship saw the other earlier. I am prepared to believe that the strong lights of Luna Park make it less easy than formerly to see the navigation lights of distant ships, particularly looking from West to East across the illuminated area. But the shore lights cannot account for what happened in the present case. I feel certain that, with proper vigilance, long before the "Kairanga" reached the Harbour Bridge, she might have been seen from the "Empire Star", that is after the latter vessel came out of Darling Harbour. I think that the atten-

(attention

tion of the Master and of the Pilot was distracted by their interest in the extinguishment of the light on Blue's Point. It is not unlikely that they went to the port side of the bridge and left the wheel house for a few moments. And it is not unlikely that, through looking at or towards Luna Park, their eyes became less able to pick up quickly the lights of the "Kairanga".

That those on the forecastle head were looking at Luna Park from time to time I feel fairly confident. It is remarkable that no one saw the ferry crossing ahead of the ship. But whatever may be the explanation, the fact is that on a clear night in good weather the lights of an oncoming ship, the "Kairanga", were not seen when they were visible. There was some suggestion that the humidity was higher than usual, and that the side lights of the "Kairanga" were not very bright. But it is hard to believe that any difficulty existed in seeing the "Kairanga's" lights while she was still on the Eastern side of the Bridge, at all events as far East as Kirribiri.

Why the "Empire Star" was not seen earlier from the "Kairanga" has not been satisfactorily explained. There was no one on the forecastle head. It is the station of the Chief Officer, nearing port, and he was to

have been called at Bradley's Head, but he was still in his cabin. The lookout on the navigation bridge, for some reason, did not report the ship, and he says that he did not see her until the Master saw her. They all saw the "Empire Star" when she was almost right ahead, but I think that she should have been sighted earlier. The "Kairanga" had then already ported and, seeing the "Empire Star's" green light, the Master judged that the best thing to do was to continue to go to port in the hope of passing green to green. This I think was wrong.

On the other side, however, I think that the "Empire Star" had gone too far North in her swing. If she had kept a proper lookout she might have had time to remedy this fault. But her lookout was, in my opinion, badly kept.

I am of opinion that both ships should be held to blame.

I think that on the "Empire Star" the lookout was improperly kept and that she went so far North as to be in her wrong water.

X
I think that on the "Kairanga" an insufficient
lookout was kept, because, though coming up the Harbour,

no one was stationed on the forecastle head and I think that the "Empire Star" was not noticed by the lookout stationed on the Bridge of the "Kairanga", or by the Master of that ship, at a time when her lights were already visible and I think that the "Kairanga" ported too soon, and, notwithstanding hearing one short blast from the oncoming ship, again ported. In all this she was at fault.

The collision resulted from a combination of the faults I have ascribed to the two ships.

From this it follows that the loss or damage arising from the collision must be divided or apportioned between the two ships. (Navigation Act 1912-1935 Secs. 259 and 261).

X I have given much consideration to the question whether the vessels were in fault in different degrees, so that the liability to make good the loss or damage would be in unequal proportions. But I have come to the conclusion that in all the circumstances it is not possible to establish different degrees of fault. The liability must therefore be apportioned equally.

The decree will be as follows:

Pronounce the collision in question in these Consolidated Suits to have been occasioned by the default

of the Master and crew of the motor vessel "Empire Star"
and by the default of the Master and crew of the ship
"Kairanga" and pronounce that the loss or damage caused
by the collision ought to be apportioned equally between
the respective owners of the said two ships or vessels.

Condemn the owners of the "Empire Star" in a
moiety of the damage or loss caused to the "Kairanga"
and the owners of the "Kairanga" in a moiety of the
or loss
damage/caused to the "Empire Star" by the collision.

Refer it to the Principal Registrar to assess
such loss or damage and report the amounts thereof.

No order as to costs.