

ORIGINAL

IN THE HIGH COURT OF AUSTRALIA.

Australian Steamships Pty Ltd

v.

The Ship "Echuca"

REASONS FOR JUDGMENT.

Delivered at

Sydney

on

Thursday 26th July 1945

40358

A. H. PETTIFER, ACTING GOVT. PRINT.

AUSTRALIAN STEAMSHIPS PTY LTD

V

THE SHIP " E C H U N G A "

O R D E R

Pronounce that the collision in this cause was occasioned by the fault or default of the master and crew of the vessel " Echunga " and by the fault or default of the master and crew of the vessel " Period ", and that the loss or damage done to the said ships ought to be borne equally by the owners thereof. Refer it to the Registrar to report the amounts of the damage done to the respective ships or otherwise occasioned by the collision. Let the respective amounts found be set off one against the other, and in respect of such damages condemn the party whose loss or damage is the less for half the excess.

AUSTRALIAN STEAMSHIPS PTY. LTD.

v.

THE SHIP "ECHUNGA".

JUDGMENT.

DIXON J.

AUSTRALIAN STEAMSHIPS PTY. LTD.

v.

THE SHIP "ECHUNGA".

JUDGMENT.

DIXON J.

This suit arises out of a collision between two ships while steaming in convoy. The convoy was proceeding on a north easterly course along the Victorian coast. The collision occurred at about 2.45, or possibly 2.50am., of 30th June 1943. It was a cloudy night with intermittent rain and, though visibility was not very bad, it was not good. The ships of the convoy were drawn up four abreast in lines 3 cables apart^{and}/in columns or files separated by 3 cables. The two ships that collided were stationed in the inner positions of the second line. The plaintiff's ship, the "Period", was the second ship from the left of the convoy and she /

she had abeam, on her port hand, a ship called the "Astoria", being the outer ship of the second line. The defendant ship, the "Echunga", was the third vessel and abeam on her starboard hand was the fourth ship, the "Koonda". While they were proceeding, with stations assigned to them in this order, the bows of the "Period" and "Echunga" struck, the fore and aft lines of the respective ships forming an angle of some 30 degrees. This could hardly have happened without fault, and the question is where the fault lies. It is evident that one or other, or both, ships must have moved from her station, or their respective stations. The evidence called contains an irreconcilable conflict as to which did so. Without discussing the witnesses or their evidence, I shall state what I find to be the facts.

I shall begin with the movements of the "Period" shortly before the collision. I am satisfied that about twenty minutes before the collision the "Period" began to veer /

veer out of her station to port, and by continuing to go to port endangered the "Astoria". She had advanced a little from her station abeam of that ship and looked as if she would come across the bows of the "Astoria", which thus would, unless something were done, collide with the port side of the "Period". The "Astoria's" engines were stopped and were put full astern. This occurred at 2.30am. I believe that the "Period" actually got to a position to port of the "Astoria's" fore and aft line. How she regained a position on the starboard side of that ship is not clear. It is suggested that she fell behind the "Astoria" and came up aft; but this I doubt. However that may be, I think that she made over under a starboard helm for the purpose of resuming or recovering her station, but I feel sure that she went too far over. The explanation of her crossing to port appears to be that an indefinite order to port was given to the helmsman to port his helm, and he, not

understanding /

understanding the intention of the order, continued under a port helm, awaiting presumably a further order.

I now turn to the " Echunga ". At her wheel was an ordinary seaman named Dale who steered in a manner very unsatisfactory to the second officer, whose watch it was . He had taken the wheel at two o'clock. The second officer found fault with him two or three times and told him to steer a better course. At length the second officer went over to the look-out, who was stationed on the port wing of the bridge. He was a seaman named Pudney, who, I gather, was an A.B. and, at all events, was more experienced than Dale. The second officer ordered Pudney to take over the wheel. This Pudney did. But, either as he did so, or before he did so, the ship was allowed to swing very decidedly to port. Neither Pudney nor Dale was called as a witness, and the second officer, upon being asked during his evidence for an explanation of this extraordinary sheer, said that he knew of nothing to account for it. However, he gave an order to put the helm hard astarboard. He says that almost immediately he saw the " Period "

converging: she was either abeam or just before the beam, and dangerously close. She gave two short blasts, signifying that she was porting, and he answered with one blast and then, within a very short space of time, the ships struck. In fact the "Period's" helm was put hard aport just before the collision. Immediately before that it had been put over half a point.

Evidence called for the plaintiffs, the owners of the "Period", places both ships at the moment of collision in the station belonging to the "Period", which means that she did not cross or swing over, but that the "Echunga" did so. Evidence called for the "Echunga" assigns the place of collision to the station of that ship.

Giving the best consideration I can to the whole evidence, I think that the proper conclusion is that at the time of the collision neither ship was in her station. I believe that the true explanation of the matter is that the "Period" bore too far over to
starboard /

starboard by continuing too long under a starboard helm, and that, owing to some neglect or some incident connected with Dale and his replacement by Pudney, the "Echunga" swung considerably over to port. Probably the ships would have met at a much wider angle than 30 degrees if just before the collision the helm of the one had not been put hard astarboard and that of the other hard aport.

I find both ships to blame.

In my opinion each vessel was in fault in equal degree. At all events in the circumstances of the case it is not possible to establish different degrees of fault: see Peter Benoit, 1915 84 L.J.P. 87: 85 L.J.P. 12: Umtali, 1938 160 L.T., 114: sec. 259 of the Navigation Act 1912-1942. The loss must therefore be apportioned equally. No order as to costs.

Pronounce that the collision in this cause was occasioned by the fault or default of the master and crew of the vessel "Echunga" and by the fault or default of the master and crew of the vessel "Period", and that the loss or damage done to the said ships ought

to be borne equally by the owners thereof. Refer it to the Registrar to report the amounts of the damage done to the respective ships or otherwise occasioned by the collision. Let the respective amounts found be set off one against the other, and in respect of such damages condemn the party whose loss or damage is the less for half the excess.
