Michigan Law Review

Volume 55 | Issue 4

1957

Admiralty - Collision - Duty of Third Vessel to Give Warning

Michael Scott
University of Michigan Law School

RECENT DECISIONS

ADMIRALTY—COLLISION—DUTY OF THIRD VESSEL TO GIVE WARNING—*Washington,* a private merchantman proceeding north at night through a large United States Navy formation steaming west, received no warning from formation commanders that *Ruchamkin,* an escort, was rejoining from the east. Uninformed of *Washington's* presence and ordered to resume station expeditiously, *Ruchamkin* entered the formation at high speed. Despite late radical maneuvers upon discovery of *Washington* close aboard, *Ruchamkin* was struck by the latter's bow with resulting damage to both ships. On reciprocal libels, *held,* decree for *Washington's* owner. In addition to *Ruchamkin's* failure to anticipate *Washington,* the United States was negligent in that the formation commanders made no effective effort to caution *Washington* of the imminent peril created by *Ruchamkin's* obedience to their orders. *The Ruchamkin,* (E.D. Va. 1956) 141 F. Supp. 97.

Waiver of federal immunity to suit for damage caused by a public vessel[1] is today understood to encompass not only actions in which the public vessel is a physical instrument of harm, but also those in which injury results from negligent conduct on the part of ship's personnel in the vessel's operation[2] or possession,[3] regardless of physical contact. It has long been clear that such negligence—normally fixed by reference to applicable navigational rules[4]—may be a causative factor in a collision despite corporeal removal of the wrongdoer, as in the infrequent case where vessel *A,* without impact, crowds vessel *B* into collision with *C,*[5] or where a tugmaster, though physically apart from his tow, causes it to be struck by an innocent ship.[6] The recent perfection of effective marine search radar has significantly expanded the scope of judicial inquiry in resolving problems of inter-ship responsibility.[7] While there has not yet emerged a generic duty to utilize

1 ". . . [A libel] in personam in admiralty may be brought against the United States . . .for damages caused by a public vessel of the United States . . . ." 43 Stat. 1112 (1925), 46 U.S.C. (1952) §781.

2 Canadian Aviator, Ltd. v. United States, 324 U.S. 215 (1945).

3 Federal liability respecting the use of public vessels has apparently been extended beyond the requirement of operation announced in Canadian Aviator, Ltd. v. United States, note 2 supra. To the effect that mere possession is now sufficient, see Thomason v. United States, (9th Cir. 1950) 184 F. (2d) 105.

4 ROBINSON, ADMIRALTY 796 (1939). The incident in the principal case was controlled by the International Regulations for Preventing Collisions at Sea. Id. at 802. These regulations, ratified by Congress in 1951 [65 Stat. 406-420 (1951), 33 U.S.C. (1952) §§144-147], were originally adopted by the most recent (1948) international conference on safety of life at sea. For a history of international cooperation regarding navigational safety, see 1 OPPENHEIM, INTERNATIONAL LAW, 8th ed., §265 et seq. (1955).

5 The Susquehanna, (E.D.N.Y. 1905) 134 F. 641; The Sisters, 1 Prob. Div. 117 (1875). See generally, GRIFFIN, THE AMERICAN LAW OF COLLISION §223 (1949).

6 The John G. Stevens, 170 U.S. 113 (1898); Bouchard Transportation Co. v. The Providence, (2d Cir. 1955) 223 F. (2d) 404. Cf. Compania Maritima Samsoc Limitada v. Moran Towing & Transp. Co., (2d Cir. 1952) 197 F. (2d) 607.

7 A useful discussion of the principles, limitations, and import of modern navigational

available radar for evasion of collision,[8] the availability of radar may affect the duty of a commander who manifests his assumption of responsibility for another's safe navigation. Specifically, it may be said that a radar-equipped vessel which, by military relation or positive acts of intercession, inspires justifiable reliance in a second vessel that the first will give warning in case of danger, creates in herself a duty to give such warning.[9] Thus a convoy commodore[10] or the commander of an escort vessel,[11] aware of danger to ships in his charge, is negligent if he omits giving them timely warning of possible harm. So also where two vessels are about to cross in a heavy fog, a third vessel which interjects a whistle signal indicating the navigational procedure to be followed will be negligent if she then fails to warn the crossing vessels of their dangerous proximity as it appears on her radar.[12] It is apparent that these cases represent no more than specialized applications of an established tort concept, viz., that *A*, having undertaken to assist an imperiled *B*, must do so with reasonable care.[13] The court's finding in the principal case, however, that the "special circumstances"[14] and "general prudential"[15] international navigational rules imposed a legal duty on the formation commanders to caution *Washington*, a vessel not in their original charge, would appear to conflict with the

radar appears in WYLIE, THE USE OF RADAR AT SEA (1953). See also Hogan, "The Use of Radar as a Legal Duty," The J.A.G. J., Sept. 1948, p. 3.

8 Compare The Medford, (E.D.N.Y. 1946) 65 F. Supp. 622, noted in 33 VA. L. REV. 71 (1947), with British Transportation Commission v. United States, (4th Cir. 1956) 230 F. (2d) 139. See also Biesemeier and Bergs, "Some Legal Aspects of Radar Conning," The J.A.G. J., Dec. 1953, p. 3. To the effect that possession of radar in no way diminishes or alters duties under the International Regulations for Preventing Collisions at Sea, see INTERNATIONAL CONFERENCE ON SAFETY OF LIFE AT SEA, recommendation 19 (1948).

9 Such a rule is to be inferred from the decision or dicta in the following cases: Chesapeake & O. Ry. Co. v. Cleveland Tankers, Inc., (E.D. Mich. 1954) 121 F. Supp. 830; United States v. Adstratus, (2d Cir. 1951) 190 F. (2d) 883; United States v. The Australia Star, (2d Cir. 1949) 172 F. (2d) 472, cert. den. 338 U.S. 823 (1949); Publicover v. Alcoa S.S. Co., (2d Cir. 1948) 168 F. (2d) 672; The Sobieski, 81 Ll. L. REV. 51 (1947), affd. [1949] Prob. 313; Glaucus and City of Florence, [1948] Prob. Div. 95.

10 The Sobieski, note 9 supra; Glaucus and City of Florence, note 9 supra; Publicover v. Alcoa S.S. Co., note 9 supra.

11 United States v. Australia Star, note 9 supra; United States v. Adstratus, note 9 supra.

12 "The Mead, having injected herself into the picture and having sounded a two-blast signal which might indicate to The Meteor that the unseen No. 12 was to pass The Mead's starboard, was guilty of misleading The Meteor when she did not warn her that The No. 12 was ignoring her signal and was heading into The Meteor's path." Chesapeake & O. Ry. Co. v. Cleveland Tankers, Inc., note 9 supra, at 834.

13 PROSSER, TORTS, 2d ed., 184 et seq. (1955).

14 "In obeying and construing these Rules due regard shall be had to all dangers of navigation and collision, and to any special circumstances . . . which may render a departure from the above Rules necessary in order to avoid immediate danger." 65 Stat. 419 (1951), 33 U.S.C. (1952) §146k.

15 "Nothing in these rules shall exonerate any vessel . . . from the consequences . . . of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case." 65 Stat. 419 (1951), 33 U.S.C. (1952) §147a. For a general construction of these two rules, see HILBERT, THE INTERNATIONAL RULES OF THE ROAD AT SEA 126 (1938).

basic tenet of the tort principle just stated: *A* has no original duty, save perhaps a moral one, to go to imperiled *B*'s assistance, except where the peril was created by *A*'s antecedent misconduct.[16] It can be hypothesized (1) by permitting *Washington* to enter the formation, the commanders undertook to assist her, and were then bound to exercise due care to avoid injury to her, or (2) that by ordering *Ruchamkin* to station they were guilty of prior misconduct imperiling *Washington*. The court is silent as to these possibilities, however, so the decision may be construed as imputing to the formation commanders an original duty toward a strange vessel to assist in the latter's safe navigation. Even the potential implication of such a legal duty should be effaced.[17] Judicially to derive consent to give warning from acts no more indicative of consent than steaming in sea-lanes while equipped with radar is to confuse and compound the already exacting task of keeping one's own vessel out of harm's way.

Michael Scott

16 PROSSER, TORTS, 2d ed., 184 et seq. (1955).

17 Note the following statement from Biesemeier and Bergs, "Some Legal Aspects of Radar Conning," J.A.G. J., Dec. 1953, p. 5: "Yet another element of fault was found . . . in that there was a duty upon the escorting naval vessel to warn her charge by signal lights, whistle signals, or radio that she was standing into danger. . . . It is the authors' opinion that this places a serious and what could amount to an intolerable burden on the escort."