

23rd. January, 1954

Judge :— The Hon. Mr. Justice W. Harding, B.Litt., LL.D.

The Police *versus* Leading Seaman Arthur Thomas Lay  
**Navigation — Damages — Order-in-Council of the  
 13th October, 1901**

*According to the rules of navigation, adopted by every maritime country of any importance, one of the elementary rules of good seamanship is to keep a proper look-out. And any one who fails to keep a proper look-out is answerable for want of ordinary care, skill and diligence.*

This is an appeal from a judgment given by the Criminal Court of Magistrates on the 16th November, 1953, whereby the appellants were found guilty of having, whilst acting as coxswain of an oar-propelled naval whaler, through imprudence, negligence, unskilfulness, and non-observance of regulations, hit a fifteen-year old boy, by name Emmanuel Mallia, with one of the oars, causing him an injury on his left knee, as certified by Dr. Camilleri;

The Court below came to the conclusion that the appellants had failed to keep a proper look-out, and had failed to give a sufficient wide berth to Giuseppe Mallia's boat, and sentenced him to the payment of a fine (ammenda) of £3;

This Appellate Court, after hearing the evidence (see shorthand transcript in the record), and after hearing the submissions of Counsel for the appellants and those of the Crown Counsel, considers as follows;

The evidence shows that the appellants, on the 4th September, 1953, was the coxswain of a naval whaler of H.M.S. Rampura. The whaler was out for training in Marsamxett Creek. At a certain moment the whaler passed close by a fishing boat which was moored, and in which there was the boy Emanuele Mallia together with his father Giuseppe Mallia. The boy states in his evidence that at that moment he was hit on the knee by one of the oars of the whaler; and

his father corroborates his statement. The appellant denies that the boy was hit;

This Court, after carefully weighing the evidence, has come to the conclusion that, in point of fact, the boy was hit by one of the oars. The Court's opinion is based on the following reasons:—

*Omissis;*

It appears, from the reasons afore stated, that the conclusion reached by the Magistrate is correct, and that the appellant, who at the time was shielding his eyes from the sun with his hand, failed to keep a proper look-out and to pass by the fishing boat at a reasonably safe distance;

According to the rules of navigation, adopted by every maritime nation of any importance (vide, as far as Maltese Law is concerned, Order-in-Council of the 13th October, 1910, published in Government Gazette 5341 of the 20th January, 1911), one of the elementary rules of good seamanship is to keep a proper look-out. Any one who fails to keep a proper look-out is answerable for want of ordinary care, skill and diligence. There was nothing to prevent the appellant from keeping at a safe distance from the fishing boat; and in passing it so close as afore mentioned, he showed neglect of what, in the collision rules, is termed "neglect of a precaution required by the ordinary practice of seamen";

This Court, therefore, dismisses the appeal, and affirms the judgment of the Court below. The appellant may pay the fine within six days.

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