

BRITISH COLUMBIA ADMIRALTY DISTRICT

1957  
 June 26  
 June 26

BETWEEN:

CANADIAN PACIFIC RAILWAY } PLAINTIFF;  
 COMPANY . . . . . }

AND

BLACK BALL FERRIES LIMITED . . . . DEFENDANT.

*Shipping—Collision—Both ships proceeding at excessive speed in dense fog—Both ships held to blame in equal degree.*

*Held:* That where two ships collided in dense fog in mid-channel between Prospect Point and Lions Gate Bridge in the First Narrows, Vancouver Harbour, and the Court finds each vessel was proceeding at an excessive rate of speed under the conditions prevailing, both ships should be held to blame in equal degree.

ACTION for damages resulting from a collision in the First Narrows, Vancouver Harbour.

The action was tried before the Honourable Mr. Justice Sidney Smith, District Judge in Admiralty for the British Columbia Admiralty District at Vancouver.

*A. G. Harvey and F. H. Britton* for plaintiff.

*C. C. I. Merritt* for defendant.

The facts and questions of law raised are stated in the reasons for judgment.

SIDNEY SMITH D.J.A. now (June 26, 1957) delivered the following judgment:

This case concerns a collision that occurred in mid-channel between Prospect Point and Lions Gate Bridge in the First Narrows, Vancouver Harbour, on September 14, 1956. The vessels concerned were the passenger ferry *Princess Nanaimo* (length 344 feet; beam 62 feet, 6787 tons gross) and the passenger ferry *Kahloke* (length 300 feet, beam 57 feet, 3910 tons gross).

1957

CANADIAN  
PACIFIC  
RAILWAY  
Co.  
v.  
BLACK BALL  
FERRIES LTD.

Sidney Smith  
D.J.A.

I mention this particularly because though these ships are commonly referred to as "ferries", they would be more correctly described as passenger motor-vessels. The term "ferry" is no doubt attached to them because they each ply across the Strait of Georgia with passengers and cars several times a day.

On this occasion the *Princess Nanaimo* was outbound from Vancouver to Nanaimo on her scheduled time and more or less her usual course. That was not the case with the *Kahloke*. Her termini were Horseshoe Bay (14 miles north of Vancouver) and Departure Bay (5 miles north of Nanaimo). Ordinarily they would never meet near the First Narrows but bad weather had damaged the landing stage at Horseshoe Bay and the *Kahloke* had no choice but to proceed to Vancouver to unload cars and disembark passengers. Following closely behind her substantially of the same size, belonging to the same company, and also carrying passengers and cars was the motor-vessel *Bainbridge*. The ferry kept out of difficulty and need not again be mentioned, other than by way of narrative.

According to the *Princess Nanaimo's* pleadings she had left her berth on the afternoon, September 14, 1956, and was proceeding through the First Narrows on one of her scheduled runs to Nanaimo. Her log books are expressed in standard time but I translated the entries into daylight saving time. Visibility was not good. According to the evidence and her log there were fog patches in the Narrows and from the Lions Gate Bridge westwards there was dense fog which indeed extended across the Strait to Nanaimo. The vessel had received information by radio telephone from the bridge signalman that the *Kahloke* and the *Bainbridge* were on the other side inbound. The *Kahloke* at the same time from the same source obtained appropriate information about the whereabouts of the *Princess Nanaimo*. So that both vessels knew that in all probability they would meet in the narrowest part of the Narrows—some 1200 feet in width—and of course they also knew that very dense fog prevailed. Nevertheless each vessel proceeded, sounding fog signals it is true, but in my opinion at a speed which was clearly excessive in the circumstances. In each case the average speed was approximately 8 knots. In my opinion nothing will justify such a speed in these

restricted waters in dense fog with traffic about. The fact that the *Princess Nanaimo* had not yet entered the thick fog makes no difference. It may in fact rebound against her contentions for she had the better chance by careful navigation beforehand of keeping clear.

The *Princess Nanaimo* first heard the fog whistle of the *Kahloke* at 3.25 $\frac{1}{4}$  p.m. The *Kahloke* was then invisible within the fog somewhere to the west of the bridge. Thereafter the *Princess Nanaimo's* engines were stopped  $\frac{1}{2}$  minute, at slow ahead  $\frac{1}{4}$  minute, stopped  $\frac{1}{4}$  minute, and then full astern  $\frac{3}{4}$  minute. At the end of this period the *Kahloke* became visible in the fog on the *Nanaimo's* port bow, 200 feet away. At this time the *Princess Nanaimo* said she had some sternway on her but this I gravely doubt. I think she still had headway. Collision was then inevitable, in either case.

The *Kahloke* gave her speed just before the collision as 8 knots. She saw the *Princess Nanaimo* at Prospect Point 300 feet away and dead ahead of the *Kahloke*. Her logs are significantly meagre in their information. However the Master admitted that approaching the Narrows and upon hearing the first whistle given by the *Princess Nanaimo* he slowed down his engines but did not stop them until three minutes later. She too had some headway upon colliding. No doubt each Master did what he thought best and I do not scan too closely what was done by the two vessels while in the throes of collision. It will be sufficient to say that each with her port bow struck the port bow of the other. The *Kahloke* must also be held at fault.

Neither vessel complied with any one of the requirements of Rule 16 of the Collision Regulations. (The "stop" of the *Princess Nanaimo* at 3.25 $\frac{1}{4}$  p.m. was stated by the *Kahloke's* counsel as being merely a "token" stoppage.)

At first I thought the *Princess Nanaimo* the more to blame because she passed from visibility into the fog while the *Kahloke* had been in fog all the way down the Coast. In the end, however, I think justice will be done by holding both to blame in equal degree and I so find. The learned Registrar will assess the damages and costs will follow in like degree.

*Judgment accordingly.*

1957  
CANADIAN  
PACIFIC  
RAILWAY  
Co.  
v.  
BLACK BALL  
FERRIES LTD.  
—  
Sidney Smith  
D.J.A.  
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