

## BRITISH COLUMBIA ADMIRALTY DISTRICT

1958

BETWEEN:

Mar. 27 &amp; 28

LIONS GATE LUMBER CO. LTD. . . . . PLAINTIFF;

June 11

AND

THE SHIP *FRANCES SALMAN* . . . . . DEFENDANT;

AND

RICHMOND TUG BOAT CO. LTD. . . . . THIRD PARTY.

*Shipping—Collision between defendant ship and boom of logs—No proper lights on towing tug or boom at time of collision—Action against defendant ship dismissed.*

*Held:* That where a collision occurred between defendant ship and a boom of logs in tow of a tug which did not exhibit proper towing lights on the tug or the tail end of the boom defendant ship cannot be held liable for damages resulting from the collision.

ACTION for damages caused by collision between defendant ship and a boom of logs.

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

*W. D. C. Tuck* for plaintiff.

*J. R. Cunningham* for defendant.

*Granville Mayall* for third party.

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

SIDNEY SMITH D.J.A. now (June 11, 1958) delivered the following judgment:

This suit concerns a collision between the defendant ship and a boom of logs of eighteen sections in tow of the tug *Skooter*. A third party was joined, namely, the Richmond Tug Boat Co. Ltd., who were the charterers of the tug.

The tug in tow had been weather-bound in Dogfish Bay, Gabriola Pass, on March 31 of last year. During the afternoon the weather moderated and the tug master decided to proceed to his destination, Vancouver. While

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 —  
 Sidney Smith  
 D.J.A.  
 —

crossing the strait the weather became threatening and he decided to turn back and regain further shelter. His log entry was as follows:

17.00 Thrasher Rock. Light easterly. Turned back. Westerly coming up.

Half an hour later the boom was struck by the said steamship and cut in two about the middle. The night was dark but clear.

The steamship had left Powell River and was on her way to Victoria and Los Angeles. She is of Swedish nationality. Evidence was given on her behalf by her master, the chief officer and the British Columbia pilot, Captain Simpson. The latter two were on her bridge at the material times and the master came up immediately after the collision. I accept the evidence of these three officers without hesitation. They impressed me as being thoroughly competent and they gave their testimony in a thoroughly seamanlike manner. I do not accept any conflicting evidence on the part of the plaintiff's witnesses. I am satisfied that a vigilant lookout was kept by both the chief officer and the pilot and that no proper lookout was kept by either of the men on the tug.

The main issue in the case was as to whether the tug was showing the proper lights at the material times and whether there was a light at the tail end of the boom. Admittedly the tug was not showing the required towing lights under Article 3 of the Regulations for her uppermost light was an "all-round" light at the top of her mast. It is idle to say that this was not misleading. Apart from this, however, I find that she exhibited no other towing lights or a stern light, and moreover that if she carried a light on the tail end of the boom it was in such condition, or so fixed, as not to be visible to those on the *Frances Salman*.

There will be judgment for the defendant with costs.

*Judgment accordingly.*

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