

ON APPEAL FROM THE BRITISH COLUMBIA ADMIRALTY DISTRICT

1935

Dec. 9 & 10

BETWEEN:

THE S.S. *PRINCESS ALICE*, (DEFEND- } APPELLANT;
 ANT) }

1936

Jan. 31

AND

THE CORPORATION OF THE DIS- }
 TRICT OF WEST VANCOUVER } RESPONDENT.
 (PLAINTIFF)

Shipping—Collision—Immoderate speed of both vessels proceeding through dense fog—Joint negligence—Article 16 of the International Rules of the Road.

The collision herein occurred in the First Narrows, at the entrance to Vancouver Harbour. Both vessels were found to have been proceeding at excessive speed through a dense fog.

Held: That since the collision was primarily caused by the joint negligence of both ships in failing to comply with the first part of Article 16 of the International Rules of the Road, and in proceeding through a dense fog at a speed which was immoderate having regard to the existing conditions, they were equally at fault and the total damage occasioned by that joint fault should be borne equally by the parties.

APPEAL from the judgment of the District Judge in Admiralty for the British Columbia Admiralty District, finding both vessels equally to blame for the collision, and adjudging that the total damage occasioned by that joint fault be borne equally by the parties.

The appeal was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

J. E. McMullen, K.C., for the appellant.

W. Martin Griffin, K.C., for the respondent.

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

THE PRESIDENT, now (January 31, 1936) delivered the following judgment:

This is an appeal taken by the owners of the steamship *Princess Alice* from a decision of Mr. Justice Martin, District Judge in Admiralty for the British Columbia Admiralty District. I was assisted on the appeal by two nautical assessors, Captain L. A. Demers and Captain L. G. Dixon.

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The action arose out of a collision occurring on February 4, 1935, in the First Narrows, a narrow channel, at the entrance to Vancouver Harbour, between the *Princess Alice*, a passenger ship of about 1,900 net register tons, on a voyage from Seattle to Vancouver, and the steamship *West Vancouver Ferry No. 5*, hereafter to be referred to as the *Ferry*. The *Ferry*, a small wooden vessel of 48 net register tons, performs a ferry service between the Municipality of West Vancouver and the City of Vancouver, and in doing so must proceed through the First Narrows, West Vancouver being outside and west of the First Narrows.

The learned trial judge was of the opinion that the collision was primarily caused by the joint negligence of both ships in failing to comply with the first part of Article 16 of the International Rules of the Road, and in proceeding through a dense fog at a speed which was immoderate, "having careful regard to the existing conditions," and he pronounced them equally at fault and adjudged that the total damage occasioned by that joint fault be born equally by the parties.

From that judgment the owners of the *Princess Alice* have appealed, and they ask that the judgment below be set aside and that it be decreed that the collision was due solely to the fault or default of the master and crew of the *Ferry*, and that the owners thereof should bear the whole of the damage.

While the *Ferry* was found by the learned trial judge to have been at fault, and from which finding there was no appeal, yet, in discussing the question as to whether the *Princess Alice* was also at fault, or whether she was entirely blameless, it would seem necessary to refer briefly to the movements of the *Ferry* prior to the collision.

The *Ferry* left her pier at Vancouver at 8.30 a.m., and proceeded on her trip to West Vancouver, passing Burnaby Shoal and Brockton Point on her port side, at a safe distance. When off Burnaby Shoal the whistle of the *Princess Alice* was heard and recognized by the master of the *Ferry* and others of her crew, and there is no reason to doubt this. At a position off Brockton Point, the course of the *Ferry* was altered to W. by N. to pass a safe distance off the First Narrows Inner Beacon (Calamity Point), the *Ferry* being all the while at full speed, that is, $9\frac{1}{2}$ knots from the time

of her departure. At 8.42 a.m. her engines were reduced to "slow," which the master stated would be 4 knots over the ground, but there was an ebb tide of two knots, and my assessors advise me that it is very probable that the *Ferry* was steaming 6 knots over the ground. When the First Narrows Inner Beacon was abeam at 8.43 a.m. the course of the *Ferry* was altered to W. by N. $\frac{1}{2}$ N. with the sound of the horn on the First Narrows Beacon right ahead. The master of the *Ferry* testified that he knew when the *Princess Alice* arrived at a position off Prospect Point—the first point reached on the starboard side in the First Narrows by an incoming vessel—by the echo of the whistle of the *Princess Alice*. The distance from a point abeam the First Narrows Inner Beacon to a point abeam Prospect Point is only one-half mile, but the master and other officers of the *Princess Alice* testified they did not hear the fog whistle of the *Ferry*—ordinarily audible at a distance of four miles—until a very short interval before she came into sight and just before the collision. Two employees at the signal station at Prospect Point testified that they heard the fog whistle of the *Ferry* while in the First Narrows, and prior to the collision. I, and my assessors, find it rather difficult to understand why the *Princess Alice* did not earlier hear the fog whistle of the *Ferry* forward of her beam, and did not know of her presence in the First Narrows at the time material here, but the learned trial judge expressed no opinion on this point, and Mr. Griffin, as I understood him, did not press the point on the hearing of the appeal, and I therefore refrain from expressing any opinion upon it.

The *Princess Alice* was on a voyage from Seattle to Vancouver, and according to the abstract log, she encountered dense fog from 5.29 a.m. when off East Point in English Bay, which continued up to the time of the collision, and the abstract log records "Vis. Nil" during all that time, and this no doubt is perfectly true because those on the bridge of the *Princess Alice* would be unable to see much further than her bow. The *Princess Alice* took her departure from a point abeam Point Atkinson at 8.22 a.m., her speed and course prior to that time has no material bearing on the case. From the time of taking her departure from off Point Atkinson at 8.22 a.m.

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until arriving abeam Prospect Point at 8.46 a.m. she steamed a distance of 5 miles in 24 minutes, which would give her an average speed of about $12\frac{1}{2}$ knots. The engine room log records her engine movements as follows:—

8.19 $\frac{1}{4}$ a.m. half speed ahead.
 8.26 a.m. full speed ahead.
 8.27 a.m. stop.
 8.28 a.m. full ahead.
 8.39 a.m. slow.
 8.44 a.m. half speed.
 8.47 a.m. stop.
 8.48 a.m. full astern (collision).

The "full speed" of the *Princess Alice* was 17 knots, but with the telegraph at "stand by" the understanding with the engine room was that it called for 135 revolutions of the engine, which would mean 15 knots. "Half speed" my assessors advise me would mean about 10 knots with the *Princess Alice*. The master of the *Princess Alice* himself testified that "half speed" meant 10 knots, and "slow" 5 knots. I would point out that the order to "stop" at 8.27 a.m. is of no significance because the ship would lose very little way from "full speed" in one minute. The change in speed from "slow" to "half speed," at 8.44 a.m., just two minutes prior to being abeam Prospect Point, which speed was continued for at least one minute after reaching Prospect Point, rather indicates an intention to continue that speed right through the First Narrows; the order to stop the engine at 8.47 a.m. was only given when the whistle of the *Ferry* was heard, and just before the ships came in sight of each other, one minute before the collision. The *Princess Alice* of course never came to a stop; her speed at the moment of impact no doubt would have been reduced, because her engines were then going astern, otherwise she would have gone completely through the *Ferry*, but even then the injury to the *Ferry* caused her in the end to sink. I perhaps should observe that the master of the *Princess Alice* was of the opinion that his ship, at 8.47 a.m., had not yet worked up to half speed and at that moment was proceeding at not more than seven miles per hour through the water, and he stated that this speed was necessary to avoid losing steerage way on account of the ebbing tide, a contention which I cannot accept and neither do my assessors.

An effort was made by counsel to define the position of the *Princess Alice* at the time of the collision from the courses alleged to have been steered by her between Point Atkinson and Prospect Point, and as recorded in her log, together with the time on each course. My assessors advise me that this could not be relied upon because the courses of the *Princess Alice* might have been frequently changed, owing to the dense fog, or for other reasons, without any notation being made in the log, which I am advised is common practice. Any attempt to ascertain the position of the *Princess Alice* at the time of the collision, and just prior thereto, from her log entries, cannot, I think, be relied upon.

The evidence given on behalf of the *Princess Alice* would place her at all times after reaching Prospect Point well to the south of the centre of the First Narrows channel, her proper side in clear weather, and that same evidence would place the position of the *Ferry* at the same time further still to the south of mid-channel, in fact on the starboard side of the *Princess Alice* and quite close to the south shore. There is also very formidable evidence from independent witnesses on the side of the *Ferry* that both ships were in mid-channel, or to the north of mid-channel, when the collision took place. The distance from mid-channel to either shore would be approximately 600 feet, that is to the three-fathom line. The master of the *Princess Alice* states that he passed Prospect Point at a distance of anywhere from 125 to 150 feet, and the third officer gives the distance as being about 100 feet off; with "visibility nil," this close proximity to Prospect Point in a dense fog could hardly be explained as a position of deliberate selection. The master of the *Princess Alice* states that about this time he altered his course to E. $\frac{3}{4}$ S., because he was too close to Prospect Point. My assessors advise me that it is probable that the *Princess Alice* in attempting to locate her position when off Prospect Point by the echo of her whistle, found it unreliable on account of her close proximity to Prospect Point, and I am also advised that reliable calculations by echo could not be expected if the *Princess Alice* was as close to Prospect Point as was stated by the witnesses called on her behalf.

In some respects I doubt if either side gave the court true evidence, particularly as to the position of the respect-

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ive ships just prior to and at the moment of the collision. I think, and my assessors agree, that neither ship knew her position with accuracy while in the First Narrows and just prior to the collision, on account of the fog; I am of the opinion, and my assessors agree, that just before the collision they were both in mid-channel, which, in the circumstances, my assessors advise me, would hardly be censurable providing they were navigating with that caution required by the rules of the road. The attempt to place the *Ferry* on the starboard side of the *Princess Alice* and close to the south shore is not in my opinion to be believed, and with this my assessors also agree.

I entirely agree with the finding of the learned trial judge that the *Princess Alice*, as well as the *Ferry*, was proceeding at an immoderate speed in view of the prevailing fog, and contrary to the first part of Article 16 of the International Rules of the Road, one of the rules designed for the protection of life and property at sea. In the circumstances, a speed of either seven or ten knots by the *Princess Alice* in passing Prospect Point, and thereafter, cannot be condoned, and with this my assessors agree. I cannot find any difference in the degree of fault in either ship. The speed of both ships was excessive in the circumstances and each was willing to take the risk of collision rather than lose a few minutes in reaching their respective destinations. It is quite plain what the rules of the road required them to do in the circumstances.

The first part of Article 16 of the International Rules of the Road was, in my opinion, violated by the *Princess Alice*, as found by the learned trial judge. The appeal is therefore dismissed with costs.

Judgment accordingly.