
BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN :

THE OWNERS OF THE SHIP
ISLAND PRINCE APPELLANT;
 AND
 NATIONAL HARBOURS BOARD..... RESPONDENT.

1950
 Mar. 17,
 18, 20
 Mar. 23

Shipping—Appeal from assessment of damages—Loss due to failure on part of appellant to transship goods or charter other vessels—Claim for loss of profits of substitute vessel too remote—Appeal dismissed.

An appeal from the disallowance by the Registrar, British Columbia Admiralty District, of two items in an assessment of damages claiming for loss of earnings through interruption of scheduled service and loss of profits of a substitute vessel placed on the run of the damaged vessel was dismissed.

Held: That the failure of appellant to transship freight to other lines and to charter other available vessels was the direct cause of whatever loss it sustained by way of decreased subsequent earnings rather than the collision with respondent's bridge.

2. That the loss of profits claimed through the service of the substitute vessel was the result of an error in judgment of appellant in making its dispositions of its vessels and cannot be charged to respondent.

APPEAL from an assessment of damages made by the Registrar, British Columbia Admiralty District.

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

D. N. Hossie, K.C., and Ghent Davis, for appellant.

W. S. Owen, K.C., and J. I. Bird, for respondent.

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

SIDNEY SMITH, D.J.A., now (March 23, 1950) delivered the following judgment:—

On Thursday 9th December, 1948, the S.S. *Island Prince* was damaged by the negligent operation of the defendant's bridge, and the following June this Court gave judgment on the question of liability in her favour. On 14th and 16th December, 1949, the learned Registrar assessed the damages, and from his findings this appeal is brought.

The plaintiff called three witnesses on the reference, viz., Mr. G. B. Clark and Capt. Harry Terry, respectively the president and the manager of the owning Company (The British Columbia Steamships, Ltd.), and Mr. P. N. Goode, a chartered accountant, who audited the Company's books. The defendant called no witnesses.

The owners submitted their statement of damages under the following heads:—

1. Repair to vessel—B.C. Marine Shipbuilders...	\$ 14,447 53
2. Night watchman—27 days at \$6 per day— December 9th to January 5th.....	162 00
3. Owner's Surveyor	125 00
4. Noting Protest	5 00
5. Charter Hire substitute vessels while <i>Island Prince</i> undergoing repairs M.V. <i>Squamish Queen</i> —Charter Hire plus Stevedoring expense loading cargo from <i>Island Prince</i>	\$ 1,200 00
	198 75
	\$ 1,398 75
Less freight earnings on cargo handled.....	857 42
	541 33
6. S.S. <i>Alaska Prince</i> —Charter Hire.....	\$ 2,400 00
Dec. 15-Dec. 18 both inclusive—4 days at \$600 per day (plus cost of operation)—	
Dec. 28-Jan. 1 both inclusive—4 days at \$600 per day.....	2,400 00
	4,800 00
Less freight earnings on cargo handled.....	1,062 80
	\$ 3,737 70

7. S.S. *Island Prince*—Time lost while undergoing repairs at B.C. Marine Shipbuilders Ltd.—27 days at \$350 per day—Gross..... 9,450 00

Credit—

Wages: First Officer—15 days at.....\$ 230 00
 Per month, including board..... 115 00
 Winchman—20 days at..... 174 00
 Per month, including board..... 116 00
 Quartermast—20 days at..... 174 00
 Per month, including board..... 116 00
 Deck hand—20 days at..... 165 00
 Per month, including board..... 110 00

\$ 457 00

Stevedoring (averaged over a period of 4 months)..... 425 24

Fuel oil—27 days—194 barrels. Average monthly consumption of fuel oil covering previous six months period 1,390 00

Fuel oil consumed during the 27 days in question 800 65

Balance—Credit 590 00

\$1,472 24

\$ 7,977 76

8. Loss of Trade on *Island Prince*, scheduled run through interruption of scheduled service (substitute vessels unable to serve all points on this run, no scheduled voyage, January 1st to April 30th)..... \$ 22,231 11

9. Loss of profits S.S. *Alaska Prince* while serving as substitute vessel on *Island Prince* scheduled run (estimated) 5,000 00

\$ 54,223 43

Less allowance for possible delays and trading conditions 4,486 77

Total amount of claim..... \$ 49,740 66

Claim limited by writ to..... \$ 46,986 78

The learned Registrar allowed the amounts claimed under heads 1 to 7. Under head 8 he allowed \$5,000.00 and disallowed the rest; and he disallowed the whole of head 9. The appeal is brought with respect to these disallowances.

The owning Company had two steamers, viz., the *Island Prince*, 123 feet long, 11 feet mean loaded draft (11½ feet max. draft) and a carrying capacity of 500 tons; and the

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*Alaska Prince*, 192 feet long, 12 feet mean loaded draft (15 feet max. draft) and a carrying capacity of 750 tons.

Following the accident the *Island Prince* was under repair from 9th December, 1948, to 5th January, 1949—a period of 27 days. Before the accident she was, and still is, employed on a scheduled voyage from Vancouver to various points on the mainland and Vancouver Island as far north as Alert Bay. This was known as the “logging run”. On these runs she was loaded to about one-half, more or less, of her capacity, and her cargoes consisted of 15 per cent lumber, 15 per cent machinery, 15 per cent trucks and machinery, 25 per cent oil, and 30 per cent general.

Prior to December, 1948, the *Alaska Prince* had been on a run to Prince Rupert, B.C., Alaska and way points; but at the time of the accident she was in drydock, being overhauled, preparatory to making several voyages, during December and January, to the West Coast of Vancouver Island with fish meal and fish oil. This is known as the West Coast run, and was regarded as very profitable business.

The Plaintiffs adduced evidence showing a falling-off of earnings on the part of the *Island Prince* during the early months of 1949, and contended this was due to the interruption of her service and customers’ goods going to other ships. They contended further that by using the *Alaska Prince* to carry out part of the *Island Prince’s* run, the former vessel was deprived of the profits she otherwise would have made on the West Coast run.

When the accident happened the *Island Prince* was at the beginning of one of her scheduled voyages, laden with a normal cargo—rather less than 250 tons. Part of this cargo was shipped to its destination on the *Squamish Queen*, of 150 tons, specially chartered by the owner for that purpose; part was returned to shippers; and part left on board till completion of repairs and, presumably, carried on the first voyage thereafter.

In the period from 9th December to 5th January the *Island Prince* would normally have made four “logging runs”. In the circumstances the first was made by the *Squamish Queen*; two were later made by the *Alaska Prince* and one, the Christmas run, was missed altogether. But

the *Alaska Prince* was not a suitable vessel for this route. With greater draft, it is claimed she could not make the smaller places of call, and moreover she did not have suitable equipment for the run. Nevertheless, the owners put her on this run, but extended her trips to Prince Rupert, and other ports to pick up whatever further cargo might there be available. This seems to me to have been a thoroughly unsatisfactory arrangement which made the worst of all worlds. She should have been left to undertake the alleged profitable business on the West Coast run.

There were other vessels on the "logging run" serving the same ports as did the *Island Prince*; and also on scheduled weekly voyages; notably the *Island King*, owned by the Waterhouse Company, and equipped like the *Island Prince*; and the *Chelosin* owned by the Union Steamship Company. The former sailed every Thursday night and the latter every Monday. So far as I can ascertain from the evidence, there was nothing to hinder the *Island Prince's* cargo then on board, and also the cargoes likely to be carried on the ensuing three weekly trips, being transhipped in one or both of these vessels; for they, too, sailed only partially loaded. The reason why this was not done is stated many times in the evidence. One passage from the testimony of Clark will suffice. Replying to a question by the Registrar as to why this was not done, he said:—

We would have been practically turning our business over to our competitors. We would have been helping him to take it away from us, if we turned the business over to the Waterhouse Company . . .

We would not have any business if we did that two or three times. They (the shippers) would see their Bill of Lading and accept the bill and say 'The B.C. Steamship is not running any more.'

It is clear that they refrained from so transshipping because of fear of losing their business to the other companies. It was this "fear" that was the direct cause of whatever loss (if any) in the shape of decreased subsequent earnings they may have suffered; it was not the collision with the bridge. This "fear" was not reciprocal, for Clark also testified that when the Waterhouse Company had an excess of cargo for the West Coast run, they did not hesitate to approach him to carry some of it. This is how he expressed it:—

I am quite certain that the Waterhouse Company would have been very glad to have given us a lot of their surplus tonnage when they had to go and employ a foreign vessel.

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and later

Waterhouse tried to see if we were available and when we were not available he secured the American boat.

I do not think the fear of losing some of their business is a good ground for failing to trans-ship on these other vessels on the same run. They could quite well have remained prominently before their shippers by issuing their own Bills of Lading, as was submitted by Mr. Owen for the defendant, without contradiction. And the day or two's alteration in the scheduled runs could not have made any difference. It may be noted that on the "accident trip" the *Island Prince* was one day late on her own scheduled time for sailing. I am of opinion that by doing so they would have retained, perhaps with added prestige, the respect of their own customers, and their business would have been on hand on 5th January, 1948, when the *Island Prince* was ready to resume the service.

Nor is it clear on the evidence that they could not have chartered other vessels. The *Squamish Queen* (10th to 13th December) took part of the "accident trip's" cargo. The rest of that particular cargo could have been trans-shipped as above mentioned. The Waterhouse Company seem to have had their S.S. *Eastholme* (200 tons capacity) available for charter on Monday 13th December. She could have made that week's trip, with perhaps some help from the scheduled vessels on the run. For the third and fourth trips, there is nothing to show why they could not have chartered an American ship (all else failing) as did the Waterhouse Company for the West Coast run. So that either by trans-shipping the whole, as first mentioned, or by chartering, as now suggested, they could have delivered their cargoes substantially on scheduled times, and no question of subsequent losses due to interrupted service would have arisen.

Since loss of actual profits was allowed for under head 7, the claim under head 8 is really one for loss of good-will. I am far from satisfied that there was any real loss, and that the general falling-off experienced after the *Island Prince* resumed operations was not due to the bad weather at the time, which would affect logging operations. Certainly any allowance that I might make under head 8 would not exceed the \$5,000.00 that the Registrar allowed.

I think the Registrar was quite right in holding that head 9 was too remote. There was no tangible basis for the claim; the *Alaska Prince* had contacts but no contracts. Moreover, I think this claim duplicates head 6, which was allowed on the basis of the vessel's earning power. The plaintiff claims \$9,800.00 for the value of a vessel that was at all times available for use, but which in actual use only earned \$1,062.30. If it were so valuable at its own work as was claimed, clearly it should never have been taken off that, and put to earning a paltry (by comparison) \$1,062.30. I think the plaintiff must bear the result of its own bad judgment in making its dispositions and cannot charge them up to the defendant.

One other point remains: The plaintiff claims interest at 5 per cent from date of judgment. This was conceded by the defendant. This claim was not put forward on the reference, so its allowance now will not affect the matter of costs.

The appeal is dismissed. The plaintiff will have its costs of the reference; the defendant its costs of this appeal.

*Judgment accordingly.*

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