BRITISH COLUMBIA ADMIRALTY DISTRICT.

1913
Feb. 28.

PALLEN, *ET AL.*,

v.

THE SHIP "IROQUOIS."

Collision—Fog—Duty as to speed—Liability—Costs.

The provisions of art. 16, requiring each vessel in case of fog or thick weather to "stop her engines and then navigate with caution", must be strictly adhered to in order to avert a collision. Mere sounding of the fog signal is not sufficient. Where both vessels are at fault "the damages shall be borne equally by the two vessels", pursuant to sec. 918 of the *Canada Shipping Act* (R.S.C. 1906, c. 113). The old rule that each delinquent vessel shall bear her own costs is still in force.

ACTION for damages resulting from a collision.

Tried before the Honourable Mr. Justice Martin, Local Judge of the British Columbia Admiralty District, at Vancouver, October 30 and November 1, 1912.

J. A. Russell and *Moffat*, for plaintiff.
A. D. Taylor, K.C., for defendant.

MARTIN, Loc. J. (February 28, 1913) delivered judgment.

On October 22nd, 1911, about 4.30 P.M., off the sandheads, Fraser River, the Steamship "Iroquois" (a high-powered passenger vessel, Henry C. Carter, Master), heading for Vancouver Narrows, on a N.W. by N. ½ N., collided with the Steam Tug "No-name" (registered tonnage 116, length 86 feet, John Barberie, Master), with loaded scow in tow, 60 x 26 feet, bound for Fulford Harbour, *via* Active Pass,

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on a course S.E. by S. ¾ S. The day was calm, with little if any wind; tide flooding probably under one knot an hour. The "Noname" had clear weather till 3.45, when she ran into a thick fog, in which objects were not visible beyond half a cable, but proceeded on her course without abating her speed, which was about the best she could make, viz.: 6 knots through the water. I am satisfied that she regularly gave the proper signals, nor do I find any reason for thinking that the "Iroquois" failed to do the same; the fact that some of the witnesses gave apparently truthful, yet conflicting, evidence regarding the signals heard in fog can readily be explained by a perusal of the Report of Trinity House Fog-Signal Committee, 1901, reprinted in Smith's Leading Cases on the Collision Regulations (1907) 296. The "Iroquois" was, with the slight assistance of the tide, maintaining a speed of probably a little over 14 knots through the water, which her officers call her "fog speed," as she runs very regularly on that speed and makes distances more accurately on it between fixed points than on her best speed, which, at 143 revolutions, is about 15½ knots. When the vessels actually came in sight of one another they were not more than 250 or 300 feet apart. It was only immediately before sighting the "Noname" that the engineer of the "Iroquois" had been given the signal for half speed, which signal, he says, was followed up without any interval by one for "full speed astern," which was responded to, but it was too late to avoid the collision, though the force of the impact was greatly diminished.

It is proved by the evidence of the master and mate of the "Noname" that though they heard a

vessel approaching them almost, if not quite, right ahead through the fog for 5 or 6 minutes before they sighted her, they took no other precautions than to continue to sound the fog signal. Article 16 provides that:

"Every vessel shall, in a fog, mist, falling "snow, or heavy rainstorms, go at a moderate "speed, having careful regard to the existing cir- "cumstances and conditions.

"A steam vessel hearing, apparently forward "of her beam, the fog signal of a vessel the posi- "tion of which is not ascertained, shall, so far as "the circumstances of the case admit, stop her "engines, and then navigate with caution until "danger of collision is over."

No valid reason was given for the failure of the "Noname" to "stop her engines and then navigate with caution"; the suggestion of her master that he did not do so because the barge astern would sheer and become more difficult to handle, is inadmissible in the circumstances, because there was nothing in wind, tide or weather conditions to prevent him from at least reducing his speed to what would be the lowest possible speed consistent with safety of tug and tow in the circumstances, even if it were not practicable to let the way run entirely off the tow and come to a standstill. To escape liability it must be shown that the movement was not more than was necessary, but no attempt was made to establish this. Compare *The Lord Bangor*,[1] *The Challenge and Duc d'Aumale*.[2] The truth is, according to his own testimony, that he mistook the fog whistle of the "Iroquois" for that of a small boat, and took

[1] [1896] P. 28.
[2] [1905] P. 198.

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dangerous chances, which contributed to the collision. Indeed, the man at the wheel, Williams, testified that they had heard the "Iroquois" for 20 minutes on their port bow, and she had whistled at least 4 times from that point. On the other hand, I am unable to accept the excuse offered on behalf of the "Iroquois" for running at such a speed, which cannot be called moderate in the circumstances. While it may be true that she runs more regularly at a certain speed, that may make it safer for herself in determining her position as aforesaid, but at the same time it, if high, makes her more dangerous to other vessels, which is the fact the regulations require her to guard against. She might, on the one hand, run more regularly at 12 knots than at full speed, or, on the other hand, at full speed than 12 knots, at which full speed she would be safer for herself but still more dangerous to others than she was in this instance.

I am unable to say that, after the vessels came in sight of one another, either of them could reasonably be said to have failed to do anything which would have avoided the collision. They are equally at fault in having brought it about by contravening Article 16, which the Privy Council stated in *China Navigation Co. v. Lords Commissioners S.S. Chinkiang*,[1] "is a most important article and one which "ought to be most carefully adhered to in order to "avert the danger in thick weather." . . . It was notorious that it was a matter of the very greatest difficulty to make out "the direction and distance of "a whistle heard in a fog, and that it was almost im- "possible to rely with certainty on being able to

[1] [1908] A. C. 251.

"determine the precise bearing and distance of a "fog signal when it was heard." According to the following extract from the judgment of the Admiralty Court in the late case of *The Sargasso*,[1] not only the "Iroquois," but the "Noname" was also guilty of excessive speed:—

"With regard to the *Mary Ada Short*, her speed "spoken to by her master was three knots; that is "probably a smaller speed than she had a good deal, "and in this regard, apart from the angle of the "blow, I have come to the conclusion, from the "nature of the wound, that the speed at which this "vessel was going was a good deal more than he "says. If vessels could only see each other at a "distance of 100 yards and if they had to be under "way at all, they ought to proceed as slowly as they "possibly can. It is impossible to say what the "speed ought to be in figures in every case, but it "is obvious, if a vessel is proceeding at a speed "which would not allow her to pull up in something "like her own length, in the circumstances of this "particular afternoon, and if a vessel could proceed "and have steerage way at a smaller speed than she "was going, she ought to have gone at that speed, "and in so far as that speed was exceeded it was "excessive."

The situation, finally, herein was like that described in a case in this Court: *Wineman v. The Hiawatha*,[2] wherein it was said:—

"The rate was so immoderate and the fog so "thick that it prevented either vessel, in the brief "space of time which elapsed after sighting the

[1] (1912) P. 192 at 199.
[2] (1902) 7 Can. Ex. 446 at 468.

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"other, from taking any effective steps to avoid "the other."

Pursuant to sec. 918 of the *Canada Shipping Act*[1] I direct that "the damages shall be borne equally by "the two vessels . . . one-half by each," which means in this case that the "Iroquois" must pay one-half of the damage to the "Noname" because no evidence was given of any damage to the "Iroquois," and there will be the usual reference to the Registrar, assisted by merchants, if necessary, to assess them. I note that the *Maritime Conventions Act,* 1911 (Imp.) 1 and 2 Geo. V., c. 57, s. 9, does not apply to Canada, so no question of establishing the degree of blame can arise in this Court, but it has been decided that even where that statute can be given effect to the old rule that each delinquent vessel bears her own costs is still in force. The *Bravo.*[2] And compare the *Rosalia,*[3] the first decision under said Act.

Judgment accordingly.

[1] R.S.C. 1906, c. 113.
[2] (1912) 29 T.L.R. 122, 12 Asp. M.C. 311.
[3] [1912] P. 109.