

BRITISH COLUMBIA ADMIRALTY DISTRICT.

1945
Nov. 1, 2 &
10
Nov. 17

BETWEEN:

THE SHIP *PRINCESS NORAH*.....PLAINTIFF;

AND

THE SHIP *CO-OPERATOR 1*.....DEFENDANT

Shipping—Collision in Inner Harbour of Victoria, B.C.—Failure to keep proper lookout—Failure to become aware of vessel being under way—No practice in Victoria Harbour that three blasts be blown as warning signal—Ship not required by Article 28 to blow three blasts since not on any authorized course.

Plaintiff and defendant ships collided in the Inner Harbour of Victoria, British Columbia. The Court found the *Princess Norah* was one-quarter to blame and the *Co-Operator 1* three-quarters to blame for the collision.

Held: That the failure on the part of the *Co-Operator 1* to keep a proper lookout was without any extenuating circumstance and was the primary cause of the collision, and that the *Princess Norah* was at fault since her Master should have become aware of the presence of the *Co-Operator 1* sooner than he did and that she was under way and given her a wider berth.

2. That since the *Princess Norah* was never at any material time going full speed astern nor taking any course "authorized by these rules" she was not called upon to blow three blasts as required by Article 28.
3. That there is no practice in Victoria Harbour calling for three blasts as a precautionary measure or warning signal.

ACTION by plaintiff to recover damages resulting from a collision with defendant ship due to alleged negligent operation of defendant ship.

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

J. E. McMullen, K.C. for plaintiff.

J. V. Clyne for defendant.

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

SIDNEY SMITH D. J. A. now (November 17, 1945) delivered the following judgment:

The Inner Harbour of Victoria, B.C., is roughly in the shape of a half moon, with the diameter running approximately North and South and with the rim to the westward. The diameter is approximately 2000 ft. long and therefore the radius is about 1000 ft. long. The exit from the harbour is to the West, about the middle of the rim, and is about 400 ft. in width. The central part of the harbour is therefore little more than a turning basin and only one vessel of any size can safely manoeuvre therein at the one time.

On the 30th September, 1944, at 11 p.m., or very shortly thereafter, the *Princess Norah*, a Canadian Pacific Railway coasting passenger steamer 262 ft. in length, 48 ft. beam and 2731 tons gross tonnage, left her berth at the South end of the harbour on her usual voyage to the West Coast of Vancouver Island. About the same time the *Co-Operator 1*, a small fish packer, 82 ft. long, 18 ft. beam, 97 tons gross tonnage, with a crew of 4, left another berth at the north end of the harbour, on a voyage to Vancouver, B.C. Both vessels went astern and when in a position to shape up for the outward channel, stopped their engines and then went ahead; the *Princess Norah* under starboard helm and the *Co-Operator 1* under port helm. While so turning, and with very little headway on the *Princess Norah* but with some 3 to 4 knots headway on the *Co-Operator 1*, the two vessels collided with considerable

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damage to each; the port side of the *Co-Operator 1* striking the starboard counter of the *Princess Norah*. At the time of the collision the *Princess Norah* was heading S.S.W. and the *Co-Operator 1* about S.W. x W. The task before the Court is to determine where the liability rests for this rather unusual and peculiar collision. Fortunately the area of controversy is very limited, and there can be little doubt as to the sequence of events.

I heard evidence from Captain Robert Thomson, the Master of the *Princess Norah*, and also from his second and third officers and from the third engineer. They produced the deck log, the engine-room log and the engine-room bell-book of their vessel. These contained entries depicting the events that happened, made as they happened, or very shortly thereafter. It will be convenient to say here that I reject at once the suggestion that the engine-room bell-book may have been falsified; and also the suggestion, made at one time during the evidence, that the vessel may have been exhibiting a green stern-light. Captain Thomson seemed to me to be a ship-master of experience and ability. He had been in permanent command of Canadian Pacific Railway coasting vessels for twenty years. His evidence was impressive and I accept it. He was navigating his vessel from the top bridge and therefore was in a commanding position to see the events as they occurred. I prefer his evidence to that of his officers, particularly to that of his junior officer, whose primary duty was to stand-by aft and, with the aid of a spot light, to sight and report on logs likely to endanger the propeller. There was a light South-West wind; the night was clear, cloudy and moon-lit. There was some controversy about this last feature, but I think I can take official notice of the phase of the moon. I find it was full moon on the night after the collision.

The *Princess Norah* left her wharf at 11.02 p.m. and the following are the entries in her engine-room bell-book, viz., 11.02 slow astern; 11.03 stop; 11.03½ slow astern; 11.05 half astern; 11.07 full ahead; 11.08 stop. The collision was at 11.08. The 3rd officer said that when his vessel was proceeding astern he saw the white and red lights of a vessel; but in this I think he was mistaken. I think they were not seen till later, and that they were

first seen by the Master, and that that was just before the 3rd officer directed his spot-light upon the vessel exhibiting them, which proved to be the *Co-Operator 1*. The Master testified that he was proceeding with his engines at half speed astern and, having reached the proper position to turn to starboard for the outward channel, had put his engines full ahead with helm hard-a-starboard; and at that time he saw the *Co-Operator 1* about 4 points on his port quarter, 350 to 400 feet distant, and close to and a little to the North of Enterprise Wharf. I am satisfied that at the time and place indicated by the 3rd officer the red light of the *Co-Operator 1* had not opened out and could not then be seen by those on board the *Princess Norah*. Captain Thomson judged the other vessel was going at 2 to 3 knots with increasing speed. He heard her blow one short blast. Under the influence of her engines and helm the *Princess Norah* gradually lost her stern-way and her stern swung to port. The *Co-Operator 1* came on with headway and with her head swinging to port. These movements resulted in the *Co-Operator 1* colliding with the *Princess Norah* in the manner already mentioned, and in a position rather less than midway between Enterprise Wharf and Tuzo Rock. Both vessels then stopped their engines and in due course made their way back to dock.

The case for the *Co-Operator 1* was that she sailed at approximately 11 p.m. from Spouse's Fish Slip at the North-East corner of the harbour, just below Johnson Street bridge, and went astern for about 500 ft parallel to, and close to, the North side of the harbour. During this movement she gave three short blasts of her whistle. She then ported her helm, went slow ahead for about 2 minutes, steadied on her course out of the harbour with helm amidships, and proceeded with engines at half ahead. She then saw on her port bow the stern of the *Princess Norah* bearing down upon her, under very fast sternway, at a distance which was variously estimated in the evidence as being from 30 feet to 83 feet. Collision was seen by her Master to be inevitable, and in order to minimize the impact he ported his helm so as to bring about a glancing blow. He testified that had it not been for this helm action the damage would have been much more serious.

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I am of opinion that the *Co-Operator 1* never steadied on her course out of the harbour. I think that after she concluded her stern movement she went ahead under hard-a-port helm and that she continued so doing until the collision. I think her Master was confused and shaken by the sudden appearance of the *Princess Norah*. Captain Williams, then Superintendent of the Canadian Pacific Railway Coast Service, found him so when he went on board later that night to survey the damage.

I formed the opinion that the Master of the *Co-Operator 1* did his best to assist me with his evidence. I think that in familiar ships and in familiar waters he would be a competent officer; but I think, too, that on this occasion he was neither in the one nor in the other. He holds a certificate as passenger mate, obtained in 1944. No point was raised before me as to whether this was a proper certificate for Master of this vessel. He had been at sea since 1919; for all but two years of that time in the ships of the Union Steamship Company out of Vancouver, reaching the position of Chief Officer. He said he had had some service during the war as officer, master, and pilot with the United States Army Transport Service, but the type and the term of this was left very vague. He stated that at the date of the trial he was fairly familiar with Victoria harbour, but that at the date of the collision he had been there only five or six times. No deck or engine-room log was produced from his vessel; and therefore he spoke, as did the other three witnesses from the ship, from memory of events long after they had taken place. I find their evidence unreliable. They had no accurate idea of the time intervals and in their evidence seem to have accepted those of the *Princess Norah*. In their Preliminary Act they gave the time of collision at 11 p.m.—a time when neither vessel had left her berth. The Master said he first became aware of the *Princess Norah* when her spot light flashed into his pilot house, and that she was then almost on top of them; and that it was only a matter of seconds before the collision. Yet in this brief period he stated that he blew a series of short blasts, put his helm hard a port, rang full astern on his engines and sounded

three short blasts on the whistle. He made no mention of the one short blast heard by the witnesses from the *Princess Norah*.

The reason for the failure of those on board the *Co-Operator 1* to become aware of the presence of the *Princess Norah* at an earlier period was because (as they testified) she showed no lights. The argument advanced seemed to be that the grey colour of her hull merged into the dark background of the piers; or, alternatively, if she were showing lights, that her lights merged into the lights of the piers in the background. This seemed to me to be rather inconsistent but, in any event, I accept neither limb of the submission. There can be no doubt in relation to this matter that the *Princess Norah* was properly exhibiting all her regulation lights, and that in addition she was showing a series of deck lights round her stern. When it is remembered that the *Princess Norah* is a relatively large vessel and that all this happened in restricted waters, on a moon-lit night, the failure of the *Co-Operator 1* to see her becomes, to me at least, quite inexplicable.

It was contended that the *Princess Norah* should have blown three blasts, as required by Article 28. I cannot accept this view. For one thing, her engines were never at any material time going full speed astern; for another, she was not taking any course "authorized or required by these rules." She was pursuing her usual and proper course out of the harbour. *The Anselm* (1); *The Bellanoch* (2). Then it was argued, failing this submission, that she should have blown three blasts as a precautionary measure or warning signal, and that this was a customary thing to do. However it may be in other harbours, there is no such practice in Victoria Harbour. A three-blast signal might well have been misleading. Moreover, no one in the *Princess Norah* could have been expected to realize in the circumstances that the *Co-Operator 1* could possibly fail to see her, or could possibly fail to appreciate the manoeuvre she was carrying out. *The Lady Belle* (3).

If the *Princess Norah* had been seen earlier, the *Co-Operator 1*, being much the smaller and more easily handled vessel, as a matter of good seamanship in the

(1) (1907) P. 151.

(2) (1907) P. 170.

(3) (1933) 49 T.L.R. 595.

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circumstances, might have been expected to take the prudent course of stopping and allowing the *Princess Norah* to pass out ahead of her. *S.S. Cameronia v. S.S. Hawk* (1). Indeed her Master expressly stated that this is what he would have done. I therefore regard the failure to keep a lookout on the part of the *Co-Operator 1* as being without any extenuating circumstance, and as being the primary cause of the collision. She must therefore be held in fault.

There remains to consider whether there was also fault on the part of the *Princess Norah*. I think there was. It seems to me that her Master should have become sooner aware of the presence of the *Co-Operator 1* and that she was under way. Had he done so he might have the sooner noticed the turning movement in which she became engaged, and given her a wider berth. But this fault falls far short of that of the *Co-Operator 1*. Giving the best attention I can to the proportion of liability in the light of all the circumstances, I find that the *Princess Norah* was one-quarter to blame and the *Co-Operator 1* three-quarters to blame for this collision.

Mention should perhaps be made of two witnesses who gave evidence on behalf of the *Co-Operator 1*. The first was Captain Cecil Claxton, Superintendent of Pilots at Vancouver, B.C. From Captain Claxton's testimony it is evident that, apart from some experience in command of mine-sweeping vessels in the Mediterranean in the first Great War, he spent his sea career as an officer in ocean-going liners; that he has had no experience in vessels like the *Princess Norah*; that he has never been in command (except as aforesaid), and that he has never navigated any type of vessel in Victoria Harbour. In these circumstances I was unable to derive much guidance from his evidence. The other witness was the skipper of a fishing vessel in a nearby berth to the *Co-Operator 1*. His evidence was not particularly helpful to me; and neither side seemed to regard it as being of much weight. That is also my view.

For these reasons judgment will go as indicated, with costs in the like proportions. There will be a reference to the Registrar to assess the damages of each vessel.

Judgment accordingly.