

1948
 July 6, 7
 Sept. 27

BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN:

M.R. CLIFF TUGBOAT CO. LIMITED..PLAINTIFF;

AND

THE M.S. *ISLAND MAIL*.....DEFENDANT.

Shipping—Collision in dense fog—Both ships equally to blame—Reasonable steps taken to lessen the loss—Plaintiff entitled to an accounting.

In an action arising out of a collision between the motor ship *Island Mail* and a boom of logs in tow of the tug *Brunette* the Court found both vessels equally to blame.

Held: That the steps taken by the tug after the collision to retrieve the logs being reasonable in the circumstances the plaintiff is entitled to an accounting for the loss sustained by it.

ACTION by plaintiff to recover damages alleged to have been suffered by it as the result of a collision at the entrance to Vancouver Harbour between defendant vessel and a tug owned by plaintiff.

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

Walter Owen, K.C. and *Evans Wasson* for plaintiff.

D. S. Montgomery and *Vernon R. Hill* for defendant ship.

The facts are stated in the reasons for judgment.

SIDNEY SMITH, D.J.A., now (September 27, 1948) delivered the following judgment:

At the trial Counsel asked leave to submit argument in writing. This was granted. Such argument has now been filed.

The case involves a collision in dense fog at the entrance to Vancouver Harbour, Northward and somewhat to the Eastward of Brockton Point, between the Motor-Ship *Island Mail* (of some 15,000 tons displacement) inward bound and a boom of logs in tow of the Tug *Brunette*, also inward bound and being overtaken by the *Island*

Mail. I accept the evidence of Captain A. J. Gilbert (the local Pilot of the *Island Mail*) and Captain Frank Calhoun (the Master of the *Brunette*) with respect to the events that happened as observed by them from their respective ships.

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I think the *Island Mail* must be held at fault for not immediately going astern on sighting the boom. She had lost steerage way and was proceeding at slow, making very little headway at the time. She stopped her engines but failed to go astern until three minutes later. Had she done so at once I think the damage would have been negligible.

Sidney
Smith
D J.A.

In my view the *Brunette* was also at fault, in that she unjustifiably, in the prevailing conditions, altered her course in fog. The fog bank lay heavily in Vancouver Harbour, but the greater part of the First Narrows to the Westward was clear. The *Brunette* entering the fog bank but looking astern into clear weather, saw the *Island Mail* about Prospect Point, later heard her fog signals and knew she was coming up astern and overtaking the *Brunette*. The *Island Mail*, looking ahead into the fogbank, did not see the *Brunette*, or her tow, although she later heard her towing whistles. When past Brockton Point the *Brunette* altered her course 28° to port, and made for her destination at Moodyville on the North shore. This was an alteration which brought the boom across the bow of the *Island Mail* and thus increased the danger to the *Island Mail*, and in the circumstances was wrongful. But for this action there would, in my opinion, have been no collision. I therefore find both vessels equally to blame.

I am not disposed to be critical of the manœuvres taken by the *Brunette*, after the collision, to retrieve the logs. I think the steps she took to that end were reasonable in the circumstances and at that time of anxiety. She is entitled to an accounting under the headings set out in para. 8 of her statement of claim. Unless the parties can agree on the amount, there will be a reference to the Registrar to assess damages.

Costs of each party to be taxed, the total amount to be borne equally.

Judgment accordingly.