

BRITISH COLUMBIA ADMIRALTY DISTRICT

PACIFIC COYLE NAVIGATION }
 COMPANY LIMITED } PLAINTIFF;

1957
 Mar. 4, 5
 Mar. 12

AND

CANADIAN PACIFIC RAILWAY }
 COMPANY } DEFENDANT.

Shipping—Collision—Vessel not excused from stopping engines because it has a tow—Assessment of damages and costs.

The action is one for damages resulting from a collision between plaintiff's tug and defendant's tug with a barge in tow. The Court found that both vessels were going at an excessive speed and each failed to stop its engine on hearing fog signals, and that no proper lookout was kept on board plaintiff's tug.

Held: That the negligence must be assessed in the ratio of three quarters to plaintiff and one quarter to defendant.

2. That the fact that a vessel has a tow is no excuse for it not stopping its engines.

ACTION for damages resulting from collision between two vessels.

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

W. D. C. Tuck and *A. F. Campney* for plaintiff.

A. G. Harvey for defendant.

SIDNEY SMITH D.J.A.:—This suit concerns a collision in dense fog in English Bay between the plaintiff's tug *Newington* running light and the defendant's tug *Kyuoquot* having the barge *Transfer No. 9* in tow. The *Newington* had come down Howe Sound and had rounded Point Atkinson with the intention of anchoring in English Bay. The *Kyuoquot* bound outward had passed Prospect Point and was heading towards Point Grey.

I formed a poor opinion of the *Newington's* navigation. I doubt if any proper lookout was being kept on board and whether proper fog signals were being sounded. I find she was proceeding at an excessive speed in the prevailing conditions and that she failed to stop her engines upon hearing the fog signal of the *Kyuoquot* immediately prior to the collision.

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PACIFIC
R.Y. Co.

—
Sidney Smith
D.J.A.
—

On the other hand I had no trouble in accepting the evidence of the experienced seamen who testified for the defendant company. The *Kyuoquot* however was at fault too in that she was going at an excessive speed and she too failed to stop her engines on hearing the fog signal of the *Newington*. This signal appeared on the starboard beam of the *Kyuoquot* but it was forward of the beam *vis-a-vis* the barge. It is not a valid excuse for not stopping engines that the vessel concerned has a tow, *The Challenge and Duc D'Aumale* (1). The circumstance that the barge did not sound fog signals in no way contributed to the collision.

I find the *Newington* three-quarters to blame and the *Kyuoquot* one-quarter, with corresponding costs.

If necessary, the learned Registrar will hold a reference as to the damages.

Judgment accordingly.