

ON APPEAL FROM THE BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN:

1929  
Oct. 4.  
Nov. 18.

FRED OLSEN & COMPANY (OWNERS OF THE STEAMSHIP "HAMPHOLM"), (PLAINTIFF) ..... } APPELLANT;

v.

THE SS. PRINCESS ADELAIDE (DEFENDANT) ..... } RESPONDENT;

AND

THE SS. HAMPHOLM (DEFENDANT)..... APPELLANT;

v.

THE CANADIAN PACIFIC RAILWAY COMPANY (OWNERS OF THE STEAMSHIP "PRINCESS ADELAIDE") (PLAINTIFF) ..... } RESPONDENT.

Shipping—Collision—Rule 16 of the Regulations for preventing Collisions at Sea—Speed—Fog

The P. A., a passenger steamer, left Vancouver, bound for Victoria in a dense fog. After passing the first narrows, she was running at a rate of twelve knots, on a course of S.W. 1/4 S., which course she kept till the collision was imminent. She stopped her engines about a minute before the collision, upon hearing a signal from a tug to port, and one from a ship to starboard, the H., and which she first saw emerging from the fog at a distance of about 300 feet, and between two and three points on her starboard. The P. A. then attempted to clear the H. by putting her helm hard a starboard with full speed ahead, but without success, the stem of the H. cutting into the P. A. on her starboard side, a little ahead of amidships, she was swinging with a speed of about eleven knots.

The H. inward bound, passed Point Atkinson at 10.05 a.m. on a course of E. by N. and at a speed of four knots, but seeing the density of the fog decided not to enter the narrows, but to proceed cautiously, by "slow ahead" and "stop" alternatively, to a southerly part of English Bay, and altered her course at 10.25 to E.N.E. Later, at

10.50, hearing signals of other vessels, she changed her course E.S.E. giving proper signals. From 10 o'clock to 11.12 she was proceeding by "slow ahead" and "stop" at close arrivals. At 11.12 the *H.* heard the signal from the *P. A.* about 5 or 6 points on her port bow. She stopped her engine, blew the whistle, to which the *P. A.* replied. There followed another exchange of whistles, and while the *P. A.* was whistling for the third time, she emerged from the fog, heading for the *H.* The *H.* then reversed her engine full speed and put her helm hard a port, but too late to avert collision. When they first saw each other the *P. A.* was running at ten knots, and the *H.* at one and a half knots and the collision occurred about half a minute after.

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*Held*, on the facts (varying the judgment appealed from) that the *H.* by proceeding at a very moderate speed and otherwise acting as aforesaid was obeying rule 16 of the Regulations for Preventing Collisions at Sea, but that the speed of the *P. A.* (10 knots), in fog, was in the circumstances excessive, and that the *P. A.* was alone to blame.

2. That a vessel in fog should run at such a speed that upon sighting an approaching vessel, she can pull up in the distance she can see.
3. That Article 16 aforesaid does not require a vessel running in fog to reverse her engine upon hearing of a fog signal apparently forward of her beam, but only to stop her engines and then navigate with caution, and that as the *H.* could come to a stop in thirty feet and could see a vessel at three hundred feet, she was navigating with caution within the meaning of Article 16, and was not called upon to reverse before she did.

APPEAL and cross-appeal from the decision of the Honourable Mr. Justice Martin, Local Judge in Admiralty for the British Columbia Admiralty District.

The appeal was heard before the Honourable Mr. Justice Maclean, President of the Court, at Vancouver.

*Martin Griffin, K.C.*, for appellants.

*J. E. McMullen, K.C.*, for respondents.

The facts are stated in the reasons for judgment.

THE PRESIDENT, now (November 18, 1929), delivered judgment.

This is an appeal from the judgment of Hon. Mr. Justice Martin, Local Judge in Admiralty for the British Columbia Admiralty District, in an action, brought by the owners of the steamship *Hampholm* against the owners of the steamship *Princess Adelaide*, for damage sustained by the plaintiffs by reason of a collision in a dense fog between the two ships. The defendants counter-claimed for damages against the plaintiffs. The learned trial judge found both ships to blame, and he apportioned the liabil-

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ity for damage in the proportions of two-thirds on the part of the *Princess Adelaide*, and one-third on the part of the *Hampholm*. Against this decision both parties appealed, the owners of the *Hampholm* contending that the *Princess Adelaide* was alone to blame, the owners of the *Princess Adelaide* contending that both ships were equally to blame and that the damages should be apportioned equally. The facts relating to the matters in issue are not seriously in dispute, and they are so fully and clearly stated by the learned judge in his reasons for judgment, to be found reported in (1929) Ex. C.R. p. 199, that I am relieved of the necessity of any lengthy or detailed reference to the facts disclosed at the trial.

The passenger steamer *Princess Adelaide*, of 1910 registered tonnage, departed from Vancouver on the 19th of December, 1928, bound for Victoria, in a dense fog. After passing the First Narrows or Prospect Bluff, the *Princess Adelaide* was running through the fog at the rate of twelve knots on a S.W.  $\frac{1}{8}$  S. course, and she continued that course till the collision was imminent. The master of the *Princess Adelaide*, the learned trial judge stated, stopped his engines about half a minute before the collision upon hearing a signal from a tug to port, and also a signal from a ship to starboard which afterwards proved to be the *Hampholm*, and which he first saw emerging from the fog at a distance of about 300 feet, and between two and three points on his starboard bow. The *Princess Adelaide* attempted to clear the *Hampholm* by putting her helm hard-a-starboard with full speed ahead, but it was too late to avert the collision, the stem of the *Hampholm* cutting into the *Princess Adelaide* on her starboard side, a little ahead of amidships. At the moment of impact, the learned trial judge states, the *Princess Adelaide* was still swinging with a speed of about 11 knots at least, to avoid the *Hampholm*.

The *Hampholm*, a Norwegian freighter of 2,615 registered tonnage and 395 feet length, inward bound to Vancouver on the morning of the collision, had passed and seen Point Atkinson half a mile off, at 10.05 a.m., on a course E. by N. at a speed of about four knots, but in view of the density of the fog decided not to enter the Narrows but to proceed cautiously by "slow ahead" and "stop" alternately, to anchorage in the southerly part of English Bay.

The course of the *Hampholm* was accordingly altered at 10.25 to E.N.E., and she continued on this course at a decreased speed. Owing to the signals of other vessels, she again changed her course at 10.50 to E.S.E., giving proper signals and taking soundings. According to the engine room scrap log of the *Hampholm*, her movements from 10.00 to 11.12 were "slow ahead" and "stop" in closely following intervals of time. At 11.12 the *Hampholm* while on her last course, heard the signal of another vessel, which turned out to be the *Princess Adelaide*, about 5 or 6 points on her port bow. Thereupon the *Hampholm* stopped her engines and blew her whistle to which the *Princess Adelaide* replied; there soon followed another exchange of whistles, and while the *Princess Adelaide* was whistling for the third time, she emerged from the fog and became visible to the *Hampholm* at about 300 feet distant, heading directly for the *Hampholm* or at least across her bow, whereupon the *Hampholm* reversed her engine full speed and put her helm hard aport, but too late to avert the impact. It is admitted that the *Princess Adelaide* was running at a speed of 10 knots when the *Hampholm* was first seen right ahead. The master of the *Hampholm* states his ship was struck by the *Princess Adelaide* less than half a minute after sighting her; the former had on a slight amount of way when she first sighted the *Princess Adelaide*, according to the learned trial judge, but not exceeding  $1\frac{1}{2}$  knots. In her preliminary act the *Hampholm* alleged that she had "steerage way only," which is pretty much the same thing. Just prior to hearing the first signal of the *Princess Adelaide*, the engines of the *Hampholm* had been stopped, then given ten or twelve revolutions ahead, and the master of the *Hampholm* testified that he was barely making headway when her engines were stopped upon hearing the first signal of the *Princess Adelaide*, and that he could have brought her to a standstill in 30 feet.

The learned trial judge found that the *Princess Adelaide* had committed a breach of art. 16 of the Collision Regulations; "that she deliberately violated the regulations in a gross degree," and "without any extenuating circumstances." It was alleged against the *Hampholm*, that at least two minutes before the collision, she was in a position of danger from an "unascertained" ship continuing to

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approach her on the same S.W. course, 5 to 6 points on her port bow without broadening; that the requirements of "navigating with caution," under art. 16, and taking "any precaution which may be required by the ordinary practice of seamen or by the special circumstances of the case" under art. 29, were not observed in that she did not earlier reverse her engines. The learned trial judge supported this view. He said:

According to the master of the *Hampholm* when his ship was on her final course, immediately preceding the collision, she was going so slowly that he could have brought her to a standstill within 30 feet, but he gives no satisfactory, if any, explanation, why he did not, after hearing the *Adelaide's* second whistle at least, which indicated her continued approach in the same direction of "risk" then reverse her engine and take her way off as he had done shortly before in safely working past another vessel to port, also coming out from the Narrows, which he could not see. Both the pilot and the master admit they knew they were crossing the main stream of traffic through the Narrows in going to the said southerly anchorage and expected to meet vessels, and hence the situation was obviously one requiring the exercise of much caution as is always the case when a ship is on the final approach to the narrow entrance of a great port such as the one in question.

After a reference to art. 16 of the Collision Regulations, and a discussion of several authorities, the learned judge proceeded to say:

Applying all the foregoing to the facts of this case I can only reach the conclusion, after giving much thought to the matter (because it "involves considerations of general importance," as Lord Watson said in *The Ceto*) that the *Hampholm* did not "navigate with caution" after, at least, she heard the second whistle of the *Adelaide* and thereupon should have realized that as it showed no indication of broadening the danger was immediately increasing. The person in charge of the *Hampholm* was not placed in the "agony of collision" so that he had not even that inevitably short interval for "his mind to grasp the situation and to express itself in an order" (as was said in the U.S. Shipping case, supra 290, in a space of three seconds) but he had at least one half a minute to give that proper order to reverse the engines which his mind should have been on the alert for, if necessary, after hearing the first whistle, and had that order been given there is no doubt that either the *Adelaide* would have swung clear or at the worst a scraping only would have resulted with little if not trifling damage. Such being the case it becomes necessary to apportion the liability for the damage "in proportion to the degree in which each vessel was in fault," as the Maritime Conventions Act declares, cap. 126, R.S.C., Sec. 2.

\* \* \* \* \*

I apportion the liability for "degrees of the fault" as two-thirds on that of the *Princess Adelaide* and one-third on that of the *Hampholm*; there is a great distinction between the conduct of the two vessels, the former deliberately violated the Regulations in a gross degree and the latter erred in her manner of endeavouring to carry them out.

The real point in issue is therefore, whether or not the *Hampholm* should have not only stopped her engines upon hearing the first signal of the *Princess Adelaide*, but also have reversed them. The point is obviously one of very great importance to shipping and to navigators.

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The important provision of the Regulations for Preventing Collisions at Sea, for consideration here, is art. 16, which reads:—

Every vessel shall, in a fog, mist, falling snow, or heavy rain storms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel, the position 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.

The last paragraph of art. 16 first appeared in the Regulations of 1897. This part of the article seems to me to be quite plain as to its purpose and meaning. It appears to be a self contained code in itself, and I cannot agree that it is proper, in this case at least, to carry into that article, any other article of the Regulations for Preventing Collisions at Sea; art. 16 was the only one that applied in the circumstances. What is the meaning of this rule and why was it enacted? The reason for the adoption of art. 16, and its meaning, I think, was correctly expressed by Jeune J. in the case of the *Rondane* (1). In discussing that article he said:—

That article has to be considered with regard to both vessels. I have considered art. 16, and have had the advantage of reading the judgment of Barnes J. in the case to which I was referred (*The Pontos v. The Star of New Zealand*) not reported, which, as far as I know, is the only authority which bears upon the rule. So far as my judgment in the matter goes I feel no great difficulty in understanding substantially what the rule means. The words are "A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel, the position 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." I think I understand what that rule means. It was an approach to what many persons had advocated at different times—namely, that in a fog vessels should absolutely stop. Of course a suggestion of that kind applies with far more force to river navigation than to the open sea, because of course, as has been said over and over again, in the Channel, if vessels had to stop dead, it might be that you would get the Channel crowded with ships, which would be unable to reach their destinations. In a river like the Thames it might be better for vessels to stop and anchor, though what injury it might cause to trade I do not say. This rule stops short of that. It does not say that a vessel is to stop and never move again

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in the fog. On the contrary all she has to do is to stop her engines and then navigate with caution, and she is to do that because she hears forward of her beam a fog-signal of a vessel, the position of which is not ascertained. She is to keep them stopped until she can by hearing further signals from the other vessel, ascertain the position of that other vessel. The rule does not say that in terms, but that appears to me to be the meaning. The object, of course, is clear—namely, to give the vessel which stops her engines an opportunity of hearing better than she otherwise would do, and also to specially call the attention of those on board to the matter. So that they may be more acute to hear a second whistle and to locate it if possible. Therefore the duty of a vessel in fog clearly appears to me to be to stop her engines when the first whistle is heard, for the purpose I have mentioned.

Another interpretation of art. 16 is to be found in a Scotch case, *The Warsaw v. Granite City Steamship Co.* (1). Art. 16 was there held imperative, as long as there was not certainty as to the position of the other vessel (*The Warsaw*) and what she was doing. Lord Stormonth-Darling said:—

Now, I do not doubt that all the articles are to be read together, so far as they can be so read, and accordingly that it may be quite right to read Article 16 along with any other article which will live with it. For example, the note to Article 21, by its reference to “thick weather or other causes,” shows that it may be read along with Article 16 when the emergency arises to which it refers. But it is equally clear that Article 21 itself cannot be so read, because that would involve the contradiction that, in certain circumstance, the same vessel was both to stop her engines and navigate with caution, and to keep her course and speed. The truth is that Article 16, in its two paragraphs, seems to contain all the obligatory directions with reference to speed in a fog. It deals (1) with the case of a vessel finding herself in a fog without knowing of any other vessel near her, in which case her duty is simply to go at a moderate speed, and then (2) with the case of her hearing the fog-signal of a vessel apparently forward of her beam, but in an otherwise unascertained position, in which case her duty is to stop her engines, and then to navigate with caution until the danger of collision is over. Plainly, I think, if a vessel obeys these directions she is not bound to act as if she saw the other vessel and knew all about her exact position. It is an acknowledged fact (which our skilled adviser corroborates) that sound in a dense fog may be very misleading and a shipmaster who governed his conduct by conclusions so drawn instead of following the safe and cautious directions of Article 16 might be very much to blame.

In the case of *The Challenge and Duc d'Aumale* (2), it will be found that the learned trial judge (Gorell Barnes J.) found that the charges of excessive speed and of improper helm action failed, for both the plaintiffs and the defendants' vessel were going at a moderate speed, and an alleged improper helm action had no material effect; but

(1) (1906) 8 Sc. Session Cases,  
 (5th Ser.), 1013.

(2) (1905) P. 198.

the learned judge distinguished the case of the *Merthyr* (1), and gave judgment in favour of the plaintiffs, on the ground that the *Camrose* was not to blame as she had complied with art. 16 of the Regulations for Preventing Collisions at Sea by stopping, and was not bound to reverse before she did so; whilst the tug *Challenge*, and the sailing ship in tow, the *Duc d'Aumale*, were to blame, as distinguishing *The Lord Bangor* (2), it was practicable for the tug, in the circumstances of the case, to have at once stopped her engines, and let the way run off the tow. Upon appeal the judgment of the trial judge was sustained, and it was held unanimously that art. 16 did not prescribe reversing as well as stopping. Collins M.R. said:—

In this case the plaintiffs steamship *Camrose* was proceeding up the English Channel, and the defendants' sailing ship *Duc d'Aumale*, in tow of the defendants' tug *Challenge*, was proceeding down the channel on practically opposite courses. The weather was thick with fog, and the *Camrose*, hearing a fog signal upon her port bow, stopped, and, it is alleged against her, ported her helm. When the tug and her tow came into sight the *Camrose* reversed and starboarded. It is now further urged against her that she ought to have reversed before, and that the non-reversal led to the collision; but the second paragraph of article 16 of the Regulations for Preventing Collisions at Sea only requires that "a steam vessel hearing apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines." So that there is clearly no obligation imposed by the rule to reverse. She did stop, and the learned judge has found—and he had the concurrence of the Elder Brethren—that as far as the circumstances of the case admitted she navigated with caution.

Numerous authorities were cited in support of the contention of the owners of the *Princess Adelaide*, and I must refer to some of them. One was *The Ceto* (3). It is to be observed that art. 18, of the Collision Regulations of 1884, was the one applicable to the case, and it was found that both vessels violated this regulation. That rule, required that every steamship, when approaching another ship, so as to involve risk of collision, should slacken her speed, or stop and reverse, if necessary. That article is not now to be found in the Collision Regulations, and therefore no assistance is, I think, to be gained from a consideration of that case. The same may be said of *The Knarwater* (4). Authorities subsequent to 1897, when the present art. 16 was first introduced, were also cited, such

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(1) (1898) 8 Asp. M.C. 475.

(2) (1896) P. 28.

(3) (1889) 14 A.C. 670.

(4) (1894) The Rep., Vol. 6, 784.



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as *The King* (1); *The Clara Camus* (2); and *The Union* (3). In the first mentioned of these cases, the *Queensdyke*, in a fog, stopped her engines on hearing the whistle of the *King*, the other ship involved in the collision, and they had been stopped for ten minutes before the collision. *The King* did not stop on hearing the *Queensdyke's* signals forward of her beam and was proceeding according to Bargrave Deane J., at too great a speed in the fog, and therefore she had broken art. 16, and for this reason the *King* was held alone to blame. It seems to me that this case is rather in support of the contention of the *Hamp-holm*. It perhaps might be pointed out also, that the learned judge who heard that case was of the opinion that in cases of fog, only the fog rules applied, the other rules being only applicable when the vessels are in sight of each other. Then as to the case of the *Clara Camus*. In this case both vessels were found throughout to be guilty of excessive speed in foggy weather, and thus both had violated the first part of art. 16 as to moderate speed in fog. There is nothing in the judgment delivered in the court of first instance or in the judgments rendered in the Court of Appeal, that in a fog, the regulations required a vessel hearing a fog signal apparently forward of her beam, not only to stop her engines, but also to reverse, unless of course unusual circumstances made it an obvious and prudent step to take. Everything would indicate the contrary. The learned trial judge found both vessels to blame and he apportioned the blame equally. The Court of Appeal held however, that the proper degrees of fault should be two-thirds and one-third, because of the fact that one of the vessels, the *Metagami*, was more to blame than the other vessel in that she not only broke that part of the regulation requiring moderate speed in a fog, but also that she broke the second part of art. 16 in that she did not stop her engines when she heard the signal of a ship forward of her starboard beam; the other vessel was held to blame only in respect of her speed. I do not think the decision in this case is applicable to the one being considered. Then there is the recent case of *The Union*. Here both ships were held equally to blame because both were held to be

(1) (1911) 27 T.L.R. 524. (2) (1926) 17 Asp. M.C. 171.  
 (3) (1929) 17 Asp. M.C. 483; (1928) P. 175.

going too fast in a dense fog. *The Vulcano*, one of the ships involved in this collision which took place in the River St. Lawrence, was proceeding at the rate of eight or nine knots, when she first heard the whistle of the other ship, the *Union*. The latter ship was also found to blame for excessive speed and for not stopping—her engines I assume—shortly after she got into the fog when she heard the whistle of the *Vulcano*. This case was really decided upon the ground that both ships were to blame for excessive speed, and upon a state of facts which do not obtain here. At any rate, I do not think the case purports to decide that either ship was to blame, merely because she did not reverse her engines, as contended here. Other authorities cited do not, I think, support the contention made on behalf of the *Princess Adelaide*.

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It is clear, I think, that the *Hampholm* conformed to the Regulations for Preventing Collisions at Sea. She obeyed the first and second parts of art. 16, that is to say, she was proceeding at a moderate speed in the fog, she stopped her engines when she first heard the signal of the *Princess Adelaide* and thereafter she navigated with caution. In the case of *The Cathay* (1), that ship was found to blame for not having done just what the *Hampholm* did do. If, with the stopping of her engines, it also became necessary for the *Hampholm* for one reason or another, as an act of precaution or of good seamanship to reverse her engines as well, that would be another question. In my opinion, the actual facts of the situation as known to the *Hampholm* had not disclosed a necessity for such action on her part. I do not think that art. 29, which contains no express rule or regulation and is only a declaration concerning the effect of negligence, is applicable to the facts of this case. Both in letter and spirit the *Hampholm* was observing the exact regulation designed for the situation in which she found herself, and she was, I think, under such control as to meet successfully any situation that might fairly be expected to arise. One of the objects of art. 16, is, that a ship shall go at such speed in a fog as will give as much time as possible for avoiding a collision, when another ship suddenly comes into view at a short distance. In a fog it is well known that the sound of a

(1) (1899) 81 L.T.R. 391; 9 Asp. M.C. 35.

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whistle from a steamer is not a reliable means of ascertaining the position of that steamer, and by "position" I mean that both direction and distance are implied. In the circumstances here, the master of the *Hampholm* was justified in assuming that the *Princess Adelaide* was proceeding at a moderate speed and not at the rate of one thousand feet or thereabouts a minute, and that she was also being navigated with caution; he was justified in assuming also that when their respective positions were fairly ascertained by each, or when they came within sight of each other, there would be ample time for each to manoeuvre safely. I can hardly believe it open to controversy, that had the *Princess Adelaide* been going at a moderate speed and conforming fully with art. 16, there would have been ample time and space for each to manoeuvre past the other with perfect safety, after their respective positions had been definitely ascertained, or after they came in sight of one another. The collision occurred, in my opinion, because of the unwarranted speed of the *Princess Adelaide*, and for her failure to navigate with caution after hearing the signal of the *Hampholm* as required by art. 16; she was unable to meet the situation that developed on account of her excessive speed. The *Princess Adelaide* should have been going at such speed, after hearing the first signal of the *Hampholm*, or after sighting the *Hampholm*, that she could have pulled up in the distance she could see. See Deane J. in *The Counselor* (1). I do not think there was any negligence whatever on the part of the *Hampholm*. It does not establish negligence on the part of the *Hampholm* to say that had she earlier reversed her engines, there would have been no collision or that the consequences would have been less serious. She is charged with neglecting the precaution of practised seamen in not earlier reversing her engines; and negligence is the essence of the offence, according to art. 29. If the *Hampholm* observed art. 16, and I think she fully did, then the only interval of time when she could have been guilty of any negligence would be after sighting the *Princess Adelaide*, but then she did reverse her engines; the collision was then unavoidable as was declared by the *Princess Adelaide* in her preliminary act, and owing, I think, entirely

to the speed of the *Princess Adelaide*. It therefore follows, I think, that the *Hampholm* was not negligent of the ordinary practise of seaman at that interval of time. Further, any fault on the part of the *Hampholm*, if any there was, did not in my opinion contribute to the collision, and sec. 2 (b) of the Maritime Conventions Act, Ch. 126, R.S.C. 1927, enacts that no vessel is liable for any loss or damage to which her fault has not contributed.

I am of the opinion therefore, with respect, that the *Princess Adelaide* was alone to blame for the collision; that the appeal of the owners of the *Hampholm* should be allowed with costs; and that the cross-appeal of the owners of the *Princess Adelaide* should be dismissed with costs. The case will be remitted to the Court of first instance to be there dealt with as rights of the parties under this judgment may appear to the said Court.

*Judgment accordingly.*

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