HER MAJESTY THE QUEEN (*Plaintiff*) ..APPELLANT; 1962

AND *May 8, 9 June 11

LEVIS FERRY LIMITED (*Defendant*) ..RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Shipping—Collision—Loss of ice-breaker—Negligence—Apportionment of liability—Damages—Limitation of liability—Interest—The Canada Shipping Act, R.S.C. 1952, c. 29, ss. 657, 659—The Interest Act, R.S.C. 1952, c. 156, s. 3.

In this action, the Crown sought damages for the loss of the ice-breaker *Lady Grey* which sank in the St. Lawrence River when it collided with the defendant's ferry *Cité de Levis*. The collision occurred in very severe winter weather and in thick intermittent fog. The ice-breaker had gone to the assistance of the ferry which had become caught in ice floes. The Crown alleged that the collision was caused by the fault and negligence of the *Cité de Levis*. The defence contended that the collision was an inevitable accident or was due to the negligence of the navigators of the *Lady Grey*. The trial judge found that the collision was not due to an inevitable accident but was caused by the negligent operation of both vessels, and apportioned the liability of the defendant at 60 per cent and of the plaintiff at 40 per cent. The trial judge also held that the defendant was entitled to limit its liability under the *Canada Shipping Act*. The Crown appealed to this Court and the defendant cross-appealed.

Held: The appeal should be allowed and the cross-appeal dismissed.

The trial judge was justified in finding that the collision was not an inevitable accident, that it was not due solely to the fault and negligence of the navigators of the *Lady Grey*, and that the ferry had no look-out and had failed to sound the signals required by r. 15(*c*)(1) of the Regulations for Preventing Collisions at Sea.

However, although the defendant was entitled, as held by the trial judge, to limit its liability at $40,390, the trial judge had erred in taking 60 per cent. of that amount and giving judgment for $24,234. The trial judge had also erred in allowing interest only at the rate of 4 per cent. instead of at the rate of 5 per cent. as provided for by s. 3 of the *Interest Act*, R.S.C. 1952, c .156.

APPEAL and cross-appeal from a judgment of Fournier J. of the Exchequer Court of Canada[1]. Appeal allowed and cross-appeal dismissed.

R. C. Holden, Q.C., and *R. Tassé*, for the plaintiff, appellant.

J. Brisset, Q.C., for the defendant, respondent.

The judgment of the Court was delivered by

*PRESENT: Kerwin C.J. and Cartwright, Fauteux, Abbott and Judson JJ.

[1] [1960] Ex. C.R. 243.

1962

THE QUEEN v. LEVIS FERRY LTD.

THE CHIEF JUSTICE:—This is an appeal by Her Majesty the Queen and a cross-appeal by Levis Ferry Limited from a judgment of the Exchequer Court of Canada[1] in which the appellant was plaintiff and the cross-appellant was defendant. The proceedings were commenced by information and were not brought in Admiralty, although the Court and counsel proceeded as if they were.

The appellant was the owner of the Ship *Lady Grey,* a twin screw ice-breaker, and the respondent was the owner of the steam ferry *Cité de Levis.* On February 1, 1955, at the request of the respondent, the *Lady Grey* went to the assistance of the ferry which had become caught in ice floes and was unable to reach her berth at Quebec. Ultimately the ship and the ferry collided as a result of which the ship sank and was a total loss, for which the information claimed damages. There is no dispute as to the total amount of damages sustained, $310,775, and the appellant does not now question the trial judge's apportionment of liability, *i.e.,* 60 per cent. to the respondent and 40 per cent. to the appellant. The respondent, however, claims that the collision was an inevitable accident and that it should not be held liable for any amount or in any event for a less percentage than that found by the trial judge.

It will be convenient to deal first with the cross-appeal. On the argument questions were raised as to the correctness of some of the facts found by the trial judge. While there may be discrepancies in his reasons, on the whole there was no serious error and he came to the right conclusion as to the fault and liability for the collision. He had the assistance of two assessors and no objection was taken either to the forum or to the presence and use of these assessors. We agree with him that the collision was not an inevitable accident and that the collision was not due solely to the fault and negligence of those in charge of the navigation of the *Lady Grey.* The ferry had no lookout at the time of the collision and failed to sound the signals required by r. 15(*c*)(1) of the Regulations for Preventing Collisions at Sea. Indeed we are inclined to agree with the submission of counsel for the cross-respondent that the trial judge placed insufficient emphasis on the speed at which the ferry was manoeuvring just before the collision, but in any event the

[1] [1960] Ex. C.R. 243.

main ground upon which he proceeded as to the fault of those in charge of the navigation of the ferry is justified upon the evidence. The only other point raised by the cross-appeal was that in view of the result at which the trial judge arrived he should have given the appellant only part of the costs of the action but we see no reason to interfere with that disposition. The cross-appeal is, therefore, dismissed with costs.

The first branch of the appeal is really not disputed. The appellant agrees that the respondent was entitled to limit its liability at $40,390, but the cross-appellant also agrees that the trial judge was in error in taking 60 per cent. of that figure and giving judgment only for $24,234. The second point in the appeal is that the trial judge was in error in allowing interest only at 4 per cent. instead of 5 per cent. Apparently the trial judge followed a rule in England, but in Canada the point is covered by s. 3 of the *Interest Act*, R.S.C. 1952, c. 156. It is emphasized that counsel for the respondent admitted that interest should be allowed, but he contended that the trial judge was correct in fixing the rate at 4 per cent.

The appeal is therefore allowed with costs, the cross-appeal dismissed with costs and the judgment of the Exchequer Court set aside. Judgment is directed to be entered for the appellant against the respondent in the sum of $40,390 with interest at 5 per cent. per annum from February 1, 1955, to the date of payment. The appellant is entitled to her costs of the action.

Appeal allowed with costs;
Cross-appeal dismissed with costs.

Solicitor for the plaintiff, appellant: E. A. Driedger, Ottawa.

Solicitors for the defendant, respondent: Beauregard, Brisset & Reycraft, Montreal.