

NEW BRUNSWICK ADMIRALTY DISTRICT.

BETWEEN

1902
Jan. 8.

CLARENCE MCGREGOR ROBERTS.....PLAINTIFF;

against

THE SHIP "PAWNEE."

*Admiralty law—Collision between steamer and sailing vessel—Undue speed
—Rule 16—Liability.*

Two vessels, a steamer and a sailing schooner, were making for the harbour of St. John, N.B., at noon, on a certain day. The steamer had passed the whistling buoy, off Partridge Island, and was sailing a N.W. by N. course. The schooner was running about N. with a fair wind, which was very light. A thick fog prevailed. The steamer's speed was between four and five knots, when those on board heard three blasts from a fog-horn on the schooner for the first time. This indicated to those on board the steamer that the schooner was about four points off their bow, and that she was sailing free in a northerly direction. Upon hearing the blasts the steamer continued upon her course at the same speed. Ten minutes after she first heard the blasts the steamer struck the schooner on the starboard side, with her bow about midships, and stove her in, the schooner sinking in a few minutes.

Held, that under rule 16 of the Regulations for Preventing Collisions at Sea, it was the duty of the steamer upon hearing the fog-signals to stop her engines, so far as the circumstances of the case would permit, and then navigate with caution until the danger of collision was over. The steamer was, therefore, wholly responsible for the collision.

THIS was an action for damages by collision between a steamer and a sailing vessel near the entrance of the harbour of St. John, N.B.

The facts of the case are fully stated in the reasons for judgment.

July 25th, 1901.

The case was heard at St. John, N.B.

H. H. McLean, K.C., for the plaintiff: When the steamer first heard three blasts of the fog-horn on board the schooner it was her duty to stop until she had ascertained where the schooner was and her course. The captain of the steamer admits he knew from the sound that the schooner was running free; he also admits that he knew there was danger of running into the schooner. (*The Heather Belle* (1); *The Zambesi* (2); *The Lancashire* (3); *The Kirby Hall* (4); *The John McIntyre* (5); *The Dordogne* (6); *The Ebor* (7); *The Lord Bangor* (8); *The Rondane* (9); *The Cathay* (10); *The Frankland* (11); *The Campania* (12). All these cases establish that it was the duty of the steamer to slow down her speed so that she would be in a position to stop, after sighting the schooner, in time to prevent a collision.

C. J. Coster, for the ship, contended that the authorities cited by counsel for the plaintiff only applied to cases where vessels were approaching each other, and under a specific rule in that behalf. The evidence is that the schooner was sounding three blasts, showing that she was going in the same direction as the steamer, and that she was sailing free. If a steamer were obliged to stop every time a horn was heard, she would be stopped all the time in foggy weather, and would run great danger of being run down by other vessels. *The Marpesia* (13).

1902

ROBERTS

v.

THE SHIP
PAWNEE.

Argument
of Counsel.

(1) 3 Ex. C. R. 40.

(2) 3 Ex. C. R. 67.

(3) [1894] A. C. 1.

(4) 8 P. D. 71.

(5) 9 P. D. 135.

(6) 10 P. D. 6.

(7) 11 P. D. 25.

(8) [1896] P. D. 28.

(9) 69 L. J. Adm. 114.

(10) 81 L. T. N. S. 391.

(11) L. R. 4 P. C. 529.

(12) 83 L. T. N. S. 511.

(13) 8 Moo. P. C. N. S. 478; L. R. 4 P. C. 212.

1902
 ROBERTS
 v.
 THE SHIP
 PAWNEE.
 Reasons
 for
 Judgment.

The accident was inevitable so far as the steamer was concerned, and had the schooner hauled her wind when she first sighted the steamer, they would have run up alongside of each other and little damage would have been sustained by either. (*The Calcutta* (1); *The Argentino* (2); *Marsden on Collisions at Sea* (3).

H. H. McLean, K.C., replied.

McLEOD, L.J. now (January 8th, 1902,) delivered judgment.

This is an action brought by the plaintiff, as owner of the schooner *Roland*, registered at Parrsboro, N.S., for damages occasioned by collision with the steamer *Pawnee*, on July 17th of last year, by which the schooner and her cargo were lost.

Three actions were brought against the steamer, one by the plaintiff, as owner of the schooner; one by Joseph A. Likely, as owner of the cargo; and one by the seamen on board the schooner for their personal effects; but on the hearing the cases were consolidated and tried as one case. The collision took place about noon on the 17th of July last, near the whistling buoy, off Partridge Island. The steamer was on her way from New York to St. John in ballast. The schooner was coming from Parrsboro to St. John loaded with coal. Both vessels were making for St. John. The steamer had passed the whistling buoy and was sailing a N.W. by N. course. The schooner was running about north with a fair wind, which was very light, and there was a thick fog. The steamer struck the schooner on the starboard side, with her bow about midships, stove her in and she sank in a few minutes. At the outset I may say that there is no evidence that shows that the schooner was in any way at fault. She

(1) 21 L. T. N. S. 768.

(2) 14 App. Cas. 519.

(3) 2nd ed. pp. 354, 380.

was sailing with the wind, which was very light, and she was going very slow, having not much more than steerage way, and would not answer her helm quickly. She was supplied with a good mechanical fog horn, which was kept continually blowing, giving three blasts at proper intervals. The steamer was blowing her whistle, which was heard on board the schooner. The question I have, therefore, to consider is whether the steamer was in fault, either in running at too great speed under the circumstances, and whether she violated the rule in not stopping when she first heard the schooner's fog horn. As so much depends on the action of the steamer after the schooner's horn was heard, I will first refer to some of the evidence of those on board the steamer taken on behalf of the defendant. Captain Cartwright, the captain of the steamer, was examined, and part of his evidence, by question and answer, is as follows :

“ Q. Before the accident did you hear any fog horn blowing?—A. Yes, we heard a sailing vessel's horn blowing, giving three blasts sometime previous to it, about ten minutes before the accident. Q. After that did you hear three blasts again?—A. When we saw the schooner right ahead, three at the same time. Q. You say the schooner was then how far off?—A. About a hundred yards distant. Q. The fog, you say, was very thick?—A. Very dense. Q. As soon as you saw the schooner what did you do—what order did you give?—A. Stopped the engines.” And he further says that he ordered the engines full speed astern, but the steamer struck the schooner. He further answered as to the schooner: “ Q. How was the schooner sailing?—A. Sailing with the wind free. Q. Had she come up in the wind would the accident have been lessened?—A. I imagine had the schooner taken quick action, and put her helm down and hauled her wind,

1902

ROBERTS
v.
THE SHIP
PAWNEE.

Reasons
for
Judgment.

1902
 ROBERTS
 v.
 THE SHIP
 PAWNEE.
 Reasons
 for
 Judgment.

“ we might have gone alongside of each other, and
 “ might not have done serious damage.”

As to this, as I have already said, the wind was very
 light, and the schooner had not much more than
 steerage way and would not answer her helm quickly.
 The captain of the schooner, however, in his evidence,
 says that so soon as he saw the steamer he ordered his
 mate, who was at the wheel to put it hard to starboard,
 and that he saw the order obeyed, and the mate, in his
 evidence, corroborates this and says that he obeyed and
 put the wheel hard to starboard. The captain of the
 steamer further answers in his cross-examination as
 follows:—

“ Q. You heard the schooner's horn, you say, about
 “ ten minutes before the collision?—A. Yes, heard it
 “ the first time. Q. You heard it off your port bow?—
 “ A. It seemed to me a little before the beam on the
 “ port side. Q. You heard the schooner blowing three
 “ blasts?—A. Yes. Q. That would indicate that she
 “ was running free?—A. Yes. Q. And you would
 “ know, of course, that there was danger of running
 “ into her?—A. Yes. Q. Now, did you give orders to
 “ slow down the speed you were going at after you
 “ heard the schooner's horn?—A. At that time we did
 “ not. She was going slow. Q. She was going at the
 “ same speed she had been through the morning?—
 “ A. She had been for half an hour or so. Q. I think
 “ you will see by the engineer's log that a long
 “ time before that she was going at full speed?—A.
 “ Going slow. Q. Going slow would be six knots?—
 “ A. No, we were going slow all the morning. I was
 “ on the bridge. I was on the bridge from eight
 “ o'clock, part of the time we were going full speed,
 “ and another part of the time we stopped the ship
 “ altogether to get soundings.”

Griffith Jones, the first officer of the steamer, was also called, and, after saying that the collision occurred just after they had passed the whistling buoy, and that they heard the whistling buoy at Partridge Island. In his direct examination—by, question and answer, he says:—

1902
 ROBERTS
 v.
 THE SHIP
 PAWNEE.
 Reasons
 for
 Judgment.

“Q. Did you hear the sound of a fog horn?—A. Yes.
 “Q. About that time?—A. Well I heard three blasts
 “about ten minutes before the accident occurred. Q.
 “You were on the lookout, were you?—A. I was on
 “the lookout. Q. Who was with you on the lookout?
 “—A. Another man. Q. What was his name?—A. A
 “seaman, Antonio Masco. Q. He was with you?—A.
 “Yes. Q. You say you heard three blasts about ten
 “minutes before the accident occurred, when did you
 “next hear any blasts?—A. Just the time we collided.
 “Q. How far ahead was the schooner *Roland* when
 “you first sighted her?—A. Just about a hundred
 “yards. I should think it would not be any more any
 “how. Q. The fog was very dense?—A. Very dense
 “at the time.”

And again he says:

“Q. The first time you heard the fog horn, you
 “say, was about ten minutes before the accident.—A.
 “Yes, about ten minutes before the accident. Q.
 “Where did the sound seem to be coming from, what
 “direction?—A. I should think the sound was a little
 “on the port before the beam and bow, from there on
 “to the forepart of our beam. The beam is like this
 “(indicating). The wind was coming in that direc-
 “tion on the port side.”

He further says, in answer to a question:—

“How long after you saw her before you came into
 “collision?—A. It was instantly, just there and then.
 “Q. Just as soon as you saw the schooner you came
 “into collision?—A. She was about a hundred yards
 “off in a few seconds.”

1902
 ~~~~~  
 ROBERTS  
 v.  
 THE SHIP  
 PAWNEE.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

Antonio Masco, the seaman referred to by Jones,  
 says :—

“ Q. How long before the accident did you hear any  
 “ whistles, and when did you hear them?—A. Fog  
 “ whistles?—A. Yes? A. We heard the schooner first  
 “ time. Q. What was she blowing?—A. Three horns  
 “ —three blasts. Q. And how long before the accident  
 “ did you hear her when you first heard the three  
 “ blasts?—A. Before. Q. How long before? A. About  
 “ ten minutes. Q. And then when did you hear the  
 “ blasts again after the first time?—A. The second  
 “ time? Q. Yes, where was the schooner when you  
 “ heard them again?—A. On the port bow. Q. That  
 “ is the first time you heard them?—A. Yes. Q. First  
 “ time she was on the port bow?—A. Yes. Q. Well,  
 “ then, did you hear her again yourself a second time?  
 “ A. Yes, a second time we heard, and we struck. Q.  
 “ How far off was the schooner when you heard them  
 “ the second time?—A. Not half the length of the ship.  
 “ We heard the whistle and saw the schooner, and at  
 “ the same time struck together.”

Morris Rowlands, the second officer of the steamer,  
 also says that he heard a horn giving three blasts about  
 nine or ten minutes before the collision; that the blasts  
 seemed to be about four points off the bow. That  
 hearing them he knew the vessel was sailing free, in a  
 northerly direction. The captain of the steamer, and  
 all the men on board, who were called as witnesses, say  
 that the steamer was going slow, not more than two  
 and a half or three knots an hour; and, that on hearing  
 the schooner's fog horn the first time they did not stop,  
 and made no change in the speed or course of the  
 steamer. The plaintiff and men on board the schooner,  
 who were called as witnesses, say she was going five  
 or six knots an hour, and they form this opinion by the  
 speed at which she seemed to be going when they first

saw her, and the quickness with which she struck after she was first sighted. The pilots, who were out in their boats at the time, who were called as witnesses, saw her just before she struck the schooner, and they say they thought she was going four or five knots an hour. They also say they heard the schooner's fog horn regularly blowing—giving three blasts at a time. The first contention by the plaintiff is that the steamer, when the schooner's horn was first heard, should have been stopped so as to ascertain the whereabouts of the vessel blowing. After having carefully considered the evidence, I think the steamer violated the rules in not stopping her engines when she first heard the fog horn. I can find, from the evidence, no reason for her not doing so. The rules are plain—when a steamer and sailing vessel are proceeding in such directions as to involve a collision, the steam vessel must keep out of the way; and by rule 16 a steam vessel hearing a fog signal of a vessel, apparently forward of her beam, 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 the danger of collision is over. The steamer heard the fog horn of the schooner on her port side, apparently forward of her beam, ten minutes before the collision occurred. Three blasts were given, by which she knew the vessel was sailing free, in a northerly direction. Her own course was N.W. by N., and there was, at all events, danger of a collision. The captain of the steamer admits that in his cross-examination, and in answer to the question: "You would know, of course, that there was danger of running into her?" he says, "Yes." And he also says that he did not give orders to slow down speed as she was going slow. And no change in the speed course or management of the steamer appears to have been made after the fog horn was first heard,

1902  
 ROBERTS  
 v.  
 THE SHIP  
 PAWNEE.  
 Reasons  
 for  
 Judgment.

1902  
 ROBERTS  
 v.  
 THE SHIP  
 PAWNEE.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

until she came right up to the schooner. I think it is absolutely clear that the steamer's engines should have been stopped when the fog horn was first heard, and efforts made to ascertain the position of the vessel. The fog was dense, and those on board the steamer could not see the vessel, but they knew there was one in the vicinity, and that if they kept on their course there was, at all events, danger of a collision; and the fact that there was danger was the reason why the engines should have been stopped, and, if necessary, reversed. There seems to have been no reason why they could not have been stopped. The captain says that he stopped at different times in running, to take soundings, and it seems to me, even without the rule, knowing there was a sailing vessel in front of them, and that there was danger of a collision, he should have stopped and taken precautions to avoid a collision. The authorities are numerous, but Mr. Coster claimed that they refer to cases of vessels approaching each other. That is true, but it is not necessarily when vessels are sailing toward each other, but when vessels are sailing in such a direction as to be liable to come together and there is danger of a collision. In *The Lancashire*, Lord Herschell says, (1), "that "there being this dense fog, with the two vessels "approaching one another, although by the sound of "the whistle it seemed to those navigating the *Lanca-* " *shire* that the other vessel was coming in a direction "which would take them clear, nevertheless they "ought not to have assumed that that state of things "would certainly continue, and they ought to have "stopped from time to time, and so made sure that "they would not approach the other vessel at too "great a speed, and that the risk of the collision "would have been in that way avoided." It seems

(1) [1894.] A. C. at p. 4.

to me that this language applies with great force to the facts in the present case. There was a dense fog, the schooner's horn was heard on board the steamer, and the captain knew that on his then course there was danger of a collision, and it was his duty to take, at once, precautions to prevent it by stopping his way until he had ascertained the position of the vessel. In the *John McIntyre* (1), it is said by Bret, M. R.: "It may be laid down as a general rule of conduct that it is necessary to stop and reverse, not indeed every time that a steamer hears a whistle or fog horn in a dense fog, but when in such a fog it is heard on either bow and approaching, and is in the vicinity, because there must then be a risk of collision." And this is quoted with approval by Lord Watson in *The Ceto* (2). The *Kirby Hall* (3) is to the same effect. In this case Sir Robert Phillimore, in holding the *Kirby Hall* to blame for not stopping when she heard the whistle, says, at p. 78, "We have arrived without hesitation at the conclusion that the *Kirby Hall* is solely to blame by reason of not stopping her way in the water when the whistle of the *City of Brussels* was heard the first time, instead of going ahead without knowing where the *City of Brussels* was, or what she was doing; and we wish to state, with as much emphasis as possible, that those in charge of a ship in such a dense fog as was described in this case, should never conjecture anything when they hear a whistle the sound appears to come from a vessel in such close proximity as was the case here, whether approaching them or not." In the present case the *Pawnee* heard the fog horn on her bow and knew, or should have known, that there was danger of a col-

1902  
 ROBERTS  
 v.  
 THE SHIP  
 PAWNEE.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

(1) 9 P. D. at p. 136.

(2) 14 App. Cas. at p. 637.

(3) 8 P. D. 73.

1902  
 ROBERTS  
 v.  
 THE SHIP  
 PAWNEE.  
 ———  
 Reasons  
 for  
 Judgment.  
 ———

lision, and should have stopped her way, and, if need be, reversed and taken time to ascertain where the vessel was. There was further reason for stopping the engines. The schooner's horn was kept blowing all the time. The various witnesses, who were out in small boats, say they heard it giving the three blasts regularly. The steamer heard it once and did not hear it again for about ten minutes, and then she was just on the schooner. If she had stopped when she first heard it, she could have heard more distinctly, and the attention of those on board would have been called to it, and they would have had an opportunity to locate the position of the schooner. In the *Rondane* (1), the court, in giving judgment, holding that the *Rondane* should have stopped when she first heard the whistle, says, at p. 115, "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 "locate it if possible." In this case the steamer, on hearing the fog horn the first time, made no effort to locate it, but continued in her course. Her duty, I think, in the fog, on first hearing the horn, was to have stopped her engines for the purpose of locating it. I think, therefore, the steamer violated the rule. I also think, from all the evidence, that the steamer was going at a greater rate of speed than two and a half or three knots, as stated by the captain and those on board. The entry of the rate of speed in the mate's log-book, from six o'clock that morning until twelve noon, the time of the accident, gives the speed at six knots each hour, except the last, which is five knots. He explains that by saying that it is just an esti-

(1) 69 L. J. Adm. 114.

mate of the rate of speed through the hour, but the pilots who saw her coming just before the accident, say that she was going at least four or five knots an hour. And there is the further fact, that I think is some evidence, that she was going at a greater rate of speed than two and a half or three knots. The captain says when he first saw the schooner she was about 100 yards off and he immediately ordered the engines stopped and reversed, and he further says that going at the rate of two and a half or three knots an hour the steamer would entirely stop in about two lengths of herself. Now, the evidence is that when she struck the schooner she pushed her through the water and sunk her in a few minutes. I think the force with which she struck the schooner shows that she must have been going at a greater rate of speed than the captain says, and corroborates the evidence given by the plaintiff's witnesses as to her rate of speed. For these reasons I must pronounce the *Pawnee* to blame. As to the damage, the only difficulty is as to the value of the schooner herself. The plaintiff claims she was worth \$5,000 to him. She was thirteen years old, but in good repair and well fitted, he claims, to do the kind of business he was doing, and he called several witnesses, some of whom had seen her and they all placed her value at between \$4,000 and \$5,000. The defendant also called witnesses as to value. I think only one of them, Mr. Ewing, had seen the schooner, but they all said a vessel of that age would not be worth over \$1,500 or \$2,000. So that, in coming to a conclusion as to the amount of damage, I must do the best I can with this evidence. I think, however, from the evidence that the schooner was in a good state of repair and was well fitted for the business she was doing, and she was destroyed through the fault of the steamer, and I should put such reasonable dam-

1902

ROBERTS  
v.  
THE SHIP  
PAWNEE.

Reasons  
for  
Judgment.

1902  
ROBERTS  
v.  
THE SHIP  
PAWNEE.  
Reasons  
for  
Judgment.

ages as would make the plaintiff whole. I will therefore award \$4,000 for the schooner; the freight was \$90. For the personal effects I allow \$550. I deduct the fog-horn and some small items. I therefore award the plaintiff in this action \$4,640. In the suit of Joseph A. Likely I award the sum of \$668.28 for the cargo. In the suit of Crowell, Morris and Porter, seamen, for personal effects, I award the sum of \$59, according to their several statements filed, with costs, but the costs to be taxed as one suit from the date of the consolidation, which was on the first hearing in July 25th, 1901.

*Judgment accordingly.*

Solicitor for the plaintiff: *H. H. McLean.*

Solicitor for the ship: *C. J. Coster.*

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