

ON APPEAL FROM THE QUEBEC ADMIRALTY DISTRICT

1940  
May 22 & 23.  
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1941  
Jan. 10.  
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BETWEEN:

THE SHIP *NEW YORK NEWS*.....APPELLANT;

AND

PATERSON STEAMSHIPS LIMITED...RESPONDENT;

AND

QUEBEC & ONTARIO TRANSPORTATION COMPANY LIMITED } APPELLANT;  
(COUNTER-CLAIMANT) .....

AND

PATERSON STEAMSHIPS LIMITED } RESPONDENT.  
(COUNTER-DEFENDANT) .....

*Shipping—Collision—Rules 19, 22 & 25—Both ships equally to blame for collision—Damages assessed equally on both ships—Judgment of District Judge in Admiralty varied.*

The ship *New York News*, owned by the Quebec and Ontario Transportation Company Limited, and the ship *Fort Willdoc*, owned by Paterson Steamships Limited, collided during a dense fog in Lake Superior while proceeding in opposite directions on or about the courses usually followed by ships in Lake Superior bound from Port Arthur or Fort William down the Great Lakes or vice versa.

The District Judge in Admiralty for the Quebec Admiralty District allowed an action brought by the Paterson Steamships Limited against the ship *New York News* for damages suffered by the *Fort Willdoc* as a result of the collision and dismissed the counter-claim of the owner of the *New York News* against Paterson Steamships Limited for damages suffered by the *New York News* in the same collision.

On appeal the Court found that both ships were to blame for the collision and the resulting damage, and directed that the judgment at trial be varied by apportioning the blame and damages equally between the two ships.

*Held:* That both ships were in error in proceeding at full speed contrary to Rule 19 which requires that every ship shall, in thick weather, by reason of fog or other causes, go at a moderate speed, observance of which rule is required whether the fog signals of approaching ships are heard or not.

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2. That both ships violated Rule 19 in not immediately reducing speed to bare steerage way on hearing the fog signal of another vessel less than four points from right ahead, and navigating with caution until they had passed each other.
3. That a delay of over half a minute before giving a signal is not a prompt answer within the meaning of Rule 25.
4. That both ships in the circumstances here erred in not blowing a danger signal promptly as required by Rule 22.

APPEAL from the judgment of the District Judge in Admiralty for the Quebec Admiralty District.

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

*L. Beauregard, K.C.* for appellant.

*C. Russell McKenzie, K.C.* for respondent.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, now (January 10, 1941) delivered the following judgment:

This is an appeal, heard with the assistance of a nautical assessor, Captain G. B. Frewer, from the judgment of Cannon J., District Judge in Admiralty for the Admiralty District of Quebec, maintaining an action brought by the respondent, Paterson Steamships Ltd., against the ship *New York News* (hereafter called "the *News*"), the appellant, for damages suffered by the respondent's ship *Fort Willdoc* (hereafter called "the *Willdoc*"), following a collision in Lake Superior between the two ships mentioned, and dismissing the counter-claim of the owners of the *News* against the respondent for damages suffered by the *News* in the same collision. As will appear from the narration of the material events the case is a complicated one and not without its difficulties.

The *News*, a canal type of steel ship of 2,310 gross tons, having a length of 256 feet over all, was on a voyage from Port Arthur to Montreal, laden with grain. The *Willdoc*, a steel single screw steamship of 4,542 gross tons, having a keel length of 416 feet, was proceeding light in the

opposite direction, from Port Colborne to Fort William. The *News* had a maximum speed, loaded, of 7 knots, while the full speed of the *Willdoc* was approximately 11½ knots. Both ships were proceeding on or about the courses usually frequented by ships in Lake Superior, bound from Port Arthur or Fort William to eastern Canadian ports on the Great Lakes, and vice versa. At all times material here the weather was a dense fog.

I may now state the principal events leading up to the collision, and the movements and manœuvres of both ships just prior to the collision. The *News* left Port Arthur on September 11, 1938, at 1 a.m. At about 5.20 a.m., daylight saving time, the *News* first heard the fog signal of an approaching ship, afterwards identified as the *Willdoc*. On hearing this fog signal the second time, a minute or so after the first signal was heard, the engines of the *News* were put at half speed, about four knots, but not before. The fog signals of the *Willdoc* appearing more distinct as the ships approached closer together, the *Willdoc* appeared to the master of the *News* to be a little to starboard and he thereupon gave a passing signal of two blasts, that is, the *News* proposed that the ships pass each other starboard to starboard, as provided by Rules 21, 24 and 25. The *News* then reduced her speed to slow, and then to dead slow. At this time the *News* states that her speed was between two and three miles an hour. While blowing her two whistles the *News* heard one whistle from the *Willdoc* and immediately the *News* was put full speed astern, followed shortly thereafter by a danger signal. She then proceeded full astern for about a minute, and during that time the *Willdoc* blew two whistles, which the *News* understood as an answer to her two whistles, and it was so intended by the *Willdoc*. Just before this, or at about the same time, the *News* saw the red light of the *Willdoc* bearing on her port bow and heading for about the bridge of the *News*. At that moment the ships were somewhere between 200 and 300 feet apart. Perceiving this situation, and realizing that a collision was imminent, the *News*, in order to minimize the consequences of a collision, if not to avoid it altogether, ordered full speed ahead and hard astarboard, giving at the same time a danger signal. Then it was

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realized that the *News* was swinging to starboard and the helm was ordered hard aport in order to swing her stern away from the *Willdoc*. But this did not avoid a collision, and the *Willdoc* struck the *News* a glancing blow at an angle of thirty-five or forty-five degrees, the damage sustained by the *News* being pretty well aft. The collision occurred at about 5.30 a.m. That is the story of the *News*.

At about 5.15 a.m., the *Willdoc*, while proceeding at full speed,  $11\frac{1}{2}$  knots, first heard a fog signal ahead, which would be about fifteen minutes before the collision. Upon hearing this signal her engines were ordered from full speed to slow speed ahead. It is to be assumed from the evidence that while the two blast signals of the *News* was being given, the *Willdoc* was simultaneously blowing one whistle, and this would indicate that the *Willdoc* was directing her course to starboard. Then, the *Willdoc* on hearing the two whistles of the *News* replied with the same signal, two whistles, and her helm was directed to port, but the first mate of the *Willdoc* states that this was from one-half to three-quarters of a minute after hearing the two whistles of the *News*, and it is claimed on behalf of the *News* that this signal should have been given immediately, "promptly," to use the word used in Rule 25, and that the failure to do so was perhaps the major factor contributing to the collision. The *Willdoc* states she was hard aport for about three minutes when she saw the red light and the mast head light of the *News*, on her starboard bow, at a distance of about 200 feet, the *News* coming across her bow at right angles. The *Willdoc* further states that her speed had in the meanwhile been ordered to bare steerage way, and that she had been proceeding at that speed for the last two miles. That is the story of the *Willdoc*.

It might be desirable now to turn briefly to the time when the ships were approaching each other, either head and head, or nearly so, or at least on close parallel courses, some little time before the collision. First, it is to be remembered that the weather was a dense fog, and the ships, as events disclosed, were only able to see one another at a distance of somewhere between two and three hundred feet, and they were each on about the course usually frequented by all ships, as I understand it, bound to or from

Port Arthur or Fort William. Prior to the time when each ship heard the fog signals of the other both ships were proceeding at full speed contrary to Rule 19 which requires that every ship shall, in thick weather, by reason of fog or other causes, "go at a moderate speed." In such circumstances observance of this rule is required by ships whether or not they hear the fog signals of approaching ships. It is an intelligible and common sense rule designed to avoid danger to ships in the navigation of the seas, and does not purport to make any alteration in the law. Apart from the rule the law requires a ship in fog to be navigated at a moderate speed. Moderate speed has often been defined as to mean that a ship navigating in fog must be able to stop within the distance she can see ahead. That definition may not in all circumstances be regarded as a practical working rule but it approximates the spirit of Rule 19. One of the reasons for this requirement is that it gives a better opportunity for one ship to hear the fog whistle of another ship, and so of ascertaining her whereabouts, always a matter of great difficulty by reason of the capricious way in which sound is conveyed in fog. As has often been stated, it is so absolutely well known that it is impossible to rely upon the direction of whistles in a fog, that no man is justified in relying with certainty upon what he hears when the whistle is fine on the bows, and he is not justified in thinking it is broadening or that it is far distant, unless he can make sure of it.

I must now refer briefly to the evidence pertaining to the relative positions of the ships as they were approaching closely one another, and when each was hearing the fog signals of the other. The evidence given on behalf of both the *News* and the *Willdoc* would indicate that on hearing the first fog signals ahead, the ships were pretty well head and head. But there is evidence on both sides to the effect that, as the ships came closer together, each was slightly on the starboard side of the other. For example, the first mate of the *Willdoc* testified that he heard signals of an approaching vessel which "seemed to be pretty well ahead," "my impression was it was on the starboard side," "as we approached closer to him the sound appeared to be coming a little bit to starboard," "we could not say he was really to starboard, what I mean is with the

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fog and everything we figured we were far away, that we would give the one whistle," and "the vessel was not so far to starboard to us that it mattered. The sound seemed to be coming just a shade to starboard pretty well ahead, and you could barely tell." The same witness stated in answer to a question by the Court, that if the master of the *Willdoc* had known the exact position of the approaching ship her signal would have been two blasts and not one blast, and this one blast was after consultation between the master and his first mate. When the first mate is speaking of the "position" of the *News* he has reference to the distance ahead. The master and first mate of each ship, just before or at the time each gave a passing signal, apparently were of the opinion that each was on the starboard side of the other; it was in that belief that the *News* gave the two-blast signal, and, as the first mate of the *Willdoc* stated, the master of the *Willdoc* would also have blown two whistles had he realized that the two ships were so close together, and in the end the *Willdoc* by giving a two-blast signal expressed assent to pass starboard to starboard and direct her course to port; and the evidence rather indicates that the *Willdoc* believed the *News* was in fact on her starboard bow. It seems to have been the opinion of the master and first mate of each ship, that when the passing signals were given the ships were on the starboard side of each other, and not head and head, or nearly so; whether this was in fact precisely so is perhaps another question. The whole situation, as it developed, shows how important it was that the ships should have been proceeding at a moderate speed, and with caution.

Now, Rule 25 states that when ships are approaching each other head and head, or nearly so, it shall be the duty of each ship to pass on the port side of the other, and either ship may be the first to determine to pursue this course and she shall give as a signal of her intention one short blast which the other ship "shall answer promptly by a similar blast of his whistle," and thereupon such ships shall pass on the port side of each other. But the rule further states that if the course of such ships is so far on the starboard of each other as not to be considered as meeting "head and head," or nearly so, the ship so first deciding shall immediately give two short and distinct

blasts of her whistle and they shall pass on the starboard side of each other. The master of the *News* evidently considered the ships were not head and head, or nearly so, and accordingly he gave two short blasts of his whistle. The master of the *Willdoc* gave one blast of his whistle indicating that he wished to pass port to port, but unfortunately this signal was given simultaneously with the two blasts of the *News*. This signal of the *Willdoc*, according to her first mate, was not one that was seriously considered, because it was thought that the ships were then far apart. The master and first mate of the *Willdoc* then apparently further conferred and decided that the two-blast signal of the *News*, which they both heard, was on their starboard bow, and after a lapse of about forty seconds they responded with two blasts of the whistle to indicate they would pass starboard to starboard; the *News* so understood this signal, and the *Willdoc* directed her course to port. But what transpired is another matter.

The situation then at one moment was that the *News* was proposing that they pass starboard to starboard and the *Willdoc* was proposing that they pass port to port, and this created an embarrassing situation for the *News*, and particularly because the *Willdoc* gave no danger signal and did not promptly give two blasts of her whistle in answer to the signal of the *News*, if she were going to assent to it at all. The one blast of the *Willdoc* meant to the *News* that the *Willdoc* was starboarding and would likely cross the bow of the *News*, and the delay of forty seconds, nearly three-quarters of a minute, in assenting to the passing signal of the *News* was obviously calculated to confuse and embarrass the *News*, because in the meanwhile it would be natural for her to assume that the *Willdoc* was crossing to starboard. Even the first mate of the *Willdoc* appears to have thought that the pause of forty seconds was excessive. In the meanwhile the *News* went full speed astern, on hearing the one blast of the *Willdoc* and shortly afterwards followed this with a danger signal. Had the *News* taken a definite course to port with engines ahead, after giving her two blasts, and had the *Willdoc* answered this signal promptly, and directed her course to port, there would probably have been no collision.

The fact that when the *News* and the *Willdoc* sighted each other the *News* had swung considerably to starboard

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and across the bow of the *Willdoc* is something quite easily understood, and in the situation obtaining it is quite plain why it would appear that the *News* had swung considerably to starboard and across the bow of the *Willdoc*. On hearing the one-blast signal of the *Willdoc* the *News* went full speed astern on her engines for a time, and her stern would therefore have a tendency to back to port thus throwing her bow to starboard, while stopping her headway. Up to this time the *News* could not have been proceeding at more than about three knots. The *News* had assumed for forty seconds that the *Willdoc* intended to cross her port bow and she went astern at full speed, to stop her headway and to swing her head to starboard, and my assessor advises me this was good seamanship, and, I think, that must be so. Then, after a delay of more than half a minute, the *News* heard her own two-blast signal answered but it was then too late for her to get her head back to port sufficiently to clear the bow of the *Willdoc*. It may be granted that the *News* had heard and understood the *Willdoc's* two-blast signal but it must be remembered that by this time the *News* was going full speed astern on her engines and her bow would be beginning to swing to starboard. My assessor tells me that it would take a little time for a loaded ship to steady by her head and recover herself from a natural swing to starboard caused by her engines going full speed astern, and before this recovery to port could happen the *Willdoc* appeared close to the port bow of the *News*, and to me that seems just what happened. The *News* had probably changed her course to starboard from her original course, but the act of going full astern on her engines after she heard the one-blast signal of the *Willdoc* would satisfactorily account for this, and I do not think it can be said that the *News* crossed the bow of the *Willdoc* in the sense suggested on behalf of the *Willdoc*, and, I think, by the learned trial judge. I think the later action of the *News* in going full speed ahead and starboarding her helm in an attempt to clear the bow of the *Willdoc* was justified under Rule 37, if by doing so her master thought he could minimize the effect of the collision which at the moment appeared unavoidable, and this manoeuvre apparently had the desired effect.



Just shortly before the collision each ship appears to have thought the other on her starboard bow. It is difficult to understand then why the *Willdoc* blew one blast of her whistle because she then would have to cross the bow of the *News*, or incur the risk of so doing, but apparently she did not act upon this signal as either the master or the mate stated that she did not starboard her helm. After the *Willdoc* answered the two blasts of the *News* it is claimed that she ran for about three minutes hard aport, during which time she appears to have altered her course to port only about sixteen degrees, or to about twenty-two degrees as the learned trial judge found. My assessor advises me that this is hardly believable, because even at slow speed, in three minutes, a ship, especially at light draft, would swing far more than that, and Mr. Beauguard in his argument upon this point seemed very convincing to me. Although the evidence is against it, there is, of course, the possibility that the *Willdoc* was swinging to starboard after she had blown the one blast of her whistle, and if that were the case it might account for the fact that it took her nearly four minutes, on a hard aport helm, to reach only sixteen or twenty odd degrees from her original course. Had the original scrap log of the *Willdoc* been produced this might have been explained, and, I think, it required some explanation, but that is a point upon which I do not propose to rest my conclusions. Again, as I have already indicated, the *Willdoc* gave no danger signal after hearing the two-blast signal of the *News*, and I think the *Willdoc* should have given such a signal and gone astern as did the *News* though the latter did not give a danger signal immediately. In any event, a delay of over half a minute before giving her two-blast signal was not, I think, a "prompt" answer within the meaning of Rule 25, and this was doubtless an important factor in contributing to the collision. A delay of forty seconds was a considerable time in the circumstances obtaining at the moment, and, I think, the *Willdoc* was at fault in not promptly changing her one-blast to a two-blast signal, and particularly when she seems to have believed that the *News* was on her starboard bow.

The conclusions I have reached are the following. Both ships were violating Rule 19 in proceeding at full speed

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in a dense fog. Both ships also violated Rule 19 in not immediately reducing speed to bare steerage way on hearing the fog signal of another vessel less than four points from right ahead, and navigating with caution until they had passed each other; in such a state of facts it is no defence for one ship to say that the fog signals of the other appeared to be far away. If on the evidence it be thought that the ships were approaching each other "head and head" or nearly so, then the *News* was at fault in not giving a one-blast signal at first instead of a two-blast signal, as required by Rule 25. But there came a time when the *News* considered that the ships were not approaching each other head and head, or nearly so, but were sufficiently on the starboard of each other that she decided to give two blasts of her whistle, which meant a signal to pass starboard to starboard, and to this the *Willdoc* expressed assent and signified her willingness and intention to direct her course to port, but the *Willdoc* was at fault, as I have already stated, in not having promptly responded with her answered signal. Rule 21 requires every vessel receiving a signal from another to respond promptly with the same signal, or to sound the danger signal as provided in Rule 22. Rule 22 states that when ships are approaching each other and there is a failure on the part of either ship to understand the course or intention of the other, the one in doubt shall immediately signify the same by the prescribed danger signal, and both ships shall be immediately slowed to bare steerage way, and, if necessary, stopped and reversed until the proper signals are given, answered, and understood, or until the ships have passed each other. Both ships, I think, in the circumstances here, failed in not blowing a danger signal promptly. The *News* went full astern on her engines and blew a danger signal though perhaps not promptly, but the *Willdoc* took no action. I am of the opinion that both ships were to blame for the collision and its consequences. It is always difficult to determine with confidence and precision the degree of blame to be attached to each ship in cases of this kind but I am of the opinion that in the facts and circumstances of this case the blame should be equally apportioned.

With great respect I am, therefore, of the opinion that the judgment appealed from should be varied to the extent I have indicated, and judgment will be in accordance with the terms of the opinion I have just expressed. I reserve the question of costs until the settlement of the minutes of judgment.

*Judgment accordingly.*

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