
PATERSON STEAMSHIPS LIMITED }
 (PLAINTIFF) } APPELLANT;

AND

THE SHIP *NEW YORK NEWS* (DE- }
 FENDANT) } RESPONDENT.

1941
 * March
 12, 13.
 * Oct. 20.

PATERSON STEAMSHIPS LIMITED }
 (COUNTER-DEFENDANT) } APPELLANT;

AND

QUEBEC AND ONTARIO TRANS- }
 PORTATION COMPANY, LIMITED } RESPONDENT.
 (COUNTER-CLAIMANT) }

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Shipping—Collision—Whether either one or both ships at fault—Duties of captains of ships—Whether ships followed courses agreed upon according to signals given by both—Fog and danger signals—Prompt and instant answer to signal—Delay of over half a minute before answering signal—Moderate speed in fog—Previous excessive speed—Whether contributing to collision—Rules of the Road for the Great Lakes—Rules 19, 21, 22, 23, 37.

* PRESENT:—Duff C.J. and Rinfret, Crocket, Hudson and Taschereau JJ.

(1) [1933] S.C.R. 220.

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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 in Lake Superior, during a dense fog, the visibility being limited to between two and three hundred feet, while proceeding in opposite directions on or about the courses usually followed by ships bound from Port Arthur or Fort William down the Great Lakes, or vice versa. The collision happened at 5.30 a.m., nine miles west of Passage Island. That point was passed by the *Fort Willdoc* at 4.34 a.m., this distance of nine miles being therefore made by her in 56 minutes, at an average speed of more than nine miles an hour. At 5.15 a.m. a fog signal ahead, given by the *New York News*, was heard by the *Fort Willdoc*, whose engines were ordered to slow speed ahead; and, almost simultaneously, the *Fort Willdoc* blew one blast signal, thus indicating that she was directing her course to starboard. At about the same moment, the *New York News* gave a double blast signal, thus making known her intention to direct her course to port. If each had proceeded according to these signals, a collision would have been inevitable. After a period of between one-half and three-quarters of a minute following the double blast signal of the *New York News*, the *Fort Willdoc* gave herself a two-blast signal, thus signifying her compliance with the course declared by the *New York News*. Witnesses for the appellant testified that the master of the *Fort Willdoc* altered her course twenty-two degrees to port and proceeded at a reduced speed to meet the *New York News* starboard to starboard. During the above-mentioned interval of one half to three-quarters of a minute, the *New York News* went full astern on her engines, in order to avoid an inevitable collision, and her master testified that, when he heard the two-blast signal of the *Fort Willdoc*, it was then too late for him to conform to the course thus indicated. Subsequently both ships gave fog signals. Then, the *Fort Willdoc*, suddenly hearing a danger signal, reversed immediately her engines full speed astern, about one minute preceding the moment of the collision, but could not avoid coming into contact with the *New York News*, which was crossing her bow. Both ships came into collision, the stem of the *Fort Willdoc* hitting the port side of the *New York News* with the result that both suffered severe damages. The local judge in Admiralty for the province of Quebec, L. Cannon J., holding that the *New York News* was responsible for the collision, maintained the action brought by the *Fort Willdoc* against the respondent here and dismissed the counter-claim. The Exchequer Court of Canada, Maclean J., reversed that judgment and held that both vessels were equally at fault in bringing about the collision.

Held, Duff C.J. and Crocket J. dissenting, that the *New York News* was the only party to blame and therefore responsible for the collision and that the judgment of the local judge in Admiralty should be restored.

Held, also, as to the ground raised by the respondent that before the accident the *Fort Willdoc* was proceeding at an excessive rate of speed and thus contributed to the accident, that, assuming it to be so, this would have happened before 5.15 a.m. when the first blasts of the whistles were heard; and, in view of what occurred afterwards, that there is no possible relation between this previous speed

and the collision and that such speed could not have any bearing whatever upon the issue of liability in the present case. *The Pemaquid* (255 Federal Rep. 709) foll.—Duff C.J. and Crocket J. dissenting.

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Per Rinfret, Hudson and Taschereau JJ.—The duties of each steamer approaching each other head to head or on the starboard of each other are indicated in rules 22 and 25 of the “Rules of the Road for the Great Lakes.” In this case, both ships were not coming head to head, but were slightly on the starboard side of each other. The one-blast signal of the *Fort Willdoc* and the two-blast signal of the *New York News* were not cross-signals, as they were given almost simultaneously, and the captain of the latter so understood them. If at that moment, there has been any confusion, it was for a very short time, because immediately after the two-blast signal of the *Fort Willdoc*, her captain ordered her twenty-two degrees to port in order to meet starboard to starboard. The captain of the *New York News* admitted having heard this last signal; if it had been otherwise, it was his duty to give immediately the danger signal, which he did not give. There was perfect understanding by both ships as to how they would meet and if such understanding had been followed, there would have been no collision. The sole and determining cause of the accident was the failure of the *New York News* to follow the course agreed upon, and to proceed, without giving the necessary signals, in a direction unknown to the *Fort Willdoc* and which she had no reason to foresee.

Per Duff C.J. and Crocket J. (dissenting)—Both ships were to blame in proceeding at full speed in a dense fog contrary to rule 19 and both violated the same rule in not immediately reducing speed to bare steerage way on hearing fog signals, and not navigating with caution until they had passed each other; it is no defence for one ship to say that the fog signals of the other appeared to be far away.—Upon the facts, the *Fort Willdoc* was greatly in fault and such fault was a contributing factor in bringing about the collision—The average speed of the *Fort Willdoc*, more than nine miles an hour, in a dense fog, the visibility being limited to between two and three hundred feet, did not come within the category of “moderate speed”, as explicitly required by rule 19 and as every consideration of good seamanship would dictate: the speed of a vessel shall not be so great as to render it impossible to stop within the “limits of observation.”—Both ships in the circumstances here erred in not giving a danger signal promptly under rules 21 and 22.—Prompt action from both ships, i.e., instant action, was demanded under the circumstances. If the *Fort Willdoc* had instantly signified her compliance with the course declared by the *New York News*, the disaster might have been avoided.—A delay of over half a minute before giving a signal, in the conditions of the moment, was not a prompt answer within the meaning of the rules.—The evidence does not show anything in the nature of an agreement between the two ships, resulting from the exchange of signals, that they were to follow a course starboard to starboard; and the final manoeuvre of the *New York News* was justified under rule 37.

Judgment of the Exchequer Court of Canada ([1941] Ex. C.R. 145) reversed, Duff C.J. and Crocket J. dissenting.

APPEAL from the judgment of the Exchequer Court of Canada, Maclean J. (1), reversing the judgment of the

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local judge in Admiralty for the province of Quebec, Lucien Cannon J. The trial judge held that the *New York News* was solely responsible for the collision and he maintained the action brought by the *Fort Willdoc* against the respondent and dismissed the latter's counter-claim. The President of the Exchequer Court of Canada allowed the appeal to that Court to the extent of declaring that both vessels were equally at fault in bringing about the collision and referred the matter to the Registrar of the Quebec Admiralty District to assess the damages. The owners of the *Fort Willdoc* appealed to this Court in order to have the judgment of the trial judge restored.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgments now reported.

C. R. McKenzie K.C. and *Geo. Montgomery Jr.* for the appellants.

Lucien Beauregard K.C. for the respondents.

THE CHIEF JUSTICE (dissenting)—At the close of the argument of this appeal I had reached a provisional opinion that the judgment of the learned trial judge ought to be restored. I have since had an opportunity, however, of reading more critically the reasons of the learned President of the Exchequer Court in light of a more minute examination of the evidence and my conclusion is that the learned President of the Exchequer Court has given convincing reasons for holding, as he does, that the *Fort Willdoc* was gravely in fault and that this fault was a contributing factor in bringing about the collision.

The collision occurred on the morning of the 11th of September, 1938, and the ships concerned were the *New York News*, a steel ship of 2,310 gross tons of the canal type, having a length of 256 feet over all, which was on a voyage from Port Arthur to Montreal laden with grain; and the *Fort Willdoc*, a single screw steamship of 4,542 gross tons, having a keel length of 416 feet, which was proceeding light in the opposite direction from Port Colborne to Fort William. The maximum speed of the *New York News* loaded was seven knots and that of the *Fort Willdoc* was approximately eleven and one-half knots.

There was a dense fog, the visibility being limited to between two and three hundred feet, about one-half of the keel length of the *Fort Willdoc*.

The owners of the *Fort Willdoc* appeal and the only issue with which we are concerned is whether the judgment of the learned trial judge absolving the *Fort Willdoc* from all blame and putting the responsibility for the entire loss upon the *New York News* ought to be restored, and we are concerned, therefore, primarily with the navigation of the *Fort Willdoc*.

It appears from the evidence adduced on both sides that the collision happened at nine miles west of Passage Island, and, from an entry in the log of the *Fort Willdoc*, Passage Island was passed by her at 4.34 a.m., and from another entry in the same log the collision happened at 5.30 a.m. This distance of nine miles was therefore made in 56 minutes, or at an average speed of more than nine miles an hour. Obviously such a speed in a dense fog, the visibility being as I have mentioned, does not come within the category of moderate speed, as explicitly required by Rule 19 and as every consideration of good seamanship would dictate.

Admittedly the *Fort Willdoc* proceeded at full speed from 4.34 a.m. to 5.15 a.m., when it is said that the fog signal of the *New York News* was heard and the engines of the *Fort Willdoc* were ordered slow. In this interval the *Fort Willdoc* would have made 7.85 miles, there being no wind that could affect her speed, and, consequently, in the interval between 5.15 and 5.30, fifteen minutes, she made a distance of 1.15 miles. There is agreement among the witnesses called on behalf of the appellants that the engines of the *Fort Willdoc* were reversed for one minute preceding the moment of collision, and it seems a fair inference, therefore, that during this interval the average speed of the ship was five miles per hour. The learned trial judge found that at the moment of impact, after her engines had been reversed for one minute, as I have said, her speed did not exceed two or three miles per hour. As the learned President of the Exchequer Court of Canada says, 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.

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The duties resting upon navigators in respect of the navigation of a ship, circumstanced as the *Fort Willdoc* was on the morning in question, are known by every seaman. Rule 19 explicitly provides that the vessel shall go "at a moderate speed". In the application of the rule it has been treated as imposing a limitation by which the speed of the vessel shall not be so great as to render it impossible to stop within the "limits of observation". In the case of the *Fort Willdoc* that would mean, in the conditions prevailing on the occasion in question, roughly within the limits of half her length. The reason for the rule is well known. Sounds are notoriously deceptive in a fog and the vessel is, therefore, without any reliable clue of the position of other vessels in proximity to her. The *Fort Willdoc*, as we have seen, proceeded at full speed for 56 minutes—in other words, in reckless disregard of the obligations imposed upon her master by the existing conditions. At 5.15 the *Fort Willdoc* first heard a fog signal ahead and upon hearing this signal her engines were ordered from full speed to slow speed ahead. At about the same time the *Fort Willdoc* blew one blast and this, of course, would indicate that she was directing her course to starboard. The impression of the captain and mate seems to have been that the vessel approaching from ahead was on the starboard bow of the *Fort Willdoc* and it is admitted by the mate that, having regard to the true positions of the ships, the proper action would have been to blow two whistles and to direct her course to starboard. This, the mate said, would have been done, if they had known the true positions. They surmised, however, that the *New York News* was far off and that it was quite safe to give the single blast signal. As the learned President says, the signal was not one that was seriously considered, because of this mistaken surmise.

At the same moment that the *Fort Willdoc* gave her single blast signal the *New York News* gave a double blast signal. These two inconsistent signals obviously disclosed a situation of danger—one ship declared she was directing her course to starboard, the other declared she was directing her course to port. If each proceeded according to the signal given by her a collision would be inevitable. I entirely agree with the learned President of the Exchequer Court of Canada that prompt action from both sides, that

is to say, instant action, was demanded. If the *Fort Willdoc* had instantly signified her compliance with the course declared by the *New York News*, it is possible that disaster might have been avoided. One thing was quite clear, that delay would add to the danger; yet this is precisely the fault into which the *Fort Willdoc* fell. She waited for a period which was between one-half a minute and three-quarters of a minute before apprising the *New York News* of her intentions. That which happened in the interval was what might have been expected, what the master of the *Fort Willdoc* might have realized would likely happen; the *New York News*, interpreting the signal from the *Fort Willdoc* as manifesting an intention to cross her bow, immediately went full astern on her engines. That was a natural and proper course, (if not the only course open to the *New York News*) as the learned President of the Exchequer Court of Canada, on the advice of his assessor, finds. When the master of the *New York News* heard the two-blast signal of the *Fort Willdoc* it was too late for him to conform to the course declared by this signal from the *Fort Willdoc*, as the learned President of the Exchequer Court of Canada, again on the advice of his assessor, finds.

I am unable to agree with the contention of the appellants that there was anything in the nature of an agreement between the *Fort Willdoc* and the *New York News* resulting from the exchange of signals that they were to follow a course starboard to starboard. The learned trial judge finds there was and bases it upon an admission which he derives from the evidence of the captain and crew of the *New York News*. The evidence of the captain describes the course of events as I have given them. When he heard the two-blast signal of the *Fort Willdoc* it is true he understood it to be an answer to his own two-blast signal and he understood, he says, the meaning of it according to the rules, but that is a very different thing from an admission that he was a party to an agreement that he would conform to the course indicated by that signal. Apparently he was not. During the delay between the first inconsistent signals and the two-blast signal of the *Fort Willdoc* conditions had so altered that it was impossible for the captain of the *New York News* to conform to the course suggested by the *Fort Willdoc*'s signal, if he had desired to do so. All this

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would follow in the natural and ordinary course from the *Fort Willdoc's* one-blast signal and her delay in giving her two-blast signal, as the master of the *Fort Willdoc* might have realized. The learned President of the Exchequer Court of Canada says:—

The one blast of the *Fort Willdoc* meant to the *New York News* that the *Fort Willdoc* was starboarding and would likely cross the bow of the *New York News*, and the delay of forty seconds, nearly three-quarters of a minute, in assenting to the passing signal of the *New York News* was obviously calculated to confuse and embarrass the *New York News*, because in the meanwhile it would be natural for her to assume that the *Fort Willdoc* was crossing to starboard. Even the first mate of the *Fort Willdoc* appears to have thought that the pause of forty seconds was excessive.

* * *

On hearing the one blast of the *Fort Willdoc* the *New York 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 *New York News* could not have been proceeding at more than about three knots. The *New York News* had assumed for forty seconds that the *Fort 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 *New York 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 *Fort Willdoc*. It may be granted that the *New York News* had heard and understood the *Fort Willdoc's* two-blast signal but it must be remembered that by this time the *New York 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 *Fort Willdoc* appeared close to the port bow of the *New York News*, and to me that seems just what happened.

I agree with the learned President of the Exchequer Court of Canada that the *New York News* was in fault in not giving the danger signal instantly on hearing the single-blast signal from the *Fort Willdoc*. But on the other hand, it was the duty of the captain of the *Fort Willdoc*, as the learned President of the Exchequer Court of Canada has pointed out, under Rules 21 and 22, to give the danger signal and go astern on his engines, as the *New York News* did. I agree with the learned President of the Exchequer Court of Canada that the delay of a period of between one-half a minute and three-quarters of a minute was a considerable delay in the conditions of the moment; and

that it is impossible to say that this signal was given "immediately" after the signal of the *New York News*, or "promptly", within the meaning of Rule 25.

I find myself in some difficulty in accepting the evidence on behalf of the *Fort Willdoc* that she ran about three minutes hard aport after her two-blast signal. During that period she altered her course to port not more, at all events, than twenty-two degrees, as the learned trial judge found. The assessor of the learned President advised him that this is hardly believable and I do not think the evidence of the *Fort Willdoc* on this point is satisfactory. I agree, moreover, with the conclusions expressed in the following passage:—

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

* * *

There came a time when the *New York 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 *Fort Willdoc* expressed assent and signified her willingness and intention to direct her course to port, but the *Fort 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 shall have passed each other.

I agree with the learned President of the Exchequer Court of Canada that the final manoeuvre of the *New York News* was justified under Rule 37.

The appeal should be dismissed with costs.

The judgment of Rinfret, Hudson and Taschereau, JJ. was delivered by

TASCHEREAU, J.: The plaintiff-appellant, the Paterson Steamships Limited, is the owner of the ship *Fort Willdoc*, and the defendant-respondent owns the *New York News*.

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On the 11th of September, 1938, at 5.30 a.m., both ships were following their usual courses, nine miles west of Passage Island, near the head of Lake Superior, and came into collision, the stem of the *Fort Willdoc* hitting the port side of the *New York News* opposite her no. 1 hatch, with the result that both suffered severe damage.

Taschereau J.

The *New York News* which is a full canal type steel vessel with a gross tonnage of 2,310, was on a voyage from Port Arthur to Port Colborne and Montreal, loaded with a cargo of 122,000 bushels of wheat. The *Fort Willdoc*, a grain carrier, is a ship of 4,542 gross tonnage and was proceeding light to Port Arthur.

The local judge in Admiralty for the province of Quebec, Mr. Justice Lucien Cannon, sitting in Montreal and assisted by Victor Chartier, assessor, held that the *New York News* was responsible for the collision, maintained the action, brought by the *Fort Willdoc*, against the respondent, and dismissed the counter-claim. In the Exchequer Court of Canada (1), the learned President allowed the appeal to the extent of declaring that both vessels were equally at fault in bringing about the collision in question, and referred the matter to the Registrar of the Quebec Admiralty District to assess the damages. The owners of the *Fort Willdoc* now appeal to this Court and submit that the judgment of the learned trial judge should be restored.

The evidence reveals that at about 5.15 a.m., fifteen minutes before the collision, while the two ships were proceeding in a dense fog, both gave simultaneously passing signals, the *New York News* a two-blast signal, and the *Fort Willdoc* a one-blast signal. From forty to forty-five seconds "after the sound had died down", and the "echo had gone", Captain Baker, the master of the *Fort Willdoc* blew a two-blast signal, altered the course of his ship twenty-two degrees to port, and proceeded at a reduced speed to meet the on-coming *New York News* starboard to starboard.

The *New York News* had also slowed down to a speed barely sufficient for steerageway, and while both ships were giving fog signals, the *Fort Willdoc* suddenly heard a danger signal coming from the *New York News*. She immediately reversed her engine full speed astern, but

(1) [1941] Ex. C.R. 145.

could not avoid coming into contact with the *New York News* which was crossing her bow, and which now had her engine full speed ahead in order, as her Captain says in his evidence, "to try and clear the other".

Under the "Rules of the Road for the Great Lakes" (no. 25) it is the duty of each steamer approaching each other head and head to pass on the port side, and the pilot of either steamer may be first in determining to pursue this course and shall give as a signal of his intention one short and distinct blast of his whistle, which the pilot of the other steamer shall answer promptly by a similar blast of his whistle. But if the courses of the steamers are not head and head, but on the starboard of each other, the pilot so first deciding must immediately give two short and distinct blasts of his whistle, which the pilot of the other steamer must answer promptly by two blasts of his whistle, and then the two ships must pass on the starboard side of each other. If there is any misunderstanding, then, under Rule 22, the pilot in doubt must immediately signify his doubt by giving the danger signal of five or more short and rapid blasts of the whistle, and if both vessels have approached within half a mile of each other, they must immediately be slowed down to a speed barely sufficient for steerageway.

Both ships were not coming head and head, but were slightly on the starboard side of each other. The one-blast signal of the *Fort Willdoc* and the two-blast signal of the *New York News* were not cross signals, as they were given simultaneously and it is thus that Captain Ferguson of the *New York News* understood them. In his evidence, he says:—

A. No, there were no cross signals. They were both at the same time.

If at the moment of these simultaneous signals there has been any confusion, it was surely for a very short time, because immediately after the two-blast signal of the *Fort Willdoc*, her Captain ordered her twenty-two degrees to port in order to meet starboard to starboard. The Captain of the *New York News* heard this last signal and understood it as meaning that the ships would meet starboard to starboard according to Rule 25. He says in his evidence:—

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Q. Then, when the two-blast signal was given by the *Fort Willdoc*, that was in answer to your first two-blast signal?

A. I heard that.

Q. And that was an answer, was it not?

A. I presume it was.

Q. Therefore, when he answered your two-blast signal with a two-blast signal, that would mean to you, under the rules, would it not, starboard to starboard?

A. Starboard to starboard.

Q. To pass starboard to starboard?

A. Yes.

If it has been otherwise, it was his duty to give immediately the danger signal which he did not give. To my mind, there was a perfect understanding by both ships as to how they would meet, and I am in complete agreement with the learned trial judge when he says, and finds as a fact:—

This second two-blast signal from the *Fort Willdoc* was clearly heard and well understood by the *New York News*; there was no cross signal or any misunderstanding between the two ships at the time. The Captain of the *New York News* and the members of the crew definitely admitted this fact.

It is true that later a danger signal was given by the *New York News* three or four minutes after the last signal had been given by the *Fort Willdoc*, but it was then too late, and at a moment when the collision was unavoidable.

It seems clear that if the understanding which has been proven and admitted by the Captain of the *New York News* had been followed, there would have been no collision, both ships meeting starboard to starboard. The sole and determining cause of the accident was the failure of the *New York News* to follow the course agreed upon, and to proceed, without giving the necessary signals, in a direction unknown to the *Fort Willdoc* and which she had no reason to foresee.

As pointed out by the trial judge, the *New York News* did not follow the "Rules of the Road of the Great Lakes" nor did she steer the course agreed upon with the *Fort Willdoc*. There was ample evidence to justify the findings of the learned trial judge, who did not act on any wrong ground of law or conclusion of fact.

The respondent contends that before the accident the *Fort Willdoc* was proceeding at an excessive rate of speed, and thus contributed to the accident. If so, this would be before 5.15 a.m. when the first blasts of the whistles were

heard. I can see no possible relation between this previous speed and the collision, and I believe that it can have no bearing whatever upon the issue of liability in the present case. As it was said in the case of *The Pemaquid* (1),

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A steamer which before she came on sight, in a fog, of a meeting vessel, which she knew was approaching, had stopped and reversed, and was actually going astern at the time of collision, cannot be held in fault because of her previous speed. Taschereau J.

I come to the conclusion that the *New York News* is the only party to blame and that she is responsible for this accident. I would allow the appeal, maintain the action of the *Fort Willdoc*, dismiss the counter-claim and restore the judgment of the local judge in Admiralty with costs throughout.

CROCKET J. (dissenting).—I agree with the learned President of the Exchequer Court of Canada and would dismiss the appeal with costs.

Appeal allowed with costs.

Solicitors for the appellants: *Montgomery, McMichael, Common & Howard.*

Solicitors for the respondents: *Beauregard, Laurence & Brisset.*
