

THE SHIP "GLENROSS" (DEFENDANT) .. APPELLANT;

1929

AND

\*March 4, 5.  
\*April 30.THE CANADA STEAMSHIP LINES }  
LIMITED (PLAINTIFF) ..... } RESPONDENT.SWAN, HUNTER & WIGHAM RICH- }  
ARDSON LIMITED (PLAINTIFF) .... } APPELLANT;

AND

THE SHIP "GLENLEDI" (DEFENDANT) .. RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA, TORONTO  
ADMIRALTY DISTRICT*Shipping—Collision of ships in fog—Liability—Breach of rules 19 and 22  
of the rules adopted by Order in Council of February 4, 1916, for the  
navigation of the Great Lakes.*The steamships *Glenross*, upward bound, and *Glenledi*, downward bound,  
collided in a thick fog on Lake Superior, about 7.24 a.m. on June 17,  
1926.*Held*, that both ships should be held equally liable for the damages  
caused; the *Glenross*, on the ground that, on hearing the *Glenledi's* fog  
signals, it did not reduce its speed to bare steerageway in accordance  
with rule 19 (of the rules adopted by Order in Council of February  
4, 1916, for the navigation of the Great Lakes); the *Glenledi*, on the  
ground that, when the *Glenross* blew its first one-blast signal (indi-  
cating, under rule 21, that it was directing its course to starboard),  
and the second mate and watchman on the *Glenledi* reporting to its  
captain that they thought they heard such a signal, and the captain  
being in doubt, it failed to sound immediately the danger signal in  
accordance with rule 22 (instead of giving, as it did, the usual fog sig-  
nal); even if it were at a standstill at the time of the collision (which  
the evidence did not seem to establish), that fact would not be an  
answer to a charge of breaking rule 22 which required it to give a  
warning to the other ship; and it was impossible, under all the cir-  
cumstances, to say that the absence of a warning did not contribute  
to the collision. The fact that the captain of the *Glenross*, when  
hearing fog signals from the other ship, changed its course one point  
to starboard (immediately indicating this by signal), was not, of  
itself, under the circumstances, a ground of liability against the  
*Glenross*.APPEAL by the ship *Glenross* and by its owners from  
the judgment of Hodgins J., Local Judge in Admiralty of  
the Toronto Admiralty District of the Exchequer Court of  
Canada, holding the ship *Glenross* solely responsible for

\*PRESENT:—Mignault, Newcombe, Rinfret, Lamont and Smith JJ.

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the collision in question between it and the respondent ship *Glenledi*, which occurred on Lake Superior on the morning of June 17, 1926. The material facts of the case are sufficiently stated in the judgment now reported. The appeal was allowed with costs, and the judgment below varied by declaring both ships equally liable for the damages caused by the collision.

*W. Fraser Grant* and *W. A. Robinson* for the appellants.

*Francis King K.C.* for the respondents.

The judgment of the court was delivered by

MIGNAULT J.—These two actions, which were consolidated and tried together in the court below, are proceedings *in rem* against the ship *Glenross*, in one case, and against the ship *Glenledi*, in the other, arising out of a collision between the two ships on Lake Superior early in the morning of the 17th of June, 1926. The Local Judge in Admiralty of the Toronto Admiralty District (Mr. Justice Hodgins), found the *Glenross* solely to blame for the collision and dismissed the action brought against the *Glenledi*. The *Glenross* and her owners now appeal in both actions.

The *Glenross* is a steamer of a gross tonnage of 3,210 tons, and measures 343 feet in length. The gross tonnage of the *Glenledi* is 3,571 tons and its length 391 feet, so that it is the larger vessel of the two. It is also the faster ship, its full speed being 12 miles per hour and that of the *Glenross* 8½ miles, or a shade better. At the time of the accident, the *Glenross* was upward bound and the *Glenledi* downward bound, both being on the stretch, more than 100 miles in length, between Passage Island and Whitefish Point, and the place of collision was between 27 and 28 miles from the latter point. Both ships were fully laden.

The weather was heavy with rain, and the wind was from the southeast. Notwithstanding the wide expanse of Lake Superior, neither ship apparently had caught sight of the other, although they were then approaching rapidly, and several hours of daylight had intervened. At about 7 a.m. a thick fog set in, and any possibility of seeing passing ships became out of the question, the only way their presence could be detected being by the fog signals which they

were required to blow at regular intervals. The *Glenledi* was steaming on a course S. 60° E. by compass, while the *Glenross* was steering N. 53° W., also by compass. They were thus on substantially parallel courses, these courses being in close proximity, and the ships were approaching on the starboard side of each other.

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When the fog set in, the captains of both ships were called and came on the bridge. Captain Taylor was master of the *Glenledi*, and he went into the wheelhouse, or pilot house, in the forepart of the ship, where he remained with the wheelsman, Mahew, while the second mate, Sykes, and the watchman, Gerster, stood outside on the bridge. Captain Taylor placed himself before an open window. Captain Hudson was master of the *Glenross*, and, with his second mate, Bush, his wheelsman, Bruce, and his watchman, Woods, took his stand in the wheelhouse, the three front windows of which were open, the captain being at the window on the starboard side.

The clocks on the two ships did not agree, and this explains the discrepancy in the testimony as to the precise time at which the material events happened. For this reason, and because the marking down of the hour on the *Glenledi* appears to have been the most accurate, I propose to follow what I may call the respondent's time-table, which places the collision at 7.24 a.m., the time given by the appellant being 7.28 a.m.

Fog signals (three distinct blasts according to the rules) were at intervals sounded and heard by both ships, the conditions, on account of the direction of the wind, being better for hearing signals on the *Glenledi* than on the *Glenross*. To the watchers on the latter ship, the fog signals from the *Glenledi* appeared to come from straight ahead. For this reason, and after three or four fog signals had been exchanged, Captain Hudson of the *Glenross* ported his helm one point (11 degrees), thus bringing the ship's head one point to starboard. He says that he wanted to test the bearing of the other ship, the identity of which he did not know, and after the manoeuvre was effected, the signals were heard one point to port, confirming, the captain states, his impression as to the position and bearing of the oncoming vessel.

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This change of course of the *Glenross*, whatever may have been its motive, was much insisted upon by the respondent. It is no doubt a circumstance to be considered, but in itself it does not appear to have been necessarily faulty. A circumstance more material, in view of what happened, is that while the wheelsman on the *Glenross* was carrying out the manoeuvre of porting one point, Hudson blew one blast on his whistle, and he states that he heard in reply a one-blast signal, appearing much nearer than the previous fog signals from the other ship, but the witnesses from the *Glenledi* say that this one-blast signal was not given. Hudson also checked his ship to half-speed, about  $4\frac{1}{2}$  miles per hour.

Under rule 21 of the rules adopted by Order in Council of February 4, 1916, for the navigation of the Great Lakes, one blast, with an exception not material here, means: "I am directing my course to starboard." And the same rule states that *in all weathers* every steam vessel under way in taking any course authorized or required by the rules shall indicate that course by the following signals (mentioned in paragraph 2 of rule 21) on her whistle, to be accompanied, whenever required, by corresponding alteration of her helm; and every steam vessel receiving a signal from another shall promptly respond with the same signal or sound the danger signal as provided in rule 22.

These signals are known as passing signals, and the testimony on behalf of the *Glenross* is that this one-blast signal was sounded at the time her course was changed one point to starboard. If this signal was received by the *Glenledi*, it called for the action on her part required by the rule just mentioned.

It will be convenient at this point to see what was being done at that time on the *Glenledi*. The master, Captain Taylor, had come on the bridge at 7.13 a.m. For some time he heard fog signals from an approaching vessel which turned out to be the *Glenross*. To those on the *Glenledi*, these signals sounded one and two points to starboard, and they seemed to broaden out more and more on that side. At 7.20 both the second officer, Sykes, and the watchman, Gerster, reported to Captain Taylor that they thought they had heard a one-blast passing signal from the approaching steamer. Taylor himself admits that he heard something

but not distinct. He says he was in doubt. I think it may be taken that Hudson's first one-blast signal was sounded at 7.20 a.m., four minutes before the collision, when both ships were hidden by the fog.

Before discussing what was Taylor's duty in these circumstances, it may be mentioned that he testifies that on receiving this report from Sykes and Gerster, he blew a fog signal of three blasts. He denies giving the one-blast signal which the witnesses from the *Glenross* say they heard in answer to their first passing signal. The learned trial judge suggests that possibly what was heard on the *Glenross* was one of the blasts of the three-blast fog signal. Hudson states that after his first one-blast signal, and the hearing of the answer, he sounded a second one-blast signal which was heard by the *Glenledi*. Taylor then blew an alarm, and while he was doing so the vessels hove in view, witnesses from the *Glenledi* say at a distance of about 1,000 feet, witnesses from the *Glenross* at some 600 or 700 feet from their ship. The collision was then inevitable, and as the *Glenross* was swinging to starboard—Hudson had put his helm hard to port on receiving an answer to his second one-blast signal—Taylor states that he gave her a one-blast signal so that she might continue her swing and not strike the *Glenledi* amidships. The vessels came together almost at their bows, each one sustaining a deep wound from the other. The bulkheads, however, held good and the ships were able to continue their journey in safety.

It is now important to determine what was the speed of the vessels from the time the fog set in until the collision. When each captain came on the bridge, the ships were travelling at full speed. On giving his first one-blast signal, Hudson checked his engines to half-speed,  $4\frac{1}{2}$  miles, and reversed them to full speed astern when he heard the second one-blast signal from the *Glenledi*. Taylor, on the other hand, says that when he arrived on the bridge at 7.13 he checked his ship to half speed, 7 miles. At 7.17 he first heard the fog signal of the other vessel, and stopped his engines. Fog signals from the *Glenross* were heard from 7.17 to 7.20, when his second mate and watchman reported that they thought they heard a one-blast signal from the other ship. Taylor then went full speed astern and blew a fog signal. The *Glenross* at that time was not in sight.

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I am satisfied that the alarm which Captain Taylor says he sounded was appreciably later than 7.20, when he received the above mentioned report from his second officer and his watchman, for on this report he states that he sounded the usual fog signal.

This appears to me as clear an account as it is possible to give of the material events which preceded the collision. The testimony on behalf of the *Glenross* is confused and the learned trial judge preferred the story of the officers of the *Glenledi*, which, however, somewhat lacks in definiteness, notably as to the interval of time which intervened between the fog signal which Taylor says he sounded after receiving the report of Sykes and Gerster, and the alarm signal which he subsequently gave. But one salient fact is established beyond any question, to wit, the failure of Captain Taylor, on receiving this report, to sound immediately an alarm, instead of giving the usual fog signal. On this fact it seems possible to base a decision as to the liability of the *Glenledi*.

The first passing signal was undoubtedly given by the *Glenross*, and I have placed it at 7.20 a.m. The second officer and the watchman of the *Glenledi* reported to the captain that they thought they heard it and the latter heard something himself, but not distinct. Taylor admits that he was in doubt and that he had "no idea what his (the *Glenross's*) heading might be."

What then was Taylor's duty under the rules, the signal in question being a passing signal indicating that the other ship was directing her course to starboard, which would bring her across the course of the *Glenledi* and involve danger of collision?

If Taylor was in doubt, as he says, rule 22 imperatively required him to sound immediately the danger signal. This rule is as follows:

Rule 22. If, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving the danger signal of five or more short and rapid blasts of the whistle; and if both vessels shall have approached within half a mile of each other, both shall be immediately slowed to a speed barely sufficient for steerage-way, and, if necessary, stopped and reversed, until the proper signals are given, answered, and understood, or until the vessels shall have passed each other.

The learned trial judge found the *Glenledi* in fault under this rule, but he absolved her owners from all liability on the ground that this fault had not caused or contributed to the collision. He came to this conclusion because he believed the evidence on behalf of the *Glenledi* that at the time of the collision that ship was at a standstill or moving backward.

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It does not appear to me absolutely clear that the *Glenledi* was at a standstill or moving backward when the ships came together. Taylor does not say that his ship was travelling backward. I quote from his testimony:

*By His Lordship:*

Q. You were backing full speed?

A. Yes, sir.

Q. You mean your vessel was travelling backward?

A. No, sir. I mean the engines were going full speed astern.

*By Mr. King:*

Q. Can you tell us at that time about how much speed you had on your ship? I don't suppose you can put it in miles an hour, but I mean were you going fast or slow or how?

A. We were going fairly slow I would think. I am sure.

*His Lordship:*

I would like to know what he means, because when he says "fairly slow" I don't understand.

A. (Continued) In the neighbourhood of four miles an hour when he (the *Glenross*) first loomed into view.

Q. You have no way of estimating the speed?

A. No sir.

Q. You are just guessing at it. You have no record of the speed of the ship at all?

A. Not at that speed. No, sir.

The nature of the wound inflicted by the *Glenledi* near the bow of the *Glenross* would further seem to show that the former was still moving forward at the time of the collision.

Moreover, with great respect, I cannot think it an answer to a charge of breaking rule 22, to say that the *Glenledi* had come to a standstill at the time of the collision. What that rule required her to do was to give a warning to the other ship, so that the latter might "be immediately slowed to a speed barely sufficient for steerage way, and, if necessary, stopped and reversed, until the proper signals are given, answered, and understood, or until the vessels shall have passed each other." The navigation of the *Glenledi* may have been faultless, but it is hard to see how that would be an excuse for a breach of rule 22 requiring her to give a warning to the approaching ship. And I find

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it impossible, under all the circumstances, to say that the absence of a warning did not contribute to the collision. What Captain Taylor tells us he did would rather be calculated to mislead the other ship. (See *Blamires v. Lancashire and Yorkshire Ry. Co.* (1), and judgment of Blackburn J., at p. 288).

I think therefore that the *Glenledi* cannot be absolved from liability for the collision.

At the same time I would not disturb the finding of liability of the learned trial judge against the *Glenross*. I would, however, base this liability on the ground that the *Glenross* did not reduce her speed to bare steerageway as required by rule 19, which says:

Rule 19. Every vessel shall, in thick weather, by reason of fog, mist, falling snow, heavy rainstorms, or other causes, go at *moderate speed*. A steam vessel hearing, apparently not more than four points from right ahead, the fog signal of another vessel shall at once reduce her speed to bare steerageway, and navigate with caution until the vessels shall have passed each other. (*The italics are in the official edition of the rules.*)

Like the trial judge, I think the more reliable testimony shows that the *Glenross* would answer her helm at a slower speed than half-speed. Captain Hudson made the assertion that it would not, but his testimony was contradicted. The mere hearing of these fog signals at not more than four points from right ahead made it incumbent on the *Glenross* to reduce her speed to mere steerage way. It is a well known natural fact that the direction of sound cannot be accurately determined in a thick fog; and although Hudson felt confirmed by his change of course that the approaching vessel would pass him on his port side, under all the circumstances he should have strictly followed rule 19. It is extremely important, in the interest of the safety of the public, that no violation of such a rule of caution should be tolerated.

Inasmuch as the change of course of the *Glenross* was immediately signalled to the *Glenledi*, I do not regard it by itself as a sufficient ground of liability. Nor do I think that there was a failure on the part of the *Glenross* to keep a sufficient look-out.

The appeals should be allowed with costs and the formal judgments varied so as to declare the *Glenledi* equally liable for the damages caused by the collision with the *Glenross*.