TORONTO ADMIRALTY DISTRICT

1925
Jan. 31.

MERLO, MERLO & RAY, LIMITED.....PLAINTIFF;

AND

THE SHIP *HARRY R. JONES*.....DEFENDANT.

Shipping—Collision—Strict observance of Rules of Navigation required—Warning—Division of Damages—Narrow Channels—Overtaking Vessel—4-5 Geo. V, c. 13.

Held: When a ship ahead after receiving a passing signal from an overtaking ship in a narrow channel deviates and continues to go to starboard, she contravenes Rule VIII which states that the boat ahead shall in no case crowd upon the course of the passing vessel.

2. That if the ship ahead anticipates damages from the approach of an overtaking ship it is the duty of the former to give warning. On the other hand the ship overtaking must observe the utmost care and watchfulness of the movements of the ship ahead, and if the movements or changes in the course of the ship ahead are not understood the overtaking ship is bound to slacken speed and if necessary to stop or to keep out of the way of the overtaken ship.

3. When both ships in a collision are held to be contributory to an accident, the damage can only be apportioned one half to each, as 4-5 George V, c. 13 (Dom.) does not apply to the Great Lakes.

This was an action brought by the plaintiff against the ship *Harry R. Jones* for damages by reason of collision between the plaintiff's ship *Sawyer* with the steamship *Minch*

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for which collision it was alleged the ship *Harry R. Jones* was responsible.

April the 28th, 29th and 30th, and December 16th and 17th, 1924.

Action now tried before the Honourable Mr. Justice Hodgins L.J.A., at Toronto.

J. H. Rodd, K.C., for plaintiff.

Francis King, K.C., for defendant.

The facts are set out in the Reasons for Judgment.

HODGINS L.J.A., now (31st January, 1925) delivered judgment.

Action for damages arising out of a collision, heard before this court on the 28th, 29th and 30th April, 1924, and on the 16th and 17th days of December, 1924.

Broadly speaking the accident happened in this way. The SS. *Sawyer,* a steam vessel of 484 gross and 259 net tons, 152 feet long and 32 feet beam laden to 13 feet, owned by the plaintiffs, having crossed Lake St. Clair was proceeding in a southerly direction through the channel which leads from Lake St. Clair to Detroit, U.S.A.

While in this channel, she was overtaken by the SS. *Jones,* a steam vessel of 5,315 gross and 4,160 net tons, 468 feet long, 52 feet beam and with a draught of 19·5 and fully laden, and a collision, without appreciable injury, occurred when the two vessels were passing, resulting, as the plaintiffs allege, in causing the *Sawyer* to get under the stern of the *Jones* and to shoot across the ship channel, during which movement she came in contact with SS. *Minch,* a vessel proceeding up channel. Owing to the injury which resulted from this last contact, the *Sawyer* was beached in shallow water, and its owners sue the *Jones* for the damage suffered.

The channel in which the occurrence took place is known as the Grosse Point channel in the lower end of Lake St. Clair. At its northern end is a lightship and there are on each side gas buoys, at three different points, those mentioned in the evidence being gas buoys 19 and 20, which are south of the lightship, and 9 and 10 which are still further south. These are spar buoys on each side between these gas buoys. The channel itself is 800 feet wide, and

its east side is nearest Canadian territory and is to the left or port of vessels descending, that is, moving southward through the channel; the westerly side is nearest to American territory and is on the right or starboard side of vessels so proceeding. The channel lies wholly in American waters, and both sides agree that the rules applicable to the case are those known as the Pilot Rules for the Great Lakes and for Connecting and Contributory Waters, Edition May 1, 1912, together with the laws relating to the navigation of vessels on the Great Lakes and connecting and tributary waters, being an Act of Congress approved 9th June, 1910, all being found in Exhibit 4.

[His Lordship here gives the contentions of the parties as found in their respective Preliminary Acts, and then proceeds.]

The sheering of the *Sawyer* towards the *Jones* is alleged by the plaintiffs to be due to suction from that vessel. On the other hand the defendants say that the *Sawyer,* through some error or mismanagement, came too far towards the Jones and that if then affected by suction, which they deny, it was due to her own fault. It was not contested that the subsequent striking of the *Minch* was due to what happened between the *Sawyer* and the *Jones.*

The movements of the *Sawyer* and a vessel, the *Cadillac* during and before their passing one another are to my mind important features in this case. The *Cadillac* whose gross tonnage is 3,582, and the length 400 feet and beam 50 feet, with a speed of about 10 miles per hour, was coming down the lake ahead of the *Jones* and behind the *Sawyer* and ultimately passed the latter in the channel a little more than half way between the light ship at the northern entrance to the ship channel and gas buoys 19 and 20. The *Cadillac* was easterly of and behind the *Sawyer,* the *Jones* to the west and still further behind. When the *Cadillac* was overtaking the *Sawyer* she signalled her desire to pass down on the port side of the *Sawyer* and this was accepted. But she found she could not safely do this having regard to the position and course of the *Sawyer* which was to the east of the centre line of the channel, just how much is not certain, but is given as from 30 to 40 feet. If this distance is accurate it would give the *Cadillac* 360 feet of clear

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channel, less her beam, and whatever distance she was from the eastern side of the channel (together 100 to 125 feet). Being fearful that she would get into shoal water if she continued on her course on the port side of the *Sawyer* the *Cadillac* desisted when about abreast, dropped back, and changed her course to the westward, signalling the *Sawyer* that she intended to pass her on the *Sawyer's* starboard side. This she did, and her master, Walter M. Amsbary, called for the plaintiffs, gives rather important evidence as to what had occurred. It is as follows:

[His Lordship here cites from the evidence and then proceeds.]

The conclusion I draw from this and other evidence to which I shall refer, is that when the *Cadillac* discovered that she could not safely pass the *Sawyer* on the latter's port side, and went westward to pass her to starboard, the *Sawyer* moved towards the east, crossing her bow and then straightened up on a course somewhat to the east of that which she had previously been following. That then when the *Cadillac* passed, at 100 feet distance, the *Sawyer,* after signalling the *Minch,* altered her course to starboard and went further to the westward to avoid any danger from the *Minch.* Now if the courses, of the two vessels, the *Sawyer* and the *Jones* became sixty to seventy feet apart, due to that change of course, they were then too near for passing in safety, and the manoeuvre of the *Sawyer* was calculated to bring her into collision with the *Jones,* even disregarding the view that suction or interaction at 100 feet or less would draw the vessels together.

There are other items of evidence which have a bearing upon my conclusion. When Hill on the *Sawyer* took over the wheel from the wheelsman, Avelin, as the *Jones* was passing, the latter says it was amidships. If so the *Sawyer* must have straightened up after getting back on her course, because Avelin says that when the *Cadillac* passed, the *Sawyer* was 100 feet east of the centre line and only 25 feet east when the *Jones* passed. The *Sawyer* had hauled to the east according to Amsbary, the Master of the *Cadillac.* To get back to 25 feet east of the centre line, the *Sawyer* must have gone to starboard. Amsbary further

says that it was only two or three minutes after the *Sawyer* signalled the *Minch* that the former took her sheer across to the *Minch* and that he thought that after the *Cadillac* passed the *Minch,* the *Sawyer* was west of the centre line. Hill says that the wheel was slightly aport to get away from the *Minch* when he took it, and that he put it hard aport to carry the bow to starboard as the suction of the *Jones* was drawing in her stern. If the wheelsman is right as to the position of the wheel this action of Hill would necessarily result in a collision with the *Jones* as the vessels were then only 30-40 feet apart. But I believe it had been and was aport when Hill took it, whether from the carelessness of the wheelsman or in forgetfulness of the position of the *Jones.* It was suggested by one witness that the *Sawyer* should have taken the eastern side and let the *Minch* come between her and the *Jones.* It may be that that was the *Sawyer's* first intention but her signal indicated that she had decided to resume her original course.

There is very clear evidence of inattention on the part of the *Sawyer,* to the position and movements of the *Jones.* Hill says that after observing the *Jones* five or six hundred feet astern, he did not notice her again until she was abreast of the *Sawyer's* wheelhouse. His evidence is as follows:

[His Lordship here cites from the evidence and proceeds.]

If the course of the *Jones* was, as Hill and the other of the *Sawyer's* witnesses assert, only 60-70 feet distant laterally from that of the *Sawyer,* when 500-600 feet away (which is only about the length of the *Jones* or somewhat over that), it would be the duty of the *Sawyer* to have sounded a danger signal when she realized that fact and she did not do so. This is the more extraordinary, as it was just then that she signalled the *Minch* that she was going to starboard to pass her safely. Hill says that having blown a signal to the *Minch,* he had to keep clear. Kelly, Master of the *Minch,* places the *Minch's* position as 75 feet from the buoys showing the eastern limits of the channel when he noticed the *Sawyer* and *Jones* abreast. Hill puts the *Minch* at 150 to 200 feet east of the centre line of the channel. If the *Sawyer's* position is correctly given by her witnesses as being 25 feet to the east of the centre line,

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then there was 300 feet according to Kelly, or 125 or 150 feet according to Hill, between them when the *Minch* whistled, and there was no necessity for giving her any room. Kelly says he had practically all his half of the channel when signals were exchanged and the *Cadillac* had passed about 100 feet away. Ericson corroborates the position of the *Minch* as being well over to the east and close to the buoys.

The wheelsman of the *Sawyer* impressed me as being rather stupid, and his evidence indicated a measure of inexperience and unfamiliarity with the Rules of Navigation applicable to narrow channels. He had charge while the *Cadillac* passed them to starboard and before and after the change of direction. The *Jones,* he says, was then one-half mile astern when seen by him and others of the crew. In cross-examination he says 1 mile, and that the *Minch* was a mile away when the *Cadillac* went by. These figures are not to be depended on. There were thus, to his knowledge, three vessels in proximity. After signalling to the *Minch* he says that he again noticed the *Jones* one-quarter mile away but paid no further attention to her till she was broadside going by. In another part of his evidence he says he saw her 500 feet astern and coming on at 11 miles an hour as compared to their seven miles, and coming closer to the *Sawyer.* Indeed notwithstanding her gain of one-quarter mile he says he had no idea she was going to pass. This he confirms on cross-examination. His account as to the wheel of which he was in charge differs from that of Hill. He says it was amidships when Hill the mate took it and that the *Jones* was then only ten feet away. He contends that it so remained till the stern and bow of the *Sawyer* had struck the *Jones,* when the wheel was put to port by Hill. He is very confused when describing how the wheel acted and what orders would be given, and cannot be relied on.

The Master of the *Sawyer* was very late in appearing on the scene, and came into the wheelhouse just when the *Sawyer's* bow after she touched the *Jones,* swung out towards the *Minch* and had got about 100 feet from the *Jones.* Avelin took the wheel again from Hill before the Master turned up, and the latter then took it. The Master

confirms Hill's testimony as to the wheel and says it was hard aport when he took it and that it so remained till the *Sawyer* hit the *Minch* and that there was no time to change it before they did so. He then put it hard astarboard to make for the shore.

It is practically agreed that the *Cadillac* had passed the *Sawyer* at a distance of 100 feet. She is about as large and long as the *Jones,* and no suction was felt.

In considering all the distances given, it must be remembered that they are estimates, only trustworthy when the observer has a trained eye and time to use it. But taken as they are given, the distance between the *Jones* and the *Sawyer,* even if 200 feet, is only a little more than the length of the latter vessel, so that any movement by her towards the course of the *Jones* would in a very short space of time fill up the intervening distance. The beginning of a swerve would create a very real peril of collision, seeing that the *Jones* was only twice her length behind and was going three miles an hour or 1¼ miles (whichever version is taken) faster than the *Sawyer* whose movement forward on a slant would be slightly slower than if she had held her course.

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The duty of the *Sawyer* was to have kept its course and speed, and she deviated. This is indirectly contrary to Rule VIII "The boat ahead shall in no case * * * * crowd upon the course of the passing steamer." The position of the wheel when Hill took it over was "aport," so that Rule 20 (Laws) was broken by going and continuing to go to starboard, after the *Jones* had signalled and (Rule VIII) in not sounding a danger signal before so doing. Those on the *Jones* say the *Sawyer's* signal (said to be intended for the *Minch*) was taken by them as answering their passing signal. The giving by the *Jones* of the latter signal is denied by some of the witnesses on the *Sawyer,* but I find that it was given and that in all probability concentration on the *Minch* accounts for the *Jones'* signal being unnoticed. Indeed the position of the latter vessel, only about three lengths of the *Sawyer* away was such that its catching up and passing must have been and indeed was clearly anticipated. If danger was anticipated from the

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rapid approach of the *Jones* it was, as I have said, the *Sawyer's* duty to warn her. This was not done nor any indication of any kind given as to what the *Sawyer* was going to do. Hill says he knew that the *Jones* was going by almost twice as fast as the *Sawyer* was running. The *Minch* was quite near enough, about three ship-lengths away, to require prompt attention. The *Sawyer* was bound to have due regard to each of these vessels, and to have dealt with each. Her changing her course to avoid the *Minch*, with the *Jones* on her starboard side or quarter, was inexplicable.

In answer to all this it is alleged that the *Jones* was entirely to blame for the disaster because she came too near and caused the *Sawyer* to swerve from her course by force of the suction exerted by the *Jones*.

With regard to suction, or interaction, between these vessels, it is to be noted that, according to Hill, who was in charge, it was felt when the wheel houses of each boat were in line and resulted in pushing the bow of the *Sawyer* away from the *Jones* and bringing the stern in towards her. This would be the natural consequence of a bow wave. Or if the *Sawyer* was edging in towards the course of the *Jones* interaction might catch her bow as the *Jones* proceeded and so throw it to port. The wheelhouse of the *Sawyer* is about 15 feet aft of her bow and that of the *Jones* is 30 feet from her stern. This being so, the stern of the *Jones* would extend very much beyond the stern of the *Sawyer*, in fact about 300 feet. The vessels are respectively 468 and 152 feet long. Suction caused by the stern of the *Jones* which was chiefly emphasized in the evidence given, would not be felt in that position.

Vaughan Williams L.J., in the *Olympic* and *H.M.S. Hawke* (1), speaks of the question of suction or interaction as

> too uncertain to enable any one . . . . to speak positively as to the distance within which such a possible cause . . . . will be dangerous . . . .

He adds:

> knowledge of the subject is still in its infancy,

and as applied to the witnesses in this case, I think the description is unusually accurate. The Masters of the

(1) [1913], P. 214, at p. 251.

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Minch and the *Cadillac* say that a wrong wheel or mismanagement, equally with suction, would account for what happened. In the case of *Caldwell* v. *SS. Bielman* (1), the effect of suction or interaction is considered and a quotation from Spencer on Collisions is given.

> It must be presumed that the master of a large steamer must know the effect of frontal and side waves made by such steamer when going at her ordinary rate of speed in narrow channels, and he should therefore regulate or moderate the rate of speed and keep sufficiently out of the way of an overtaken vessel.

It appears from the case of the *Cederic* (2), that in a narrow channel, where the speeds and some of the conditions were very similar to those in this case, passing at a distance of 100 feet is considered as dangerous, a view taken in the United States in the *City of Brockton* (3). I find also that Maclennan J. in *Geo. Hall Coal Co.* v. *SS. Lord Strathcona* (4), says:

> Suction is a force that has been recognized as a danger in close navigation especially in shallow waters, and always results from a too close approach.

The explanation of the case of the *Olympic* and *Hawke* (ante) as given in Marsden on Collisions, illustrates the *onus* which must be met in this case.

In the House of Lords the Judgment in the *Olympic* (5) case was affirmed, both the Lord Chancellor and Lord Atkinson admitting the probability of suction being effective in shallow water.

If the *Jones* was in reality only 60-70 feet away laterally from the course of the *Sawyer* it would seem that the *Jones* would be wrong in attempting to pass at her greater speed. The position and movements of the *Jones* must therefore be considered.

Those responsible for the navigation of the *Jones* saw the passing of the *Sawyer* by the *Cadillac* and the whole of their manoeuvres towards the east and west, prior thereto. The *Jones* was then about half a mile astern, or according to Neely, her lookout, only a quarter of a mile. When signalling the *Sawyer* and getting what the Master of the *Jones* took as a complying answer, he says that he ordered the wheelsman to slightly port so as to throw her bow to

(1) [1906] 10 Ex. C.R. 155.
(2) [1924] P. 215.
(3) [1889] 37 Fed. Rep. 897.
(4) [1924] Ex. C.R. 32.
(5) [1914] 12 Asp. Mar. Cases 580.

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starboard and to keep gas buoy No. 9 somewhat on the starboard bow, and that she afterwards passed that buoy at a distance of fifty feet. Clifford (the wheelsman) was not called and it was stated by counsel that Clifford could not be found since last June. At No. 19 gas buoy the Master says that the *Jones* was 175-200 feet east of it, or just about in the middle of the west half of the channel. This is somewhat corroborated by Gillis, lookout on the *Moll* who says the *Jones* was 150 feet from the west limit when she entered the channel, and was gradually working to westward and that the *Moll* steered on her. The *Sawyer,* he says, was then just east of the centre line. The *Sawyer's* swerve of 50 feet, spoken of by the Master of the *Jones,* if he is accurate, would just bring her on the range. But at this time the bow of the *Jones* had lapped up on the starboard quarter of the *Sawyer.* This would leave, according to the *Jones* 175-200 feet between the vessels. The *Sawyer's* version makes the distance 60-70 feet, though Hill also says that the *Jones* had 150 feet of water clear to the West; this agrees with the latter's statement of her position, but if true displaces the distance between the vessels alleged by the *Sawyer* and makes it agree with that given by the *Jones.* The *Sawyer* took two minutes to strike the *Jones,* according to the Master and Second Mate of the latter. But Taylor the Engineer of the *Sawyer* and her *Master* make it half or less than half that time. The *Jones* admits she did not check or stop until the *Sawyer* had drawn within 30 or 40 feet of her, because it was presumed that she would straighten up. If the vessels were as close as 60-70 feet this would seem peculiar as the Master of the *Jones* admits that suction would affect the vessels within 100 feet.

The account given by the Master of the *Jones,* Macdonald, is that the *Sawyer* was east of the centre line and kept her course till the bow of the *Jones* had "lapped up" on the starboard quarter of the *Sawyer,* when the latter sheered to starboard 50 feet and then straightened up, leaving some 200-250 feet between them clear; that when the pilot houses were abreast, the *Sawyer* came towards them, apparently under a port wheel, and struck the *Jones* in two minutes. The *Jones* gave a danger signal when the

other vessel was within 30 to 40 feet, checked and stopped and not till then. If the position of the *Jones* at gas buoy 19 is correctly given, and the *Sawyer* was 25 feet east of the centre line, it increases the lateral distance between the vessels by nearly 180 feet. The question is which of these accounts is correct, because if the *Jones* was 250 feet away, the first change of the *Sawyer's* course would leave 200 feet clear, and it would not be till later that danger would become imminent. The second mate of the *Jones,* Costa, does not pretend that the "wobbling" of the *Sawyer* which he speaks of had a swing of more than 50 feet so that that cannot account for her movement in crossing 200 feet of water. When the blow was delivered, the *Jones* was put full speed astern but when the *Sawyer* swung under her stern they were stopped. The Master of the *Jones* denies that suction caused the collision. He admits that he did not see or notice the *Minch* coming up, though she might have been visible when he signalled the *Sawyer* to pass her, and so he did not attribute her signal as to any other ship than his own. Nor did he see the *Minch* till the *Jones* was "lapped up" on the *Sawyer,* although he admits that when she must have been about $\frac{3}{4}$ miles away he could see $2\frac{1}{4}$ miles that evening. He says he looked down channel but fails to give any intelligible reason for not seeing the *Minch.* Costa, second mate of the *Jones,* says he saw a vessel, probably the *Minch,* but that she was not within signalling distance (what that is he does not say) but he says he did signal her just when coming up with the *Sawyer.* The lookout says that he hadn't picked up the *Minch* until the bow of the *Jones* was abreast of the *Sawyer's* stern, though he could see two miles clearly. The Master of the *Cadillac* puts the *Jones* as 200 feet from the western limit of the channel and says that she was further to the west than the *Cadillac* was when she passed the *Sawyer.* Kelly, Master of the *Minch,* says that the *Jones* was about 400 feet west of her when the collision occurred and she herself was 40-50 feet from the eastern side of the channel.

But the important question after all, is whether the *Jones,* having regard to the previous actions of the *Sawyer* should have stopped or hauled further to the westward in

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order to give her a wide berth and pass in safety, or to have signalled for leave to pass when it was seen that the *Sawyer* had changed her course. Two of the witnesses on behalf of the *Jones* speak of the course of the *Sawyer* as being wobbly and that this was noticed before they got into the channel. I think that the *Sawyer* moved westward more than she admits. While several of the witnesses on behalf of the *Jones* say they observed the spar buoys or stakes on the western side of the channel and the course is given as tending westward from the lightship down to the buoys known as numbers 9 and 10 and while I have mentioned other evidence tending to place the *Jones* well to the westward, yet the result which happened could not, in my judgment, have occurred if the *Jones* had kept as near to the western buoys as she alleges. I should place her nearer the centre of the western half of the channel. But adopting the *Jones* evidence, the *Sawyer's* first swing and straightening up being observed and apparently not understood it then became the duty of the *Jones* under Rule II to signal "danger," and to slow up and stop, or else to go to starboard so as to avoid trouble. It may be that those on the *Jones* had not observed the *Minch,* but they should have done so. A sight of that vessel earlier might have explained to the *Jones* why the movement was effected, and so brought about some action on her part.

It may be said that on the second erratic movement of the *Sawyer,* she apparently became a crossing vessel, having taken a course involving risk of collision and therefore having the *Jones* on her starboard bow was bound to avoid her. But I think the true view is that the actions of the *Sawyer* threw upon the *Jones* the duty, or afforded her the opportunity of escaping her. While "the court ought to be careful not to cast blame too readily upon a vessel which is placed in difficulty by another vessel," per Evans P. in *The Tempus* (1), there was enough time for some deliberation on the part of the *Jones.* She had proceeded on her course and maintained her speed till the ships had come within 30 or 40 feet of each other. On her own showing 100 feet is a safe distance and less than that is not. In addition there were three ships involved. Taking the most

(1) [1913] P. 166-171.

favourable view of the *Jones* and the *Minch* 50-75 feet from the east and west limits of the channel, and deducting their beam, say 100 feet, that leaves only 150 to 200 feet between the *Sawyer* and the *Jones*. This is about the length of the *Sawyer*, and half the length of the *Jones* and the *Minch*. Any deviation from parallel lines would therefore involve considerable risk. This deviation is proved against the *Sawyer* and it is also asserted by the *Jones* that her navigation was for a considerable time faulty, i.e., "wobbly." In addition, the *Cadillac* had, in full view of the *Jones* crossed over from east to west to pass the *Sawyer* which had then come back towards her former course. The *Jones'* speed 9¾ miles was not checked nor was any signal made to ascertain if after the *Sawyer's* change of course, she still had permission to pass. See Rules 2, 8, and 22 and 26.

I think under all these circumstances the *Jones* was to blame and contributed to what happened. As 4-5 Geo. V, c. 13 (Dom.) does not apply to the Great Lakes I can only apportion the damage one-half to each.

What happened subsequently to the collision between the *Jones* and *Sawyer* does not come in question here. The consequences of the situation brought about by the *Jones* and *Sawyer* are described by the Master of the *Jones* as "natural." The actions of the *Sawyer* just before and after the collision were not characterized by any great degree of seamanship or intelligence, and there is something to be said in favour of the view that the position of the wheel and the starting of the *Sawyer's* engines also contributed to make the collision with the *Minch* inevitable. But the *Sawyer* had been in a position of peril by her own fault and by that of the *Jones* and it is unnecessary to determine as to exact cumulative effect of her actions after she had cleared the *Jones*. The comment of the Master of the *Jones* is justified and the injury suffered by her hitting the *Minch* is attributable to and is the effect of the situation created by the negligence of both vessels originally involved. My conclusion may be summed up thus. I find the *Sawyer* to blame for having altered her course after passing the *Cadillac* and for continuing on the altered course too long, for neglecting to pay proper attention to

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the approach of the *Jones* and approaching her too closely and executing a dangerous manoeuvre in face of the vessels approaching from front and rear, and failing to return the *Jones* signal for leave to pass and for failing to signal her on making her change of course and for violation of the Rules mentioned. I find the *Jones* to blame for neglecting to sight the *Minch* and to apprehend her relation to the *Sawyer*, for taking for granted that the *Sawyer's* signal was an answer to the *Jones*, for neglecting the warnings indicated by the various changes in the course of the *Sawyer* and in failing to check and stop her engines in time or to go to starboard, and for approaching too closely to the *Sawyer*, and passing too near to that vessel and for violation of the Rules mentioned.

Judgment will therefore be entered for the plaintiff for one-half the damages sustained by the *Sawyer*. Each party must pay his own costs of the action. Reference to the Registrar in Toronto to assess the damages.

Judgment accordingly.