

S.S. *RICHELIEU* AND HER OWNERS }
 (DEFENDANTS) } APPELLANTS;
 AND
 LA CIE DE NAVIGATION SAGUENAY }
 ET LAC ST-JEAN LIMITÉE AND } RESPONDENTS.
 OTHERS (PLAINTIFFS) }

1945
 *May 14, 15
 16
 *June 20

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA, QUEBEC
 ADMIRALTY DISTRICT

Shipping—Collision—Ship channel divided in two branches—One ship going up and the other down stream—Whether one or both ships at fault—Confusion created by successive blasts given by both—Required signals to be given from a sufficient distance and within a sufficient time to allow ships to proceed safely—Danger arising from misunderstood signals—Absence of proper look-out.

The action brought by the respondents, owners of the S.S. *Roberval*, her master and members of the crew and owners of her cargo on board, and the counter-claim by the appellants, the S.S. *Richelieu* and her owners, arose out of a collision between the two ships in the river St. Lawrence, near Three Rivers. In the vicinity of that city, the regular ship channel divides into two branches, one practically parallel to the other. The *Roberval* was proceeding down stream and was following the north branch, while the *Richelieu* was coming upstream, below a buoy in the ship channel east of the junction of the two branches. The *Richelieu* intended to proceed by the south branch and, seeing the *Roberval*, gave two short blasts of its whistle to indicate that it was directing its course to port, and in fact ported. Those on the *Roberval* say that they heard only one blast, which would indicate that the *Richelieu* was directing its course to starboard. Those on the *Richelieu*, not hearing any immediate answer from the *Roberval*, stopped their engines. Immediately thereafter,

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the *Roberval* answered with one blast and thereupon the *Richelieu's* engines were ordered full speed astern and three blasts of its whistle were given. The collision occurred almost immediately: the stem of the *Richelieu* came in contact with the port side of the *Roberval*, the *Richelieu* being practically stopped at the time of the impact. The trial judge, holding that the *Richelieu* alone was to blame for the collision, maintained the action and dismissed the counter-claim.

Held, per The Chief Justice and Hudson and Taschereau JJ., that, according to the facts of the case, both ships were to blame, that the responsibility should thus be apportioned and that the judgment appealed from should be modified accordingly. Kerwin and Rand JJ. were of the opinion that the respondents' action ought to be dismissed *in toto* and the counter-claim allowed.

Per the Chief Justice and Hudson and Taschereau JJ.—When two ships are about to meet, the required signals have to be given from a sufficient distance and within a sufficient time to allow the respective crews to take the necessary steps to avoid any peril which may arise as the result of misunderstood signals. The *Richelieu* was late in signalling her intention as to which channel she would follow, and, under similar circumstances, ordinary prudent seamen would not have waited as long as she did to indicate the route she was to follow. At the time of the first blast given by the *Richelieu*, the distance between the two ships, half a mile, was too short, the blasts were given too late and the officers of the crews did not have the necessary time to avoid the peril created by the emergency resulting from the misunderstanding. The errors of the *Roberval*, in trying to pass port and her failure to stop her engines in proper time when the danger was imminent, contributed to two-thirds of the accident, and the *Richelieu* should bear one-third of the responsibility for her delay in giving the necessary signals.

Per Kerwin and Rand JJ.—The *Richelieu* has acted properly at all times. The signals given by her were proper because the ship was taking a course "authorized by the Rules," and they were not given too late; she also acted properly, and not too late, in stopping its engines when hearing no reply to its signal and then in reversing its engines when it did hear the one blast from the *Roberval*. The cause of the collision was the absence of a proper lookout by those on the *Roberval*. If they had kept a proper lookout, they would have heard the *Richelieu's* two blasts, and, even then, the collision might have been avoided if the Captain of the *Roberval*, seeing what the *Richelieu* was actually doing, had altered his course to port and had slowed his engines.

APPEAL from the judgment of the Exchequer Court of Canada, Quebec Admiralty District, Cannon, J., maintaining the respondents' action and dismissing the appellants' counter-claim, arising out of a collision between the S.S. *Richelieu* and the S.S. *Roberval* owned by the respondent company.

R. C. Holden K.C. for the appellants.

A. Pouliot K.C. and *William Morin K.C.* for the respondents.

The judgment of the Chief Justice and of Hudson and Taschereau JJ. was delivered by

TASCHEREAU J.—On the 29th of August, 1942, the S.S. *Roberval*, owned by La Cie de Navigation Saguenay et Lac St-Jean Ltée, and the S.S. *Richelieu*, property of the Canada Steamship Lines Ltd., collided opposite the city of Three Rivers, in the St. Lawrence river, and as a result of this collision the S.S. *Roberval* sank.

In the Admiralty Court, Mr. Justice Lucien Cannon found that the S.S. *Richelieu* was to blame for this accident and he therefore maintained the action of the S.S. *Roberval*, and of the other plaintiffs and dismissed the counter-claim of the S.S. *Richelieu* with costs.

The evidence adduced by both parties is contradictory, and there are very few points on which the respective crews of the two ships agree. However, there are certain facts which cannot be challenged, and which may help to determine to whom shall attach the responsibility for this collision.

The S.S. *Roberval* which was on her regular voyage between Montreal and Chicoutimi, via Quebec city, was a small ship having a gross tonnage of 348·20, and a registered tonnage of 184·16. Her normal speed was approximately seven knots per hour through the water. On the relevant date, a few minutes after 11 p.m., the S.S. *Roberval* was steaming down the north channel opposite the city of Three Rivers following the St. Maurice course, steering on the lights of the Three Rivers Range astern of her. This north channel is practically parallel to the south channel, and both join in the vicinity of black gas buoy 49-C.

The S.S. *Richelieu* was proceeding up the main channel at fourteen knots an hour, on the Cap de la Madeleine upper course, steering on the lights of the Cap de la Madeleine lower Range, and she was returning from her weekly cruise to the Saguenay river.

At that time, the weather was clear and calm, with a light breeze blowing from the northeast, and the current was running down the channel at a speed of approximately two knots per hour. When the two ships, which were properly manned and equipped, reached a point 600 feet west of buoy 49-C, where both channels meet,

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the stem of S.S. *Richelieu* came in contact with the port side of the S.S. *Roberval* abreast of her bridge, with the result already indicated.

Were it not for the confusion created by the successive blasts given by both ships, this collision would have easily been avoided. The S.S. *Roberval* could have met the S.S. *Richelieu* starboard to starboard, and could have continued her course on the lights of the Cap de la Madeleine lower Range.

The appellant company owns a number of ships that make regular voyages on the St. Lawrence River. Those which carry the passenger and freight services, between Quebec and Montreal and vice versa, stop at Three Rivers, and it is therefore necessary for them to use the north channel; while the S.S. *Richelieu* which makes a weekly cruise to the Saguenay river, does not stop at Three Rivers, and passes through the south channel.

On the night in question, it was the intention of the Captain of the S.S. *Richelieu* to follow this latter course, but the S.S. *Roberval* was not and could not be aware of this fact. It rested therefore upon the S.S. *Richelieu* to signal with two short blasts that she would proceed on the south channel, to meet starboard to starboard, leaving the channel wide open for the S.S. *Roberval*.

All the members of the crew of the S.S. *Richelieu* who were heard as witnesses, testified that this was done, and that less than thirty seconds after having given this two blast signal, the order was given to stop the engines in view of the S.S. *Roberval's* failure to give an answer. A few seconds later—and on this point the officers of the S.S. *Richelieu* are also in agreement—a one blast signal was heard coming from the S.S. *Roberval*, indicating that she would meet port to port instead of starboard to starboard, as requested by the S.S. *Richelieu*. In view of this confusion of signals, the S.S. *Richelieu* gave a three blast signal, and at the same moment an order was given to put her engines astern. She was practically stopped at the time of the impact, one minute later.

With this version of the facts as related by the crew of the S.S. *Richelieu*, the Captain and others on board the S.S. *Roberval* entirely disagree. It is their contention that

the first signal given by the S.S. *Richelieu*, was a one short blast, and this one blast signal meant that they were to meet port to port. In order to do so, and pursuant to the agreement, the S.S. *Roberval* had to proceed in a straight line, directing her course approximately in the direction of buoy 49-C, and even more to the south, in order to pass in front of the S.S. *Richelieu* and meet port to port. Some members of the crew of the S.S. *Roberval* also contend that the second signal given by the S.S. *Richelieu* was not, as stated, a three blast signal, but a two short blast signal.

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It is indeed quite extraordinary that such a discrepancy in the evidence should occur and that we should be confronted with these wide divergencies of opinions. The learned trial judge, however, has found as a fact that the S.S. *Richelieu* gave a first two blast signal, and that after receiving a one blast signal from the S.S. *Roberval*, put her engines astern. These divers opinions expressed by the respective members of the crew, have not been explained, although many hypotheses have been suggested. It has been said that the whistle of the S.S. *Richelieu* was not functioning properly, that a sufficient time did not elapse between the two blasts, or that due to some peculiar atmospheric conditions, some of the blasts of the S.S. *Richelieu* were inaudible. But these suggestions seem to be mere conjectures and no evidence has been adduced to substantiate any of them.

We are left with the mere fact that the S.S. *Richelieu* gave originally the proper two blast signal, and that she conveyed her intention to proceed as she usually does through the south channel. Unfortunately, these blasts were picked up differently by the S.S. *Roberval*, but for this unfortunate happening, the S.S. *Richelieu* cannot be blamed. It was her duty, because she had the choice of two different channels, to indicate which one she would follow, and this she did by giving the proper signal and by inclining to port simultaneously. This last move was noticed by the officers in the wheelhouse of the S.S. *Roberval*, and this fact should have given rise to the suspicion that they had misunderstood the signal. When the counter-signal was given by the S.S. *Roberval*, the S.S. *Richelieu* reversed her engines, which were then stopped, but then the accident could not be avoided.

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I believe that the S.S. *Roberval* cannot escape her share of responsibility. Her officers saw the S.S. *Richelieu* going slightly to port after the first signal, but nevertheless insisted in directing their ship to starboard, in the direct path of the on-coming S.S. *Richelieu*, at full speed, stopping the engines only at the moment of the impact. The S.S. *Roberval* realized or should have realized that there was no agreement between the two ships, and she should have stopped her engines long before she did. For this failure to follow the rules of the sea and of good seamanship, she must bear her share of the responsibility.

But the S.S. *Richelieu* cannot be absolved of all blame for this accident. It seems reasonably clear that she was late in signalling her intention as to which channel she would follow. Under similar circumstances, I believe that ordinary prudent seamen would not have waited as long as she did to indicate the route that she was to follow. When two ships are about to meet, the required signals have to be given from a sufficient distance and within a sufficient time to allow the respective crews to take the necessary steps to avoid any peril which may arise as the result of misunderstood signals.

In the present case, and it is also a finding of the trial judge, the S.S. *Richelieu* did not signal in due time, and in order to reach such a conclusion, I base my judgment not only on the evidence of the members of the respective crews who have appreciated the distance between the two ships when the first blast was given, but also on the time that elapsed between the first signal and the moment of the impact.

Although Captain Gagnon of the S.S. *Roberval* says that the distance between both ships at the time of the first blast was approximately one mile, Frégeau, master on board the same ship, says that it was 1,000 feet. Bernier, second officer of the S.S. *Richelieu*, says that it was approximately 3,000 feet. R. Gagné, pilot on board the S.S. *Richelieu*, believes that the distance was 3,000 to 4,000 feet, and R. Savard, the assistant-pilot of the S.S. *Richelieu*, testifies that 2,000 feet only, separated the two ships.

I think that one is justified in saying that the two ships were about half a mile away when the first blast was given.

This fact is corroborated by the evidence of the officers of the S.S. *Richelieu* who testified in a very precise way, that the mishap occurred less than one minute and a half after the first blast. They all agree that thirty seconds after the original signal was given, the engines of the S.S. *Richelieu* were stopped and put full astern, and that one minute later the collision happened.

During that time, taking into account the speed at which the S.S. *Richelieu* was proceeding, she covered 1,400 feet, and the S.S. *Roberval* coming in the opposite direction covered 1,200 feet, making a total of 2,600 feet, or half a mile, which was the distance between the two ships at the time of the first blast.

In my opinion, this distance was too short. It seems obvious that if the S.S. *Richelieu* found it necessary to stop and reverse her engines within thirty seconds after signalling her intention, the blasts were given too late, and the officers of the crew did not have the necessary time to avoid the peril created by the emergency resulting from the misunderstanding.

It follows that both ships are to blame, and that the responsibility should be apportioned. I believe that the errors of the S.S. *Roberval* in trying to pass port to port, and her failure to stop her engines in proper time when the danger was imminent, contributed to two-thirds of the accident, and that the S.S. *Richelieu* should bear one-third of the responsibility for her delay in giving the necessary signals.

The appeal should therefore be allowed and judgment should be entered condemning the S.S. *Richelieu* to pay one-third of the damages suffered by the S.S. *Roberval* and the other plaintiffs. The appeal on the counter-claim should also be allowed and the S.S. *Roberval* should be ordered to pay to the S.S. *Richelieu* two-thirds of the damages that the latter suffered.

In the lower court, the S.S. *Roberval* should be entitled to one-third of her costs and the S.S. *Richelieu* to two-thirds of hers. In this Court, the appellants should have two-thirds of their costs on the main action, and will be entitled to the same proportion of costs on their appeal on the counter-claim.

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Kerwin J.

The judgment of Kerwin and Rand JJ. was delivered by

KERWIN J.—This is an appeal from a judgment of the District Judge in Admiralty for the Quebec Admiralty District which maintained the action and dismissed the counter-claim. The plaintiffs are the owners of the S.S. *Roberval*, her master and members of her crew, and the owners of the cargo on board the *Roberval*. The defendants are the S.S. *Richelieu* and her owners. The action and the counter-claim arise out of a collision between the two ships in the river St. Lawrence near Three Rivers at about 11.18 p.m. daylight saving time on August 29th, 1942.

The *Roberval* was proceeding down stream at its full speed of seven knots with a current of approximately two miles per hour. In the vicinity of Three Rivers the regular ship channel divides into two branches and the *Roberval* was following the north branch. The *Richelieu* was coming upstream at its full cruising speed of fourteen knots and was below buoy 49C in the ship channel east of the junction of the two branches. The *Richelieu* intended to proceed by the south branch and, seeing the *Roberval*, gave two short blasts of its whistle to indicate that it was directing its course to port, and in fact ported. Those on the *Roberval* say that they heard only one blast, which would indicate that the *Richelieu* was directing its course to starboard, although those in the wheelhouse of the *Roberval* noticed the alteration of the *Richelieu's* course to port. Those on the *Richelieu*, not hearing any immediate answer from the *Roberval*, stopped their engines. Immediately thereafter the *Roberval* answered with one blast and thereupon the *Richelieu's* engines were ordered full speed astern and three blasts of its whistle were given. The collision occurred almost immediately.

The trial judge was assisted by nautical assessors but no mention is made in his judgment as to the views of these assessors, or either of them, and the only place in the record, to which we were directed as indicating that the assessors took any part in the proceedings, was at pages 156, 157. This occurred during the questioning, by the judge, of Léopold Bernier, the second officer on the *Richelieu*,

on the point as to what might have caused those on the *Roberval* to hear only one blast of the *Richelieu's* whistle. The trial judge found that two blasts had been given but that only one was heard. The only suggestion in his judgment as to why this should be is the condition of the atmosphere but it was a calm night with a light breeze blowing up the river and there appears to be no foundation in the record for the suggestion.

I accept the trial judge's finding that while two blasts of its whistle were given by the *Richelieu*, those on the *Roberval* were telling the truth when they said they heard only one. The inevitable result of this, in my opinion, is the conclusion that those on the *Roberval* were not keeping a proper lookout because, if they were, they would have heard the *Richelieu's* two blasts. It was contended by the respondents that no signal should have been given by the *Richelieu* and that, although she wanted to take her usual course up the south branch, she should have waited until the *Roberval* had passed in front of her. None of the international rules of the road require this to be done. It is quite evident that, if the two ships kept on their courses, there would be a collision. The *Richelieu*, therefore, ported a little and gave the signal therefor, which in the terms of Article 28 was proper because the ship was taking a course "authorized by the Rules". The interpretation of this word "authorized" given by Sir Francis Jeune in *The Uskmoor* (1), was approved by the Court of Appeal in *The Anselm* (2), and *The Aristocrat* (3). What Sir Francis Jeune said was this:—

It has been sought to put a rather narrow interpretation on the rule. Of course the word "required" is clear enough. There are certain things required by the rules to be done. The word "authorized" is, however, very much larger, and I am inclined to think that a large interpretation ought to be given to it, and that it includes any course which, for the safety of the vessels, good seamanship requires to be taken with reference to the other vessel then in sight.

As is pointed out in the ninth edition of Marsden's *Collisions at Sea* at page 429:—

This definition, it may be observed, covers every course which "good seamanship" requires.

(1) [1902] P. 250, at 253.

(2) [1907] P. 151.

(3) [1908] P. 9.

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The trial judge found the *Richelieu* entirely to blame for the accident for four reasons:—

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A.—Le S.S. *Richelieu* a changé sa course sans attendre le résultat de l'échange des signaux; B.—Les signaux du S.S. *Richelieu* ont été donnés trop tard; C.— S.S. *Richelieu* a persisté dans sa mauvaise manœuvre, nonobstant le signal donné par le S.S. *Roberval* et sa course à tribord; D.—Les engins du S.S. *Richelieu* ont été arrêtés et renversés trop tard.

Kerwin J.

As to the first, the *Richelieu* acted properly in stopping its engines when it did not hear any reply to its signal and then in reversing its engines when it did hear the one blast from the *Roberval*. As to the second, I can find no evidence the *Richelieu's* signals were given too late and, with respect, there is nothing in the record from which any such inference may be drawn. As to the third, I have already pointed out what was done on the *Richelieu* and I can find no justification in the suggestion, if that is what is meant, as was argued by the respondents, that the wheel of the *Richelieu* should have been put to starboard. It appears to me that the collision would have been worse, with possible loss of life, if that had been done. As to the fourth, I am constrained to disagree with the trial judge that the *Richelieu* had stopped and reversed its engines too late.

As to all of these, it is I think impossible to estimate the precise times that elapsed between the various episodes, such as the sighting of the *Roberval* by the *Richelieu*, the giving of the signals, and the collision. It is true that only a short time intervened between the first and the last but whistles are not to be used when ships are a great distance apart as they might easily be mistaken by some other intervening vessels. The truth of the matter is that the *Richelieu* acted properly at all times and the cause of the collision was the absence of a proper lookout by those on the *Roberval*. Even then the collision might have been avoided if the Captain of the *Roberval*, seeing what the *Richelieu* was actually doing, had altered his course to port and had slowed his engines.

I would maintain the appeal, dismiss the claim and allow the counter-claim with costs throughout. There may be a reference to the Registrar to fix such damages as may be established by the appellants.

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*Appeal allowed and judgment appealed
from modified.*

Counter-claim also allowed in part.

Solicitors for the appellants: *Heward, Holden, Hutchi-
son, Cliff, Meredith & Collins.*

Kerwin J.

Solicitor for the respondents: *William Morin.*
