

OCEANIC STEAMSHIP NAVIGATION }
 CO., LTD. } PLAINTIFF;

1927
 Dec. 30.

v.

THE SS. *LINGAN* DEFENDANT.

AND

THE LINGAN STEAMSHIP CO., LTD. PLAINTIFF;

v.

THE SS. *DORIC* DEFENDANT.

Shipping—Collision—Good seamanship—Harbour

On June 19, 1927, at 9.43 p.m., the night being fine and clear, the *D.*, a passenger boat, was moored in Quebec Harbour heading down stream and had all required lights, and was otherwise lighted up as a passenger boat. There was a flood tide of three miles an hour and the *D.* being bound for Montreal had to turn to go up the river. The river at this point is about 3,000 feet in width. The *D.* when leaving dock gave three blasts to warn ships in dock. There was then no other ship in sight except one coming up from the Island of Orleans. After working the engines for 7 minutes to clear the shore, the *D.* went ahead and started to turn, the flood tide helping her. The collision took place 6½ minutes later about 600 feet from the south shore, the starboard bow of the *L.* striking the portquarter of the *D.* Before porting her helm, the *D.* gave one blast indicating she was directing her course to starboard. The *L.*, a freighter, was then below Buoy 140 B., and showed her red light, but suddenly, as the *D.* was pointing to the south shore, the *L.*, which was over half a mile away, starboarded her helm, changed her course and began to show her two lights, then a green light only. As the *L.* changed her course, the *D.* gave a second short blast, to which the *L.* replied with two short blasts, indicating she was altering her course to port, which course she continued to follow until the collision. When 750 feet from the *D.*, the *L.* reversed her engines, but too late. It was impossible for the *D.* to go full speed for fear of grounding, but to ease the blow she starboarded her helm, put her port engine astern and the starboard engine ahead.

Held, on the facts, that by attempting to pass starboard to starboard instead of going between the north shore and the stern of the *D.*, and by starboarding her helm when she did the *L.* violated the rules of good seamanship and was wholly to blame for the collision.

2. That although a vessel emerging from a dock must be navigated with utmost care, yet other vessels should be manoeuvred with consideration to the difficulties of the vessel that is emerging. The manoeuvres and caution to be taken in such cases all depend on the distance at which the ships sight each other.

These two actions, consolidated for purposes of the trial, were the result of a collision between the SS. *Doric* and the SS. *Lingan*.

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The actions were tried before the Honourable Mr. Justice Archer, at Montreal, assisted by two assessors.

Arthur Holden, K.C., for the SS. *Doric* and the Oceanic SS. Navigation Co., Ltd.

L. Beauguard for the SS. *Lingan* and the Lingan SS. Co., Ltd.

The facts are stated in the reasons for judgment.

ARCHER J., now (December 30, 1927), delivered judgment (1).

These two actions *in rem* were joined for the purposes of the trial and judgment.

At about 9.43 p.m. on June 19, 1927, the SS. *Doric* and the SS. *Lingan* came into collision in the River St. Lawrence opposite the city of Quebec, at about a distance of 600 feet from the south shore (Levis).

The SS. *Doric*, commanded by Captain Samuel Boulton, is a passenger ship of 9,870 tons net, 16,084 tons gross. She is a twin screw ship, measuring 601 feet in length and 61 feet 5 inches beam, and at the time of the collision was drawing 25 feet forward and 26 feet 8 inches aft. Her speed is 16 knots in smooth water.

The SS. *Lingan* is a freight boat, carrying coal from Sydney to Montreal. She was under the command of Captain Lewis. Her length is 375 feet and her beam is 52 feet. She was drawing 29 feet forward, and 25 feet aft. Her tonnage is 4,676 gross, 2,603 net. Her speed is about 9 knots. At the time of the collision Captain Lewis was on the bridge with the mate and third mate.

On the evening in question there was no wind to speak of. The weather was fine and clear, and there was a flood tide running about 3 knots.

The River St. Lawrence is approximately 3,000 feet wide at the place of the collision.

The plaintiff's case is as follows:—(His Lordship here cites from pleadings.)

(1) The judgment herein was appealed to this Court, and on the 19th November, 1928, was affirmed by the Honourable Mr. Justice Maclean, the Court observing that the trial of actions upon evidence taken before another tribunal was an undesirable practice, and should not be encouraged.

The case of the *Lingan* is as follows:—(His Lordship here cites from pleadings.)

It is claimed by the *Lingan* that amongst the faults attributable to the *Doric* is that the *Doric* began to turn in a frequented channel at a moment when a vessel was seen down the river impelled by flood tide, and that the *Doric* should have waited the passing of the *Lingan*.

By consent of the parties this case was submitted on the evidence taken before the Wreck Commissioner, subject to the right of the parties to recall the same witnesses. Two witnesses were recalled, Captain Boulton and Pilot Angers of the *Doric*, both of whom have had considerable experience in navigating the St. Lawrence.

Some of the evidence is most unsatisfactory, especially as the witnesses give illustrations with models as to the positions of the ships and this court has not had the benefit of seeing all such illustrations.

At 9.30 p.m. on June 19, 1927, all hands were at stations on the *Doric*. The Chief Officer and the Second Officer were on the forecastle-head, and the fourth and fifth officers were on the bridge with the Captain and the Pilot. The first and third officers were aft. The *Doric* was then moored at Berth 26 (See Exhibit L-1) heading downstream, and being bound for Montreal had to turn to proceed up the river. In starting from the wharf after the lines had been cast off the ship went astern, and three blasts of the whistle were given in case some ship might be coming out of the docks which are indicated in Exhibit L-1. At that time there was no other ship in sight except a ship coming up from the Island of Orleans. After working the engines for seven minutes to clear the shore the *Doric* went ahead and started to turn opposite the breakwater, which is indicated by the letter "A" on the chart Exhibit L-1, the flood tide at that point would help her to turn more rapidly. The collision took place six and a half minutes later. Before porting her helm Pilot Angers of the *Doric* gave a signal of one blast of the whistle, indicating that he was directing his course to starboard.

The Master of the *Lingan* claims he only got a one-blast whistle from the *Doric* in answer to his two-blast signal, and he then thought the *Doric* was to proceed down the river. I do not believe this statement. The first signal

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was certainly given by the *Doric*, and the Master of the *Lingan* had no right to believe the *Doric* would proceed down the river. It is rather difficult to determine exactly at what distance the *Lingan* was at that time, but there is no doubt she was at some distance below buoy 140-B. She then showed her red light to the *Doric*, and I believe the officers on watch on the *Doric* when they say that owing to the distance between the ships there could not be any anticipation whatsoever of trouble. Suddenly the helm of the *Lingan* was put astarboard and she commenced to show her two lights, and then her green light only. The *Doric* gave a second short blast of her whistle, and in answer the *Lingan* gave two short blasts indicating she was altering her course to port, and continued to follow this course up to the time of the collision.

It is claimed by the Captain of the *Doric* that when he gave the second signal of one blast the *Lingan* was one mile away. The Captain of the *Lingan* claims he was 2,000 feet away at that time, and that he stopped his engines. Why not reverse? It is certainly difficult for the witnesses to give the exact distance between the two ships, and there is a certain amount of guessing. On the whole, however, when we consider the time that elapsed after the *Doric* started to turn, the speed of the ships, the time of the collision, the place of the collision, and all the evidence, it seems clear that the *Lingan* was much farther down than is claimed by the defendant. I would say the *Lingan* was somewhat over half a mile away at that time.

The *Doric* was then pointing towards the south shore, and gave another blast of her whistle, which was again answered by a two-blast signal. When at a distance of about 750 feet from the *Doric* the *Lingan* reversed her engines, but too late to prevent the collision. As the *Doric* was approaching the south shore it was impossible for her to go full speed on account of the danger of running aground on the south shore, and her helm was put astarboard, and her port engine astern and her starboard engine ahead, to ease the blow. The starboard bow of the *Lingan* struck the port quarter of the *Doric*.

Much of the evidence given on behalf of the *Lingan* is incredible. If the court accepted the evidence of Captain Lewis and the evidence of the other officers on watch on

board the *Lingan* it would be impossible to explain how the collision could have happened. The *Lingan's* witnesses claim the ship was abreast of buoy 140-B when the *Doric* was still parallel to the wharf, and the Captain of the *Lingan* goes so far as to say that when at that distance the *Doric* was still tied up at the wharf. A ship abreast of buoy 140-B coming up on the Quebec ranges would be approximately 900 to 1,000 feet from the end of the wharf where the *Doric* was docked (that is at the point marked "A" on Exhibit L-1) and between 1,800 and 1,900 feet from the starboard side of the *Doric* in a direct line. Even if the *Doric* had not been tied to the wharf but was still parallel with the wharf, or near the wharf, if the *Lingan* had kept the course it is claimed she was then following she would have easily passed starboard to starboard before the *Doric* attempted to turn and take her course towards Montreal.

I may say that although there may be discrepancies in the evidence produced on behalf of the *Doric* as to the time which elapsed between the different manoeuvres, and as to the distances, on the whole I accept this evidence in preference to the evidence produced by the *Lingan*. There is no doubt in my mind the signals were given as sworn to by the witnesses on behalf of the *Doric*, and that the *Lingan* coming up with a flood tide was going faster than is admitted by her Master and other witnesses.

I do not think the *Doric* started to turn when the *Lingan* was two miles away, but, as I said before, I am of opinion the *Lingan* was over half a mile away when she suddenly changed her course by starboarding her helm, and showed her green light, instead of porting her helm if necessary.

After considering the positions of the two ships when the *Doric* started to turn and when the *Doric* gave the second one-blast signal, and the place of the collision 600 feet from the south shore, my assessors and I agree that if the *Lingan* had been handled according to the rules of good seamanship there would have been no collision, as the *Lingan* could easily have passed between the north shore and the stern of the *Doric*.

It is claimed by the *Lingan* that amongst the faults attributable to the *Doric* is the fact that the *Doric* began to

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turn in a frequented channel at a moment when a vessel was seen down the river impelled by flood tide, and that the *Doric* should have awaited the passing of the *Lingan*. In support of the above defendant's counsel cites Marsden, 8th Edition, page 380:

As between vessels leaving docks, or coming out between breakwaters, and other vessels passing outside, the crossing rule may not apply. That, it has been said, must always depend upon the distance at which vessels sight one another. The vessel emerging must be navigated with the utmost caution, but the other vessel should be manoeuvred with consideration for the difficulties of the emerging vessel arising from obstructions, which prevent her from moving freely in all directions. A vessel, by getting under way when another is approaching, cannot put the other into the position of the give-way ship under this rule.

He also refers to the following cases: *The Llanelly* (1); *The Sunlight* (2); *The Velocity* (3); *Prince Leopold de Belgique* (4).

These cases refer to ships entering a river from the docks. In this case the officers on watch on the *Lingan* had seen the *Doric* alongside Berth 26 for some time. They saw her masthead lights and her green light, and she was all lighted up as passenger ships generally are. If they had a proper lookout they could not have helped knowing that she was moving for some time before she started to turn and take her course up the river.

The distance between the vessel emerging from the dock and the vessel coming up or down the river as mentioned in the above cases is entirely different from the present case. In this case the distance was far greater than in the cases mentioned. It is not contested that a vessel emerging from a dock must be navigated with the utmost care, but, on the other hand, as stated by Marsden, the other vessel should be manoeuvred with consideration for the difficulties of the vessel that is emerging. I am of opinion that all depends on the distance at which ships sight each other. In this case it is proven that the *Doric*, which should have been moving for some time, started to turn when the *Lingan* was quite a distance below buoy 140-B. Moreover, when the *Doric* gave a second one-blast signal, as the *Lingan* started to starboard her helm, there was then a distance of over half a mile between the vessels.

(1) (1914) P. 40.
 (2) (1904) P. 100.

(3) (1870) 39 L.J. Adm. 20.
 (4) (1909) P. 103.

My assessors advise me, and I agree with them, that under the circumstances proven the *Doric* was quite justified in leaving her dock as she did and that she was handled with proper care and skill.

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It was held in the case of the *Gulf of Suez* (1), that the question whether the crossing rule, Article 19, applies in a case of a vessel coming out of dock and a vessel coming up or down the river depends on the distance at which they sight each other and the vessels were just sufficiently far apart for the crossing rule to apply, and the *Gulf of Suez* was blamed for not stopping or reversing her engines.

Rule 19 reads as follows:—

When two steam vessels are crossing, so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way of the other.

For the purposes of this case I do not think it is necessary for me to determine if Rule 19 does apply as fault would attach to the *Lingan* whether the two ships were under the governance of the crossing rules or whether their conduct was to be judged by good seamanship independently of the rules.

I find the *Lingan* solely to blame.

There will, therefore, be judgment against the SS. *Lingan* and her bail for the damages proceeded for, and for costs; with the ordinary reference to the Deputy Registrar to assess the amount of damages.

The action of the *Lingan Steamship Company, Ltd.*, is dismissed with costs.

Judgment accordingly.

Atwater, Beauregard & Phillimore for plaintiff.

Meredith, Holden, Heward & Holden for defendant.