

1962

BETWEEN:

Mar. 20,
21, 22HANS-EDWIN REITH AND ORION SCHIFFFAHRTS-
GESELLSCHAFT REITH & CO. PLAINTIFFS;

1963

Jan. 18

AND

ALGOMA CENTRAL & HUDSON }
BAY RAILWAY COMPANY ... } DEFENDANT.*Admiralty—Collision on Great Lakes—Apportionment of negligence—
Damages.*

Plaintiffs' Ship *B* and defendant's ship *A* collided in Lake Huron and the plaintiffs sue for damages and the defendant counter-claims. The collision occurred in United States territorial waters at a point about midway between the Lake Huron lightship and the northern end of a dredged channel which extends from the northern end of the St. Clair River northwardly for approximately six miles into Lake Huron. It was convenient for an upbound ship intending to take the westerly course to keep to the western side of the channel and pass any downbound traffic starboard to starboard. Ship *A* was upbound on the western side of the channel going to Sault Ste. Marie. Ship *B* after leaving an anchorage about a mile to the north-eastward of the lightship proceeded with her engines at full speed ahead in a semi-circular north to south-westerly course toward the channel entrance. She had observed ship *A* proceeding northwardly in the western side of the channel. Ship *B* blew a single blast of her whistle to indicate she was keeping her course and speed. There was no reply. The signal was repeated four or five times in eight minutes and ship *B* kept her course with her speed increasing. When ship *A* was four or five ship lengths from ship *B* the master of ship *B* observed several puffs of steam from ship *A* which though he heard nothing, he took to be a danger signal and immediately ordered full speed astern and hard astarboard in an effort to avoid the collision which occurred about two minutes later.

Held: That ship *A* was two-thirds to blame and ship *B* one-third to blame.

2. That ship *B* was at fault in creating the risk of collision by directing her course to the portion of the channel being navigated by ship *A* without waiting until that ship had cleared the channel.
3. That ship *A* was at fault in holding her course and speed along the western side of the channel until there was imminent danger of collision, without having signalled her intention, and without having ascertained by signal or otherwise whether the course ship *B* was following would cross her own, and without having obtained the concurrence of ship *B* for a starboard to starboard passing, or having taken in due time the action required by the crossing rule to keep out of her way, and in having negligently pursued her course for a time even after hearing ship *B*'s signal and thereby made the collision inevitable despite the action of ship *B* to avoid it.

ACTION by plaintiffs and counter-claim by defendant to recover damages resulting from collision of two ships.

The action was tried before the Honourable Mr. Justice Thurlow at Ottawa.

R. C. Holden, Q.C. and *A. S. Hyndman* for plaintiffs.

F. O. Gerity, Q.C. for defendant.

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The facts and questions of law raised are stated in the reasons for judgment.

THURLOW J. now (January 18, 1963) delivered the following judgment:

In this action the plaintiffs claim and the defendant counterclaims damages arising from a collision which occurred in Lake Huron on November 11, 1960 between the plaintiffs' ship *Beteigeuze* and the defendant's ship *Algosoo*.

The collision occurred in United States territorial waters at a point about midway between the Lake Huron light ship and the northern end of a dredged channel which extends from the northern end of the St. Clair River northwardly for approximately six miles into the lake. The channel was 800 feet wide and was marked at intervals of approximately one mile on its western side by black buoys numbered B1, B3, B5, B7, B9 and B11, B11 being the northernmost buoy, and on its eastern side by red buoys numbered R2, R4, R6, R8, R10 and R12. From B1 to B7 the course of the channel was approximately true north but between B7 and B11 it was 5° T. The light ship was located 1,500 feet to the northwestward of B11 on a bearing of 341° T. from it. The channel was dredged to a depth of 30 feet, the water on either side of the most northerly mile of it being from 25 to 30 feet deep. North of the northern end of the channel the water gradually deepens.

To the eastward of the light ship and 1,000 feet from it is a point shown on the charts at which the lines of four courses commonly used by upbound and downbound ships meet. The most easterly and the most westerly of these are upbound courses leading to eastern and western Lake Huron ports respectively and between them are two downbound courses from the same ports. An upbound ship leaving the channel from the eastern side and intending to take the easterly course would thus experience no problem with ordinary downbound traffic in getting on her course but

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from the same position one intending to take the westerly upbound course might well be delayed if there was a stream of downbound traffic in the vicinity as she would be unable to cross its path and would be obliged to wait for it to pass before getting on her course. For this reason it was generally more convenient for an upbound ship intending to take the westerly course to keep to the western side of the channel and pass any downbound traffic starboard to starboard.

On the morning of the collision the visibility was excellent, the wind was south-southwest at 25 to 30 miles per hour and the current was negligible.

The *Beteigeuze* is a single screw steel steamship of the Port of Hamburg of 4,929 tons gross and 2,778 tons net register, 442 feet in length and 58 feet 4 inches in beam. She was commanded by Captain Gustav Theodore Peterson, who was on his first voyage through the Great Lakes, and at the particular time was downbound from Saginaw, Michigan to Detroit. She was carrying a cargo of 4,445 tons and was drawing 18 feet 7 inches.

The *Algosoo* is a single screw steel steamship registered in Sault Ste. Marie. She is 346 feet long, 48 feet wide and of 3,373 tons gross and 2,152 tons net register. She was commanded by Captain Frank G. Wagg and was upbound from Toledo to Sault Ste. Marie with a load of coal. Her draught was 20 feet 2 inches. Both vessels were equipped with radio-telephones.

The *Beteigeuze* left Saginaw on November 10th and on reaching the vicinity of the northern entrance to the channel early the following morning anchored about a mile to the eastward of the Lake Huron light ship, to wait for a pilot to take her through the St. Clair River. Several hours later on being advised by radio-telephone from Sarnia to proceed in to meet the pilot she hove anchor and at 10:17 proceeded at full steam ahead to shape a semicircular course first to the northwestward and then around to the southwest toward the northern entrance of the channel. This movement according to the evidence of her master ultimately brought the ship on a course of about 210° or 215° T. with the B11 buoy slightly on the port bow. By this time the *Algosoo* had been observed proceeding northwardly in the western side of the channel some three to four miles away with another ship, the *Joe S. Morrow* also on the western

side of the channel following her about three-quarters of a mile astern, and the *Beteigeuze* thereupon blew a single blast of her whistle to indicate that she was keeping her course and speed. There was no reply and in the period of about eight minutes which followed she repeated the signal four or five times and meanwhile kept her course with her speed increasing as she worked up toward her full speed of nine knots. Though the *Algosoo* had been observed to be on the western side of the channel the master of the *Beteigeuze* expected her as the give away ship in a crossing situation to alter course to starboard and pass astern of the *Beteigeuze* and he gave no consideration to deferring his approach to the channel entrance until the *Algosoo* and the *Joe S. Morrow* had cleared it. The *Algosoo* however continued on for about two miles without changing her course or speed and, according to Captain Peterson, when she had passed B11 but was still close to it and the *Beteigeuze* was four or five ship lengths from her and moving at about seven knots he observed several puffs of steam which, though he heard nothing, he took to be a danger signal. He thereupon immediately ordered full speed astern and hard astarboard in an effort to avoid a collision. The *Beteigeuze* turned rapidly to starboard and her speed was reduced but a collision nevertheless occurred about midway between B11 and the light ship some two minutes after the orders were given, the stem of the *Beteigeuze* striking the starboard side of the *Algosoo* at an angle of about 30°. At the moment of collision the speed of the *Beteigeuze* was said to have been about three knots and her heading 298° T. Captain Peterson's evidence is supported in general by that of his chief officer, but this witness placed the position of the *Algosoo*, at the time when the puffs of steam were observed, in the channel immediately south of the entrance buoys. Though the doors on either side of the bridge of the *Beteigeuze* were open and the wind was blowing directly from the *Algosoo* to the *Beteigeuze* no signals from the *Algosoo* were heard at any time and the one series of puffs of steam was the only signal observed. Some time after the collision but on the same day a note in German was entered in the log of the *Beteigeuze* which stated that a starboard signal had been given in good time and had been repeated several times while approaching the first canal buoys, that contrary to the regulations of

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marine law commonly in use the *Algosoo* did not react to the signal but maintained her course, that "due to the incomprehensible behaviour of the ship *Algosoo* very quickly the danger of a collision arose" and that in order to prevent this danger for both ships "we gave engine full reverse and wheel hard to starboard". No record was made of the course of the *Beteigeuze* having been 210° or 215° prior to the alteration to starboard.

From the *Algosoo*, which was proceeding northwardly up the channel, the *Beteigeuze* was first observed at a distance of about six miles while she was still at anchor east of the light ship. Some time afterwards the *Beteigeuze* was seen to be under way and headed for the northern entrance of the channel but Captain Wagg who intended taking the westerly upbound course on passing the light ship wanted a starboard to starboard passing and thinking he would be able to be out of the channel before the *Beteigeuze* reached the entrance he continued on his course some 50 to 60 feet from the western side of the channel with his ship working up to her full speed of 10 miles per hour which she reached shortly after passing B5. He did not, however, signal his intention nor did he hear any of the *Beteigeuze* signals until he had reached a point some two ship lengths of his ship south of B11, when, according to his evidence, the *Beteigeuze* was to the northeastward of his ship about in line with B12 and some two ship lengths to the northeastward of it and heading somewhat north of west. At that point on hearing a single blast from the *Beteigeuze* he replied with a danger signal of five short blasts and followed it after an interval with two blasts to indicate his desire for a starboard to starboard passing. At the same time he altered his course slightly to port to pass very close to B11. Captain Wagg did not know whether the *Beteigeuze* had a lake pilot on board or not but he had overheard the radio-telephone conversation between the *Beteigeuze* and the Pilot Station at Sarnia and knew that she did not have a river pilot on board and he was in no doubt from the time when he first observed her to be under way and headed for the channel entrance that she intended to enter and proceed down the channel. Immediately after sounding his signal Captain Wagg endeavoured to contact the *Beteigeuze* by radio-telephone but was not successful. When the *Algosoo* was abreast of B11

another single blast was heard from the *Beteigeuze* and Captain Wagg thereupon repeated his danger signal, followed it at an interval with two short blasts and altered course hard aport but did not reduce his speed. The ship went very fast to port but this manoeuvre did not succeed in avoiding the collision which according to Captain Wagg's evidence occurred about 460 feet to the north-northwestward of B11. This would indicate that the *Algosoo* travelled about 1,160 feet from the time of hearing the first signal from the *Beteigeuze* until the moment of impact which at ten miles per hour would have taken somewhat less than a minute and a half. Captain Wagg also stated that at the time when he first heard the signal from the *Beteigeuze* there was not sufficient room for him to avoid a collision by turning to starboard or reversing his engines or both.

At this point I should say that I regard as credible the evidence of Captain Peterson and of his chief officer with respect to the movements of the *Beteigeuze* after she hove anchor and that for some minutes before reversing her engines and going to starboard she was headed for B11 on a southwesterly course. I also accept their evidence that a single blast of her whistle was blown on four or five separate occasions while she was on that course but I do not regard it as established that the course was 210° or 215°. This would involve a conclusion that she turned 83° to 88° to starboard in the period of about a minute and a half before the collision which Captain W. M. Bowen and Captain P. F. Batten, the assessors appointed to assist me in the case, advise me is not reasonable. On the other hand, I do not think the southwesterly course of the *Beteigeuze* was more westerly than 240°, which is the bearing of B11 from her place of anchorage, and I regard as inaccurate the evidence of Captain Wagg that the *Beteigeuze* was on a course somewhat north of west or about 280° to 290° at the time when his ship was two ship lengths from B11 as well as his evidence as to the position of the *Beteigeuze* at that time. Such a position would put the *Beteigeuze* at that moment further from the point of collision than the *Algosoo* and if it were correct having regard to the speed and directions of the ships there should have been no collision or no collision such as occurred. The *Algosoo* was I think probably somewhat nearer to B11 than two ship lengths but still somewhat south of it when Captain Wagg

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first heard a single blast signal from the *Beteigeuze* which he answered with the first of his two danger signals and it was this danger signal which was observed from the *Beteigeuze*. It was at this point that the master of the *Beteigeuze*, which was not yet directly opposite the channel entrance though probably near to or opposite the prolongation of its eastern side and had as yet made no alteration to port to steer for the entrance, ordered her engines full astern and her helm hard astarboard and that a further and somewhat longer single blast of her whistle was blown. When the *Algosoo's* danger signal was observed but four to five lengths of the *Beteigeuze* (approximately 2,000 feet) separated the ships and with combined speeds of 10 miles per hour and seven knots though the latter would be decreasing in the meantime they were not much more than a minute and a half from collision. In the plaintiffs' preliminary act the intervening period is estimated at about a minute. On the other hand the engine manoeuvre book of the *Beteigeuze* records the reversal of her engine at 10:34 and the engine room log records the collision at 10:36 but these entries were made by different persons and I take them to be merely records of minutes shown on the clock. They might indicate an interval of as much as nearly three minutes or as little as just over one minute. The second danger signal by the *Algosoo* followed soon afterwards when she had reached B11 but it was neither heard nor observed by those on the *Beteigeuze*. However, at that point no further action by the *Beteigeuze* to avoid collision was possible since her engines had already been put in reverse and her helm hard astarboard.

I turn now to the rules governing the navigation of ships in the locality. In their preliminary act and in the statement of claim the plaintiffs alleged contravention by the *Algosoo* of several of the United States Great Lakes Rules and of the equivalent provisions of the Canadian Rules of the Road for the Great Lakes as well as of several of the United States Coast Guard Pilot Rules for the Great Lakes and at the trial a copy of the United States rules was filed as Exhibit 2. From this it appears that the United States Great Lakes Rules are contained in an Act of Congress passed in 1895 and that by a subsequent amendment of the Act authority was given to the Commandant of the Coast Guard to establish such regulations to be observed by

steam vessels in passing each other, not inconsistent with the provisions of the Act as he from time to time deems necessary which regulations when adopted by the Commandant under the authority of the Act are to have the force of law. Supplementary rules apparently made under the authority of the Act and entitled "Navigation Requirements for the Great Lakes and St. Mary's River" are contained in the exhibit and appear to be the rules referred to in the plaintiffs' preliminary act and statement of claim as the United States Coast Guard Pilot Rules for the Great Lakes. The Act, it may be noted, purports to make the rules applicable in the navigation of United States vessels anywhere in the Great Lakes and of all vessels on the lakes while in the territorial waters of the United States. In offering Exhibit 2, counsel for the plaintiffs observed that the United States rules are exactly similar to the Canadian rules and at no stage was any question raised as to which set of rules should be applied in resolving the question of responsibility for the collision.

In its preliminary act and defence the defendant referred to the Canadian Rules of the Road for the Great Lakes and at the trial its counsel took the position that ss. 645 to 647 of the *Canada Shipping Act* R.S.C. 1952, c. 29, makes the Canadian Rules binding in this Court on foreign as well as Canadian ships. To my mind however there is a difficulty with this position in that while s. 647(4) provides that:

. . . in any case arising in a Canadian court concerning matters arising within Canadian jurisdiction, foreign ships shall so far as respects the Collision Regulations and the said provisions of this Act, be treated as if they were Canadian ships.

it does not appear to me that the Canadian Rules of the Road for the Great Lakes were applicable to either the plaintiffs' or the defendant's ship. For while the rules purport to apply anywhere in the Great Lakes the rule making power conferred on the Governor-in-Council by s. 645(1) is limited to the making of "rules or regulations for the prevention of collisions at sea and on the inland waters of Canada or any part thereof" and having regard to the definition of "inland waters of Canada" contained in s. 2(4) of the Act, the portions of the Great Lakes comprised within the boundaries of the United States do not appear to fall within the areas for which the making of rules and regulations is authorized. While it probably makes no difference

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in the result I think the situation should be regarded as governed by the United States rules.

Rules 18, 20, 21, 23, 26, 27 and 28 of the United States Rules of the Road for the Great Lakes and Rule 90.10 of the United States Coast Guard Regulations are as follows:

- Rule 18. When two steam vessels are crossing so as to involve risk of collision the vessel which has the other on her own starboard side shall keep out of the way of the other.
- Rule 20. Where, by any of the rules herein prescribed, one of two vessels shall keep out of the way, the other shall keep her course and speed.
- Rule 21. Every steam vessel which is directed by these rules to keep out of the way of another vessel shall, on approaching her, if necessary, slacken her speed or stop or reverse.
- Rule 23. In all weathers every steam vessel under way in taking any course authorized or required by these rules shall indicate that course by the following signals 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, as provided in rule twenty-six:
- One blast to mean, "I am directing my course to starboard."
- Two blasts to mean, "I am directing my course to port."
- But the giving or answering signals by a vessel required to keep her course shall not vary the duties and obligations of the respective vessels.
- Rule 26. If the pilot of a steam vessel to which a passing signal is sounded deems it unsafe to accept and assent to said signal, he shall not sound a cross signal; but in that case, and in every case where the pilot of one steamer fails to understand the course or intention of an approaching steamer, whether from signals being given or answered erroneously, or from other causes, the pilot of such steamer so receiving the first passing signal, or the pilot so in doubt, shall sound several short and rapid blasts of the whistle; and if the vessels shall have approached within half a mile of each other both shall reduce their speed to bare steerageway, and, if necessary, stop and reverse.
- Rule 27. In obeying and construing these rules due regard shall be had to all dangers of navigation and collision and to any special circumstances which may render a departure from the above rules necessary in order to avoid immediate danger.
- Rule 28. Nothing in these rules shall exonerate any vessel, or the owner or master or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or of a neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.
- Rule 90.10. *Vessels approaching each other at right angles or obliquely.*—
- (a) When two steam vessels are approaching each other at right angles or obliquely so as to involve risk of collision,

other than when one steam vessel is overtaking another, the steam vessel which has the other on her own port side shall hold her course and speed; and the steam vessel which has the other on her own starboard side shall keep out of the way of the other by directing her course to starboard so as to cross the stern of the other steam vessel; or, if necessary to do so, slacken her speed or stop or reverse. The steam vessel having the other on her own port side shall blow one distinct blast of her whistle as a signal of her intention to cross the bow of the other, holding her course and speed, which signal shall be promptly answered by the other steam vessel by one distinct blast of her whistle as a signal of her intention to direct her course to starboard so as to cross the stern of the other steam vessel or otherwise keep clear.

- (b) If from any cause whatever the conditions covered by this situation are such as to prevent immediate compliance with each other's signals, the misunderstanding or objection shall be at once made apparent by blowing the danger signal, and both steam vessels shall be stopped, and backed if necessary, until signals for passing with safety are made and understood.

There was no rule requiring ships to keep to the starboard side of the channel in question or to pass ships approaching in it port to port.

The plaintiffs submitted that the *Algosoo* was solely to blame for the collision, that if she had been keeping an adequate lookout she would have heard or observed the early signals of the *Beteigeuze* and would have had plenty of time to go to starboard or slow down so as to avoid her, that whether she heard the signals or not it was her duty under the crossing rule to keep out of the way of the *Beteigeuze* which she failed to do, and that she kept on at full speed throughout though she could still have avoided collision by reversing and going to starboard when she first heard a signal from the *Beteigeuze*. They also submitted that the *Beteigeuze* complied with the rules in every way, that it was her duty to keep her course and speed until the last possible moment and only then to take action to avoid collision, that she held her course and speed until that moment and then went full astern and to starboard and that she was not guilty of any fault at all.

The question whether the *Algosoo* could still have complied with the crossing rule and kept out of the way had she gone to starboard or reversed or both immediately upon first hearing the single blast signal of the *Beteigeuze* is one of considerable difficulty and unfortunately the views of

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the assessors on this point are not in agreement. In Captain Batten's opinion assuming the *Beteigeuze* to have been headed for B11 on a course of 240° T. and the distance between the ships to have been four lengths of the *Beteigeuze* at the time mentioned, the *Algosoo* could still have avoided a collision by at least 60 feet by going hard astarboard. This opinion was based on the assumption that the *Beteigeuze* would also take the action which she in fact took shortly afterwards to reverse her engines and go hard astarboard. In Captain Batten's view such a turn to starboard by the *Algosoo* would have avoided the *Beteigeuze* by an even greater distance if the ships were further apart than four lengths of the *Beteigeuze* at the time mentioned and also if the course of the *Beteigeuze* was in fact more southerly than the 240° T. which I have estimated. It would, however, have been a closer passing than 60 feet if instead of reversing and going to starboard when she did, the *Beteigeuze* had kept on a course of 240° or thereabouts for any appreciable time after her signal was given and there would have been a collision if she had held the course and not made a turn to starboard. As Captain Wagg was not expecting the *Beteigeuze* to alter to starboard this may I think explain his view that at that stage there was not enough room to avoid the *Beteigeuze* by going to starboard. Captain Bowen's advice on the question was that while he could not say that a hard astarboard turn by the *Algosoo* would not have avoided collision, he was not satisfied that such a turn would have avoided it. Neither assessor considered that reversing the *Algosoo's* engines at that stage would have been wise or effective. On the whole, while I think that an alteration to starboard by the *Algosoo* would probably have avoided a collision if the *Beteigeuze* had also altered to starboard and reversed, as in fact she did, I do not think it can be assumed that the *Beteigeuze* which had just blown a signal indicating her intention to keep her course and speed would have taken such action to reverse her engines and go hard astarboard immediately had she received an answering single blast signal from the *Algosoo* instead of the danger signal which was in fact given and I find it impossible to estimate when she would have taken the action, if at all. Without such action being taken early enough, I do not think a move to starboard by the *Algosoo* would have been effective to avoid the *Beteigeuze*

and the most that can be said is that if the *Algosoo* had immediately gone hard astarboard or hard aport the *Beteigeuze* would have had an opportunity to avoid a collision by reversing her engines and going hard astarboard. Having regard to the evidence of Captain Wagg and the advice of the assessors, I do not think that stopping or reversing the engines of the *Algosoo* would have served any useful purpose at that stage. Accordingly, I am not satisfied that the *Algosoo* alone could still have avoided collision by reversing or going to starboard or both when she first heard a signal from the *Beteigeuze* and in the view I take it has not been established that the failure of the *Algosoo* to take such action at that time was the sole cause of the collision.

The evidence also leaves me unsatisfied that in the circumstances a lookout stationed outside the bridge would have heard or observed one of the earlier signals of the *Beteigeuze* and the answer to the question whether or not with such a lookout an earlier signal of the *Beteigeuze* would have been heard or observed must also remain a matter of conjecture. The master of the *Algosoo*, however, was not in any doubt as he passed B7 and B9 and approached B11 that the *Beteigeuze* was headed for the entrance of the channel and while he may have hoped or even expected that the *Beteigeuze* would wait for him to clear the channel or would give the signal for a starboard to starboard passing and even though he had received no indication that the course which the *Beteigeuze* proposed to take when entering the channel would cross his own he ought to have realized that if by chance the *Beteigeuze* intended to cross his bow the *Algosoo* as the give away ship in a crossing situation would be required by the rule to keep out of her way by slowing down or by going to starboard or both. Moreover, he ought also to have realized that if the occasion for it arose such action would be required not merely after an emergency had arisen but in time to avoid danger of a collision. He thought, however, that he could be out of the channel and away to the northward before the *Beteigeuze* reached the entrance and for the sake of the convenience that this would afford, though there were no other downbound ships in the vicinity that would cause him any inconvenience, and though he had made no arrangement with the *Beteigeuze* which would absolve him from

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the necessity if occasion should arise, as in fact it did, to keep out of her way, he took the risks involved in pursuing his course at top speed until he finally heard a signal from the *Beteigeuze* by which time the ships had reached the point where he did not think there was enough room for him to slow down or stop or go to starboard and thus keep out of the way. And even at that point instead of stopping or reversing, as his own danger signal required, or going hard astarboard or hard aport, either of which possible alternative course offered some chance of avoiding collision he continued on for an appreciable and important period of time on a virtually unchanged course which made a collision inevitable despite the action taken by the *Beteigeuze* to avoid it. The assessors concur in advising me that the course so taken by the *Algosoo* was not a good one under the circumstances and it appears to me to have been the worst of three possible choices of course for if it was too late to go to starboard it was obviously less hazardous and afforded a longer time and a greater opportunity of avoiding collision to go hard aport than to continue on with practically no attempt to get out of the way until B11 was reached.

It was argued that while Captain Wagg might have sounded a signal somewhat earlier in order to ascertain the intention of the *Beteigeuze* having heard nothing from her he had committed no fault of navigation prior to the time when he first heard a signal from the *Beteigeuze*, that is when he was some 600 to 700 feet from B11 and by that time the emergency was upon him and the law will not require the most perfect action on his part in an extremity. Assuming, as I think was obviously the case, that when the *Algosoo* reached the point mentioned it was high time for someone to take action to avoid collision in my opinion the evidence shows that the *Algosoo* was already seriously at fault in having allowed such a situation of danger to arise. As the vessels approached each other the master of the *Algosoo* did not know whether the course of the *Beteigeuze* would cross his own or not but in the absence of any kind of communication from the *Beteigeuze* indicating that she intended a starboard to starboard passing he was I think at least bound to regard the situation as one in which the crossing rule might be or become applicable and was seriously at fault in closing the distance between the ships

at high speed to the point where he had put it out of his power to keep out of the way of the *Beteigeuze*. The *Algosoo* accordingly in my opinion was negligent and cannot be absolved from blame for the collision.

I turn now to the conduct of the *Beteigeuze*. It was submitted that she was at fault in two respects, first in that she failed to wait for the *Algosoo* and the *Joe S. Morrow* to clear the channel before proceeding to the entrance and secondly in that she held her course and speed too long under the circumstances.

The first of these submissions depends on the particular circumstances in which the *Beteigeuze* was being navigated toward the channel entrance. From the time when the *Beteigeuze* left her anchorage until shortly before the collision both the *Algosoo* and the *Joe S. Morrow* were proceeding along the western side of the channel and close enough to that side to leave some 700 feet of its width free for other traffic of which there was, however, none at the time. When Captain Peterson first saw the *Algosoo* he observed that she was on the western side of the channel and in the circumstances it should I think have been readily apparent to anyone even slightly familiar with the geography of Lake Huron and its navigation that the *Algosoo* was very probably holding that side of the channel because she intended taking a westerly upbound course when passing the light ship. The inference should have been apparent shortly afterwards with respect to the *Joe S. Morrow* as well and it should have become even clearer when despite his approach both the *Algosoo* and the *Joe S. Morrow* continued to maintain their positions on the western side of the channel. It should I think also have been obvious that a crossing situation would arise only if the *Beteigeuze* insisted on having the extreme western side of the channel since otherwise with the remaining seven-eighths of it free of ships she would have ample room to enter the channel by a path which would nowhere intersect the courses of the outcoming ships. This of course would mean passing the two ships starboard to starboard, and would involve a decision to do so by the master of the *Beteigeuze* and action by him to put his decision into effect. In the particular circumstances, having regard to the fact that this was Captain Peterson's first voyage in the Great Lakes as well as to the

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fact that he had no pilot on board, I do not think his failure to head for the open portion of the channel and pass the outcoming ships starboard to starboard is open to criticism but it does seem to me and to the assessors, that if he was not prepared to adopt that course he should have deferred his approach to the channel entrance until the two ships had cleared it rather than to bring about risk of collision by seeking to bring the crossing rule into play in an effort to require them to leave the portion of the channel they were navigating and thus incurring the hazards of failure by him or them to hear or to understand or to comply with or to respond to signals involved in crossing the bows of these ships which were of unknown draft and in comparatively shallow waters and which had no means of knowing at what point or how sharply the *Beteigeuze* would alter her course, as she would have to do sooner or later, in order to enter the channel. In the circumstances the conduct of the *Beteigeuze* in directing her course toward the portion of the channel which the other ships were navigating in my opinion and in that of the assessors was unseamanlike and amounted to neglect of a precaution required by the special circumstances of the case within the meaning of Rule 28.

Apart from this fault, however, and viewing the situation as simply one of ships on crossing courses, I do not think it can be said that the *Beteigeuze* which would be required by the rule to keep her course and speed was also negligent in having held her course and speed too long for while by the time her signal was heard the point had been reached where action by the *Algosoo* alone would be ineffective to avoid collision and the time had thus arrived for the *Beteigeuze* to take action such action was in fact taken immediately after the exchange of signals. And while it cannot be affirmed that the *Beteigeuze* would have taken the same action in time to avoid collision if the *Algosoo* instead of a danger signal had given an answering single blast signal and turned to starboard, neither can it be said that the *Beteigeuze* would not have acted in time. Accordingly, and with the concurrence of the assessors, I do not think that the *Beteigeuze* was guilty of additional fault in this respect as well.

The situation as I find it is thus one in which both ships were at fault, the *Beteigeuze* in creating risk of collision by directing her course to the portion of the channel being navigated by the *Algosoo* without waiting until the *Algosoo* had cleared the channel and the *Algosoo* in holding her course and speed along the western side of the channel until there was imminent danger of collision without having signalled her intention and without having ascertained by signal or otherwise whether the course which the *Beteigeuze* was following would cross her own and without either having obtained the concurrence of the *Beteigeuze* for a starboard to starboard passing or having taken in due time the action required by the crossing rule to keep out of her way and in having negligently pursued her course for a time even after hearing the *Beteigeuze* signal and thereby made collision inevitable despite the action of the *Beteigeuze* to avoid it. In my opinion the faults of both ships caused the collision and both were accordingly to blame for it. I think however that the fault of the *Algosoo* was of a greater degree than that of the *Beteigeuze* and I apportion two-thirds of the blame to her and one-third to the *Beteigeuze*.

There will be judgment accordingly on the claim and counterclaim pronouncing the *Algosoo* two-thirds to blame and the *Beteigeuze* one-third to blame and if the parties are unable to agree on the amounts there will be a reference to the Registrar to assess the damages. The plaintiffs may tax and recover against the defendant two-thirds of their costs and the defendant may tax and recover against the plaintiffs one-third of its costs.

Judgment accordingly.

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