

BETWEEN :

M/S WILLOWBRANCHAPPELLANT;

AND

IMPERIAL OIL LIMITEDRESPONDENT.

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Jun. 20,
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Shipping—Collision in approach to Halifax harbour—Dense fog—Negligence—Narrow channel rule—Alterations of course—Excessive speed—Improper radar outlook—Appeal from District Judge in Admiralty allowed.

Respondent's tanker *IH* outbound from Halifax collided in a dense fog with appellant's tanker *W* inbound, in the approach to Halifax harbour. The *IH* entered the fog bank at full speed. Half speed was then ordered and about this time the echo of an approaching ship 3° on the starboard bow and about 1½ miles ahead was noticed on the radar screen. Slow speed was ordered about a half minute after half speed had been ordered. The bearing of the approaching ship appeared to broaden to 4° when the ships were about a mile apart and the master of the *IH* thereupon assumed that the approaching ship was on a course exactly opposite to his own and that the ships would pass star-

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board to starboard and his subsequent actions were based on such assumptions. Shortly before the echo of the approaching ship disappeared in the clutter on the radar set it was observed to be moving across the screen in such a way as to indicate that the ship was on a course which would cross that of the *IH* from starboard to port. Shortly thereafter a whistle was heard directly ahead and the engines were reversed. At or about that time the *W* was seen about 100 feet ahead of the bow of the *IH* and collision occurred shortly afterwards, the bow of the *IH* striking the port bow of the *W*. At the time of impact the speed of the *IH* was about 4 knots.

The *W* had proceeded inward at reduced speed and had altered her course four times in order to pass port to port. Though the whistle of the *IH* had been heard about two minutes before the *IH* came into view the engines of the *W* had been kept at slow speed ahead. They were reversed immediately the *IH* came into view and the forward way was off the *W* by the time the impact occurred. The trial Judge held her to be two-thirds to blame and the *IH* one-third to blame. On appeal to this Court the appellant contended that the narrow channel rule or alternatively the meeting end-on rule applied and justified her four alterations of course to starboard in order to pass port to port and that in the circumstance she was justified in maintaining her engines at slow speed even after hearing the whistle of the *IH*. The respondent contended that the area was open sea and that it was the duty of the appellant to maintain her course without alteration so that the ships would pass starboard to starboard.

Held: That the appeal be allowed and the cross appeal dismissed.

2. That respondent's tanker is two-thirds to blame and appellant's tanker one-third.
3. That the evidence showed that seamen regarded the locality of the collision as a channel where ships passed port to port.
4. That even if the narrow channel rule was inapplicable in the circumstances it was not wrong for the *W* to alter course to starboard to get out of the way of the *IH* but that her alterations were negligent, the first two in being too small to put the *W* well out of the way of the *IH* or to be readily detectable by the *IH* and the latter two in having been made blindly after the whistle of *IH* had been heard and before her position was ascertained. It was not, however, clear that a collision would not have occurred even if the latter two alterations had not been made.
5. That upon hearing the fog signal of the *IH*, the *W* should have stopped her engines.
6. That the *IH* was negligent in entering the fog bank at the grossly excessive speed of twelve knots and in failing to keep an adequate radar lookout which created the danger of the collision, and in failing to take effective action to reduce speed and in persisting in the unwarranted assumption that the ships would pass starboard to starboard.

APPEAL from a decision of the District Judge in Admiralty for the Nova Scotia Admiralty District.

The appeal was heard before the Honourable Mr. Justice Thurlow sitting with an assessor at Halifax.

Donald Kerr for appellant.

Donald McInnes, Q.C. and John Dickey, Q.C. for respondent.

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

THURLLOW J. now (July 19, 1963) delivered the following judgment:

This is an appeal by the M/S *Willowbranch* from a judgment of the District Judge in Admiralty of the Nova Scotia Admiralty District holding her two-thirds to blame and the respondent's ship, *Imperial Halifax* one-third to blame for a collision which occurred between the two ships in the approach to Halifax Harbour on July 16, 1959. There is also a cross-appeal by the respondent against the finding that the *Imperial Halifax* was one-third to blame.

Both ships are tankers and at the time of the collision both were equipped with radar. The *Imperial Halifax* is a ship of 3,734 tons gross register and is 357 feet long and 48 feet wide. Her full speed is 12 knots. She was carrying 4,967 tons of stove oil and furnace oil and was out-bound on a voyage to Charlottetown. The *Willowbranch* is a ship of 2,153 tons gross register, 259 feet long and 43.9 feet wide. She is a lake ship with a blunt bow and a large rudder which when put hard over acts as a brake. Her full speed is 9 knots. She was carrying 27,000 barrels of gasoline and was in-bound from Montreal.

The collision occurred in dense fog shortly after 0823 a.m. A.D.S.T. in the area to the northward of Neverfail Shoal. The sea was calm and the tide was ebbing at about one-quarter knot.

The *Imperial Halifax* which was being navigated by her master, Captain William G. Kent, without a harbour pilot had left her dock at Imperoyal on the eastern side of the harbour at 0751 on the morning in question and had shaped a course to pass west of Ives Knoll Buoy. The weather at this point was fine, the sky was overcast but the visibility was clear. At 0801 her engines, which had been working at half speed for seven minutes, were advanced to full speed and on rounding the buoy at 0804 the ship was put on a course of 163° T which would take her about midway

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between Mauger's Beach Light and Outer Middle Ground Buoy about $1\frac{1}{4}$ miles away, and directly towards Neverfail Bell Buoy some $4\frac{1}{2}$ miles away. At this time there was a United States naval ship also proceeding out of the harbour about two cables distant to starboard and slightly ahead and one or more other naval vessels following. Assuming that these ships would probably be proceeding to the westward and would pass to the westward of Neverfail Shoal, Captain Kent decided to go out to the eastward of Neverfail. By 0813 when the ship passed Mauger's Beach she had attained her full speed of twelve knots and at that point fog was observed about a mile and a half ahead. Two minutes later at 0815 course was altered to 159° T, a course which would take the ship to the eastward of Neverfail Shoal and directly toward what will be referred to as the Inner Automatic Buoy some $4\frac{1}{2}$ miles ahead. This course is the same as that of a line shown on the charts the projection seaward to and beyond the Inner Automatic Buoy of the line between two harbour lights. The line on the charts indicates a clear course east of Neverfail Shoal from inside the harbour to the Inner Automatic Buoy and it has been referred to in these proceedings as the range line. At 0815 when the course was altered to 159° T an order to "stand by engines" was given and sounding of the whistle at one minute intervals was commenced, but no reduction in speed was made until 0819 by which time the ship was entering or had entered the fog bank. Half speed was then ordered. About this time, whether shortly before or shortly afterwards, Captain Kent noticed for the first time on the radar screen the echo of an approaching ship which he estimated to be $1\frac{1}{2}$ miles ahead and 3° on the starboard bow. The bearing of the approaching ship appeared to him to broaden to 4° at a distance which he estimated at about a mile and he then assumed that she was on a course of 339° T, (exactly opposite to his own) and that the ships would pass each other starboard to starboard. At 0819 $\frac{1}{2}$ engine speed was reduced to slow. Slow speed when attained would be about four knots but it would take several minutes to reduce to that speed from twelve knots. Between that time and 0822 the whistle of a ship apparently on the starboard bow was heard by an officer on duty outside and on the starboard side of the bridge and at 0822 the engines were stopped. By this time, according to Captain Kent, the

ship's speed should have been reduced to about seven knots. Shortly before the echo of the approaching ship disappeared in the clutter (3/16 of a mile) on the radar set, it was observed to be moving across the screen in such a way as to indicate that the ship was on a course which would cross that of the *Imperial Halifax* from starboard to port. At about 0823 another whistle was heard, this time directly ahead, and an order to reverse the engines was given. At or about that time, the *Willowbranch* was first seen about 100 feet ahead of the bow and the collision occurred shortly afterwards, the stem of the *Imperial Halifax* striking the port bow of the *Willowbranch* some twenty feet from the stem at a speed which the learned trial judge found to be about four knots. At some point between 0819 when the engines were put on half speed and the time of the collision, the course of the *Imperial Halifax* had been altered 4° to port and at the time of impact it was 155° T.

Earlier that morning the *Willowbranch* had approached the Inner Automatic Buoy from the east on a course of 264° T in dense fog at slow speed (about three knots) and at 0800 A.D.S.T. o'clock when about a cable west of the buoy had taken on board Captain Michael M. Cox, a Halifax Harbour pilot. Before Captain Cox reached the bridge her master, Captain Roland Patenaude, had altered to 330° T, a course which would have taken him into the harbour to the westward of Neverfail Shoal which lay one and three-quarter miles ahead. Captain Cox was, however, aware that a flotilla of United States warships was proceeding out of the harbour to the westward of Neverfail and therefore suggested that the *Willowbranch* go to the eastward of it. The course was accordingly altered to 340° T and shortly afterwards to 345° T. At 0803 the engines were advanced to full speed ahead. This course and speed were maintained until 0813 during which period there were ships passing at some distance to port none of which were seen except by radar and none were seen directly ahead by radar or otherwise. At 0813 Captain Patenaude remarked that he was in no hurry and thereupon rang for half speed (6.5 knots). By this time his ship would have travelled about one and a half miles of the distance from the Inner Automatic Buoy to Neverfail. Shortly thereafter Neverfail Bell Buoy was passed at a distance which the trial judge found

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was about two cables. The bell was heard but the buoy was not seen, visibility at that point being estimated at 600 feet.

The estimate so made of the ship's position at that time would for practical purposes place her on the range line as shown on the charts. After passing Neverfail Bell Buoy the ship's course was altered to 340° T or 1° east of the course of the range line. Up to this point no ship presenting any hazard had appeared ahead on the radar screen but shortly after altering to 340° T the echoes of several ships ahead were seen. The evidence of the chief officer who was watching the radar and of Captain Patenaude and Captain Cox, each of whom took at least one look, varies as to what was observed, probably because they looked at different times and were speaking of what the radar showed when they looked, but on this point the trial judge appears to have adopted the evidence of Captain Cox who observed two ships, at a distance of two miles, one of which was 10° or more on the port bow and the other directly ahead. Captain Cox interpreted this as indicating that the ship directly ahead was coming out of the harbour on the course of the range line, 159° T, but when he first saw her echo and for some time afterwards her position was such that it was still open to her to pass either to the west or to the east of Neverfail and there was nothing to indicate to those on board the *Willowbranch* which course she would take. When the approach of this ship had been under observation for from two to three minutes and the *Willowbranch* had reached the vicinity of Neverfail Can Buoy, the course of the *Willowbranch* was altered to 345° T and later to 350° T to put her to the eastward and out of the path of the oncoming ship. Shortly afterwards the chief officer having reported that the ship was approaching at high speed and that the angle of her approach on the port bow created by the alteration of course of the *Willowbranch* was not broadening the course was altered to 355° T and still later to 360° T.

The evidence does not make clear precisely how long any of the courses 340° T, 345° T, 350° T or 355° T was maintained but it seems probable that the first of them was taken at about 0815 or from two to three minutes after speed was reduced to half speed. By that time the *Willowbranch* should have reached the point where Neverfail Bell Buoy was abeam and at her reduced speed it would take her from two to three minutes more to travel the distance of

three cables from that buoy to Neverfail Can Buoy. It was while traversing the distance between these buoys that the ship was on 340° T. The trial judge has found that

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when abeam of Neverfail, course was altered to 340° T and when Neverfail Can Buoy was abeam two vessels were observed by radar, one right ahead and one 10° on the port bow distant two miles. Speed was reduced to slow and course was altered to 345°.

The vessel on the port bow was seen to be going clear to pass west of Neverfail but the vessel ahead did not appear to change her bearing so after a couple of minutes, course was again altered to 350° T.

That the alteration to 345° T was made when Neverfail Can Buoy was abeam is supported by the evidence of Captain Cox and the same witness also stated that speed was reduced to slow at that time. As the reduction to slow speed was made at 0819, it would appear that the alteration to 345° was made about four minutes before the collision or when the ships were just over a mile apart. By that time it must I think have become apparent that the approaching ship would probably be passing east of Neverfail and that some alteration of course would be required to avoid collision. About two minutes before the collision the whistle of the *Imperial Halifax* was heard apparently on the port bow. The whistle was heard a second time and Captain Cox was outside on the wing of the bridge listening and expecting to hear it a third time when the bow of the *Imperial Halifax* came into view about 30° on the port bow and at a distance estimated by him at 300 feet. No action had been taken to stop the engines of the *Willowbranch* on hearing either of the fog signals of the approaching ship but when the latter came into view full astern and hard astarboard were immediately ordered and most if not all of the way was off the *Willowbranch* by the time of the impact which occurred about half a minute after the *Imperial Halifax* was first sighted. The order for full astern was recorded twice in the engine room log at 0822 which would be the time recorded for any order received in the minute preceding 0822½. There was probably a variation in the times shown by the clocks of the two ships, the time of the *Willowbranch* being slower than that of the *Imperial Halifax*, but the difference seems to have been less than a minute and it does not appear to me to be of importance. It also appears that the alterations of course to 355° and to 360° were made after the first fog signal of the *Imperial*

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Halifax had been heard and at a time when her position was not ascertained, but as the evidence does not show how long the several courses were maintained, it is not possible to estimate with accuracy how far to the eastward the last two or the earlier two alterations carried the *Willowbranch*. Having regard to her speed and the time available a rough calculation indicates that the four alterations would not account for a lateral distance of much more than about 350 feet, but even so it appears to me that but for the several alterations from 340° the ships would probably have passed each other starboard to starboard without colliding though it would have been a passing at very close quarters.

The learned trial judge found that the *Willowbranch* was chiefly to blame for the collision. He considered that the prudent thing for her to have done on observing the echo of the *Imperial Halifax* directly ahead at a distance of two miles was to stop the vessel and run a check of the radar bearings of the approaching ship and he found that instead of doing this the *Willowbranch* had "proceeded at slow speed and continued altering course to starboard without knowing what course the *Imperial Halifax* was steering," the result of which in his opinion was that she put herself directly in the path of that ship. The learned judge also found the *Imperial Halifax* to blame though to a lesser extent and expressed his view of her fault thus.

When the "IMPERIAL HALIFAX" ran into dense fog after passing Mauger's Beach the engines were put on stand-by and then on half speed at 0815 hours and were not put on slow speed until 0819 hours, in spite of the fact that a radar signal of an approaching vessel had been observed bearing 3° on the starboard bow. It would have been more prudent to have stopped at this time and then run a check on the radar bearings, particularly in view of the fact that the "IMPERIAL HALIFAX" had a full cargo and was therefore hard to fetch up. The engines of the "IMPERIAL HALIFAX" were not stopped until 0822 hours when the fog signal of the "WILLOWBRANCH" was heard and a minute later the vessel itself was seen. The "IMPERIAL HALIFAX" had too much way on her to bring up in time and struck the "WILLOWBRANCH" at a speed of about 4 knots, doing heavy damage to both vessels.

Turning to the fault found against the *Willowbranch* the first question that appears to me to arise is whether it was wrong for her in the circumstances to alter to starboard as she did on four occasions from about 0819 until 0822 when the *Imperial Halifax* came into view.

The appellant took the position that the narrow channel rule applies in the locality in which the collision occurred

and that it was not wrong for the *Willowbranch* on detecting the approach of the *Imperial Halifax* to alter to starboard so as to get to the eastward of the range line and into her own proper water to pass. Alternatively it was submitted that the meeting end on rule would apply and justify her alterations to starboard. The respondent on the other hand submitted that neither rule applied, that the area is not a narrow channel but open sea in which the buoys simply mark shoals, that there was no rule applicable to require the ships to pass port to port and that in the circumstances it was the duty of the *Willowbranch* on detecting the approach of the *Imperial Halifax* to maintain her course without alteration.

The first of the contentions advanced by the appellant raises at the outset the question whether the locality in which the collision occurred is one in which the narrow channel rule applies. So far as I am aware there is no reported case in which either the approach to Halifax Harbour to the eastward of Neverfail Shoal or that to the westward of it or the area north of the shoal, where the collision occurred, has been determined to be a narrow channel within the meaning of the rule, and it appears to me that the question must be resolved on the evidence with the assistance of the knowledge and experience of Captain Bird, the assessor appointed to assist me in the case, one of the determining factors being the way in which seamen treat the locality and behave in navigating it. *Vide Jaroslaw Dobrowski*¹; *The Anna Salem*²; and *The Sedgpool*³. There is in my opinion evidence that seamen regard the locality in question as a channel and that in navigating in it ships pass port to port. *Vide* Captain Patenaude at pp. 135 and 142, Mr. Gerard at p. 164, and Captain Cox at pp. 223, 224, 231 and 245 and it is noticeable as well that both Captain Kent at pp. 34, 58 and 90 and Mr. Kearley at p. 107 exhibited a tendency to refer to the locality as a channel though Captain Kent did not regard it as a place in which Rule 25 applied. In the opinion of Captain Bird the whole of the area from the Inner Automatic Buoy into the harbour is a locality in which the narrow channel rule applies. He regards the system of red and black buoys shown on the charts (*vide* Ex M/U) as indicating a channel or channels

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¹ [1952] 2 Lloyds Rep. 20 at 26. ² [1954] 1 Lloyds Rep. 474 at 478.

³ [1956] 2 Lloyds Rep 668 at 678

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one to the eastward and the other to the westward of Neverfail Shoal and he advises me that ships approaching the harbour pass between the buoys keeping red buoys to starboard and black buoys to port and when passing outgoing ships in clear weather keep to their side of the fairway the centre of which for the channel to the eastward of Neverfail Shoal is indicated by the range line to which I have referred. From his experience as a Halifax Harbour pilot and regarding the locality as one in which the narrow channel rule applied, Captain Bird considered that altering her course to starboard was the natural thing for the *Willowbranch* to do in the circumstances when she observed the *Imperial Halifax* directly ahead for it was a move that would put her on her own proper side of the fairway in case the *Imperial Halifax* should be coming out by the channel lying east of Neverfail. In his opinion however it would have been better to alter by 10° or 15° at once rather than merely by 5° as was initially done.

It does not appear to me to be necessary for the present purpose to consider whether the whole of the approach from the Inner Automatic Buoy into the harbour is an area in which Rule 25 applies. In particular, I do not find it necessary to decide whether the rule would apply in the area to the southward of Neverfail Shoal. But while the matter is not entirely free from doubt, having regard to the evidence and to the advice given me, I think the preponderance favors the view that the portion of the approach to the harbour consisting of an area approximately eight cables wide and bounded eastwardly by a line from Thrumcap Shoal to Lighthouse Bank Bell Buoy and westwardly by a line from Neverfail Can Buoy to the Whistle Buoy off Mars Rock, which embraces the locality in which the collision occurred, is a narrow channel within the meaning of Rule 25 and adopting this view of the nature of the locality I am of the opinion, again relying to a considerable extent on Captain Bird's advice, that in the particular circumstances it was not wrong for the *Willowbranch* on detecting the approach of the *Imperial Halifax* directly ahead to alter to starboard in an effort to get to her side of the mid-channel or fairway. *Vide The Sedgpool*¹. On the other hand even treating the narrow channel rule as inapplicable it appears to me that having observed that the approaching

¹ [1956] 2 Lloyds Rep. 668 at 680.

ship was directly ahead and might be going to the westward to pass west of Neverfail, in which case no problem would arise, or might be coming straight towards the *Willowbranch* to pass east of Neverfail, in which case a dangerous situation might arise, but would have no probable or reasonable course further to the eastward, especially in a dense fog, and having observed as well that this ship was approaching at high speed I do not think it was wrong for the *Willowbranch* to alter to starboard to take herself well out of the way in case the oncoming ship should be passing east of Neverfail. In either case however it appears to me that the initial alteration to starboard was negligent in that it was too slight either to put the *Willowbranch* well to the eastward or to be easily detectable by those on board the approaching ship and the same criticism applies as well to the subsequent alteration to 350° T which appears to have been made for the same purpose and at a time when the ships were still more than half a mile apart.

With respect to the subsequent alterations to 355° and 360° it is I think clear that they were negligent as well since they were made blindly after the echo of the *Imperial Halifax* had been lost in the clutter of the radar and before she was seen and her position ascertained and at a time when something different from what could reasonably have been expected earlier was obviously happening since despite the changes of course which the *Willowbranch* had made the bearing of the approaching ship had not broadened as expected. To alter course in these circumstances was in my view a fault on the part of the *Willowbranch* even though the situation in which the rapid approach of the *Imperial Halifax* had placed her was a difficult one, but having regard to the reduced speed of the *Willowbranch*, the minor nature of the alterations and the short time left for them to take effect, it seems to me unlikely that they could have carried her many feet to the eastward of the projection of her course of 350° or that a collision of some sort would not have occurred even if these alterations had not been made.

The other element of the fault found by the learned trial judge against the *Willowbranch* was that she proceeded at slow speed instead of stopping some time earlier. She had in fact reduced from half to slow speed at 0819 but it would take her some time to get down to three knots and it is clear that she did not stop her engines as required by

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Rule 16(b) upon hearing the whistle of the *Imperial Halifax* apparently forward of her beam some two minutes before the collision occurred. It was argued on her behalf that considering the highly inflammable nature of her cargo and the rapid approach of the *Imperial Halifax* it was essential that the *Willowbranch* maintain steerageway and manoeuvrability, that if she had stopped her engines the tide would have tended to cause her bow to fall off either to starboard or to port as she slowed down thus exposing her side to the oncoming ship and at the same time she would have been unable to take effective action to get out of the way and that the fact that she was able to stop very quickly and in a very short distance when the *Imperial Halifax* ultimately came into view showed that the speed which she maintained by keeping her engines on slow speed was not excessive. On this question Captain Bird advises me that it would not be necessary to maintain a speed of three knots to provide steerage way and manoeuvrability, that at three knots the way on the ship would probably have afforded steerage for about two minutes after stopping the engines, that steerageway if lost could be restored by restarting the engines briefly from time to time, and that in his opinion the circumstances mentioned would not as a matter of seamanship justify failure to stop her engines. I accept and adopt this advice. The rule requiring a vessel so far as the circumstances admit to stop her engines on hearing the fog signal of a vessel apparently forward of her beam is not calculated merely to ensure that she will be able to stop quickly if necessary. The difficulties of estimating distances and directions of sounds in fog are well known and one of the purposes which stopping engines serves is to afford to both ships a better opportunity to hear and appreciate the signals of the other. If the engines of the *Willowbranch* had been stopped as the rule required and her speed thus reduced earlier, Captain Cox might well have heard another signal from the *Imperial Halifax* before she came into view and had the advantage of a further and better warning of her position and a somewhat longer time would also have been afforded to the *Imperial Halifax* to reduce her excess way. In my opinion therefore the *Willowbranch* is not free from blame for the collision and damage and to the extent and in the senses indicated I would affirm the finding of fault on her part in proceeding at slow speed

and altering to starboard. I should add, because it appears to me to afford a standard against which to estimate the gravity of her fault that in the opinion of Captain Bird, with which I am in agreement, what the *Willowbranch* should have done on detecting the approach of the *Imperial Halifax* directly ahead was to reduce her speed either by stopping her engines immediately or by going to slow speed until the whistle was heard, when the engines should have been stopped and if she was to alter to starboard before the ship came into view she should have made a larger alteration initially at an early stage rather than a series of minor alterations.

I turn now to the conduct of the *Imperial Halifax*. According to her logs and the uncontradicted evidence she approached and entered the fog at her full speed of twelve knots and maintained that speed until 0819. She was thus travelling at twelve knots until about $4\frac{1}{2}$ minutes before the collision. In the remaining $4\frac{1}{2}$ minutes according to the evidence of Captain Kent she traversed a distance of eight cables which indicates an average speed in excess of ten knots in the interval and she was still moving at a speed of about four knots when the impact occurred. Having regard to the fact that she was fully loaded and could not be brought up quickly and the fact that there was a ship approaching ahead, her speed from the time she approached and entered the fog bank was grossly excessive and even with "unremitting attention to the radar screen and the sharpest appreciation of what it revealed" (*Vide* Rand J. in *The Dagmar Salen v. The Chinook*¹), it would be impossible to justify it in the circumstances. In my opinion, however, the radar lookout which was being maintained did not meet the required standard. By 0819 $\frac{1}{2}$ when she went on slow speed the echo of the *Willowbranch* had been seen and by that time I think that the observations of her bearing 3° on the starboard bow at 1 $\frac{1}{2}$ miles and 4° on the starboard bow at one mile must also have been made for by 0819 $\frac{1}{2}$ the ships appear to have been no more and probably less than a mile apart. The echo however could and should have been seen earlier and even when it was seen if what is said to have been observed is to be taken as accurate, what was in fact revealed was that the ships were not on exactly opposite courses but were indeed on converging courses since an

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¹ [1951] S.C.R. 608 at 612.

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angle of 3° at $1\frac{1}{2}$ miles subtends 450 feet while an angle of 4° at one mile subtends but 400 feet. The assumption that the *Willowbranch* was on a course of 339° was therefore not indicated by what had been observed, and since at that stage nothing was known of the speed of the approaching ship or of the distance which she had travelled between the two observations there was not sufficient information upon which to base a precise estimate of what her course was and the assumption that the ships would pass starboard to starboard was accordingly unwarranted as well. It may be difficult to make the observations and calculations necessary to determine the exact course of an approaching ship on the spur of the moment but unless they can be made and the correct inferences drawn, whether by instruments or by plotting, in my opinion for a ship such as the *Imperial Halifax* there is no justification for high speed in a dense fog when there are other ships in the vicinity.

Moreover, even with the assumption that the ships were on reciprocal courses it should have been apparent that there was danger of the *Imperial Halifax* becoming involved with the approaching ship since at best the ships would pass at close quarters and it ought in my opinion to have been appreciated that if there was any error in the radar machine or in the reading of it, or in maintaining the *Imperial Halifax* exactly on her course the approaching ship might be or become even finer on the bow and that a difference of a degree or two in the assumed course of the approaching ship could bring them even closer together. In my view, by 0819 a highly dangerous situation already existed because of the speed of the *Imperial Halifax* and of her failure to detect the echo of the *Willowbranch* earlier and take appropriate measures to reduce to a moderate speed and in my opinion and in that of Captain Bird when the echo of the *Willowbranch* was finally seen the observation of the bearing of the echo at 3° at $1\frac{1}{2}$ miles and later at 4° at one mile should not have been regarded as significant or as indicating either that the approaching ship was on an exactly opposite course or that the ships would pass starboard to starboard. Instead the approaching ship should have been regarded as for practical purposes directly ahead and action should have been taken immediately to get the excess way off the *Imperial Halifax* by reversing her engines instead of attempting to pass the approaching ship star-

board to starboard at what would obviously be close quarters and at a speed which would not permit the *Imperial Halifax* to stop in time to avoid collision when the ship came into view. Moreover in my opinion it should not have been assumed that the approaching ship, with the *Imperial Halifax* bearing down on her at high speed, would steer in dense fog an opposing course which would take her between the out-coming warships, with which Captain Kent had been preoccupied, on her port side and this fast moving ship, which at best would pass at close quarters, on her starboard side. It should also in my opinion have been appreciated that the approaching ship might have already observed the approach of the *Imperial Halifax* and taken action to get to the eastward and out of her way—as had I think in fact already occurred—and for this reason as well effective action to get the excess way off the *Imperial Halifax* should have been taken at once so that she would be able to take avoiding action when the position and course of the approaching ship were finally ascertained. In my opinion it was the grossly excessive speed of the *Imperial Halifax* prior to 0819 and the inadequacy of the radar lookout which was being maintained at that stage which created the danger of a collision and these faults together with the failure to regard the *Willowbranch*, when finally detected, as directly ahead and to take effective action to reduce to a moderate speed, the misinterpretation of what the radar revealed and the attempt to pass starboard to starboard based on an unwarranted assumption as to the course of the *Willowbranch* and what she was doing, were to my mind by far the chief causes of the collision and damage.

It was argued on behalf of the *Imperial Halifax* that she obeyed the rules because she stopped her engines when she heard the signal of the *Willowbranch* but though she may have complied with the rules in that respect, she was clearly guilty of travelling at an excessive speed in fog contrary to Rule 16(a) and this excessive speed in my view made it impossible for her to comply with the requirement of Rule 16(b) that she navigate with caution until the danger of collision should pass.

It was also strongly urged on behalf of the appellant that the *Imperial Halifax* was further to blame in having altered her course 4° to port after having observed the echo of the *Willowbranch*, and thus put herself in the path of that ship.

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To alter to port was in my opinion and in that of Captain Bird clearly wrong but the alteration so made was in my view part of the fault of attempting to pass starboard to starboard at excessive speed under such circumstances and while if made early enough it alone may with the greater speed of the *Imperial Halifax* have effectively counteracted the efforts of the *Willowbranch* to get to the eastward of the course of the *Imperial Halifax*, I do not regard it as a separate or as an additional cause of the collision. The trial judge found that it was made at about 0822, his finding on the point is in my opinion supported by the evidence and while the expression "about 0822" might mean somewhat earlier than 0822, there is in my view no sufficient basis in the evidence for interfering with his finding or for treating the alteration as having in fact been made somewhat earlier. From 0822 to the time of collision, the alteration of 4° would not have carried the bow of the *Imperial Halifax* very far to the eastward of her earlier course of 159° T (probably less than say 70 feet) and while it was a wrong manoeuvre and part of what I regard as a negligent attempt to pass starboard to starboard at high speed and at close quarters, I am unable to reach the conclusion that a collision, which might have been more severe than that which occurred, would not have resulted if the alteration had not been made.

In the result therefore I am of the opinion that the collision was due to faults on the part of both ships but that the faults of the *Imperial Halifax* were chiefly responsible for the collision and damage and were of a much greater degree than the faults of the *Willowbranch*. As the apportionment of blame made by the learned trial judge does not reflect the substantial preponderance of fault which in my view should be attributed to the *Imperial Halifax* and may have been considerably influenced by the impression which he appears to have had that the *Imperial Halifax* began to reduce her speed at 0815 which, with respect, is I think not supported by the evidence, the case is in my opinion one in which an appellate court is justified in substituting its own apportionment of the blame and I would apportion it two-thirds to the *Imperial Halifax* and one-third to the *Willowbranch*.

The appeal will therefore be allowed with costs and the judgment of the court below will be varied so as to pro-

nounce the respondent liable to make good two-thirds and the appellant liable to make good one-third of the damages. The cross-appeal will be dismissed with costs.

Judgment accordingly.

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Reasons for judgment of V. J. Pottier, D.J.A.:—

The *Imperial Halifax* is a motor-driven tanker owned by Imperial Oil Limited, 3,734 tons gross, 1,982 tons net and 345 feet overall. She was bound from #4 Jetty, Imperoyal, Halifax, to Charlottetown with a full load of stove oil and furnace oil.

The *Willowbranch* is a motor-driven canal type tanker, 2,153 tons gross, 1,489 tons net and 259 feet overall. She was bound from Montreal to Halifax with a full load of gasoline.

The weather at the time of the collision was dense fog with a visibility of approximately 200 feet. It was calm with a smooth sea and the tide was ebbing at about one quarter knot.

The time of collision was 0823 hours, A.D.S.T., July 16, 1959 and it occurred about one mile 011° true from Neverfail Bell Buoy in the approaches to Halifax Harbour.

The *Imperial Halifax* left Jetty #4, Imperoyal at 0751 hours, A.D.S.T., July 16, 1959 in charge of her Master, Captain William G. Kent. No pilot was taken and the Master was doing his own piloting. The weather at the time was fine, overcast and clear with smooth sea. The vessel rounded Ives Knoll Buoy at about 0804 hours and a course of 163° was then steered by gyro with the engines at full ahead to pass between Mauger's Beach Lighthouse and Outer Ground Buoy. Mauger's Beach was abeam dist. 2 cables at 0813 hours and course was then altered to 159° to go out of the Harbour east of Neverfail Buoy. The Master stated that the reason he made this de-

cision was because a number of warships were observed to the westward also leaving the Harbour and he decided to keep to the eastward in order to keep clear of them.

Immediately after passing Mauger's Beach Lighthouse, the vessel ran into thick fog at 0815 hours, the engines were put on Standby and then on Half Speed and the regulation fog signal was given on the whistle about every minute. On the bridge of the *Imperial Halifax* were the Master, in charge, the Chief Officer, Third Officer, Helmsman and Lookout.

On entering the fog bank the pip of a vessel was observed on the radar screen bearing 3° on the starboard bow distant 1½ miles and at 0819 hours the engines were put on slow speed. The radar pip changed from 3° to 4° on the starboard bow and at 0822 the Chief Officer reported hearing a ship's whistle on the starboard bow, so the engines were stopped and course was altered to 155°. Shortly after this, the bow of another vessel loomed out of the fog and at 0823 the engines were rung full astern. A few seconds later, the stem of the *Imperial Halifax* struck the *Willowbranch* on the port bow, cutting a gash in the shell plating below the main deck, flooding the dry cargo hold and inflicting extensive damage to the deck rails and fittings and the port wing of the bridge. At 0824 hours the *Imperial Halifax* engines were stopped.

The *Willowbranch* bound from Montreal to Halifax with a full cargo of gasoline, arrived off the Inner Automatic Buoy in dense fog and picked up her Halifax pilot, M. M. Cox, at about 0800 hours,

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A.D.S.T., July 16. The pilot boarded about one cable west of the buoy and the course was set on 340° towards Neverfail Shoal Buoy. As Pilot Cox knew that a flotilla of war craft was leaving port, he suggested to the Master that the vessel be taken in east of Neverfail. The Master agreed, so course was then altered to 345°. Speed was increased from slow ahead to full ahead. About 0810 hours Neverfail Buoy was abeam to port distant approximately two cables. The buoy was not sighted on account of fog, but the bell was distinctly heard. Speed was then reduced to half ahead. On the bridge at this time was the Master, in charge, the Pilot, Chief Officer and the wheelsman. The watchman was keeping a lookout on the fore-castle head and there were three deckhands up there with him as well. The whistle was being blown at intervals of about one minute or so.

When abeam of Neverfail, course was altered to 340° and when Neverfail Can Buoy was abeam two vessels were observed by radar, one right ahead and one 10° on the port bow distant two miles. Speed was reduced to slow ahead and course was altered to 345°.

The vessel on the port bow was seen to be going clear to pass west of Neverfail but the vessel ahead did not appear to change her bearing, so after a couple of minutes, course was again altered to 350°.

As the bearing of the approaching vessel did not appear to be opening up on the port bow course was again altered to 355° and after a few minutes to 360°. No radar plot was kept nor were actual times noted when the course was altered. Apparently the *Willowbranch* was swung slowly to starboard from 340° to 360°, steadying up for a minute or two on 345°, 350°, 355°, and 360°.

When the *Willowbranch* was heading 360° and steaming at slow speed a fog signal was heard on the

port bow and almost immediately afterwards the bow and bow-wave of the *Imperial Halifax* was observed about 30° on the port bow distant about 300 feet, and heading directly for the *Willowbranch*. The helm was immediately put hard astarboard and the engines given a triple ring astern. The *Imperial Halifax*, which apparently had a forward speed of about 4 knots at the time, struck the *Willowbranch*, which by this time was about stopped in the water with her stem on the port bow, cutting into the *Willowbranch* just abaft the fore-castle head. The collision took place at 0823 hours. After the first impact, the bow of the *Imperial Halifax* scraped down the port side of the *Willowbranch*, being rails and stanchions and buckling the port wing of the bridge. The two vessels then drifted clear of one another and the *Willowbranch* let go an anchor. On examination it was found that neither vessel was in danger of sinking and they each proceeded into port under their own steam.

The court finds that the *Willowbranch* was chiefly to blame for this collision for the following reason.

According to the evidence, the first intimation those on board the *Willowbranch* had of the approach of the *Imperial Halifax* was when she was observed by radar right ahead. The prudent thing to have done under these circumstances would have been to stop the vessel and then run a check on the radar bearings of the approaching vessel. If this had been done it would have been possible to find out what course the approaching vessel was steering and take action accordingly. Instead of doing this, the *Willowbranch* proceeded at slow speed and continued altering course to starboard without knowing what course the *Imperial Halifax* was steering. The result was that she put herself directly in the path of the *Imperial Halifax* and when the

two vessels sighted one another through the fog it was too late to avert collision, although the *Willowbranch* immediately went full astern on her engines and was able to stop her headway before the vessels actually struck. This was due to the fact that the *Willowbranch* had good backing power and was only proceeding at slow speed prior to the collision.

The *Imperial Halifax* was also to blame but to a lesser extent.

When the *Imperial Halifax* ran into dense fog after passing Mauger's Beach the engines were put on stand-by and then on half speed at 0815 hours and were not put on slow speed until 0819 hours, in spite of the fact that a radar signal of an approaching vessel had been observed bearing 3° on the starboard bow. It would have been

more prudent to have stopped at this time and then run a check on the radar bearings, particularly in view of the fact that the *Imperial Halifax* had a full cargo and was therefore hard to fetch up. The engines of the *Imperial Halifax* were not stopped until 0822 hours when the fog signal of the *Willowbranch* was heard and a minute later the vessel itself was seen. The *Imperial Halifax* had too much way on her to bring up in time and struck the *Willowbranch* at a speed of about 4 knots, doing heavy damage to both vessels.

The blame is apportioned as follows:

Willowbranch two-thirds to blame.

Imperial Halifax one-third to blame.

Judgment accordingly.

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