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ON APPEAL FROM THE ONTARIO ADMIRALTY DISTRICT

1939  
 June 20.  
 July 3.

BETWEEN:

PATERSON STEAMSHIPS LIM- } APPELLANT;  
 ITED (PLAINTIFF) .....

AND

THE SHIP *FRANK B. BAIRD* } RESPONDENT;  
 (DEFENDANT) .....

AND

THE SHIP *SORELDOC* (DEFENDANT)... APPELLANT;

AND

UPPER LAKES & ST. LAWRENCE } RESPONDENT.  
 TRANSPORTATION COMPANY }  
 LIMITED (PLAINTIFF) .....

*Shipping—Collision between two upbound ships—Duty of overtaking ship—Rule 36 of the Rules of the Road—Appeals dismissed.*

The *Soreldoc* and the *Baird*, both laden and upbound from Quebec ports, were in collision off Weaver's Point gas buoy on July 15, 1937. About 11:00 p.m., July 14, 1937, the *Baird* anchored for the night in Pillars Bay, about three-quarters of a mile from Weaver's Point

gas buoy. The *Soreldoc* came around Steen Island and shortly after saw the anchor lights of the *Baird*. The *Soreldoc* saw the green light of the *Baird* and blew a two-blast signal which the *Baird* answered with a two-blast signal. The *Baird* weighed anchor and proceeded on her way to Weaver's Point. The *Soreldoc* gave a second two-blast signal which was also answered by the *Baird*.

The two vessels collided at a point where the navigable channel is 1,000 feet wide. The trial judge found that the *Soreldoc* had plenty of room to the port of the *Baird* in which to navigate and keep out of the way of the *Baird* whilst the *Baird* could not safely have gone any closer to the buoy than she did. The trial judge also found that the *Baird* could have avoided the collision by slowing her speed and remaining in Pillars Bay. Both ships being equally at fault the trial judge ordered the damages assessed on the basis of 50 per cent to each. On appeal to this Court the judgment was affirmed.

*Held:* That it is the duty of a vessel overtaking another to keep out of the way of the overtaken vessel.

2. That the master or pilot of the *Baird* after answering the signal of the *Soreldoc* should have exercised more caution and facilitated in every reasonable way the passage of the *Soreldoc* towards the buoy.

APPEALS from the judgment of the District Judge in Admiralty for the Ontario Admiralty District dismissing two actions consolidated for purposes of trial.

The appeals were heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

*C. Russell MacKenzie, K.C.* for appellants.

*G. P. Campbell, K.C.* and *F. H. Keefer* for respondents.

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

THE PRESIDENT, now (July 3, 1939) delivered the following judgment:

This is an appeal from the decision of the District Judge in Admiralty for the Ontario Admiralty District in the above two consolidated actions, which had their origin in a collision occurring between the ship *Soreldoc* and the ship *Frank B. Baird*, hereinafter referred to as "the *Baird*," off Weaver Point in the River St. Lawrence some distance below Morrisburg, Ontario, early in the morning on July 15, 1937. Both ships were laden, of about the same speed, and were bound up the River St. Lawrence. The learned trial judge found both ships equally to blame,

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and from that decision both parties have appealed. On the hearing of the appeals I was assisted by Captain J. W. Kerr as Nautical Assessor.

The important facts of the case are so concisely and clearly set forth in the reasons for judgment of the learned trial judge that it is unnecessary to repeat them.

The first two-blast signal of the *Soreldoc* indicated to the *Baird* that the former was directing her course to port and to which the *Baird* promptly responded with the same signal, knowing that the *Soreldoc* was proceeding up the river and that she would have to turn the buoy at Weaver Point, where a definite alteration in course to starboard would be necessary. At that stage the master of the *Soreldoc* apparently thought the *Baird* was a down-bound ship and therefore his signal could not have been intended to mean that he was overtaking the *Baird* and was desirous of passing her on her port side. But the *Baird* was then about departing from her anchorage to take a course up the river and she also would be obliged to turn the buoy at Weaver Point, both ships then being on courses slightly converging toward the buoy. I think it was the duty of the *Baird* from the start to make sure that she did not crowd upon the course of the *Soreldoc*. The *Baird*, however, worked her engines at full speed for several minutes in heading towards the buoy after clearing her anchorage, while in slack water, and after responding to the signal of the *Soreldoc* with a two-blast signal. The master or pilot of the *Baird* on answering the signal of the *Soreldoc* with two blasts should have exercised more caution and facilitated in every reasonable way the passage of the *Soreldoc* towards the buoy, by proceeding at moderate or slow speed. Had the *Baird's* speed from her anchorage towards the buoy been moderate or slow until the *Soreldoc* was well on towards rounding the buoy, which would have been the proper and prudent thing to do in the circumstances, the collision would have been avoided. Instead of that the *Baird* crowded upon the course of the *Soreldoc*. I think the *Baird* was therefore in part liable for the collision.

At some stage between the time of the first and the second two-blast signal of the *Soreldoc* it must have become obvious to her master that the *Baird* was bound up the river, and that she would have to turn the buoy at

Weaver Point. The *Baird* was then on a course which would take her around the buoy, and she was ahead of the *Soreldoc*. As they came into parallel positions, or almost so, the *Soreldoc* gave her second signal of two blasts. This signal was likely intended as one of an overtaking ship desirous of passing on the port side of a ship ahead. In any event Rule 36 requires that notwithstanding anything contained in the rules every vessel overtaking any other shall keep out of the way of the overtaken vessel, as would also the ordinary practice of seamen and the circumstances of the situation here require. There was, I think, a duty on the part of the *Soreldoc* to keep out of the way of the *Baird* notwithstanding the latter may have agreed that the *Soreldoc* might overtake and pass her on her port side. In point of fact the *Soreldoc* never overtook and passed the *Baird* up to the time of the collision, and I do not think they were even approximately bow to bow until about the moment of the collision. The *Soreldoc* did not keep sufficiently clear of the *Baird* to avoid the risk of collision and there was no reason for not doing so. I am advised by my assessor, as, I think, was the learned trial judge advised by his assessor, that in approaching Weaver Point the *Soreldoc* could have easily laid a course, preferably some distance from the buoy, to give the *Baird* a much wider berth, knowing that the *Baird* was also heading for the buoy, and with considerable speed, even though the *Baird* had responded to the second two-blast signal of the *Soreldoc* as meaning that the *Soreldoc* was an overtaking ship desirous of passing on the port side of the *Baird*. Further, I am advised, with the current against the *Soreldoc* she should have been able to stem the current without making any appreciable headway and still keep under command by reducing engine revolutions to equal or nearly equal the speed of the current and to manoeuvre a reasonable distance below Weaver Point buoy in such manner as to give it a wider berth than was given at the time of the collision. Had these precautions been taken the *Soreldoc* could have avoided the collision. The *Baird* could not with safety have passed closer to the buoy than forty feet which was her distance from the buoy when she was rounding it. I see no reason for thinking that the *Soreldoc* could not easily have manoeuvred sufficiently to port, even when

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the ships were getting quite close together, without subjecting herself to loss of command or steerage way because of the current. I am therefore of the opinion that the *Soreldoc* was also in part liable for the collision.

I am in agreement with the learned trial judge that both ships were equally at fault. Both appeals are therefore dismissed and each party will bear its own costs.

*Appeals dismissed.*

#### REASONS FOR JUDGMENT OF BARLOW D.J.A.:

These two actions were consolidated by order of the 8th day of March, 1939. The action is the result of a collision between the *Soreldoc* and the *Baird* off Weaver's Point gas buoy about 3:00 a.m. on the 15th day of July, 1937.

The *Soreldoc* is a canal type with a keel length of 253' and a beam of 43' 4". She was loaded with pulpwood on a voyage from Frankland, Quebec, to Thorold, Ontario.

The *Baird* is also a canal type with a keel length of 253' and a beam of 43' 1". She was laden with a cargo of corn on a voyage from Three Rivers to Toronto.

About 11:00 p.m. on the 14th day of July the *Baird* anchored for the night in Pillars Bay about three-quarters of a mile from Weaver's Point gas buoy. The *Soreldoc* came around Steen Island and shortly after saw the anchor lights of the ship anchored in Pillars Bay, which ship later turned out to be the *Baird*. When about half way from Steen Island to Weaver's Point, the *Soreldoc* saw the green light of the *Baird* at which time the *Soreldoc* blew a two-blast signal. The evidence of the witnesses for the *Baird* is that the first two blasts were blown by the *Soreldoc* when the *Soreldoc* was just east of the point known as the Poplars, which point is about half way between Steen Island and Weaver's Point. There is, therefore, no dispute as to the evidence this far.

The *Baird* answered with a two-blast signal. When the *Baird* came to weigh anchor in Pillars Bay, although she was an upbound ship her bow was heading almost due east, and although some of the witnesses of the *Baird* question whether or not the *Soreldoc* could see her green light, I am of the opinion that the *Soreldoc* did see the green light at the time she first blew her first two-blast signal. The *Baird* proceeded to back and fill in making the turn and in doing so her green light was shut out and her red light same into the view of the *Soreldoc*. It then became evident to the *Soreldoc* that the *Baird* was not a down bound ship and at this time it would appear to the *Soreldoc* that the *Baird* might be a crossing ship. When the *Baird* was turned sufficiently, she proceeded on her way to Weaver's Point. In the meanwhile the *Soreldoc*, which was to the port of the *Baird*, was proceeding on her way, but was out in the current whereas the *Baird* was more or less in dead water. When the *Baird* was some two or three boat lengths to the starboard of the *Soreldoc* and slightly ahead of her, the *Soreldoc* blew a second two-blast signal, which was answered with a two-blast signal by the *Baird*.

At this time the evidence is that the *Baird* was at half speed and the *Soreldoc* at full speed. If the *Baird* had checked her speed

somewhat more after having answered the second two-blast signal of the *Soreldoc*, the *Soreldoc* would probably have gone ahead of her and no collision would have occurred. I have asked my Assessor, Captain Felker, if the *Baird* should have waited for the *Soreldoc* to proceed ahead and he tells me that in view of the width of the river at Weaver's Point and that there was plenty of room for both ships to round the point, that there was no obligation upon the *Baird* to do so. In any event both ships proceeded.

For a time it would appear that both ships were almost parallel, and the *Baird* finding herself caught by the current, found it necessary to speed up to straighten herself away, after which she again checked to half speed. At this time the *Soreldoc* blew a check signal which was not answered, the explanation of the *Baird's* pilot being that the *Baird* was already checked to half speed. The evidence of the pilot of the *Soreldoc* is that he kept edging to port to keep away from the *Baird* as the two ships were coming abreast of Weaver's Point gas buoy when the *Baird* was about 40' off the buoy and the *Soreldoc* about 25' from the *Baird*. The evidence of the witnesses for the *Soreldoc* is that the *Baird* took a slight sheer to port and the two ships came into contact the buff of the starboard bow of the *Soreldoc* with the port bow of the *Baird*. The witnesses for the *Baird* say that just before the collision the *Soreldoc* hauled to starboard and that this caused the collision.

At the point of contact the navigable channel is at least 1,000 feet wide, yet the course of the *Soreldoc* was within at least 105 or 110 feet of the buoy. I have asked my Assessor, Captain Felker, if the collision could have been avoided and he tells me that with the width of the channel at this point the *Soreldoc* had some 900 feet to the port of the *Baird* in which she could safely navigate and keep out of the way of the *Baird*, and that the *Baird* could not safely have gone any closer to the buoy than she did.

I am, therefore, of the opinion that both ships were at fault. If the *Baird* had slowed her speed and remained in Pillars Bay no accident would have happened. On the other hand, in view of the width of the channel at Weaver's Point, she elected to proceed, and having done so the *Soreldoc* could have avoided the collision by keeping much more to the port of the *Baird*. Some evidence has been given as to the time which it took the *Baird* to proceed from her point of anchorage in Pillars Bay to Weaver's Point gas buoy, but when it is remembered that the *Baird* was travelling in almost dead water the better part of the way whereas the *Soreldoc* was travelling against the current, it can be easily understood how they reached the point of impact at the time they did.

As I have come to the conclusion that both ships are equally at fault, the damages will be assessed on a basis of fifty per cent to each with a reference to the Registrar to determine the same.

In view of the above finding each party should bear its own costs.

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