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CORRIGENDUM

THE "BRAMLEY MOORE", [1963] 2
Lloyd's Rep. 429 (Part 11).

At p. 429, in col. 2, lines 36 to 42 should
be deleted.

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Of the Middle Temple, Barrister-at-Law

[1963] VOL. 2]

FRIDAY, SEPTEMBER 6, 1963

[PART 1

ADMIRALTY DIVISION

June 11, 12 and 13, 1963

THE "BRITISH TENACITY"

Before Mr. Justice HEWSON, sitting with Captain G. C. H. NOAKES and Captain D. S. TIBBITS, Elder Brethren of Trinity House

Collision — Fog — Narrow channel — Vessels approaching end on — Radar — Excessive speed — Look-out — Deterioration in visibility not appreciated.

Collision between plaintiffs' outward-bound motor vessel *Minster* and defendants' inward-bound motor tanker *British Tenacity* in River Thames Estuary, in fog — Vessels approaching on opposite courses — *Minster* proceeding in clear weather at full speed (10 knots) to northward (her port side) of mid-channel — Deterioration in visibility — Radar switched on at 3-mile range and, when warmed up, echo of *British Tenacity* observed fine on starboard bow — Engines of *Minster* rung "stand by" and fog signals sounded — 7½ minutes later engines of *Minster* reduced to half speed ahead, and, 1 minute later, to slow (2½ minutes before collision) — Attempt by master of *Minster* to pick up buoy — Buoy passed to starboard at distance of ¼ mile (by radar), putting *Minster* on her wrong side of channel — Masthead light of *British Tenacity* sighted at between ¼ and ½ mile — Wheel of *Minster* ordered to starboard — Second masthead and green light of *British Tenacity* seen immediately afterwards and wheel of *Minster* ordered hard-a-port — Fog signal heard from *British Tenacity* — Two short blasts sounded by *Minster* — One short blast heard from *British Tenacity* and two-short-blasts signal repeated by *Minster* — Further

exchange of contrary signals — Unsuccessful avoiding action — *British Tenacity* proceeding at full speed (11 knots) with radar switched on in good visibility — Wisps of fog noticed — Engines of *British Tenacity* put on stand by 2½ minutes before collision — Engines put to slow ahead 1 minute later and fog signal sounded — Radar looked at and echo of *Minster* observed ahead — Lights of *Minster* (including both side lights) immediately sighted ahead — One short blast sounded by *British Tenacity* and her wheel put hard-a-starboard — Engines of *British Tenacity* put full astern — Collision between stem of *British Tenacity* and starboard side of *Minster* at angle of 7 points.

— Held, by HEWSON, J., (1) that at collision, speed of *Minster* was 5 knots and speed of *British Tenacity* was 9 knots; (2) that *Minster* was to blame in that she did not reduce speed when it ought to have been appreciated that visibility was deteriorating, and did not get to her starboard side of channel (which was a "narrow channel"); and failed to stop her engines on becoming aware of the *British Tenacity*; (3) that *British Tenacity* was to blame in that she failed to appreciate that visibility was restricted, and continued at excessive speed without referring to her radar — Apportionment of blame: *Minster*, 60 per cent.; *British Tenacity*, 40 per cent.

In this case, the plaintiffs, owners of the motor vessel *Minster*, claimed against the defendants, owners of the motor tanker *British Tenacity*, damages arising out of a collision which occurred between the vessels in the River Thames Estuary, near the North-East Mouse Buoy, in fog, at about 5 20 a.m. on Jan. 4, 1959.

Both vessels alleged negligent navigation by the other, and the defendants counter-claimed.

According to the plaintiffs' case, shortly before 5 21 a.m. (G.M.T.) on Jan. 4, 1959, the *Minster*, a steel single screw motor

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The "British Tenacity"

vessel of London, of 3194 tons gross and 1738 tons net register, about 335 ft. in length and 46 ft. in beam, fitted with Burmeister & Wain diesel engines of 1600 b.h.p. and manned by a crew of 21 hands all told, was in the estuary of the River Thames on a voyage from Dagenham to the River Tyne, in ballast. Her draught on sailing was 8 ft. forward and 13 ft. 6 in. aft. The wind was N.W., a gentle to moderate breeze, there was fog in patches and the tide was flood of a force of about one knot. The *Minster* was on a course of E.N.E. (mag.) and with her engines working at full speed ahead was making about 10½ knots through the water. Two white masthead lights, both side lights and a fixed stern light were being duly exhibited and were burning brightly, and a good look-out was being kept on board.

In these circumstances, when, after passing the West Barrow Buoy, those on board the *Minster* noticed that the visibility was becoming restricted, the radar was switched on and the echo of a vessel which proved to be the *British Tenacity* was observed, distant about three miles and bearing fine on the starboard bow, and carefully watched. Shortly thereafter the engine-room telegraph was rung to "stand by" and single prolonged blasts for fog were sounded on the whistle of the *Minster* at regulation intervals. Shortly thereafter the engines of the *Minster* were put to "half ahead", and very shortly thereafter her speed was further reduced to "slow ahead". When a white masthead light of the *British Tenacity* came into sight, distant about one-quarter of a mile and bearing about one point on the starboard bow, and at the same moment a signal of one prolonged blast was heard from her, the master of the *Minster* ordered starboard wheel, but immediately thereafter, when the second masthead and green side light of the *British Tenacity* came into sight and the *British Tenacity* was seen to be heading approximately on an opposite course to that of the *Minster*, the wheel of the *Minster* was put hard-a-port and a signal of two short blasts was sounded on her whistle. When the *British Tenacity* replied with a signal of one short blast the *Minster* again sounded two short blasts as she was then swinging to port, and when the *British Tenacity* sounded a further signal of one short blast the *Minster* again sounded two short blasts. The *British Tenacity* then replied with a signal of three short blasts. Shortly thereafter, when the red light of the

British Tenacity opened, the wheel of the *Minster* was put hard-a-starboard and her engines were put full speed ahead. The *British Tenacity* came on at speed, and with her stem struck the starboard side of the *Minster* in way of the after end of No. 3 hold at an angle of about 80 deg. leading aft on the *Minster*, doing damage.

The collision occurred in a position with the North-East Mouse Buoy bearing S.S.W. (mag.) and about three cables therefrom.

The plaintiffs alleged that those on board the *British Tenacity* were negligent in that they failed to keep a good look-out; proceeded at an excessive speed in the prevailing weather conditions; failed, upon hearing forward of their beam the echo of a vessel whose position was not ascertained, to stop their engines and thereafter to navigate with caution; altered course to starboard at an improper time; failed to pass the *Minster* starboard to starboard as they could and ought to have done; failed to sound their whistle for fog in accordance with the Collision Regulations, 1954; failed to ease, stop or reverse their engines in due time or at all; failed to comply with Rules 15, 16, 25 and 27 (as qualified by Rule 29) of the Collision Regulations, 1954; and failed to make any or adequate use of their radar in due time or at all.

According to the defendants' case, shortly before 5 19½ a.m. on Jan. 4, 1959, the *British Tenacity*, a steel screw motor tanker of London, of 8439 tons gross and 4855 tons net, 482 ft. in length and 62 ft. in beam, fitted with Doxford oil engines of 2850 b.h.p. and manned by a crew of 63 hands all told, was in the River Thames estuary on a voyage from Saltend to the Isle of Grain, in ballast. Her draught was about 13 ft. forward and 19 ft. aft. The wind was variable, light airs; it was fine and clear; and the tide was flood of a force of about one knot. The *British Tenacity* was on a course of 240 deg. (true), keeping well to the northward of the channel, and with engines working at full speed ahead was making about 10 to 11 knots through the water. Regulation masthead lights, side lights and stern light were being duly exhibited on board, all of which were burning brightly, and a good look-out was being kept on board.

In these circumstances, visibility ahead suddenly started to deteriorate from fine and clear to foggy, and the engines of the *British Tenacity* were immediately rung to

"stand by" and reduced to slow speed from full ahead, one prolonged blast being sounded on her whistle. Almost immediately afterwards the echo of the *Minster* was observed in the radar screen of the *British Tenacity*, and at about the same time the two white masthead lights (in line) and red and green side lights of the *Minster*, which was about on an opposite heading, were seen visually distant about half a mile, bearing about right ahead. The wheel of the *British Tenacity* was immediately put hard-a-starboard and one short blast was sounded on her whistle. Almost immediately afterwards the *Minster* replied with two short blasts, her red side light shut out and her masthead lights began to open as if she was altering course to port, whereupon the engines of the *British Tenacity* were instantly stopped and almost immediately afterwards put full speed astern with a double ring and a second signal of one short blast was sounded on her whistle. When the *Minster* again replied with two short blasts, a signal of three short blasts was sounded on the whistle of the *British Tenacity* and her engines were kept working full speed astern, but the *Minster* came on at speed, swinging to port, and with her starboard side in way of her No. 3 hold struck the stem of the *British Tenacity* at a right angle, doing damage.

The place of collision was a little down river of North-East Mouse Buoy and to the northward of a line between No. 13 Barrow and West Barrow Buoys.

The defendants alleged that those on board the *Minster* failed to keep a good look-out; failed to make proper and timely or any use of their radar and/or failed to observe and plot and/or act upon its indications with proper seamanlike skill and care or at all in due time or at all; ported their wheel; failed to starboard their wheel in due time or at all and/or, having put their wheel to starboard, failed to keep it to starboard; failed to keep to their own starboard side of mid-channel or to take the appropriate or any steps so to do in due time or at all; proceeded at an excessive speed in the circumstances; failed to ease, stop or reverse their engines in due time or at all; crossed the channel ahead of the *British Tenacity*; failed to indicate their manœuvres by the appropriate or any whistle signals; further, or alternatively, having heard forward of their beam the fog signal of the *British Tenacity*, whose position was not ascertained, failed to stop their engines and thereafter navigate with

caution; failed to sound their whistle for fog in due time in accordance with the Collision Regulations, 1954, or at all; and failed to comply with Rules 18, 25, 27, 28 and 29, and/or further or alternatively with Rules 15 and 16 of the Collision Regulations, 1954.

Mr. H. V. Brandon, Q.C., and Mr. Barry Sheen (instructed by Messrs. Thomas Cooper & Co.) appeared for the plaintiffs; Mr. J. V. Naisby, Q.C., and Mr. Gerald Darling (instructed by Messrs. William A. Crump & Son) represented the defendants.

JUDGMENT

Mr. Justice HEWSON: This action arises out of a collision between the motor vessel *Minster* and the motor tanker *British Tenacity* which occurred in the Barrow Deep in the Thames Estuary on Jan. 4, 1959.

The *Minster* is a single screw ship of 3194 tons gross, 335 ft. in length and 46 ft. in beam, fitted with Burmeister & Wain diesel engines of about 1600 b.h.p. She was bound from the River Thames to the River Tyne, in ballast, drawing about 8 ft. forward and 13 ft. 6 in. aft.

The *British Tenacity*, a somewhat larger vessel, is of 8439 tons gross, 482 ft. in length and 62 ft. in beam, fitted with Doxford oil engines of 2850 b.h.p. She was inward bound in the Thames Estuary, in ballast, drawing about 13 ft. forward and 19 ft. aft.

At all material times both vessels were exhibiting the regulation navigation lights, and the *British Tenacity* was in charge of a duly licensed Trinity House pilot.

The collision occurred at about 5 20 a.m. (G.M.T.) on that day, a little down river of the North-East Mouse Buoy and about on the northern edge of the channel which, in that part of the river, I take to be the line joining the West Barrow Buoy with No. 13 Barrow Buoy.

The wind was north-westerly, a gentle breeze. At the time of the collision it was fog with a visibility of between a quarter and half a mile. The tide was flood of a force of about one knot.

When the *Minster* was off Sea Reach Buoy No. 1 at about 4 31 a.m., she set a course for Barrow Deep in clear weather. She picked up the West Barrow Buoy at a distance of about three miles, which indicated good visibility at that time. This buoy marks the northern side of the western