



# LLOYD'S LIST LAW REPORTS

Including extended Reports of Cases appearing in  
"LLOYD'S LIST and SHIPPING GAZETTE"

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Edited by  
H. P. HENLEY  
of the Middle Temple, Barrister-at-Law

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THURSDAY, MAY 26, 1938.

[BY SUBSCRIPTION

## ADMIRALTY DIVISION.

Apr. 27, 28, 1938.

### THE "SKARABORG."

Before Mr. Justice LANGTON, sitting  
with Captain W. R. CHAPLIN and  
Captain C. St. G. GLASSON, Elder  
Brethren of Trinity House.

*Collision—Narrow channel—Starboard-hand rule—Collision between German steamship Hermia and Swedish steamship Skaraborg in Gravesend Reach, River Thames—Hermia bound down; Skaraborg bound up—Ebb tide—Porting by Skaraborg to pass astern of Customs' launch crossing river—Port helm signal then sounded to Hermia—Starboard helm signal sounded by Hermia—Engines put at "slow," then at "stop" and later at "full astern"—Duty of vessels to pass port to port—Whether special circumstances of the case made departure from the Rule necessary—Collision just outside southern limit of dredged channel—Look-outs—Speeds—Port of London River By-laws, 1914-1934, Rule 33.*

*Held, that the special circumstances of the case did not make necessary any departure from a port to port passing; that the Hermia acted in a seamanlike manner in the matter of her engine and helm actions; and that the Skaraborg was solely to blame for bad look-out, for wrong helm action and for ineffective engine action.*

In this case, the owner of the German steamship *Hermia* claimed in respect of damage sustained by her in a collision with the Swedish steamship *Skaraborg*, owned by the defendants, which occurred in Gravesend Reach, River Thames, on the

night of July 17, 1937. The defendants denied negligence, alleging that the collision was due to the negligent navigation of the *Hermia*, and counterclaimed for damages.

Mr. K. S. Carpmael, K.C., and Mr. H. G. Willmer (instructed by Messrs. Constant & Constant) appeared for the plaintiff; Mr. G. St. Clair Pilcher, K.C., and Mr. Owen L. Bateson (instructed by Messrs. Thomas Cooper & Co.) represented the defendants.

According to the plaintiff's case, shortly before 10 50 p.m. (B.S.T.) on July 17, 1937, the *Hermia*, a steel screw steamship of Hamburg, of 997 tons gross and 604 tons net, 226.3 ft. in length and 33.3 ft. in beam, and fitted with triple expansion engines of 111 h.p. nom., was in Gravesend Reach, River Thames, on a voyage from London to Hamburg, part laden with general cargo and manned by a crew of 15 hands all told. The weather was fine and clear, the wind was westerly light and the tide was ebb of a force of about two knots. The *Hermia*, which had just discharged her river pilot, was on a down-river course of about E.  $\frac{1}{2}$  S. (mag.), keeping well on her own starboard side of mid-channel and with the Shornmead Light right ahead, and with engines working at full speed ahead was making about six knots and gathering headway. The regulation masthead light, additional optional masthead light, side lights and a fixed stern light were being duly exhibited on board the *Hermia* and were burning brightly, and a good look-out was being kept on board her.

In these circumstances the masthead lights and green light of a steamship which proved to be the *Skaraborg* were observed approaching up river, distant about two miles and bearing about a point on the port bow of the *Hermia*. The *Hermia* kept her

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course and speed in the expectation that the *Skaraborg* would open her red light and pass port to port, as she could and ought to have done. The *Skaraborg*, however, kept her green light open and after an interval, was heard to sound two short blasts, whereupon the engines of the *Hermia* were reduced to slow ahead, one short blast was sounded on her whistle and her wheel was starboarded a little. Shortly afterwards the *Skaraborg* again sounded two short blasts and came on, still showing her green light on the port bow of the *Hermia*. The engines of the *Hermia* were thereupon stopped and one short blast was again sounded on her whistle, and immediately afterwards her engines were put full speed astern, three short blasts were sounded on her whistle, and her wheel was put hard-a-starboard. The *Skaraborg* also sounded three short blasts, but continued to come on, angling athwart the river, with her green light open, and although just before the collision the starboard anchor of the *Hermia* was let go, the *Skaraborg*, with her starboard side forward, struck the stem of the *Hermia*, causing damage to the *Hermia*.

The plaintiff alleged that those in charge of the *Skaraborg* were negligent in that they failed to keep a good look-out; failed to keep the *Skaraborg* clear of the *Hermia* or to take the proper or any steps to do so in due time or at all; failed to keep to their own starboard side of mid-channel; failed to pass the *Hermia* port to port as they could and ought to have done; failed to starboard their wheel in due time or at all; improperly and at an improper time put and kept their wheel to port and/or caused or allowed their head to fall to port; improperly and at an improper time attempted to cross the river; improperly and at an improper time attempted to cross ahead of the *Hermia*; failed to ease, stop or reverse their engines in due time or at all; failed to let go an anchor or anchors in due time or at all; and failed to comply with Rules 33, 34, 39, 40, 41 and 42 of the Port of London River By-laws, 1914-1934.

According to the defendants' case, shortly before 10 56 p.m. on July 17, 1937, the *Skaraborg*, a steel screw steamship of Stockholm, of 1093 tons gross and 595 tons net register, 221.6 ft. in length and 36 ft. in beam, fitted with triple expansion engines of 121 h.p. nom. and manned by a crew of 19 hands all told, was in Lower Hope Reach, River Thames, on a voyage

from Kalmar to Millwall Dock, laden with a cargo of wood pulp and timber. The weather at the time was fine and clear, there were light variable airs and the tide was ebb of a force of about two knots. The *Skaraborg*, in charge of a duly licensed Trinity House North Channel pilot, was on an up-river course of W. (mag.), and with engines working at full speed ahead was making about nine knots through the water. The regulation lights for a steamship under way with an additional optional masthead light and a fixed stern light were being duly exhibited on board the *Skaraborg* and were burning brightly, and a good look-out was being kept on board her.

In these circumstances the masthead light and the green light of a small vessel were observed a short distance ahead of the *Skaraborg* and about a point on her port bow. The wheel of the *Skaraborg* was accordingly ported a little so as to pass under her stern and two short blasts were sounded on her whistle. While the *Skaraborg* was passing under the stern of the small vessel, angled about two points to port of her up-river course and still swinging to port, the masthead light and the red light of a vessel which proved to be the *Hermia* were observed distant about three to four cables and bearing about two points on the starboard bow of the *Skaraborg*. The *Skaraborg* again sounded two short blasts on her whistle and her wheel was put further to port. The *Hermia*, however, instead of keeping on and passing the *Skaraborg* starboard to starboard as she could and ought to have done in the circumstances, sounded a short blast on her whistle. The *Skaraborg* immediately replied with two short blasts, but the *Hermia* again sounded one short blast and was now seen to be coming rapidly to starboard. Thereupon the engines of the *Skaraborg* were put full speed astern and three short blasts were sounded on her whistle, but the *Hermia* continued to come on at considerable speed and with her stem struck the starboard bow of the *Skaraborg* just abaft the break of the forecastle head, causing such serious damage that it was necessary to beach the *Skaraborg* as she was making water fast in the forehold.

The defendants alleged that the plaintiff or his servants on board the *Hermia* negligently failed to keep a good look-out; failed to pass the *Skaraborg* starboard to starboard as in the circumstances they could and ought to have done; failed to

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keep their course; improperly and at an improper time put and kept their wheel to starboard; failed to port their wheel in due time or at all; failed to ease, stop or reverse their engines in due time or at all; and failed to comply with Rules 38, 41 and 42 of the Port of London River By-laws, 1914-1934.

## JUDGMENT.

Mr. Justice LANGTON, in giving judgment, said: In this case the collision happened in Gravesend Reach on July 17, 1937. The vessels in collision were, first, the *Hermia*, a German ship, of 997 tons gross and 226.3 ft. in length, and at the time part laden with a general cargo. The *Hermia* was proceeding down the river without a pilot in charge, being in these waters an exempt ship. The other vessel, the *Skaraborg*, which was coming up river, was a Swedish vessel of practically the same size—1093 tons gross and 221.6 ft. long. The tide at the time was ebb, of a force of two knots. The weather was dark but quite clear and fine, and the wind was negligible, being either westerly, light, or light variable airs. It is a little to the point that the *Skaraborg*, the vessel that was coming up, was laden with about 1100 tons of wood pulp and timber which, for the purposes of the blow in this case, would afford a pretty good resistance to the blow received. It is not in dispute that the blow was at an angle of about seven points leading aft on the *Skaraborg*, and the parts in collision were the stem of the *Hermia*—which was turned sharply over to starboard, more than a right angle, by the force of the blow—and the break of the forecastle of the *Skaraborg*, which part received a very severe blow, in the end making a fracture towards the lower portion of the blow.

The plaintiff's case—the *Hermia's*—was this, that she was proceeding down river, as she says, at nearly full speed, and, as I am satisfied, at quite her full speed, and having dropped her pilot at Gravesend Pier, or in that neighbourhood, was keeping down to the southward of mid-channel. As she got down the river in Gravesend Reach she saw two vessels approaching coming up the reach, the first of them showing her a red light, and the second a green light. As regards the vessel showing the red light she had no difficulty at all in passing her in the usual way red to red. The vessel showing her the green light turned out to be the *Skaraborg*, and the *Skaraborg* sounded two short blasts. The

action taken on board the *Hermia*, according to her case, was that she reduced her engines to slow ahead, blew one short blast, and starboarded a little. In her pleaded case there is nothing about steadying afterwards, but I am satisfied that the action which she really took thereafter, so far as her helm was concerned, was the action spoken to by the helmsman, that is to say, that thereafter she did steady from the first starboarding. Proceeding with her story, she then again heard two short blasts from the *Skaraborg*, to which she again replied with one, and, according to her helmsman's evidence (which is the evidence I accept for this purpose) she again starboarded. I am satisfied she continued to starboard until two seconds before the collision, when her helm was just for a moment thrown hard-a-starboard. At the second exchange of blasts, when she heard the *Skaraborg* sound two, and herself sounded one, she stopped her engines, and, very shortly after that, put them full speed astern. She says that the *Skaraborg* continued to come on but had only got a very small portion of her forepart across the stem of the *Hermia* when the collision happened.

The case on the other side is that the *Skaraborg* was coming up the river when she observed very close, at a distance of two lengths, on her port bow, a small vessel which turned out to be a Customs' launch. This vessel was showing a green light on her port bow and was crossing the river. I did not understand that she was crossing it in a direction straight athwart the river, but crossing the river diagonally, so to speak, going up river, at the same time making towards Gravesend, or making, perhaps, towards the Tilbury side of the river in the direction of Gravesend. The case is that the *Skaraborg* thereupon ported her helm and went under the stern of this Customs' launch, and then—and not till then—at a distance of four cables she observed the down-coming *Hermia*. Being, as she says, committed to a port helm, which she had already announced to the Customs' launch but not to the *Hermia* because she had not seen her, she then announced this port helm to the *Hermia* and blew another two short blasts, to which she got an answer. But the *Hermia* was seen to be going off under a starboard helm, and the *Skaraborg*, apparently thinking there was nothing better to do than to continue, then, at a late moment, put her engines full speed astern.

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On those stories alone, without any further comment at all, it is obvious that the *Skaraborg*—which was in charge of a young Trinity House pilot licensed to pilot ships of less than 14 ft. draught—is in considerable difficulties in this Court.

It is material to consider Rule 33, which regulates the conduct of vessels proceeding up and down the river. It is not necessary that I should read it, but it is to be borne in mind that the injunction contained therein is that when two vessels are proceeding in opposite directions, they shall keep to that side of the channel which lies on their starboard hand and shall take action to pass port side to port side unless the special circumstances of the case make departure from the Rule necessary. The *Skaraborg*, on her own story, had not taken action to pass port side to port side, and, therefore, the burden lies upon her in this Court to show that there were special circumstances which made departure from the Rule necessary.

The first thing I have to determine, in order to resolve the difficulties of this case, is to determine where the collision took place, and as to that I find myself in no difficulty at all. The evidence of the *Skaraborg* is quite clear upon this point, that she ported her helm and went on porting her helm until the collision happened. It is not necessary to assume that she came very, very far from the northward of mid-channel. She does not claim that she did, but it is fair to assume that she came some way from the northward of mid-channel. If she was, in fact, porting her helm, with her engines still going full speed until a very short time before the collision, when she put them full astern she would clearly have got a considerable way towards the south shore and must have got a very considerable angle before the collision.

The angle of the blow was agreed at seven points. The down-coming vessel, the *Hermia*, also contributed something to that angle. The master (and I would say in passing that he was much the best witness whom I had before me) was under the impression that he had not gone off at all before the collision, or if he had it was something quite negligible. But I think the master was deeply occupied with the vessel in front of him, and deeply concerned with the proper engine action to take, and I do not think he observed the fact which the helmsman observed—that

the vessel did, in fact, go off, and go off substantially before the collision.

I have, therefore, these facts that really are beyond dispute: that the *Skaraborg* was porting for quite a considerable time before the collision, with full speed on her engines for most of that time, and that the *Hermia* was starboarding, but nothing like so violently and with less speed, for a short time before the collision.

As for the witnesses on board the *Skaraborg*, I have only had the pilot, because the ship's witnesses were not here. But the pilot tells me that he went off two points under the action he took for the Customs' launch, the *St. George*, before he ever sighted the down-coming *Hermia*. That explains two points of the seven point angle. It is not, I think, unfair to assume that as he then had a swing, and the tide on his starboard bow, and was still keeping his full speed for a substantial period after that, he went off more sharply than the *Hermia*, which was not keeping her full speed during the later portions of the time and was not taking such drastic action. It is fair, therefore, to find, and I find as a fact, that this blow, agreed at seven points, was contributed to, as to five points, by the port helm action of the *Skaraborg*, and as to two points by the starboard helm action of the *Hermia*.

Once those facts are resolved the place of collision, again, becomes comparatively simple. The German master, who knew the river well, but not perhaps quite so exactly as he thought, placed the collision in what he called Higham Bight, but having regard to all the evidence on both sides, I think it is now quite clear that it did not take place as far down the river as what most landmen, at any rate, would call Higham Bight. I have very little hesitation in placing this collision as somewhere between the *Sunbeam* and the *Parker*—nearer the *Sunbeam* than the *Parker*—and the anchored vessels on the south shore, to give an indication of up and down river, and just outside, rather than inside, the southern limit of the dredged channel as indicated by the pecked line upon the chart.

Another matter which falls to be resolved upon the evidence, and on which I had some assistance from a technical gentleman—a Mr. Foster—who was called, was as to the respective speeds of the two vessels at the time of the collision. The *Hermia*

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was coming down the river, as I find, at her full speed. Indeed, Mr. Pilcher very properly pointed out that it is not very easy to get her from the Terrace Pier, or wherever she dropped her pilot, to the place of collision with what speed she was able to make, but I am advised, and I am satisfied, that in the time at her disposal—some four to five minutes—she would easily get her full speed, and she was coming down therefore at her full nine knots, with two knots of tide to help her. On first hearing two short blasts from the *Skaraborg* she took the very wise precaution of putting her engines to "slow." I am quite satisfied that she did that. It is apparent from her documents, and it is clear in her master's very excellent evidence. At a very short stage after that she heard another two short blasts from the *Skaraborg*. She stopped her engines, and not long after that she put them astern. Mr. Foster tells me that having seen the *Skaraborg* in dry dock, and having had every opportunity of inspecting her, in his view, from the indications of the blow, the speed of the *Hermia* must have been between four and five knots. That commends itself to me as a quite accurate reading of this damage and, what is perhaps more important, it commends itself to the Elder Brethren who advise me, as being a very fair and proper estimate. When one thinks of the action that the *Hermia* had taken, it is not to my mind surprising that she would have been able to reduce her speed from her full nine knots to half that speed at the time that the collision happened.

The *Skaraborg*, on the other hand, presents a rather more difficult problem. She received this blow very nearly at right angles, and the photographs (very good photographs) show the indent of the *Hermia's* stem. But they show no signs of scraping at all, and Mr. Pilcher—who put his case, as he always does, with the greatest fairness—said: "I am entitled to claim, upon that, that there was no speed, or no substantial speed, upon my vessel." I am bound to say, for my own part, that I have seen the indication of a blow very much resembling that upon a vessel which was agreed to be stationary, which perhaps only shows how difficult it is to predicate the speed of vessels at all exactly. But I think the explanation lies in the fact that pilot Letten says that "she rebounded from me immediately." I think that is what happened in this case, that

the *Hermia*, which is quite a light ship, rebounded from the blow which she had struck and enabled the *Skaraborg* to slip across her head. As regards the *Skaraborg*, she was coming up river at some nine knots through the water, but she had two knots of tide against her. However, she does not claim to have taken any action at all with her engines until one minute before the collision. Then she says she did put them full astern, and I think it is very likely that by putting her engines full astern, and being a handy vessel getting them full astern, she got off some portion of her way. But it seems to me quite impossible that she could have got off as much of her way as the *Hermia*, on her side, had managed to reduce with the longer period at any rate of engine action. I think it fair, therefore, to say that if the *Hermia* had got her speed to four or five knots, the *Skaraborg* had got hers not lower than six. Those were the speeds and that was the place of collision. With those facts determined, the question of blame in the case does not seem to me to be difficult to determine.

Mr. Pilcher did not contend for a moment—and of course no serious person could contend—that the *Skaraborg* was not to blame. Mr. Pilcher cross-examined the German master with great address and very fairly indeed, but the German master, though in difficulties about some of the points, particularly about the bearing on which he claimed to have observed the *Skaraborg*, in defiance of the rules of Court made this surprising but remarkably vivid observation: "Why did he not stop before, or go slower?" Well, he did not insist upon that question, and it did not become necessary for me to tell him that he must not ask Mr. Pilcher questions, but I think it is a question which Mr. Pilcher would have found it very difficult to answer, and in the admirable address that he has made to me he has not really answered it at all—"Why did not the *Skaraborg* stop before, or go slower?" I think Captain Buisker put his finger on the spot when he asked that most irregular question.

According to pilot Letten's evidence, he was passing a large vessel on his port hand, and he did not see on his port hand the small Customs' launch until he had got nearly abreast of the stern of the large vessel. The Customs' launch then loomed out on his port bow, crossing the river.



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Pilot Letten was a young man and he gave his evidence well before me, and I should be very loth to say that he told me any thing which he knew to be untrue. But I am bound to observe that of all the witnesses who have been called, no one else appears to have seen the large vessel of which he spoke.

The defendants, of course, were in a very considerable difficulty in not being able to put their ship's witnesses before me, and they elected (I think very wisely, in the circumstances) not to defer this case until they could get them here but rather to try it on the evidence they had, relying—as they knew they could rely—on the plaintiff putting in all his ship's documents. I have studied with care the maritime declaration, and maritime inquiry, in which the defendants' witnesses gave depositions before their own Consul in London on July 28, 1937. I think it is only due to them that one should study those in the circumstances with very great care. Those depositions are in very considerable detail. The captain, for example, says: "A small engine-driven vessel was observed forward about one point to port; she was going very slowly, was heading northward and was lying across the *Skaraborg's* course. To that craft port signal was given from the *Skaraborg* (two short) after which the *Skaraborg* swung to port astern of that vessel." Then he goes on to give the whole story in detail—very considerable detail—but nowhere does he refer to this large vessel. There is no record of a large vessel that obscured his view of the Customs' launch, and when he was asked his opinion about the casualty he did not blame any very large vessel. He said: "The casualty should mainly be ascribed to the fact that the *Hermia* was on the wrong side of the fairway." That is not the case; that case has never been pleaded; that case has not been made here by Counsel for the *Skaraborg* at all. The *Hermia* never was on the wrong side of the fairway. There is not the smallest reason why she should have been on the wrong side of the fairway, and indeed if that case had had any kind of substance at all it would have been completely destroyed by the evidence of another pilot, Peverley, who was on board a Norwegian vessel, the *Loke* and who said that he was coming down the river practically astern and he was not coming down to the north of mid-channel. So that the master's main point seems to have been a very bad one. He then says:

"The *Hermia* did not seem to take any measures at all for preventing the collision." That is a point, of course, I shall have to consider much more seriously. Then he puts in this: "In addition, a contributory cause to be considered might be the small craft which was lying in the *Skaraborg's* way, and to which the *Skaraborg* the first time gave port signal and thereby got the swing to port." He adds as a parting shot "that the *Hermia* was proceeding without pilot and that it was his opinion that the collision would not have occurred if there had been a pilot on board"—showing a touching and delightful confidence in that splendid body, of whom we have so many representatives in this Court.

Throughout those documents—the maritime declaration, the ship's documents, and the master's deposition, all of which I have studied with great care—I can find no reference at all to what I must call the phantom ship which is said to have obscured the *St. George*. What did the pilot do with the *St. George*? Finding the vessel on his port bow, as the master says, lying across his course, instead of taking any engine action at all, and without looking up the river to see what the consequences of such action might be, he immediately took strong port helm action in order to get under her stern. He blew his two short blasts and then—not till then—did he see the *Hermia* coming down at a distance of four cables. He at that time judged that the *Hermia* was to the northward of mid-channel, and judging her to be to the northward of mid-channel he further judged, or estimated, that he could not recover under starboard helm and therefore it was necessary for him to keep his port helm. But still he went on at full speed.

Whether there is danger of collision at four cables between two vessels that are as small as these two, when one of them has got to an angle of two points across the course of the other, would be a very difficult question to decide, and it does not seem necessary for me to decide it. But if there is no danger, the *Skaraborg* obviously could recover. If there is danger because she cannot recover, she must be wrong to go on at full speed. Therefore it does not seem to me necessary for me to give any opinion upon that exceedingly difficult point. I have asked the Elder Brethren as to whether she could have recovered, because it is one of the matters that has been much debated

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in this case. Seeing that she was going against the tide, and seeing that she had, at a very early moment, an indication that the *Hermia* was proceeding to starboard under a starboard wheel, the Elder Brethren advise me that in their view she could have recovered under a starboard wheel, and could have gone to the northward. For what my opinion may be worth, I entirely accept that. These vessels are, both of them, well under 250 ft. long, and at a distance of four cables I cannot believe that the *Skaraborg*, with the tide against her, could have any difficulty in recovering from the position in which she found herself.

The pilot, who in this matter gave his evidence quite candidly, said: "There was nothing to prevent me passing to the northward of anything coming down to the southward of mid-channel, but she was coming down a little to the northward of or in mid-channel, and I considered that I could not pass her port to port on account of her being in mid-channel." At an earlier stage he said: "I came to the conclusion that she was to the north of mid-channel." Therein lies the second fault that this pilot committed. The first, I think, was in having a bad look-out, but the second was in keeping his speed and in continuing to keep his speed without looking and without ascertaining what danger he might be running into by so keeping his speed. He made a misjudgment, a miscalculation—I am satisfied as to that—in thinking that the *Hermia* was ever to the northward of mid-channel. She was coming down, I have no doubt at all, as her master says, and really as the pilot of the following ship says she was coming down, a little to the southward of mid-channel. It is the natural course of a vessel coming down. She was only partly laden. There was no reason why she should want to go anything to the north of mid-channel. She saved nothing by so doing. She did not even get to the corner, so that there could be no question of cutting the corner, and I am satisfied that she was coming a little to the southward of mid-channel. Therefore the pilot's excuse disappears—disappears on his own admission. If she was not to the north of mid-channel, he had the whole of the northern water. The dredged channel is over 1000 ft. across, and there was more water than that in this state of the water, in which the *Skaraborg*, with her comparatively light draught of 13 ft. 9 in., could have safely

navigated. Therefore the whole of his excuse disappears.

To come back to the Rule, the special circumstances of the case did not make any departure from the Rule necessary at all. These vessels could and ought to have passed one another safely port to port if the pilot had stopped, or, I daresay, had even slowed his engines when he picked up the *St. George* crossing his course. He would have been under no necessity to go across to the southward of mid-channel and could have pursued his course peaceably and easily up to Gravesend Reach and passed the other vessel, the *Hermia*, port to port. Because he did not take any engine action at all, but elected to take most injudicious and improper port helm action, he found himself in a difficulty. As I say, he continued at full speed when he found himself in a difficulty, and although he had got not one but two signals from the *Hermia* saying that she was, in fact, starboarding, he persisted in going across until he went right down to the limit, and just outside the limit, of the dredged channel, and brought himself into collision with her. For that kind of action there can be nothing but the strongest condemnation. This collision was caused by bad look-out on the part of the *Skaraborg*; by wrong helm action on the part of the *Skaraborg*, and by ineffective engine action, not stopping, not slowing, and not even reversing anything like soon enough.

The only question that remains is the question whether there is blame to be attributed also to the *Hermia*? Criticism has been very properly addressed to the action of the *Hermia* upon various matters. To begin with, Mr. Pilcher invites me to throw over the evidence from the *Hermia*, because there are certain discrepancies between the master and the helmsman. As I have said, the master struck me as an excellent witness, and the helmsman struck me as an excellent witness also, and I do not feel any difficulty at all about reconciling their differences. I think the master was quite honestly of the opinion that his vessel had not gone off somewhat. As I have said, he had many preoccupations at the time, and it does not surprise me at all, or make me think any the less of him, that he should have given the evidence he did. The helmsman, on the other hand, was a slow-witted careful man, and I think it is right to accept—as I have accepted—his evidence upon the one subject on which he was

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engrossed, namely, the helm action and the heading of his vessel. Criticism has further been addressed to the lack of engine action on board the *Hermia*. It is said, and said with force, that if she had put her engines astern sooner first of all, the vessels being as small as they were, she might have avoided the collision and probably would have done, and, at any rate, she would have avoided causing the large amount of damage that one sees on the side of the *Skaraborg*.

Another point which has been argued against her, though I think with a great deal less force, is the point that she ought to have taken other action, that she ought to have accepted the two short blasts signal of the *Skaraborg* and herself have given two short blasts, and have ported and passed to the northward. That point does not appeal to me. The Rule is imperative as to what you are to do, unless the special circumstances of the case make departure from this Rule necessary. I have been at some pains to show that there was nothing here which made departure from the Rule necessary at all. Because a young pilot coming up river at an injudicious speed gets himself into a difficulty, that does not make departure from the Rule necessary if there are at hand measures which he can take in order to remedy his faults. I think there were measures at hand, namely, starboard-ing his wheel and checking his speed, which would have made a departure from this Rule quite unnecessary.

As to the speed, however, of the *Hermia*, I have had more difficulty. The master was inclined to say that his vessel was not going quite at full speed at any time. As I say, I am not at all satisfied about that. I think his vessel had got full speed; I think he underestimated her power of picking up her full speed. But I have got this, that she did reduce her nine knots to four or five knots, and in the circumstances, that seems to me to be a very substantial and proper reduction.

Mr. Justice Hill's *dictum* in the *Wheatear*, 3 Ll.L.Rep. 229, at p. 231, has often been quoted, and it seems to me to be very applicable to this case:

The case is not the same but it is very like that of a ship which is under an obligation to keep her course and speed until the other ship cannot avoid collision by her own action alone. It is not the

same because the obligation is not upon her, but in my view it would lead to great confusion if at an early stage ships which are navigating in a narrow channel were under this obligation, that because one is not immediately seen to be acting properly, the other must be called upon to take drastic action. I think that each is for a time entitled to assume that the other will act correctly and to go on upon that assumption, and it is only at the last when it is quite clear that the other is not going to act correctly that the one which has hitherto been doing what is right, is called upon to do something more—that is to take immediate action to avoid the collision which the other is bringing about, namely, by reversing engines.

If the *Hermia* had done nothing at all in the way of engine action, save to reverse as she did at a period of not more than a minute before the collision, I think that some very severe criticism could be addressed to her, I think that both these vessels reversed at about one minute before the collision. Just how long they took to get the engines reversing is a matter one will never know, but that is the action they attempted, and to a certain extent succeeded in producing. But it is to be remembered that the down-coming *Hermia* had the tide under her, and every seaman knows that reversing with the tide under you—particularly in a crowded waterway,—is a manœuvre which has to be attempted with considerable caution, and coming down the river as she was, she did the sensible thing in putting her engines to "slow" as soon as she saw the first real hint of danger, and stopping them as soon as that danger showed signs of becoming more acute.

Therefore in my judgment in this case she is not to be held to blame in that she did not reverse earlier than she did, because she did take other earlier engine action to bring herself in hand and to be in the best possible trim for avoiding this collision. In my judgment, therefore, this serious attack upon the *Hermia* for not taking engine action earlier than she did fails, and the result of this action therefore is that the *Skaraborg* must be held alone to blame.

His LORDSHIP accordingly entered judgment for the plaintiffs, with costs.



K.B.]

S. &amp; R. Steamships, Ltd. v. London County Council.

[K.B.]

**KING'S BENCH DIVISION.**

Apr. 6, 7, 8, 11, 12, 1938.

S. & R. STEAMSHIPS, LTD. v.  
LONDON COUNTY COUNCIL.

Before Mr. Justice SINGLETON.

*Negligence—Nuisance—Bridge owned by London County Council (defendants) at entrance to Deptford Creek—Bridge having two bascule arms—Bascules raised to permit passing of steamer—Steamer closely followed by barge—“All clear” given by look-out man immediately upon passing of steamer—Bascules lowered on to barge—Failure of eastern bascule to attain horizontal position—Forced down by tramcar—Subsequent inability to raise bascules—Fracture found to bedplate—Detention of plaintiffs' steamship in Deptford Creek—Claim for damages—Non-feasance or misfeasance—Cause of fracture to bedplate—Whether due to latent defect and/or to sudden braking by operator of bridge.*

*—Held, that the plaintiffs could not recover on the ground of nuisance (the bridge was erected under statutory authority and the failure of the defendants to open the bridge was mere nonfeasance); that the defendants' servants were negligent in lowering the bascules on to the barge; that there was no proof of latent defect; and that therefore the plaintiffs were entitled to recover damages for negligence.*

In this case, S. & R. Steamships, Ltd., of Swansea, claimed £271 in respect of the detention of their steamship *Eskwood* in Deptford Creek from Oct. 7 until Oct. 21, 1936, owing to the alleged negligence of the defendants, the London County Council, in the management of the drawbridge at the entrance to the creek.

The case for the plaintiffs was that the *Eskwood* arrived at Headley's Wharf in the creek on Oct. 5 and discharged her cargo. The discharge finished at 5 10 p.m. on Oct. 7, and the ship would then have sailed, but was prevented from doing so by an accident to the bridge. On Oct. 5 the eastern bascule of the bridge fouled a barge and would not return to

the horizontal position. The defendants allowed a tramcar to run on to the bascule to force it down, but it was then found that the main cast-iron bedplate of the lifting gear was broken. The defendants were unable to open the bascule again until Oct. 21, and the *Eskwood* was imprisoned in the creek.

For the defence, it was pleaded that the failure of the bascule to descend was due to a fracture in the gear owing to a hidden flaw which was not discoverable by ordinary care or skill. If the failure of the bridge was caused by any lack of repair, that circumstance, it was pleaded, amounted to mere nonfeasance, for which the defendants were not liable.

The further facts and arguments are sufficiently set out in his Lordship's judgment.

Sir Robert Aske, K.C., and Mr. H. L. Holman (instructed by Messrs. Holman, Fenwick & Willan) appeared for the plaintiffs; Mr. John Morris, K.C., and Mr. R. T. Monier-Williams (instructed by Mr. J. R. Howard Roberts, solicitor to the London County Council) represented the defendants.

**JUDGMENT.**

Mr. Justice SINGLETON, in giving judgment, said: This is an action of some importance, and I am told that it involves other claims, or possible claims. It has occupied some time, and a good deal of evidence has been called, yet I think it is better that I should deliver my judgment to-day rather than wait until next Sittings.

The plaintiffs claim damages against the London County Council in somewhat unusual circumstances. They, the plaintiffs, are the owners of the steamship *Eskwood*, which on Oct. 5, 1936, was lying at Headley's Wharf, which is just above Deptford Creek Bridge. The ship was discharging cargo there, and in the ordinary course she would have left Deptford Creek on the night of Oct. 5 in order to go upon her other work. For reasons which I shall explain in a moment, she was unable to leave, and as it is said that those reasons were due to an act of negligence on the part of the defendants, the plaintiffs are claiming from the defendants damages in respect of the detention of the ship. There is no question as to the amount of the claim if the defendants are responsible, but the contest before me has taken place on the