LLOYD'S LIST LAW REPORTS

Reprinted (with additions) from
"LLOYD'S LIST and SHIPPING GAZETTE."

HILARY SITTINGS, 1929.

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

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

VOL. 33. No. 1.] THURSDAY, FEBRUARY 7, 1929. [BY SUBSCRIPTION

ADMIRALTY DIVISION.
(IN PRIZE.)

Tuesday, Jan. 15, 1929.

THE "HELGOLAND" AND OTHER VESSELS (PART CARGO EX.)

Before the President (Lord MERRIVALE).

Prize—Seizures—Solicitors' costs—Settlement.

This was a motion for a charging order pursuant to Sect. 28 of the Solicitors Remuneration Act, 1860, on behalf of solicitors engaged in cases arising out of seizures on board the steamships *Derfflinger*, *Lutzow* and *Helgoland*.

Previous proceedings in these cases were reported at 32 Ll.L.Rep. 211.

Mr. E. C. M. Trehern (instructed by the Treasury Solicitor) appeared for the Procurator-General; Mr. Leon Freedman (instructed by Messrs. Lattey & Dawe) appeared for the claimants; and Mr. D. Ll. Jenkins (instructed by the Solicitors for the Administrator of German Nationals' Property) appeared for the respondents.

Mr. FREEDMAN now informed his Lordship that Mr. Stamp, acting for the Administrator of German Property, and himself had now agreed upon terms, which he handed to his Lordship, and said that with his Lordship's sanction those would be indorsed on Counsel's brief and the matter would be settled.

His LORDSHIP: You tell me that the Administrator and claimants have agreed terms?

Mr. FREEDMAN: Yes, my Lord.

Mr. TREHERN said that the Procurator-General, for whom he appeared, had been served with notice of this application. He was really not concerned in it and under the circumstances he asked for costs.

His LORDSHIP: Very well. The Procurator-General must have his costs out of the fund.

His LORDSHIP intimated his consent to the settlement.

ADMIRALTY DIVISION.

Thursday, Dec. 6, 1928.

THE "MIGUEL."

Before Lord MERRIVALE (President), sitting with Captain G. GREGORY and Captain A. R. H. MORRELL, Elder Brethren of Trinity House.

Collision between steamships off Royal Sovereign Light-vessel during fog—Both vessels admittedly to blame—Degree—Plaintiff vessel found to blame for failure to stop—Defendant vessel found to blame (1) for excessive speed; (2) for failure to stop; and (3) for helm action — Collision Regulations, Art. 16 — Apportionment of blame —Plaintiffs: one-third; defendants: two-thirds—Costs—False case presented by plaintiffs—Special order.

In this case the owners of the steamship *Paris City* claimed damages from the owners of the steamship *Miguel* for in-

juries received by their steamship in a collision between the two vessels during a fog in the vicinity of the Royal Sovereign Light-vessel on the morning of May 5, 1928. The owners of the *Miguel* counter-claimed damages.

Mr. D. Stephens, K.C., and Mr. Cyril Miller (instructed by Messrs. Ingledew, Sons & Brown, agents for Messrs. Ingledew & Sons, of Cardiff) appeared for the plaintiffs; Mr. G. P. Langton, K.C., and Mr. H. C. S. Dumas (instructed by Messrs. Thomas Cooper & Co., agents for Messrs. Ingledew & Co., of Newcastle) represented the defendants.

According to the plaintiffs' case, shortly before 10 44 a.m. on May 5, 1928, the *Paris City*, a single screw steamship of 6343 tons gross and 3958 tons net register, and manned by a crew of 38 hands all told, was in the English Channel in a position by estimate of about lat. 50 41 N. and long. 0 36 E., on a voyage from Rotterdam to Barry Dock, in ballast. The weather at the time was foggy, the wind S.E. light, and the tide setting to the E. at a force unknown. The *Paris City* was proceeding on a course of S. 51 W. (true) and with her engines working dead slow ahead, just sufficient to give her steerage way, was making between two and three knots through the water. Prolonged blasts were being heard from steamships in various directions and the regulation fog signals were being duly sounded on the whistle of the *Paris City*. Her engineers were standing by, and a good look-out was being kept on board of her.

In these circumstances two short blasts were heard from a vessel, which subsequently proved to be the *Miguel*, by those on the *Paris City*, and immediately afterwards her loom appeared about four points on the starboard bow distant at about a ship's length approaching at high speed, and, notwithstanding the two-blast signals, swinging to starboard across the bows of the *Paris City*. Instantly upon the *Miguel* being seen, the helm of the *Paris City* was put hard-a-starboard and her engines were first put full speed ahead, and at the same time two short blasts were sounded on her whistle in an endeavour to bring the *Paris City* on a course parallel with that of the *Miguel* and to avoid in any event the *Miguel* striking the stem of the *Paris City*, and to assist in this manœuvre the engines of the *Paris City* were then put full speed astern. Nevertheless, the *Miguel* came on and with her port quarter struck the *Paris City* on her starboard side in the way of Nos. 1 and 2 hatches doing her damage, and then disappeared ahead into the fog.

Plaintiffs alleged that those in charge of the *Miguel* were negligent in that they failed to keep a good look-out; were proceeding at an excessive speed in the circumstances; failed to sound her whistle in accordance with the regulations; failed to indicate their manœuvres by the appropriate whistle signals and/or sounded whistle signals at an improper time and/or sounded misleading whistle signals; failed to stop their engines on hearing the whistle of the *Paris City* forward of their beam and thereafter to navigate with caution; improperly and at an improper time ported their helm or allowed their head to go to starboard across the bows of the *Paris City;* failed to ease, stop or reverse their engines in due time or at all; failed to take any proper or seamanlike steps to avoid or mitigate the collision; and failed to comply with Arts. 15, 16, 22, 27, 28 and 29 of the Collision Regulations.

Mr. LANGTON explained that owing to a variety of unforeseen circumstances, the *Miguel* had been unable to get their witnesses there in time, and in the circumstances he asked for an adjournment in order that they might be called. His professional clients had assured him of the circumstances.

Mr. STEPHENS said that the application was an unusual one at that stage, but he fully accepted the assurance of Mr. Langton's professional clients, and in the circumstances he could not oppose.

His LORDSHIP said that he was inclined to think it would be proper to grant the request, although it was in the highest degree unfortunate, because a statement on paper often appeared different from the impression created when a statement was made in the witness box.

Mr. LANGTON said that he thought his witnesses would be available during the vacation, and it ought to be possible to retain those necessary for the case so as to be available early in the next sittings.

His LORDSHIP intimated that in the circumstances he would grant the application for adjournment. Notice could be given to the Admiralty Marshal when they were available, and a day fixed early in the next term.

Friday, Jan. 11, 1929.

According to the defendants' case, shortly before 10 a.m. (ship's time) on May 5, 1928, the *Miguel*, a steel screw

steamship of Bilbao, Spain, of 2190 tons gross tonnage, 313 ft. in length with a beam of 44.2 ft., fitted with triple expansion engines of 253 h.p. nom., and manned by a crew of 30 hands all told, was in the English Channel, at about four to five miles S.E. mag. from the Royal Sovereign Light-vessel, bound from Huelva to Fredericia, Denmark, with a cargo of pyrites. The weather at the time was a thick fog, the wind about N.E., a light breeze, and the tide setting to the E. with a force of about one to two knots. The *Miguel* was steering a course of N. 62 E. mag. and with engines working at half speed ahead was making about four to five knots through the water. The whistle of the *Miguel* was being duly sounded for fog in accordance with the regulations, and a good look-out was being kept on board of her.

In these circumstances those on board of the *Miguel* heard a prolonged blast of a steamship's whistle sounded on the port bow, and thereupon the whistle of the *Miguel* was sounded a long blast in reply and her helm was ported half a point. Shortly afterwards another long blast was heard from the other steamship, still on the port bow, and the helm of the *Miguel* was thereupon ported another half point and her whistle was again sounded a long blast. Shortly afterwards a third long blast was heard from the other steamship, which appeared to be closing in on the *Miguel*, and thereupon the helm of the *Miguel* was ported a further point and her whistle was sounded one short blast. The other steamship then replied with two short blasts, to which the *Miguel* answered with another one short blast, and immediately afterwards the other steamship, which proved to be the *Paris City*, loomed out of the fog, distant about a ship's length and bearing about seven points on the port bow, and it was seen that the *Paris City* was navigating at considerable speed and that a collision was imminent. Thereupon the engines of the *Miguel* were at once put full speed ahead and her helm hard-a-port, as the best means of avoiding a collision or of minimising the effects of the blow. Nothing further could be done on board of the *Miguel*, and the *Paris City* coming on rapidly with the bluff of her starboard bow and shoulder struck the port side of the *Miguel* in the way of the after part of No. 3 hatch and mainrigging, doing damage, and afterwards, as the *Miguel* gathered speed, the starboard bow of the *Paris City* scraped and bumped aft along the port side of the *Miguel*, doing the *Miguel* further damage.

Defendants alleged that those on board of the *Paris City* failed to keep a good look-out; failed to navigate at a moderate speed in fog; failed on hearing the fog signal of the *Miguel* forward of the beam and in a position which was not ascertained to stop her engines and thereafter navigate with caution; failed to sound her whistle for fog in accordance with the regulations; improperly and at an improper time starboarded her helm and/or her head was improperly caused or permitted to go to port across the bows of the *Miguel*; failed to indicate her manœuvres by the appropriate whistle signals and/or sounded helm signals on her whistle at an improper time and/or sounded misleading whistle signals; failed to ease, stop or reverse her engines in due time or at all; failed to take any or any proper or seamanlike measures to avoid or minimise the effects of the collision; and that those on board of her failed to comply with the provisions of Arts. 15, 16, 22, 27, 28 and 29 of the Collision Regulations.

Monday, Jan. 14, 1929.

JUDGMENT.

His LORDSHIP, in giving judgment, said: This case arises out of a collision which occurred in the English Channel about 20 miles down Channel from Dungeness on the morning of May 5, 1928; and the vessels in collision were the *Miguel*, a Spanish vessel of 2190 tons gross register and 313 ft. long, and the *Paris City*, a vessel of 6343 tons gross, 415 ft. long, and of corresponding superiority in engine power to the Spanish vessel. There is no doubt now about the place of collision. It has been virtually agreed in the course of the discussions in the hearing as having taken place 5½ or 6 miles E.S.E. from the Royal Sovereign Light-vessel.

What is a more conspicuous circumstance is that it is now agreed that each party is to blame. The owners of the Spanish ship admitted that the collision was partly caused or contributed to by the negligent navigation of the *Miguel*, but alleged that it was also contributed to by the negligent navigation of the *Paris City* and that the proper order in the circumstances is that both vessels are equally to blame. If the hearing of the case had been anticipated 20 years it would have been a simple matter, but as it takes place now under a state of things that is better calcu-

lated to do justice to the parties by apportioning the blame for the collision, somewhat difficult questions arose at the hearing.

The plaintiffs are the owners of the *Paris City* and what they alleged was that the *Paris City*, being under way, going dead slow ahead in a fog, a dense fog, heard two short blasts on their starboard bow, the signal being for starboard helm action, and that almost immediately there appeared a vessel swinging violently under port helm. She proved to be the *Miguel* and was heading across the bows of the *Paris City* only about a ship's length away; and under these circumstances the master of the *Paris City*, who was himself in charge of his ship, was able by judicious helm action to convert what might have been a collision involving great damage and possible loss of life into a collision with a moderate amount of damage by the striking of the port quarter of the *Miguel* by the starboard side of the *Paris City* in the way of Nos. 1 and 2 hatches at a narrow angle, further damage being done by the bumping of the ships after they had come into collision. The *Paris City*, therefore, in her claim in the action and subsequent proceedings attributed the collision to the excessive speed of the *Miguel* and to her violent port helm action which brought about her crossing course with the *Paris City*. It is said that the *Miguel*, which admittedly had heard the fog signals of the *Paris City*, should have stopped, but that instead of stopping she proceeded at quite extravagant speed, confessedly not less than half speed and which there are grounds for suspecting was more—five or six knots and it may be appreciably more. It is said that the master of the *Miguel* took violent port helm action and threw himself across the course of the *Paris City* and that he did this after giving a signal of a contrary nature. It was admitted that the *Miguel* did not stop as the Collision Regulations required and that at the time she was travelling at the speed I have indicated, not more than half speed, she took the violent port helm action I have mentioned. Her blameworthiness was admitted, and it was said by her master that it was true that he ported the helm of the *Miguel*, without seeing the *Paris City*, upon his supposition as to the position of the *Paris City* and that he ported and ported again, and that the *Paris City* afterwards came into view in the fog, in the remarkable position of a length distant, at about a seven-point angle on the *Miguel's* port bow, the *Miguel's* previous course having been on an up-Channel course which diverged very little indeed from the down-Channel course of the *Paris City*.

What was said for the *Miguel* was that the *Paris City* was also travelling at high speed in the fog and that the allegation that she was travelling at dead slow speed was an invention; that she was travelling at high speed and that her speed being 11½ knots full speed (or whether it was 10 or 11 knots) she was travelling at a speed altogether more blameworthy than that of the *Miguel*; and it was alleged that not only did she not stop but that she proceeded at that high speed and that she also threw herself off her previous course by starboard helm action that was admitted and that by means of that action she contributed to the collision.

It is upon the counter-allegation of the *Miguel* that the contest in this case has proceeded. As to the speed of the *Miguel*, her failure to stop and her port helm action, I do not know that I need at the moment say anything more.

As to the failure of the *Paris City* to stop, Mr. Stephens admitted it was impossible to resist Article 16 of the Collision Regulations, and that the *Paris City* must be admitted to blame for that—she was under way in a dense fog; she heard the fog signals of the *Miguel* (whether she appreciated them or not) and other fog signals (whether she appreciated them or not) and in such circumstances she should have stopped, so she must be held to blame in that respect. But it was said by the *Paris City* that her speed was not that alleged by the *Miguel* but that on the contrary she had been travelling at dead slow speed, which was set at dead slow more than half an hour before the collision and remained dead slow, and so it was continued. If the facts were as contended for by the plaintiffs and were true it could not be said that the speed of the *Paris City* was an excessive speed apart from the obligation to stop.

It was also said on the part of the *Miguel*, as I have mentioned, that the starboard helm action of the *Paris City* also contributed to the collision.

The main question, however, is with regard to the speed of the *Paris City* at the material time on May 5. The time immediately material is the point of time of the collision and the time immediately preceding it. The speed of the *Paris City* during the preceding hour or two cannot be excluded, however, from the case; and it becomes necessary to examine it very closely to see what the *Paris City* was

doing immediately before the collision and whether her account is true, or whether in a dense fog for a period of time she was proceeding at excessive speed, in order to determine whether at the time of the collision there was such speed on her as alleged.

The oral evidence does not dispose of the matter so clearly that the case can be determined upon that oral evidence. If I felt sure that I could accept the evidence of the master of the *Miguel*, there is a statement that when he saw the *Paris City* coming on at about a length away he saw her bow wave. But the look-out man, an intelligent man who had the duty of observing, described the coming into view of the *Paris City* at about a ship's length; and he said that she was coming on moderately. That is a different allegation from that of the master and does not support the case of the *Miguel* and narrows the oral evidence in favour of the ***Miguel.***

When the evidence of the *Paris City* is considered, the oral evidence and some of the ship's papers make a tremendously strong case for the *Paris City*. Her master and chief engineer came to say that for more than half an hour before the collision the *Paris City*, which had been proceeding at full speed previously, was brought to dead slow. The collision according to the ship's time is put at 10 44 a.m. and they say that at 10 10 a.m. that morning they brought the *Paris City* to dead slow and proceeded at that speed, blowing fog signals for the next half hour. That is what they ought to have done and the question is whether they did it.

Their evidence was explicit and, as I say, the ship's evidence is entirely consistent with it. But when the whole of the ship's papers are examined a different view of the case arises and there are some outstanding facts in it. The ship's log written with great clarity and deliberation said that the *Paris City* had Dungeness abeam at 8 25 a.m. That is 2 hours and 19 minutes before the collision and if that is true the *Paris City* makes a strong case. Two hours and 19 minutes would give a substantial period during which, rightly or wrongly, she was going at full speed. But the higher her speed during the earlier period the longer time she would have to reduce her speed and go dead slow. In point of fact, however, the *Paris City* did not pass Dungeness at 8 25. It so happened that at 8 o'clock her position was reported as eight miles outward from Dungeness, and if you make eight miles in 25 minutes you have a speed of something like 19 miles an hour, which the *Paris City* does not possess. The next record is 8 49 a.m. in the engine-room log and "stand by" was given at 10 o'clock; and then follows "slow ahead" and "dead slow ahead." That is said to have taken place at 10 10 and the collision at 10 44 ship's time. There is another remarkable fact that late in the hearing, upon the recognition of the responsibility of those conducting the case, Mr. Stephens very properly produced the record of a radio message that the master of the *Paris City* sent to her agent recording that she was off Dungeness at 8 30 a.m. Greenwich mean time—and oddly enough that is a minute or two within 8 25—at which other evidence in the case would lead one to suppose that the *Paris City* had passed Dungeness. But the established result of the examination of the various facts is that it becomes clear, practically to demonstration, that the record of 8 25 a.m. in the log book of the *Paris City* in passing Dungeness is a record which ought to have been recorded as 8 45 a.m., and yet with meticulous care it is written as 8 25 a.m.

The matter does not stop there, because in the ship's log and in the engine-room log "stand by" was at 10 o'clock and the order for "slow ahead" and "dead slow ahead" is said to have been given at 10 10 a.m. Now this collision took place by the ship's time at 10 44 a.m., and the question which had to be investigated was, taking it that the vessel passed Dungeness at 8 45 a.m., what was the speed at which she was travelling, and must have travelled, in order to get to the place of collision at 10 44 a.m.? That was capable of calculation—of rough calculation—and it was quite clear that with only the time from 8 45 to 10 10, if the vessel had reduced her speed to "dead slow" at 10 10 a.m. she would have been a long way to the eastward of the place of collision at the time of the collision. I thought it was capable of being worked out, and it was worked out during the hearing and I have worked it out since with the Elder Brethren; and it is clear to demonstration that the statement that she was from half an hour before the collision travelling at dead slow is a misstatement and that the entries in the log that go to corroborate that statement are untrue. That is the conclusion one is reluctantly compelled to come to.

If ethical merit were the deciding factor in a case of this kind I should not be able to find a greater amount in favour of the *Paris City* than in favour of the *Miguel*. It may be—I will not say the honours would be "easy," but the figure of blame would be easy. I have still to ascertain how at the

material time the *Paris City* was travelling. There is one piece of evidence in the case for the *Paris City* I was not surprised to find and upon which Mr. Stephens for the *Paris City* speaks with great certainty, and when it is understood it is a matter of great certainty; and that is that when the vessels came into collision at a very narrow angle the *Paris City* was alongside the *Miguel* and remained in collision in that position, but, as the *Paris City* said in her claim and as her master said in evidence, while the *Miguel* was in collision the *Miguel* was advancing upon the *Paris City*, and as the *Miguel* advanced damage aft was caused by the collision. That means that at that time the speed of the *Miguel* was substantially greater than that of the *Paris City*. I have that factor introduced, verified by the defendants, and in view of what I have said as to some of the evidence for the plaintiffs, I might have regarded it differently if it had come from the plaintiffs: but it comes from the defendants, and it is a fact; and I find it as a fact both on the declaration of the master of the *Miguel* and on the pleadings of the *Miguel*, and on the general evidence of the *Miguel*, that the *Miguel* at the time of the collision was travelling at a substantially greater speed than the *Paris City*. She had been travelling at high speed, and the speed taken off at the time the collision was imminent had not been reduced so as to bring the speed down to less than that of the *Paris City*. Witnesses said that the *Miguel* was travelling at that excessive speed and at the greater speed. I have been advised by the Elder Brethren that the helm action of the *Miguel* and the course she was taking substantially reduced her speed. Her violent helm action, whereby instead of being a vessel heading up Channel on a course of E. by N. she became heading down Channel, W. by S., would have taken off her way, but that still left her with the relatively greater speed.

That leaves me with the consideration of the speed of the *Paris City* at the time; and I approach it with some anxiety because of what I have said with regard to her documents; but I do not see any grounds for saying that she had more than four knots. Taking her own evidence in her favour and how much it was relied on by the plaintiffs I am left with the question, how was it that the speed of the *Paris City* at this time, having travelled through the fog for a long time at a speed of 10 or 11 knots, was less than that of the *Miguel*?—and I have to come to a conclusion upon the whole of the evidence and all the facts and with the advice of the Elder Brethren; and the conclusion I arrived at was that although the *Paris City* had been travelling at that most improper speed at an earlier period, it was a fact that she had reduced her speed and had come to a speed antecedent to the material time before the collision, which she described as "dead slow"; that she was working with such a number of revolutions and at such pressure as would give her steerage way but would take off her speed so far as it could be done in the case of a vessel under way. The result is that, not out of regard for the evidence of the *Paris City*, but on consideration of the whole of the facts of the case and the evidence of the *Miguel*, I come to the conclusion that the *Paris City* did take off her way so far as she was able at a point before the collision which brought her speed at the time of the collision to perhaps 2½ knots. The point of time of the collision is the material point of time, however difficult it may have been to arrive at it. So, after anxious consideration and with the assistance of the Elder Brethren I have come to the conclusion that the charge of excessive speed at the time of the collision is not made out.

With regard to her helm action I have discussed that matter with the Elder Brethren; and looking at the facts broadly they are these. The master of the *Miguel* by his most improper speed and improper port helm action in the case of a ship he had not seen and which he thought was on his port beam, had the result of the *Paris City* coming out of the fog at very nearly a right angle ahead on the port bow of the *Miguel*. The master of the *Paris City* then had to do the best he could; and the best he could do was to take starboard helm action, and that starboard helm action helped to diminish the force of the collision and was one of the things that converted what might have been a destructive collision into a collision which produced damage by the contact of the vessels at a narrow angle.

The result so far as I see the case is that the *Miguel* failed to stop, as I say, in accordance with the regulations; that she travelled at very excessive speed in a dense fog; and that not seeing a ship she heard ahead of her she took violent helm action. She is to blame in all three of these particulars.

So far as the *Paris City* is concerned she failed to stop, as is admitted, when she heard the signals of the *Miguel* down Channel. She was not at the time travelling at the excessive speed alleged, and she did

not by her helm action contribute to the collision; and in the circumstances I hold the vessels to blame in the proportions of two parts to the *Miguel* and one part to the *Paris City*.

But I cannot leave this case without considering whether the state of things I have referred to in the framing of the case of the *Paris City* ought to have no effect on the costs in this case. The question of the speed of the *Paris City* was the outstanding question in the case during the two days which it occupied; and upon the facts with regard to the speed of the *Paris City* I am satisfied that not only was a false case presented but that it was knowingly presented; and the question is whether I ought to leave the ordinary rule of costs to apply.

After considering the matter I come to the conclusion that I ought not. I am not dealing with the costs where the parties are held both to blame. I am dealing with the costs where one of the parties has presented an untrue case in a material matter. Now that is misconduct in relation to the case—not in relation to the collision. It is a kind of misconduct which brings the party concerned within the jurisdiction of the Court in respect of costs. At the hearing the case was very properly conducted by those responsible upon a state of facts which the witnesses for the plaintiffs alleged to be true statements of the facts which had to be thrashed out, and no reflection whatever is placed upon those who dealt with those statements of fact in the case or in the discussions which took place. But two of the servants of the plaintiffs adduced a state of facts to which I have referred; and it is impossible that I should allow the common rule as to the incidence of costs to apply as where both parties are to blame—that I should allow the costs to be unaffected by the action of a kind which has materially increased the costs of the party against whom the untrue allegations have been set up. I have considered the matter as well as possible. There is not an issue to which I could direct that the costs of that issue should be paid by the plaintiffs. I am therefore left to make such a decision as I can as to how the costs have been increased by this improper conduct of the servants of the plaintiffs; and I shall not be doing an injustice to the plaintiffs when I direct that the plaintiffs pay to the defendants one-fourth of their costs of the suit.

Judgment was entered accordingly.

ADMIRALTY DIVISION.

Dec. 18, 19, 20 and 21, 1928.

THE "MANSEPOOL."

Before Lord MERRIVALE (President), sitting with Captain T. GOLDING and Captain A. S. MACKAY, Elder Brethren of Trinity House.

Collision between steamships in English Channel—Vessels on crossing courses—Collision Regulations, Arts. 19, 21—Failure of give-way (plaintiff) ship to give way—Alteration of course at two miles distance—Duty to signal change of helm—Duty of stand-on (defendant) vessel where give-way vessel unable by her own action to avoid collision—Erroneous action taken by stand-on vessel—Failure to take off way—Apportionment of blame—Plaintiffs: three-fourths; defendants: one-fourth—Refusal to make special order as to costs.

In this case the plaintiffs, owners of the steamship *Horn*, claimed damages from the defendants, the owners of the steamship *Mansepool*, arising out of a collision between the two steamships in the English Channel off the Lizard on the evening of Oct. 30, 1928, which resulted in the sinking of the *Horn* and in the loss of her cargo and of the lives of five of her crew. The defendants denied negligence.

Mr. C. R. Dunlop, K.C., and Mr. R. F. Hayward (instructed by Messrs. W. & W. Stocken) appeared for the plaintiffs; Mr. G. P. Langton, K.C., and Mr. H. C. S. Dumas and Mr. G. H. M. Thompson (instructed by Messrs. Botterell & Roche, agents for Messrs. Botterell, Roche & Temperley, of West Hartlepool) represented the defendants.

According to the plaintiffs' case, shortly before 7 30 p.m. on Oct. 30, 1928, the *Horn*, a steel screw steamship of Riga, of 663 tons gross register, and 183 ft. in length, fitted with engines of 450 i.h.p., and carrying a crew of 15 hands all told, while bound from Fowey via Falmouth to Pasages, Spain, with a cargo of china clay belonging to the plaintiffs, was in the English Channel to the S.E. of the Lizard. The wind was W., moderate; the weather fine and clear; and the tide at about high water. The *Horn*, on a course of S.W. by S. ½ S. mag. with engines working at full speed, was making about eight knots. She

carried the regulation single masthead light, side lights and a stern light which were being duly exhibited and were burning brightly; and a good look-out was being kept on board of her.

In these circumstances those on board of the *Horn* observed the two masthead lights and the red light of a steamship, which proved to be the *Mansepool*, coming up channel distant at about four to five miles and bearing about four points on the starboard bow. The bearing of the *Mansepool* was carefully watched and in due course the helm of the *Horn* was ported, and when the *Mansepool* bore about ahead it was steadied and the vessels approached in a position to pass safely port side to port side. Shortly afterwards, when the *Mansepool* was all clear on the port bow of the *Horn*, she was observed to be swinging to port as if under starboard helm. The helm of the *Horn* was at once put hard-a-port and one short blast was sounded on her steam whistle, but the *Mansepool* continuing to swing to port quickly opened her green light. The *Horn* immediately repeated her single short blast and put her engines full speed astern and sounded three short blasts, but the *Mansepool*, sounding two short blasts in answer to the second short blast from the *Horn*, continuing on at high speed and repeating two short blasts shortly before the collision, with her stem struck the port side of the *Horn* forward of amidships a heavy blow, causing her to founder within a few minutes with the total loss of the plaintiffs' cargo and five of her crew.

Plaintiffs alleged that a good look-out was not being kept on board of the *Mansepool*; that she improperly failed to keep her course and speed; that she improperly starboarded; and that those on board of her improperly failed to comply with Arts. 21, 28 and 29 of the Collision Regulations.

According to the defendants' case, shortly before 7 25 p.m. on Oct. 30, 1928, the *Mansepool*, a steel screw steamship of West Hartlepool, of 4894 tons gross register, 405 ft. in length with a beam of 53 ft., fitted with triple expansion engines of 505 h.p. nom. and 3000 i.h.p., was in the English Channel, between the Lizard and the Start, on a voyage from Montreal to Rotterdam with a cargo of grain, manned by a crew of 34 hands all told. The weather at the time was fine and clear with moonlight; the wind W., a strong breeze; and the tide the last of the flood setting to the E. with a force of half to three-quarters of a knot. The *Mansepool* was steering a course of E. ¾ S. by standard compass (95½ true) and making a speed of 9 to 9½ knots. The regulation masthead and side lights for a steamship under way, including the optional additional masthead light, and a fixed stern light were being duly exhibited on board of the *Mansepool* and were burning brightly; and a good look-out was being kept on board of her.

In these circumstances those on board of the *Mansepool* observed distant about two miles and bearing about two to three points on the port bow, the masthead light and, immediately afterwards through the glasses, the green light of a steamship, which proved to be the *Horn*. The *Mansepool* kept her course and speed until the *Horn* had approached to within about 2 to 2½ ship's lengths, still showing her masthead and green light on the port bow of the *Mansepool*, when, as it was seen that the *Horn* was taking no steps to keep out of the way as she should and ought to have done and that a collision could no longer be avoided by action on the part of the *Horn* alone, the helm of the *Mansepool* was put to starboard, her whistle was sounded two short blasts and at the same moment her engines were put full speed astern. The *Horn* replied with two short blasts, but nevertheless shortly afterwards was observed to be swinging to starboard apparently under port helm and a few seconds later she opened her red light and shut in her green light and sounded one short blast on her whistle. Nothing further could then be done on board of the *Mansepool* to avoid the collision, and the *Horn*, coming on at considerable speed and still swinging to starboard, with her port side between her foremast and forecastle head struck the stem of the *Mansepool*, doing damage to the *Mansepool*.

Defendants alleged that a good look-out was not kept on board of the *Horn;* that she failed to keep out of the way of the *Mansepool* or to take any or any sufficient or timely measures so to do; that she improperly failed to port her helm or to do so in due or sufficient time; that she improperly failed to avoid crossing ahead of the *Mansepool*; that she subsequently failed to starboard her helm in accordance with her whistle signal or in the alternative sounded a wrong and misleading whistle signal; that she improperly and at an improper time ported her helm or caused or permitted her head to swing to starboard; that she failed to ease, stop or reverse her engines in due time or at

all; and that those on board of her failed to comply with the provisions of Arts. 19, 22, 23, 27, 28 and 29 of the Collision Regulations.

Judgment was reserved.

Wednesday, Jan. 16, 1929.

JUDGMENT.

The PRESIDENT, in giving judgment, said: This is an action brought by the owners of cargo lost on board a ship sunk in collision to recover from the owners of the vessel which was in collision with the lost ship the damage caused to them by the loss. It was conducted—no doubt rightly—on the footing that the plaintiffs' rights are governed by the principle on which loss due to collision is dealt with in Admiralty jurisdiction, consistent with the provisions of the Judicature Acts, the decision of Dr. Lushington as to the rights in Admiralty of owners of cargo in the *Milan*, Lush. 388; the judgment of the Court of Appeal in the Chartered Mercantile Bank of India v. Netherlands India Steam Navigation Company, Ltd., 10 Q.B.D. 521; and the Maritime Conventions Act, 1911, Sect. 1.

The collision in question took place in the English Channel, some miles off the Lizard, on Oct. 30, 1928. The plaintiffs' china clay was being carried on the *Horn*, a Latvian steamship of 180 ft. length, 663 tons register tonnage, 450 i.h.p., and manned by a crew of 15 hands in all, on a voyage to Spain from Fowey, where she had taken on board the plaintiffs' china clay. The other vessel concerned was the *Mansepool*, an English steamship of 405 ft. length, 53 ft. beam, 4894 tons gross register tonnage and 3000 i.h.p., and manned by a crew of 34. She was on her course from Montreal to Rotterdam with cargo. The weather at the time was fine with clear moonlight and very good visibility. The collision was wholly due to disregard of the Regulations, and it unhappily resulted not only in the sinking of the *Horn* with her cargo but in the sacrifice of several lives.

At 7 15 on the evening in question the vessels were approaching each other on crossing courses, the *Horn* heading S.W. by S. ½ S. mag., at her full speed of about eight knots, the *Mansepool* on a compass course of E. ¾ S.—crossing courses—at her full speed of about 9½ knots. The second officer of the *Horn* was on the bridge with a seaman at the wheel. No other member of the crew was in the watch on deck. The first officer of the *Mansepool*, who was in charge on the bridge, had a man at the wheel and a man forward on the look-out. Each vessel was observed from the other at a distance of not less than two miles. They were, as already indicated, crossing ships, and under Arts. 19 and 21 of the Collision Regulations the duty of the *Horn* was to keep out of the way of the *Mansepool* and the duty of the *Mansepool* was to keep her course and speed. The story told from each ship throws the blame of the collision on the other on grounds which — separately examined—impute errors of navigation and absence of common care to an extent almost impossible of belief.

On the part of the *Horn* it is said that the *Mansepool* was kept under observation from the time when she was five miles off; that at a distance of two miles the *Horn* was ported so as to bring the ships in a position to pass port side to port side; that at a less distance—perhaps half a mile—the helm of the *Horn* was put hard-a-port; but that when the ships by means of these manœuvres had been brought into relations of perfect safety the *Mansepool* was swung round under starboard helm so as to head directly for the *Horn*, at about a right angle to the course of the *Horn*, making collision inevitable although the *Horn's* engines were promptly put full speed astern.

The case for the *Mansepool* is that her first officer, when he saw the *Horn* at two miles distance, realised that his duty was to keep course and speed on his ship and that the *Horn* must give way; that at 200 or 300 ft. distant he saw that the *Horn* still came on at her full speed showing her green light on his port bow, and therefore, as a collision could not be avoided by her sole action, he put his helm hard-a-starboard, and as soon as possible afterwards put his engines at full speed astern, but that when he had brought the ships starboard to starboard those in charge of the *Horn* swung the ship round suddenly under a port helm and brought her directly across the new course which had been taken, and so threw the vessels into collision.

On the part of the *Horn* it is admitted that no whistle signal was given when port helm action was taken, as is said, on board of her at some two miles distant from the *Mansepool*, in order to bring her port side to port side with the *Mansepool*. It is admitted, though, that at a distance of some two miles and with the prevailing wind blowing as it did away from the *Mansepool*, the omission was a harmless one. On the part of the *Mansepool* it is

admitted that for her to take starboard helm action in face of an approaching ship near at hand on a crossing course was not to "keep her course," but the manœuvre is justified as a thing done in an emergency when collision was imminent and when—as is said—the *Horn* had put herself in a position to pass the *Mansepool* starboard to starboard.

That several of the witnesses were foreign seamen—some of them unable to speak English—is perhaps the slightest of the difficulties which attend the determination of the questions of fact in the case. Sworn declarations made on various occasions by witnesses from the *Horn* and carefully prepared statements taken by way of evidence from the crew of the *Mansepool* soon after the collision, with long entries in harmony with them, made in the practical sense concurrently, help to confuse rather than to elucidate the facts. In a vital particular the case of the *Mansepool* is challenged with regard to her course before and at the collision, with aid from a statement in her pleadings and elsewhere of a course of "95½ true." Cross-examination was directed to show that there had been before the *Horn* was sighted such an error in the course of the *Mansepool* that action under a starboard helm was naturally taken by the commander to put him on his intended up-Channel course. In respect of this matter, however, I accept absolutely the evidence of the master of the *Mansepool*. I am satisfied—and the Elder Brethren take this view—that the term "95½ degrees" was a mere error of expression and that the ship's course up Channel was E. ¾ S. by compass.

The main questions in point of fact are whether on board the *Horn* helm action was taken by her second officer at two miles distance from the *Mansepool*, or thereabout, whereby she was put on a safe course to pass the *Mansepool* port side to port side; whether at nearly a mile distance or at between half a mile and a mile further helm action was taken by the master of the *Horn* to insure that there should be a wide clearance; and whether, on the other hand, the *Mansepool* when the vessels were on safe relative courses, port side to port side, was brought round under hard-a-starboard helm and thrown across the course of the *Horn*. Evidence on the part of the *Mansepool*, given by her chief officer, of having seen the starboard light of the *Horn* on the *Mansepool's* starboard bow before he took helm action, I mention particularly only to state that I am satisfied that the *Horn's* starboard light was not so seen. I think the chief officer's memory has played him false. He said also that the *Horn* gave two short blasts at this time, but I believe she did not, and that he was misled by repeated one blast signals given in quick succession.

The account given by the master and second officer of the *Horn* of the navigation of that vessel makes a curious story. After leaving Falmouth, passing the Manacles Buoy, the master set his outward course and went to his cabin and the second officer was posted on the bridge, not in charge in the ordinary sense of the term, but under an express direction not to alter the ship's course without getting the master's authority and to call the master in case of need. The second officer observed the *Mansepool*, as he says, from the time she was five miles off, and when she was two miles off he went to the master's cabin and got orders to port his helm and bring the vessels red to red. The master was at the time undressed. He hurriedly put on some clothing and got to the bridge and when he arrived there saw the *Mansepool*, as he says, about a mile off. He says also that they were red to red. In the course of his examination he let fall the observation, I think on two occasions, that the *Mansepool* was on an altered course. What he did when he arrived on the bridge was to give peremptory orders to the helmsman of the *Horn* to "turn off to the right" and "stand hard over to the side." From the demeanour and language of the helmsman I am satisfied that the order was given with urgency and with extraordinary emphasis.

The evidence from the *Mansepool* is simple and strikingly vivid in one particular. It is to the effect that until the time when her chief officer gave his order to put her helm hard-a-starboard the starboard light of the *Horn* was still showing. In the course of the evidence the master of the *Mansepool* described with remarkable verisimilitude the exclamations of the chief officer when the master came on deck and the *Horn's* red light was in view—"he has been showing his green light all the time"; and "she showed her red light as you came out." "She cut out her green and showed her red."

Taking into consideration the evidence from both ships as to the helm action of the *Horn*, I am satisfied that such action as was taken by her second officer did not bring her and the *Mansepool* "red to red"; that the situation was urgent and perilous when the master of the *Horn* gave his order to the helmsman; and that it was the helm action then taken which threw the head of the *Horn* to starboard, and opened her red light just after the chief officer of the

Mansepool had brought that vessel under hard-a-starboard helm. At this time the two vessels—according to the best estimate I can form—were certainly not 2000 ft. apart. The first officer of the *Mansepool* estimated the distance at not more than 1000 ft., and I have no doubt honestly stated his opinion to that effect.

The duty to keep out of the way of the *Mansepool* cast on the *Horn* by Art. 19 of the Collision Regulations involved the obligation to get out of her way at such sufficient time as would make continuance on her course simple and safe. The necessary action was not taken until the vessels were in manifest danger of collision. Down to that time no whistle signal was given. To say that if given at two miles off, with a head wind blowing, it probably could not have been heard on board the *Mansepool* is no excuse for it not having been given. If not heard or not attended to it could have been repeated. The great default of the *Horn*, however, as the Elder Brethren advise me, is that she was not in respect of navigation under due control or properly controlled while her master was below.

The action taken, and the action omitted, on board the *Horn* being such as I have stated, what was done on board the *Mansepool* has to be further considered. The outstanding fact is that being the hold-on ship she did not keep her course as directed by Art. 19 of the Collision Regulations, but swung under a hard-a-starboard helm across the changed course upon which the *Horn* had too late been brought. She kept her speed but she changed her course. Her first officer is an experienced seaman and he asserted, no doubt truly, that seeing the position and course of the *Horn* while she was two miles off he treated her thenceforward until he starboarded his helm as a vessel which "must give way." His evidence in truth gave me the impression that after his observation with glasses on first sighting the *Horn* he did not take a serious account of her until just before he ordered his helm hard-a-starboard.

Mr. Langton insisted in his argument on the fact that the first officer merely complied with the absolute directions of Art. 21 of the Collision Regulations to the moment he put his helm hard-a-starboard; that he took that action when it was to the best of his judgment the only action he could take to avert a collision; and that if it was an erroneous course it was not negligent. Mr. Hayward, on the other hand, supplemented the plaintiffs' main contention by a submission that if the case of the *Mansepool* as to the helm action of the *Horn* could be accepted in point of fact, the officer in charge of the *Mansepool* ought to have given some signal while the vessels were coming into dangerous proximity and that even on this footing he was guilty of negligence.

As to this last-mentioned matter, I have felt a good deal of difficulty. Art. 21 directs the master of the hold-on ship "to keep his course and speed," and the Regulations prescribe signals for various occasions, but do not expressly authorise—much less direct—any signal by way of warning of apprehended danger in a situation such as occurred here. The Elder Brethren inform me that a succession of short blasts not capable of being mistaken for any of the prescribed signals is sometimes resorted to. I see no ground on which it could have been contended that to give such a warning under the circumstances would have been improper. To say, on the other hand, that not to do so was contrary to the Regulations or negligent is I think impossible.

The substantial ground of criticism of the course taken on board the *Mansepool* is of quite another kind. Being under an obligation to keep his course and speed until, as was said by Mr. Justice Hill in the case of the *Deputé Josselin de Rohan*, 17 Ll.L.Rep. 107, he could see the give-way ship was in a position in which she could not by her sole action avert her collision, he maintained his speed and altered his course. He assumed that the officer in charge of the *Horn* would break the Regulations, and he broke them himself. For him to put the *Mansepool* under hard-a-starboard helm was, as I am advised by the Elder Brethren, an exceedingly dangerous proceeding. This action in fact determined the angle of the blow delivered upon the *Horn*. My view of the facts, having regard to the antecedent circumstances, is that the chief officer ignored too long the approach of the *Horn* to the point of danger on a heading which made it clear he was not definitely obeying the Regulation, and then with two possible courses in an emergency which supervened took the wrong one. He changed his course and kept his speed. If he had taken off the way of his ship when danger was indicated by the continuous failure of the *Horn* to open her red light he need never have altered his course. The Elder Brethren advise me that to take engine action was the obvious and seamanlike thing for him to do. The plaintiffs' vessel, accordingly, cannot be held free of blame in respect of the action such as was in fact taken.

In view of the facts as I find them, the

apportionment of the damage due to the collision is a matter which involves difficult considerations; and the Elder Brethren advise me, and I hold upon my own view of the case, that those in charge of the *Horn* were mainly to blame for the collision, and that her neglect of the Regulations as to course, speed and signals placed the *Mansepool* in the difficulty in which the first officer took his erroneous action. On the whole, therefore, I come to the conclusion that the damage should be apportioned as to three-fourths against the *Horn* and as to one-fourth against the *Mansepool*.

Mr. LANGTON, for defendants, said that he understood his Lordship accepted the evidence of the *Mansepool* rather than that of the *Horn*, and asked for an apportionment of the costs in his favour.

His LORDSHIP intimated that he had considered this matter. If he had come to a conclusion that there had been a scheme on the part of those who gave evidence for the *Horn* to set up a deliberately false case he might have taken a different view, but he could not say there was any such intention. One knew the result of a collision such as this was likely very much to unsettle the minds of those concerned, and, in the circumstances, he left the costs as usual, and there would be no order as to them.

ADMIRALTY DIVISION.

Thursday, Dec. 20, 1928.

THE "YORK."

Before Mr. Justice BATESON.

Collision—Damages—Reference—Objection to Registrar's report—Detention for repairs — Profit-earning capacity of damaged vessel—Contract of sale entered into before repairs effected—Construction of sale contract—"Subject to buyer's approval after inspection"—Held that contract did not affect the profit-earning capacity of the vessel—Registrar's report upheld.

This was a motion by the owners of the French steamship *York* in objection to certain items in the report of the Cardiff District Registrar upon a claim by the owners of the Cardiff steamship *Royal City* for damage to their vessel arising out of a collision between her and the *York* in Barry Docks on Mar. 12, 1927.

Mr. E. W. Brightman (instructed by Messrs. W. A. Crump & Son, agents for Messrs. Gilbert Robertson & Co., of Cardiff) appeared for the owners of the *York;* Mr. G. P. Langton, K.C., and Mr. Cyril Miller (instructed by Messrs. Ingledew, Sons & Brown, agents for Messrs. Ingledew & Sons, of Cardiff) represented the owners of the *Royal City*.

Mr. BRIGHTMAN said that his clients objected to the allowance by the Registrar of surveyor's fees and of the claim for the detention of the vessel at Antwerp while the repairs were carried out. As to the first, his clients contended that they should be halved; and as to the claim for detention they contended that the item should be struck out altogether. The surveyor was engaged in other work besides the repairs and therefore it was wrong to charge the whole of his expenses. As to the claim for detention, even if there had been no repairs the plaintiffs could not have used the ship because they had sold her to a purchaser at Antwerp. The detention did not result in any loss to the owners and therefore they could not claim. The ship was necessarily at Antwerp, as she was being delivered to her purchaser.

Mr. LANGTON said that the owners of the *Royal City* were not disabled by the contract of sale from using the ship at the time of the repairs. The ship was not under any obligation to go to Antwerp at all, and the repairs were well under way before anything was done under the sale contract. As a matter of fact there was no need to have handed over the ship until after the date when the repairs were completed.

Friday, Dec. 21, 1928.

JUDGMENT.

His LORDSHIP, in giving judgment, said: I have come to the conclusion that the motion fails.

The facts are in a short compass. The collision happened on Mar. 12, 1927, and the injury was to the starboard bow of the *Royal City*, the plaintiffs' vessel, above the waterline. On Mar. 21 liability for the collision was admitted by the defendants. Apparently the vessel was able to go on trading without any repair, for there was no immediate necessity to do the repairs. She went on trading all that year until January of the following year.