



# LLOYD'S LIST LAW REPORTS

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

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MICHAELMAS SITTINGS, 1940

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Edited by  
H. P. HENLEY  
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# LLOYD'S LIST LAW REPORTS

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WEDNESDAY, DECEMBER 11, 1940.

[BY SUBSCRIPTION

## COURT OF APPEAL.

Tuesday, Oct. 1, 1940.

### WALLEY v. BRITISH & CONTINENTAL STEAMSHIP COMPANY, LTD.

Before Lord Justice MACKINNON,  
Lord Justice GODDARD and Lord  
Justice DU PARCQ.

*Damages—Assessment—Death of stevedore employed to discharge steamship Rallus—Breaking of ship's derrick chain, causing fall of derrick—Claim by widow (with seven children) against shipowners—Award of £750 by learned Judge—Appeal by plaintiff against assessment.*

*Held, that the learned Judge's assessment of damages was so manifestly inadequate that he must have estimated them on some wrong principle; and that the figure should be increased to £1250—Observations by Court as to costs unnecessarily incurred in preparation of appeal.*

This was an appeal on a question of damages by Mrs. May Walley, of Little Stanney, Cheshire, from an award of £750 and costs by Mr. Justice Oliver at Liverpool Assizes on May 14, 1940, in her claim against the British & Continental Steamship Company, Ltd., of Chapel Street, Liverpool, in respect of the death of her husband, Richard Walley.

On July 6, 1939, Walley was one of a gang employed by the Manchester Ship Canal Company to discharge the cargo of the steamship *Rallus*, at New Quay, Ellesmere Port. A chain supporting one of the derricks on the ship snapped, and the

derrick fell on him, killing him instantly. The appellant was left with a family of seven, of whom four were under the age of 16.

Mr. N. L. C. Macaskie, K.C., and Mr. A. E. Baucher (instructed by Messrs. Pattinson & Brewer, agents for Messrs. Cyril Jones, Son & Williams, of Wrexham) appeared for the appellant; Mr. Wilfrid Clothier, K.C., and Mr. S. Scholefield Allen (instructed by Messrs. Holman, Fenwick & Willan, agents for Messrs. Weightman, Pedder & Co., of Liverpool) represented the respondents.

## JUDGMENT.

**Lord Justice MACKINNON:** This is a case in which I think, on principles which this Court has applied to the question of damages, we ought to interfere with the conclusion of the learned Judge — on the ground that he must have gone upon some wrong principle in the assessment of the damages. His estimation is so manifestly inadequate that it is one we ought to revise. I think the proper and total figure for the damages in this case should be £1250. I agree with the learned Judge that of that total figure no particular award ought to be made with regard to the three youngest children, and I see no reason to differ from him as to the amounts he proportioned to the other four children, namely, £20, £30, £50 and £50—£150 in all.

The result is that the appeal will be allowed and the amount awarded to the widow increased to £1100. The other figures will remain the same.

With regard to the £16 17s. 6d. for funeral expenses, there is no question about that, I understand?

**Mr. MACASKIE:** No, my lord.

**Lord Justice MACKINNON:** In those terms this appeal must be allowed, with costs.

C.A.]

Walley v. British &amp; Continental Steamship Company, Ltd.

[C.A.]

With regard to the costs, there is one matter which I regard as a very grave one. This appeal was solely upon the question of the amount of the damages awarded, and there has been made for us three copies of every word of the shorthand notes of the evidence given in the Court below, which covers 84 typewritten pages. The only relevant part, for the purposes of this appeal, of those 84 typewritten pages is the first three pages and the last one—four pages out of 84. In addition to that, there has been made for us three copies of 30 pages of correspondence, beginning with the original letter, the letter putting forward the claim, and going on debating questions about producing particular pieces of chain in Court and all kinds of things of that sort. We have not referred to a single page of that 30 pages of correspondence. There has also been made and produced to this Court three copies of two elaborate photographs of the particular derrick involved in this accident. The whole of those documents (80 pages of transcript of the shorthand notes, 30 pages of correspondence and the

photographs, and, in addition, two pages of some certificate with regard to the annealing of the derrick chain) were absolutely unnecessary and wasteful.

When I say that this appeal is allowed with costs, I can imagine the Taxing Master will not allow to the appellant any part of those costs, although I can only hope that no part of those costs will be capable of being in any way thrown upon this appellant widow, and that the solicitor who has incurred those truly needless expenses will have to pay them himself.

**Lord Justice GODDARD:** I agree.

**Lord Justice DU PARCQ:** I also agree.

**Mr. MACASKIE:** Then the appeal will be allowed with costs and the learned Judge's order varied by substituting the figure of £1250 for the figure of £750—£1100 in the case of the widow in place of the £600?

**Lord Justice MACKINNON:** Yes.

**Mr. MACASKIE:** If your Lordship pleases.

C.A.]

Lafferty v. Furness-Houlder Argentine Lines, Ltd.

[C.A.]

**COURT OF APPEAL.**

Thursday, Oct. 3, 1940.

**LAFFERTY v. FURNESS-HOULDER  
ARGENTINE LINES, LTD.**

Before Lord Justice MACKINNON, Lord  
Justice GODDARD and Lord Justice  
DU PARCQ.

*Damages—Assessment—Death of trimmer  
on board defendants' steamship—  
Collapse of boiler—Escape of steam  
into stokehold—Negligence of ship's  
engineers—Claim by widow of deceased  
trimmer—Award of £726 damages by  
learned Judge—Appeal by plaintiff  
against assessment.*

*—Held, that although the assess-  
ment of damages was possibly on the  
low side, it could not be said that the  
learned Judge had acted on any wrong  
principle or that the amount was so  
inadequate that it should be set aside—  
Appeal dismissed.*

This was an appeal by Mrs. Elizabeth Lafferty, of Bedford Road, Bootle, widow of John Lafferty, a trimmer, from a judgment of Mr. Justice Oliver, at Liverpool Assizes, on June 21, 1940, in an action brought against the defendant company for damages arising out of a fatal boiler explosion on board the steamship *Baronesa* at Liverpool Docks on July 1, 1939. Four men (including Lafferty) were killed and Edward Cassidy, a trimmer, was injured. Actions were brought by the appellant and by Cassidy, it being contended that the accident was caused through failure to have a proper system of working, and, alternatively, through the incompetence of two engineers.

According to the plaintiffs, there had been slackness and inadequacy of proper supervision. The *Baronesa* was in Brocklebank Dock while the boilers were cleaned, and on the morning of July 1, the day the ship was due to sail, steam was being got up. It became necessary to see that water was running into the boilers, and it was submitted for the plaintiffs that there had been a complete failure on the part of the ship's engineers to do their duty, because there was no system whereby anybody was made responsible for seeing that that was done. No one was detailed to look after this duty, with the result that there was

insufficient water in the after starboard boiler. As the steam increased the crown of the boiler became overheated. Then, probably, some cold water was run in to fill the boiler, with the result that the crown of the boiler collapsed. There was a fracture and the steam poured out and filled the stokehold, killing four men and getting as far as Cassidy, who was in a coal bunker. The other men were trapped and had no time to escape. Cassidy was overcome by the force of the explosion. He collapsed and it was some little time before he regained consciousness in hospital.

The defendants submitted that the accident was the result of a dereliction of duty on the part of the first and second engineers, and possibly on the part of the chief engineer, but that was not the responsibility of the defendants, in that it did not show any lack of system. Nor was it suggested that any one of those three officers was incompetent. It was urged that the doctrine of common employment applied.

Mr. Justice Oliver held that the accident was consistent only with the grossest possible negligence on the part of the staff of the engine-room. The boiler was displaying the danger signal by the water gauge, and if some investigation had been made as to the reason it would have been discovered at once that the boiler was dangerously empty of water. The system of raising steam had broken down. The Judge described the practice of officers making themselves responsible for another officer's duty the night before a ship sailed as a bad one. In the result, his Lordship awarded Mrs. Lafferty £726 damages and the second plaintiff £375.

Mrs. Lafferty now appealed, contending that the damages awarded were inadequate.

Mr. F. A. Sellers, K.C., and Mr. H. I. Nelson (instructed by Messrs. Pattinson & Brewer, agents for Messrs. G. J. Lynskey & Sons, of Liverpool) appeared for the appellant; Mr. Wilfrid Clothier, K.C., and Mr. S. Scholefield Allen (instructed by Messrs. Weightman, Pedder & Co., of Liverpool) represented the respondents.

**JUDGMENT.**

**Lord Justice MACKINNON:** I need not repeat the principles upon which this Court deals with this sort of case, which are well known. Personally, I should have been inclined to give this widow a little more, but I cannot say that the learned

C.A.]

Lafferty v. Furness-Houlder Argentine Lines, Ltd.

[C.A.]

Judge has either acted on any wrong principle or that this amount is so inadequate that we ought to set it aside. Though I should have given a little more it would not have been very much, and that would be no ground for interfering with the judgment.

The appeal, therefore, fails and must be dismissed.

**Lord Justice GODDARD:** If I had been trying this case I should have given more, but it would not have been a great deal more and this Court has said that that is not sufficient reason for interfering with the assessment of damages by the Judge. I should have to be convinced that the amount was wholly inadequate, and I am not so convinced.

I agree that the appeal should be dismissed.

**Lord Justice DU PARCQ:** I also agree. I want to add this. These are very important cases to widows and their children. Where you are dealing with poor people, £20 or £30 may make a great deal

of difference, and in these cases it seems to me that all the facts should be put before the Court. The facts of each particular case must be considered, and, in reference to this appeal, I still do not know what the expectation of working life of a dock labourer is if he is in good health. I regret that the Judge did not hear some evidence on these matters. I think it desirable that the widow should be asked to give some evidence as to what the husband brought into the home. Speaking for myself, I hope the practice will not be generally followed in this class of case of relying merely on the statements of Counsel on instructions, or on inferences from imperfectly ascertained facts.

**Mr. CLOTHIER** asked that the appeal be dismissed, with costs.

**Lord Justice MACKINNON:** You are entitled to them, but I hope you won't press for them.

**Mr. CLOTHIER:** I will see that that intimation is conveyed to the proper quarter.

ADM.]

The "British Resource."

[ADM.]

## ADMIRALTY DIVISION.

May 3, July 24, Sept. 19, 20, 1940.

## THE "BRITISH RESOURCE."

Before Mr. Justice BUCKNILL, sitting with Captain H. C. BIRNIE and Captain C. St. G. GLASSON, Elder Brethren of Trinity House.

*Collision—Inevitable accident—Convoy—Collision between steamship Celtic Star and motor vessel British Resource, following on collision between Celtic Star and steamship Afric Star—Action brought by Celtic Star against British Resource—Counterclaim by British Resource against Celtic Star and Afric Star—British Resource and Afric Star in convoy; Celtic Star on almost opposite course—Vessels navigating without lights under Admiralty instructions—Look-out—Negligence.*

*—Held, that both collisions were due to inevitable accident (The collision between the Celtic Star and the British Resource occurred as the natural consequence of the first collision and without any intervening act of negligence by either vessel; and the first collision occurred without negligence of either the Celtic Star or Afric Star)—No order as to costs.*

In this action, the Blue Star Line, Ltd., owners of the steamship *Celtic Star*, claimed damages from the British Tanker Company, Ltd., owners of the motor vessel *British Resource*, for a collision off the West Coast of Africa in the early morning of Oct. 18, 1939, when the *Celtic Star*, which was proceeding southerly, struck the steamship *Afric Star*, a sister vessel, which was in a north-going convoy, and then the tanker *British Resource*. The British Tanker Company, Ltd., denied negligence and joined the *Afric Star* in their counterclaim against the *Celtic Star*.

Mr. G. St. Clair Pilcher, K.C., and Mr. Owen L. Bateson (instructed by Messrs. Wm. A. Crump & Son) appeared for the owners of the *Celtic Star* and *Afric Star*; Mr. R. F. Hayward, K.C., and Mr. Waldo Porges (instructed by Messrs. Thomas Cooper & Co.) represented the owners of the *British Resource*.

According to the plaintiffs' claim, shortly before 4 55 a.m. on Oct. 18, 1939, the *Celtic Star*, a steel screw steamship of 5573 tons

gross and 3515 tons net register, 407 ft. in length and 53 ft. in beam, fitted with triple expansion engines of 241 h.p. nom. and manned by a crew of 51 hands all told, was off the West Coast of Africa, in an estimated position about 60 miles from Cape Verde bearing 100 deg. true, on a voyage from Teneriffe to Buenos Aires, laden with a cargo of about 5580 tons of coal. The weather at the time was fine but overcast and dark, the wind was northerly a moderate breeze and there was no tide. The *Celtic Star* was on a course of S. 6 W. true and with engines working at full speed ahead was making about 10½ knots. No lights were being exhibited on board the *Celtic Star*, and a good look-out was being kept.

In these circumstances the outline of a vessel which proved to be the *Afric Star* in convoy with a large number of other vessels was made out very close to and bearing very fine on the port bow of the *Celtic Star*. The side lights and forward masthead light of the *Celtic Star* were immediately switched on and her wheel was put hard-a-starboard. In spite of this, however, the port bow of the *Celtic Star* struck the port bow of the *Afric Star*, and the vessels only cleared after further contacts along the port side of the *Celtic Star*. As the *Afric Star* went clear of the *Celtic Star*, which as a result of this collision and of putting her wheel to starboard to avoid it was now heading to starboard of her original course, the green light of a vessel which proved to be the *British Resource* and the lights of numerous ships ahead and on either bow of the *Celtic Star* were sighted. The green light of the *British Resource* was distant about three cables and bore very fine on the port bow of the *Celtic Star*. The wheel of the *Celtic Star* was immediately put hard-a-port, her engines were stopped and put full speed astern and three short blasts were sounded on her whistle. The *British Resource*, however, came on, still crossing the head of the *Celtic Star*, and her starboard quarter struck the stem and starboard bow of the *Celtic Star*, doing damage.

Plaintiffs alleged that the defendants or their servants on board the *British Resource* negligently failed to keep a good look-out; failed to keep their station in convoy; failed to keep their station astern of the *Afric Star*; failed to exhibit their navigation or any lights in due time; improperly and at an improper time put their wheel to port; failed to starboard

ADM.]

The "British Resource."

[ADM.]

their wheel in due time or at all; failed to indicate their manœuvres with the appropriate or any whistle signals; crossed ahead of the *Celtic Star*; failed to ease, stop or reverse their engines in due time or at all; and failed to comply with Arts. 2, 12, 18, 19, 22, 23, 27, 28 and 29 of the Collision Regulations.

According to the defendants' case, shortly before 4 50 a.m. on Oct. 18, 1939, the *British Resource*, a single screw motor vessel of London, of 7208 tons gross and 4197 tons net register, 440.6 ft. in length and 59.5 ft. in beam, fitted with diesel 8-cylinder engines of 653 h.p. nom. and manned by a crew of 44 hands all told, was in the North Atlantic on a voyage from Abadan to Antwerp and Amsterdam, laden with a cargo of benzine and gas oil. The wind at the time was northerly a moderate breeze, and the weather fine and clear but overcast. The *British Resource* was one of a number of vessels proceeding in convoy on a course of 353 deg. true, and with engines working at 75 revolutions was as far as was practicable maintaining her station about two cables astern of the *Afric Star*, the leading vessel in the seventh column of the convoy, and making about eight to nine knots through the water. No lights were being exhibited on board the *British Resource*, in pursuance of Admiralty orders, and a good look-out was being kept on board her.

In these circumstances the green light of a vessel which afterwards proved to be the *Celtic Star* suddenly came into view, distant about two to three cables, bearing about a point or a little less on the starboard bow of the *British Resource* and just clear of the port side of the steamship *Afric Star*. At about the same time the stern light of the *Afric Star*, which was at this time bearing a little on the starboard bow of the *British Resource*, came into view. Both side lights of the *British Resource*, which were screened in accordance with emergency regulations, were immediately switched on and her wheel was ported a little. Shortly afterwards the bow wave of the *Celtic Star* was observed and it was seen that she was coming on at speed, heading towards the starboard side aft of the *British Resource*. The wheel of the *British Resource* was thereupon put hard-a-starboard in an endeavour to swing her stern clear, but the *Celtic Star* continued on at considerable speed and with her stem and starboard bow struck the starboard quarter of the *British Resource* a heavy blow, doing damage.

Defendants alleged that the plaintiffs or their servants on board the *Celtic Star* negligently failed to keep a good look-out; failed to keep the *Celtic Star* clear of the *British Resource* or to take the appropriate or any steps to do so in due time or at all; caused or allowed the *Celtic Star* to come into collision with the *Afric Star*; improperly attempted to cross the course of the convoy; improperly starboarded and/or over-starboarded and/or kept the wheel of the *Celtic Star* to starboard; failed to port the wheel of the *Celtic Star* in due time or sufficiently or at all; proceeded at an excessive speed having regard to all the circumstances; failed to exhibit navigation lights or alternatively to switch them on in due time; failed to indicate their manœuvres by the appropriate or any whistle signals; failed to ease, stop or reverse the engines of the *Celtic Star* in due time or at all; and failed to comply with Arts. 23, 27 and 29 of the Collision Regulations and with Arts. 1 and 2 of the said Regulations or alternatively Sect. 4 of the Navigation and Anchor Lights Order, 1939.

The *British Resource* counterclaimed against the *Celtic Star* and joined the steamship *Afric Star* as defendants to the counterclaim, it being alleged against the *Afric Star* that she failed to keep a good look-out; failed to keep clear of the *Celtic Star* and to take the appropriate or any steps so to do in due time or at all; failed to starboard her wheel in due time or sufficiently or at all; failed to ease, stop or reverse her engines in due time or at all; failed to switch on her navigation lights in due time; failed to indicate her manœuvres by the appropriate or any whistle signal; and failed to comply with Arts. 19, 22, 23, 27, 28 and 29 of the Collision Regulations and with Arts. 1 and 2 of the Regulations or alternatively Sect. 4 of the Navigation and Anchor Lights Order, 1939.

According to the case of the second defendants by counterclaim, shortly before 4 50 a.m. on Oct. 18, 1939, the *Afric Star*, a steel twin screw steamship of 11,900 tons gross and 7438 tons net register, 475.8 ft. in length and 67.3 ft. in beam, fitted with geared steam turbines of 1581 h.p. nom. and manned by a crew of 71 hands all told, was proceeding in convoy from Rio Grande do Sul to London laden with general and refrigerated cargo, and was in an estimated position about lat. 14 52 N., long. 18 36 W. The wind

ADM.]

The "British Resource."

[ADM.]

at the time was N.N.E. light, the weather was fine and clear but very dark, and the tide was unknown. The *Afric Star* was on a course of N. 7 W. true and was making about eight knots through the water, with her engines working at about 74 revolutions. She was not exhibiting any lights, and a good look-out was being kept on board her. The *British Resource* was following in line astern of the *Afric Star* but was a little on the port quarter and distant about three cables.

In these circumstances the loom of a vessel which proved to be the *Celtic Star* was suddenly observed, distant about 250 ft. and bearing very fine on the port bow of the *Afric Star*. The two masthead lights, the side lights and stern light of the *Afric Star* were at once switched on, the wheel was put hard-a-starboard, the engines were stopped and a short blast was sounded on the whistle. Very shortly afterwards, however, the port bow of the *Celtic Star* struck the port bow of the *Afric Star*.

These defendants alleged that the collision occurred without any negligence on the part of those on board the *Afric Star* and could not have been avoided by the exercise of reasonable care and skill on their part.

They alleged against the *British Resource* that she negligently failed to keep a good look-out; failed to keep clear of the *Celtic Star*; failed to maintain her station in convoy and/or failed to take the appropriate or any steps to regain her station; failed to exhibit her navigation or any lights in due time; improperly and at an improper time put her wheel to port; failed to starboard her wheel in due time or at all; failed to indicate her manœuvres with the appropriate or any whistle signals; crossed ahead of the *Celtic Star*; failed to ease, stop or reverse her engines in due time or at all; and failed to comply with Arts. 2, 12, 18, 19, 22, 23, 27, 28 and 29 of the Collision Regulations.

Judgment was reserved.

Monday, Oct. 14, 1940.

#### JUDGMENT.

Mr. Justice BUCKNILL, in giving judgment, said: This case arises out of a collision between the *Celtic Star* and the

*British Resource* off the West Coast of Africa at about 4 55 a.m. on Oct. 18, 1939. The collision occurred soon after another collision between the *Celtic Star* and the *Afric Star*.

The *Celtic Star* is a single screw steamship of 5573 tons gross register, 407 ft. long and 53 ft. in beam. The *British Resource* is a single screw motor vessel of 7208 tons gross register, 440 ft. long and 59 ft. in beam. The *Afric Star* is a twin screw steamship of 11,900 tons gross register, 475 ft. long and 67 ft. in beam.

Shortly before the first collision the *Celtic Star* was steering a course of S. 6 W. true and making about 10½ knots. The *Afric Star* and *British Resource* were units of a large convoy in eight columns, of which the *Afric Star* was the leader of the seventh column numbering from port to starboard, and the *British Resource* was the second vessel in that column. The *Afric Star* and the *British Resource* were on a course of N. 7 W. true and were making from eight to nine knots. The prescribed lateral distance between each column was about four cables and the distance between the ships of each column about two cables. The *Mangalore*, a ship of 8886 tons gross register, 480 ft. long and 63 ft. in beam, was the leader of the eighth column.

In pursuance of Admiralty instructions the *Celtic Star*, the *Afric Star* and the *British Resource* were not exhibiting any lights. The weather was fine, overcast and very dark, with no streak of dawn. The *Celtic Star* with her port bow struck the port bow of the *Afric Star* a sliding blow and then scraped along her side, with the result that the port light screen of the *Celtic Star* was forced out of position. Shortly afterwards the *Celtic Star* with her stem and starboard bow struck the starboard quarter of the *British Resource*.

The first question I have to decide is whether the *Celtic Star* or the *British Resource* was negligently navigated after the collision between the *Celtic Star* and the *Afric Star*. The only point made against the *Celtic Star* on this question was that the helmsman of the *Celtic Star* was negligent in that he left the wheel after the first collision at a time when the wheel was hard-a-starboard. In the first collision the bridge of the *Celtic Star* sustained serious damage, reaching nearly to the wheelhouse, and fear of personal injury caused the helmsman to step aside from the wheel for a very short time. While the wheel was out of his hands it remained hard-a-starboard

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and no further order to the helmsman was given or contemplated. In my judgment the helmsman was not negligent in what he did. Even if he was, his negligence did not contribute to the collision.

The points made against the *British Resource* were that (1) the ship was deliberately being navigated a point on the port quarter of the *Afric Star* instead of keeping right astern of her; (2) she failed to reduce her speed; and (3) she ported her wheel too much.

Mr. Corbet Wall, the chief officer of the *British Resource*, appeared to me to be an honest and reliable witness, and I accept his evidence as accurate. He stated that he kept the *British Resource* in position midway between the two ships on his port and starboard beam and had the *Afric Star*, which was not keeping her position accurately, about a point on his starboard bow. In my judgment, the *British Resource* was not negligently navigated in keeping in this position. I also find that the *British Resource* was not negligent in keeping her speed and in porting her helm and keeping it to port after she first became aware of the presence of the *Celtic Star*. The first that those in charge of the *British Resource* knew of the *Celtic Star* was the sighting of her green light fine on their starboard bow and they then properly ported their wheel to pass the *Celtic Star* starboard to starboard. The damage sustained by the port light screen of the *Celtic Star* prevented those on the *British Resource* from sighting the red light of the *Celtic Star*, and they continued to see only the green light of the *Celtic Star* on their starboard bow. When those in charge of the *British Resource* saw the bow wave of the *Celtic Star* very close to and realised that the *Celtic Star* was not shaping to pass clear but was heading for their starboard quarter, they put their wheel hard-a-starboard and kept their speed in an attempt to swing their stern clear. The *British Resource*, in my judgment, was not negligent in her navigation either before or after she first became aware of the presence of the *Celtic Star*. The second collision occurred as the natural consequence of the first collision and without any intervening act of negligence on the *British Resource* or the *Celtic Star*.

The next question to decide is whether the collision between the *Celtic Star* and the *Afric Star* was due to the negligence of either or both of these vessels. The charge made on behalf of the *British Resource*

against each of these ships was that neither was keeping a good look-out, with the consequence that they failed to take effective action to avoid collision. The evidence established that those in charge of the *Celtic Star* sighted the loom of the *Afric Star* very fine on the port bow and at an estimated distance of about 300 ft. and at once switched on their side lights and forward masthead light. It was not clear from the evidence of Mr. Whitehead, the chief officer of the *Afric Star*, who was in charge of her bridge at the time, whether he first sighted the red light of the *Celtic Star* or her loom very fine on the port bow. On this point I think that the official log of the *Afric Star* is accurate, where it records that "at about 4 50 a.m. an unknown steamer was observed by the switching on of her navigation lights, apparently crossing the path of the convoy from starboard to port. At the same moment the vessels collided . . ." I believe this to be a genuine and fair record of the observation of Mr. Whitehead who signed the log. A similar record appears in the ship's log. On the day after the collision the master of the *Afric Star* wrote a letter to his owners in which he said that: "It was heavily overcast and hazy when at 4 50 a.m. the chief officer stated he first saw a vessel almost ahead by the switching on of her navigation lights, her port light being fine and very close on our port bow, helm was put hard to starboard and engines stopped. Directly afterwards her bridge and then her port quarter fouled our port bow . . . The Admiralty will know the name of the vessel as she afterwards collided with another vessel . . ."

The first question which I have to decide is whether the failure of those in charge of the *Afric Star* to see the loom of the *Celtic Star* before she switched on her navigation lights was due to a defective look-out on the part of the officers in charge of the bridge and the A.B. on the look-out forward, or whether it was due to the darkness of the night and the absence of any lights.

A similar question arises in connection with the navigation of the *Celtic Star*. The substance of the evidence from that ship was that the fourth officer was on the port side and the chief officer was on the starboard side of the bridge, and there was a look-out posted in the bows. The chief officer sighted the loom of the ship about four points on the port bow and about three cables away. At the same time the fourth officer rushed across the bridge and pointed

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out this vessel to the chief officer. Very shortly afterwards the fourth officer saw the loom of the *Afric Star* about ahead and then the chief officer saw it about 300 ft. away. The chief officer said that the loom of the *Afric Star* was right in line with the foremast to him. The look-out in the bows appears to have seen the loom of the *Afric Star* almost immediately before the collision. The chief officer's report made at Dakar two days after the collision was as follows: "At 4 51 I sighted the outlines of ships to port and at the same time the fourth officer rushed across to report having sighted them and also pointing out the outline of another ship particularly close on the port bow, which was covered by the mast from the position in which I was standing."

The degree of visibility at sea at any particular time and place is a question of fact, although the probability of the degree of visibility is a matter on which nautical experience is valuable. I have asked the Elder Brethren whether in their opinion, having regard to the weather and the size of the vessels and the evidence of visibility of other ships in the convoy, the *Afric Star* and the *Celtic Star* should have been visible to one another at a greater distance than 300 ft. Their answer is that they cannot understand how it was that those in charge of the *Afric Star* and the *Celtic Star* could not see each other at a greater distance than 300 ft. if a good look-out was being kept.

This answer has not eased the burden imposed upon me of deciding the question of negligence. Before deciding that there was negligence, I must be satisfied in my own mind that these men in charge of the *Afric Star* and the *Celtic Star* were failing to show the skill and care of competent officers and seamen under the conditions of that night in their failure to observe each other's vessel at a substantially greater distance than 300 ft. It must be borne in mind that the vessels were approaching one another nearly end on and at a joint speed of at least 600 yards a minute. If the evidence establishes that the hulls of the two ships were mutually visible at, say, three cables, the conclusion I think must be that they were not then seen because the look-out was defective.

In my view, the evidence does not establish this proposition. The only ground for the proposition is that the range of vision from the *Afric Star* and the *Celtic Star* of the looms of other ships on other bearings was some three cables. For instance, the

fourth officer of the *Celtic Star*, almost immediately before he sighted the loom of the *Afric Star*, saw a ship which was presumably the *Mangalore* about four points on the port bow and about three cables away. The danger of basing such an argument on this analogy is that the *Mangalore* was approaching the *Celtic Star* on a four-point bearing which opened up a good deal of her side and contour of her top hamper, whereas the *Afric Star* was approaching the *Celtic Star* nearly end on.

It is significant that those in charge of the *Celtic Star* first saw the loom of the *Afric Star*, whereas those on the *Afric Star* first saw the red light of the *Celtic Star*, which was switched on as soon as the loom of the *Afric Star* was detected. This is what one would expect, because the *Afric Star* is considerably larger than the *Celtic Star*.

It may be that those on the *Celtic Star* had their attention fixed on the loom of the *Mangalore* and perhaps some other ship on their port bow, and failed, for that reason, to see the loom of the *Afric Star* earlier. Such an explanation, however, does not apply to those on the *Afric Star*, except in so far as they were watching the ships on their beams and trying to keep station. It seems to me unlikely that the officers and look-outs of both ships would all be keeping an equally bad look-out, which seems the only reasonable alternative to the hypothesis that each saw the other as soon as each ship came within range of vision of the other.

It was faintly suggested in argument that identity of ownership of these two ships had led to identity of evidence on the degree of visibility, but I am satisfied that the evidence from each ship was honest and not tainted. When I heard their evidence I did not see any sufficient reason for doubting the evidence of the chief officer, fourth officer, and A.B. on the look-out on the *Celtic Star*, or of the evidence of the chief officer of the *Afric Star*, who were called as witnesses before me. I see no reason for doubting that each of these men was doing his duty to the best of his ability and was trying to keep a good look-out and see into the darkness ahead of his ship.

It seems likely that this would be the case, for there were grave and unusual perils to guard against, with the lives of all on board as a possible forfeit for any slackness of look-out. If there was a failure to see one another earlier it was almost certainly not due to any such breach of duty, but was due to failure to appreciate at once that there was an unlighted ship ahead.

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I think some allowance should be made in the case of novel and difficult navigation, and that even if an error of judgment was committed in failing to appreciate each other's presence just as soon as it was physically possible, I ought not to consider such an error of judgment as necessarily amounting to negligence.

The case appears to me, after considering all the evidence and after anxious deliberation about it, to be one in which the charge of negligence is not made out. I am not satisfied that the collision between the *Afric Star* and the *Celtic Star* was due to the negligence on the part of those in charge of the navigation of either ship. In my view, the collision between the *Celtic Star* and the *Afric Star* was due to the darkness, the absence of lights and the speed at which the vessels were meeting nearly end on, and could not have been avoided by the exercise of reasonable care and skill on the part of those in charge of either ship.

My judgment, therefore, is that the collision between the *British Resource* and the *Celtic Star*, which is the subject of this action, was not due to the negligence of either ship or to the negligence of the *Afric Star*.

Mr. BATESON: I do not know whether your Lordship has made any decision on the subject of costs. I rather think that the defendants would like the opportunity of arguing the point of costs before your Lordship.

Mr. Justice BUCKNILL: That had better be adjourned to some other date when you have Counsel here. The judgment will be entered up as I have given it, and any further argument as to the costs can be heard by me later on.

Tuesday, Oct. 29, 1940.

Arguments were presented to his Lordship on the question of costs.

Mr. BATESON said that when the defence of the *British Resource* was put in the plaintiffs raised the point that both collisions were a matter of inevitable accident, which was, in fact, the judgment of the Court. He submitted that while he might be liable to pay costs on the claim to the time when the reply was delivered, he should be entitled to have all the costs of the action after that date. Had the plea

of inevitable accident been accepted the action would not have been fought. The *Afric Star* was brought on the scene and he suggested that his clients were entitled to all the costs of defending the counterclaim as far as the *Afric Star* was concerned.

Mr. PORGES submitted that as the *Celtic Star* had failed to prove their allegation that the *British Resource* was negligent, he should have the costs of the action.

Mr. Justice BUCKNILL: This question of costs raises some interesting points. The collision occurred on Oct. 18, 1939, and the writ was issued on Nov. 3, quite shortly afterwards, and I do not think there is any substance in the fact that the *Celtic Star* happened to be the plaintiff. I say that because at the hearing no real point was taken by either side that the two collisions occurred without negligence. Each side attacked the other, and I have no reason to suppose that the *British Resource*—which I think had suffered fatal injuries to her crew—would not have started an action against the *Celtic Star* if the *Celtic Star* had not started first.

It is said by Mr. Bateson, first, that he ought to have all the costs of the action after the reply, on the ground that he raised the plea of inevitable accident. It is quite true that it is raised as an alternative plea, but the case was not argued upon that hypothesis, and that point does not seem to me to have any substance.

Then he says that in any case he should have the costs of the *Afric Star*. The *Afric Star* was brought in by the *British Resource* as an amendment to their counterclaim, possibly because the plea of inevitable accident had been raised in the reply. They may very well have thought that although the second collision was in itself an inevitable accident in so far as it was a natural consequence of the first collision, really the ship in fault for the first collision was the *Afric Star*. I should think that that is the reason they brought her in. Those are the two points made by Mr. Bateson.

On the other hand, Mr. Porges says that the *Celtic Star* has failed to make out a case against the *British Resource*, and he says that he ought to have the costs of the action because the action against him has failed. So far as goes a point made that the *Afric Star* should have her costs, I am mindful of the fact that she belongs to the same owners as the *Celtic Star*, and the case was fought as a single case, with the same solicitors and the same Counsel. There were