LLOYD'S LIST LAW REPORTS

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

HILARY SITTINGS, 1928.

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

Vol. 30.

LONDON:
PRINTED AND PUBLISHED BY LLOYD'S
AT LLOYD'S, E.C.3.
1928.

CONTENTS.

NOTE:—These Reports should be cited as "30 Ll. L. Rep."

CONTENTS—*continued.* PAGE

CONTENTS--*continued.* PAGE

LLOYD'S LIST LAW REPORTS.

REPRINTED (WITH ADDITIONS) FROM

LLOYD'S LIST

AND

SHIPPING GAZETTE.

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

VOL. 30. No. 1.] THURSDAY, FEBRUARY 9, 1928. [BY SUBSCRIPTION

COURT OF APPEAL.

Thursday, Dec. 15, 1927.

CLAN LINE STEAMERS, LTD. v. BOARD OF TRADE.
RUPAI TEA COMPANY, LTD. v. SAME.

Before Lord Justice SCRUTTON, Lord Justice ATKIN and Lord Justice GREER.

Indemnity Act — Compensation — Inability of vessels to discharge owing to lack of warehouse accommodation — Diversion of ship by owners—Whether by virtue of official order of Shipping Controller or by virtue of letter setting out facilities to discharge elsewhere and permission to use them.

In these cases the claimants, the Clan Line Steamers, Ltd., and the Rupai Tea Company, Ltd., appealed from a decision of the War Compensation Court that they were not entitled to compensation for the diversion from London to Greenock of the steamship *Clan Buchanan*, which arrived in the Thames on Feb. 6, 1920, with a cargo of tea. The War Compensation Court held that the diversion was not by order of the Shipping Controller, and that if there was such an order it was made by one who had no authority to make it. Appellants contended that there was no evidence to justify these findings.

Mr. Stuart J. Bevan, K.C., and Mr. I. Harold Stranger (instructed by Messrs. Stokes & Stokes) appeared for the appealing claimants; the Attorney-General (Sir Douglas Hogg, K.C.) and Mr. Russell Davies (instructed by the Solicitor to the Board of Trade) represented the respondents.

Mr. BEVAN explained that the claim of his clients was for interference by the Crown with their business. Only the question of liability was argued. The figures were admitted, but if the Board of Trade were held to be liable on appeal there would have to be some agreement as to which figures were admissible of the claims.

Lord Justice ATKIN: In default of agreement it will have to go back to the Court.

Mr. BEVAN: Or to the Registrar and merchants.

Mr. BEVAN, proceeding, said that in 1919 and 1920 a number of ships arrived in this country from India and Ceylon, carrying tea, which was then a priority cargo. By reason of the quantity of tea sent forward the warehouses were filled, and the ships were unable to discharge. This case related to the *Clan Buchanan*, which arrived in this country on Feb. 6, 1920. On Feb. 21 she was, as claimants contended, diverted to Greenock and there discharged. There were other alleged diversions, and though there was no binding agreement it was hoped that the decision in this case would lead to these other claims being admitted or withdrawn.

The claim made before the War Compensation Court in this case was twofold. It was said (1) that this and other ships had been directed by a Government department to load this priority cargo, although it must have been known that owing to the quantity previously shipped there would be no facilities for discharge available in the port of London for a very long time, and (2) that, apart from the fact that this was a priority cargo, this ship arrived in the Thames on Feb. 6, and while lying there awaiting discharge she was on Feb. 21 diverted to Greenock by the order of the Shipping Controller.

On both points the War Compensation Court decided against the claimants, and appellants accepted the decision on the first point. The only appeal would relate to the alleged diversion by the Shipping Controller.

On that the War Compensation Court decided (1) that there was no interference, and that the alleged diversion was an arrangement between shipowners and consignees merely blessed by the Shipping Controller; (2) that if there was an order for diversion it was made by someone in the

Shipping Controller's office who had no authority to do so. Appellants contended that there was no evidence of agreement between shipowner and consignee, that there was conclusive evidence of the order by the Shipping Controller, and that there was a holding out of the person who actually gave the order as having authority to do so.

The ATTORNEY-GENERAL: I see nothing about holding out in the notice of appeal.

Mr. BEVAN: In my submission the notice of appeal is wide enough to cover ratification and holding out, and we say there was both.

Friday, Dec. 16, 1927.

The ATTORNEY-GENERAL submitted that the appeal from the War Compensation Court was only on questions of law. This was a question of fact, though cloaked under a submission that the Court had gone wrong in law. What was relied upon as an order to divert the *Clan Buchanan* to Greenock was not an order at all, and was not intended to be an order.

Lord Justice SCRUTTON: We will take time to consider our judgment.

Friday, Jan. 20, 1928.

JUDGMENT.

Lord Justice SCRUTTON, in giving judgment, said: This is an appeal by the Clan Line Steamers, Ltd., against an order of the War Compensation Court holding that under the Indemnity Act, 1920, the claimants have not proved any order by any servant of the Crown under the Regulations for the Defence of the Realm or otherwise causing direct loss by reason of interference with the claimants' property by reason of such order.

After the Armistice there was a great rush of goods into this country, and the ports began to be much congested. At the end of 1919 the bonded warehouses in London were full of tea, and by the middle of February, 1920, a number of ships were lying in the Thames unable to discharge their cargo because there were no warehouses into which to put cargo which had duties to pay. The tea was carried under bills of lading making it deliverable in London and the consignees would not take it elsewhere. Under these circumstances it was desired by the Government, that is, by the Shipping Controller and a Committee called the Port and Transit Executive Committee (Regulation 39 C) which subject to the instructions of the Shipping Controller could issue directions for regulating traffic for the purpose of preventing congestion of traffic at ports and harbours in the United Kingdom, that the congestion of traffic in London should be relieved in some way. Accordingly, a conference of conflicting interests was summoned by the secretary of the Transit Committee and presided over by a representative of the Shipping Controller. The large conference met on Feb. 19, 1920, discussed as possible remedies more storage accommodation, diversion of ships to other ports, and re-export. Ultimately a small committee was appointed to meet that afternoon to consider the question of diversion. The Shipping Controller had power under Regulation 39 B.B.B. to issue directions requiring ships to proceed to specified ports for the purpose of unloading cargo. He was reluctant to use this power. Whether it would free shipowners from claims for deviation, or what their obligation to deliver would be, depended on the terms of their bill of lading. Without such an order they might have no answer against the consignees to such claims. The small conference met, but only one of the three associations of tea shippers was represented, the Ceylon Tea Association, and the India and China Tea Associations were unrepresented. The small conference apparently agreed, or thought it agreed, on certain terms for the division of loss by diversion, the Ceylon Tea Association agreeing if the Shipping Controller would write: "It was necessary." Accordingly the Controller sent out letters informing the tea associations of the supposed agreement, and that "it was necessary that the tea ships should be discharged at ports other than the port of London," stating the agreement as to the division of costs and the ships, seven in all, that would be diverted as soon as practicable. The India and China Tea Associations on Feb. 20 at once replied repudiating any agreement and objecting to diversion; the Ceylon Tea Association on Feb. 23 replied limiting their agreement. The Clan Line, hearing of the repudiation, proceeded to make inquiries by telephone by Mr. Fawcett and Mr. Barr of the secretary of the Transit Committee. Contradictory evidence was given of the telephone interviews, but the Tribunal, by whose findings of fact we are bound if there is any evidence to support them, find (1) the version given by Mr. Barr is substantially correct; (2) probably Mr. Tuffill, Secretary of the Transit Committee, was not so definite in his replies to Mr. Barr's questions and demands as they appear in Mr. Barr's account; (3) Mr. Tuffill's account of a subsequent telephone communication is not made out or accepted. I turn, therefore, to Mr. Barr's evidence, which I gather is substantially accepted, his increased definiteness as to Mr. Tuffill's answers being not such a departure from the truth as to make his account substantially inaccurate.

Mr. Barr's account is that in answer to an inquiry as to the effect of the repudiation by the consignees of any agreement, Mr. Tuffill said (1) they did not take any notice of what the tea people had to say in the matter, the vessels were to be diverted; (2) if the shipowners diverted in

spite of their obligations to the consignees under their bill of lading, the Government would stand behind the shipowners; (3) an official order would be prepared and sent that day. On Mr. Tuffill's assurance of that order Mr. Barr did that day divert the *Clan Robertson* to Greenock. In consequence of that telephone communication Mr. Barr also wrote a letter to Mr. Tuffill stating that he understood from it "that the instructions which you are giving us clear us for the responsibility for the delivery of the cargo at these ports," which included Greenock. Also in consequence Mr. Tuffill dictated a letter of Feb. 21 which he took to Sir E. Glover, Secretary of the Ministry of Shipping, to sign. He did this, I think, as under Regulation 39 B.B.B. directions for the diversion of shipping, that is, as to at what ports they should discharge, must come from the Shipping Controller. On the findings o the Tribunal as to what happened at th telephone communication, and as to Mr Tuffill's honesty, it must be that he thought what he was dictating was the official order for diversion which he had promised. Indeed, he practically says so in his evidence. But the letter sent, signed by another official of the Ministry of Shipping, G. H. Ellis, Director of Ship Management Branch, runs as follows:—

> Steamships *Clan Robertson* and *Clan Buchanan*.
>
> As informed you by telephone to-day arrangements have been made by which the tea cargo of these steamers can be discharged at Glasgow and Greenock respectively. You may therefore arrange to dispatch *Clan Robertson* for Glasgow and the *Clan Buchanan* for Greenock.
>
> I am, Gentlemen,
> Your obedient servant,
> G. H. ELLIS,
> Director of Ship Management Branch.

After careful consideration of its terms, this seems to me on the words used not to be an order or direction of the Shipping Controller. I read it as stating (1) that whereas you cannot discharge this tea in London, owing to congestion of bonded warehouses, we have made arrangements with the port authorities that the tea can be discharged at Glasgow or Greenock; (2) in view of these arrangements you may send the ships which otherwise should discharge in London to Glasgow and Greenock. The letter does not speak imperatively—"dispatch" or "divert"; it gives permission and speaks of arrangements made to facilitate acting on the permission. I know that Mr. Tuffill speaks of it as the terms that would be used if an order was to be given; but it appears to me that if this is correct he is singularly unfortunate in his use of English. There is nothing to show that Mr. Ellis had any knowledge of the promise to give an order or of the difficulty with the consignees or of anything except that arrangements had been made for discharging room at Glasgow or Greenock.

I have very reluctantly come to this conclusion, for I cannot help thinking that on the Tribunal's finding of what happened at the telephone interview the drafting of the letter by Mr. Tuffill in that form, and the failure of the Shipping Ministry for over a month to repudiate the Clan Line's statement that they were diverting under instructions, a copy of which was sent to the Transit Committee, constitute a very unsatisfactory, not to say misleading, way of doing business. At the same time, if the Clan Line had paid less attention to statements by subordinate officials, and had read the official letter received with the care—not to say suspicion—which they will probably use in future in reading communications from Government departments, they would have seen that the document sent was not an "order," official or otherwise, but a statement of facilities provided and a permission to use them, which is a different thing from an order.

The appeal to us under the Indemnity Act is only on a question of law. The first two contentions in the notice of appeal were abandoned. On the third contention I cannot say that on the findings of fact of the Tribunal there was as a matter of law an order to divert the *Clan Buchanan* with her cargo to Greenock. The fourth submission as to authority does not arise, but I cannot see any evidence of authority in Mr. Tuffill to issue an order by himself, or to promise an official order from the Shipping Controller. Similarly, we are not deciding whether or not, if there had been an order, there was loss from an interference with the claimants' business; the question was not argued before us.

I regret, therefore, so far as a Judge should regret his decision, to have to determine that the appeal must be dismissed, but I do not think the claimants have been well treated by the Government.

A similar result must follow in the appeal of the tea company.

My brothers, Lord Justice ATKIN and Lord Justice GREER, concur in this judgment and in my reluctance.

Mr. RUSSELL DAVIES: The appeal will be dismissed with costs?

Lord Justice SCRUTTON: Is this a case where the Crown gets costs?

Mr. RUSSELL DAVIES: Yes.

Mr. FURNESS (for Mr. Stranger): May I ask your Lordship for leave to appeal if my clients think it advisable to appeal?

Lord Justice SCRUTTON: In view of the reluctance of every member of the Court to come to the judgment they have delivered, we think you should have leave to appeal.

Mr. FURNESS: If your Lordship pleases.

COURT OF APPEAL.

Wednesday, Jan. 11, 1928.

SOCIETE ANONYME PECHERIES OSTENDAISES v. MERCHANTS MARINE INSURANCE COMPANY, LTD.

Before the Master of the Rolls (Lord HANWORTH), Lord Justice ATKIN and Lord Justice LAWRENCE.

Costs—Taxation—Marine insurance—Loss of trawler—Claim—Intimation by insurers that case would be fought on ground that loss was due to uninsured peril—Order for affidavit of ship's papers; stay of proceedings pending filing—Settlement — Defendants to pay plaintiffs' taxed costs—Costs incurred (1) before date of writ; (2) between date of order for ship's papers and filing of affidavit — Whether premature — Discretion of Taxing Master—R.S.C. Order LXV, r. 27 (29).

This was an appeal by the Société Anonyme Pêcheries Ostendaises from an order of Mr. Justice MacKinnon made upon appeal by the Merchants Marine Insurance Company, Ltd., from an order of the Taxing Master. The Société Anonyme brought an action on a policy of marine insurance on a trawler which sank at sea in February, 1926. A claim was made under the policy. The assured were told that it was going to be alleged that the ship had been scuttled, and the writ was finally issued in July, 1926. On July 28 there was a summons for directions, on which the usual order was made for an affidavit of ship's papers. One of the terms of that order was that until the plaintiffs had satisfied that all further proceedings were to be stayed.

At the beginning of June, 1926, statements were taken from ship's witnesses because the rescued members of the lost ship were liable to accept service with other owners all over the world. Before the affidavit of ship's papers was filed Mr. Camps, the well-known consulting engineer, was consulted. Plaintiffs' case would have been that the ship sank because some defective plates gave way. But in May, 1927, the action was settled, and an order of the Court directed that plaintiffs' costs should be taxed and paid by the defendants.

The costs in dispute were: (1) Costs incurred before the date of the writ; (2) costs incurred between the date of the order for ship's papers and the date of the filing of the affidavit.

These the Taxing Master allowed; but the Judge disallowed them.

Mr. C. T. Le Quesne, K.C., and Mr. K. S. Carpmael (instructed by Messrs. Thos. Cooper & Sons) appeared for the appealing plaintiffs; Mr. R. I. Simey (instructed by Messrs. Waltons & Co.) represented the defendants.

Mr. LE QUESNE submitted that as a matter of practice the objection upheld by Mr. Justice MacKinnon was novel.

Mr. SIMEY submitted that the Taxing Master misdirected himself and that the Judge was right. The shipowners were not entitled to assume that the underwriters were going to raise the question of scuttling. The evidence they got together on that assumption was premature and a luxury. Costs ought not to be allowed unless they related to some issue raised in the action.

JUDGMENT.

The MASTER OF THE ROLLS, in giving judgment, said: In my judgment, this appeal succeeds. It raises a somewhat novel point, and no doubt, from the large bearing that it may have, an important point.

The case is this. On Feb. 25, 1926, there was a loss of a trawler. That trawler was insured by the defendants in this action. The trawler belonged to the plaintiffs, and very soon after the facts as to the loss were ascertained it was notified on May 7 by a letter written to the plaintiffs that the underwriters had determined to fight the case on the ground that the loss was not due to a peril insured against. The trawler had foundered, and it is not difficult to see that, among the possible charges which might arise from that attitude taken up by the insurers, it might be possible that they were charging the plaintiffs with having scuttled the vessel. Whether that was specifically their intention or not, the plaintiffs were at any rate told that for the purpose of their success in the action it would be necessary for them to be prepared with evidence which should overcome the attitude of the underwriters that the loss was not due to the peril insured against.

Now in June, in consequence of that notification, the plaintiffs and their advisers sent over to the continent to take the statements of the crew of the trawler. The members of the crew were said to be under contract to serve in other vessels, and it was quite possible that they would be so engaged, and upon the high seas, in different directions, and that their evidence would be lost if steps were not taken immediately to secure it. On July 20, 1926, the writ was issued, and on the 21st a letter was written by the defendants as to the usual agreement which was to be obtained, that all the underwriters would be bound by the decision in the action. On July 28 there was a summons for directions, and under that summons for directions an order was made for ship's papers—the usual order for ship's papers. That order is in the usual form, and it stated that there should be a stay until the order for the ship's papers had been complied with. The actual words are these. First of all, there was an order for security for costs in £100, and a stay meanwhile; and then there was the order for ship's papers; and then it was ordered: "And that in the meantime all further proceedings be stayed." In October, some

further statements of witnesses were obtained, and there was the opinion of the consulting engineer, Mr. Camps, also obtained. On Jan. 25, 1927, the affidavit of ship's papers was prepared, but it was not communicated to the defendants. In March, the documents which had been catalogued in the affidavit of ship's papers were ready, and then, and not until then, communication was made to the other side that the ship's papers were then ready for delivery, and on Mar. 5 the ship's papers were filed. On May 20, the action was settled on terms under which the plaintiffs recovered, and were to be paid by the defendants, their taxed costs.

Now, upon the taxation, questions arose as to the three categories of costs. There were the costs which had been incurred before the action was commenced at all; there were secondly the costs which had been incurred after the writ had been issued, and which had been incurred before the time when the order for ship's papers was made; and thirdly there were the costs which had been incurred during the time when there was the stay of proceedings laid down or directed in the order for ship's papers. When the costs were brought before the master, objection was taken to them, that there was a stay of proceedings and an order for security for costs and ship's papers, and the defendants submitted that the items which had been incurred up to the time when that stay was removed were premature; and the master answered that in a manner which I will deal with in a moment.

Upon the master's answer being given, the master made the order allowing in form some costs which had been incurred apparently before action, some costs which had been incurred (such as obtaining evidence of witnesses) before the stay was imposed by the order for ship's papers, and also some costs which were incurred during the time when the stay operated.

MacKinnon, J., on Dec. 19 disagreed with the decision of the master, and ordered that these costs which I have referred to should be disallowed; and from that decision the appeal is taken to this Court. The result is that the question is raised, firstly, as to whether any costs at all could be allowed before action brought, and, secondly, whether any of the costs could be allowed during the time when the stay operated.

Now with regard to costs generally, it must be borne in mind that Order LXV, r. 27 (29) allows a very wide discretion to the Taxing Master, and I do not desire to say anything in any way to circumscribe that discretion. It is to be used by the Taxing Master, and has been drawn in the terms in which it is in order to give a wide latitude to the Taxing Master's discretion.

It is said that no costs ought to be allowed which have been incurred before action brought. That would be to state the proposition far too widely. It could not be supported in that form. In the case to which our attention has been called, a case which came before Swinfen Eady, J., of Bright's Trustee v. Sellar, [1904] 1 Ch. 369, the observation is made by Swinfen Eady, J., at p. 371:—

> Can he [that is, the master] allow the costs of a transcript obtained before action?

And it is answered in this way:—

> It is a matter of discretion . . . His discretion is not confined to costs incurred after action,

and a reference is made to the sub-rule to which I have already referred. Swinfen Eady, J., in that case did allow and adopt the master's view that there should be certain expenses allowed in the bill which had been incurred before the action was brought, and for the reason that the expenses proved useful in the action and had been incurred at a time when it was right and proper that the outlay should be made in order to safeguard the position of the intending litigant.

It appears to me, therefore, that there is a power in the masters to allow some costs which may have been incurred before action brought; and if the expense is an outlay made upon materials ultimately proving of use and service in the action, the master has a discretion, which he probably would exercise in favour of the party incurring that outlay, to allow these costs because they have been made use of during the course of and at the trial.

Then I come to the next class of costs, namely, the costs which have been incurred before the stay. As to those, it appears clear that just as all other costs which have been incurred in the action and during the action subsequently to writ issued are in the discretion of the master, so such costs to which objection has been taken, namely, the obtaining of the evidence, would fall within the discretion of the master. It is said that it cannot be clear at that moment what would be the issues as defined between the parties at a later stage of the trial, and therefore that the outlay then made was obviously unnecessary and ought not to be allowed. The answer is that if it was a prudent outlay, then the master has power to allow it, and it is for him to judge as to whether or not an outlay made subsequent to the issue of the writ was such as might reasonably be included in the costs to be taxed between the parties.

Then comes the more important point upon which the appeal has been presented to us. MacKinnon, J., has held, apparently, that the stay of proceedings included in the order for ship's papers prevents any costs incurred while that stay was operative from being recovered. I take note that the stay is of "All further proceedings." It is not a stay of activity. The steps which prudence dictates are not forbidden. The question as to whether or

not the steps that are taken are or are not premature is a matter for the Taxing Master. I agree with the answer made by Sir George King in these terms: "I do not understand that this order entirely paralyses the plaintiff so that he cannot do anything by way of preparation for his real proceedings . . . If this is so, the question whether any act by the plaintiff during that period is or is not premature must be like every other question about premature acts a question of "reasonableness to be decided by me." I think that Sir George King has rightly answered the objection carried in.

In the case of Harrison v. Leutner, 16 Ch. D. 559, Sir George Jessel approved of the answers made by the Taxing Masters, who said:—

> We have always acted upon the principle that the costs of all work in preparing, briefing, or otherwise relating to affidavits or pleadings, reasonably and properly and not prematurely done, down to the time of any notice which stops the work, is allowable, and that the Taxing Master, having regard to the circumstances of each case, must decide whether the work was reasonable and proper and the time for doing it had arrived.

Those words seem to contain a working rule which properly exhibits the discretion which is entrusted to the masters.

I also would adopt, myself, the words used by North, J., in considering a matter akin to the question, namely, as to whether or not the activity of the parties' advisers has been paralysed or sterilised, whichever you like to call it. He said this:—

> If he had said that he was prevented from preparing them [that is, the affidavits] by the order which stayed the plaintiffs' proceedings until security for costs had been given, he might have expected that the Court would laugh at him.

When one comes to consider the purpose of this order for staying proceedings, and the good sense of it, it appears to me to be clear that it was not intended to do more than prevent unnecessary steps being taken in the action itself, and that it was not intended to prevent such activity as would contribute to the success of the party ultimately, and that if a step was necessary such as the collection of evidence because the witnesses might be dispersed, it cannot be said that it was within the purview of the order made staying proceedings that no such expense should be undertaken and no such activity engaged in.

For those reasons, it appears to me that the master's answers to the objections were right, and that MacKinnon, J.'s order setting those aside is wrong. The appeal must be allowed, and the answers of the master to the objections upheld with the taxation.

Lord JUSTICE ATKIN: I agree. This case has been put before us as one of some importance to underwriters, and I agree that it is. The question arises in respect of costs incurred in an action on a marine policy, partly before the action was brought and partly during the time during which there was a stay of proceedings under an order for ship's papers. The action was begun in July, 1926, and there was an order made in July for ship's papers, and that order was not in fact complied with until a date, I think, in March, 1927, so that there was a long period during which the stay made under the usual order for ship's papers was operative.

Now in the first place it is necessary to consider what are the actual terms of the order. The terms of the order are: "That the plaintiffs and all persons interested do produce and show all papers," and so on, "and that in the meantime all further proceedings be stayed." I think it is important to compare that with a similar and concurrent stay which was imposed in the same order, an order that the plaintiffs (who were foreign plaintiffs) should give security for costs within a month, "otherwise all further proceedings in this action be stayed." As far as the legal operation of those two forms of words is concerned, I find myself quite unable to discern any difference. I think they have precisely the same effect, and, therefore, in dealing with the question of costs incurred while a stay of proceedings is current, you have to my mind to consider the matter as though it made no difference whether the stay was granted by reason of security for costs or an order for ship's papers, or upon any other.

The contention, or one of the contentions, made by the defendants, was that the effect of the stay of proceedings was such that the plaintiffs could not recover any costs incurred by them during that period—that they were, as the Taxing Master has put it in his answers to the objections, paralysed. Now that seems to me to be quite an incorrect view of the effect of the order. All that the order does is to stay proceedings, and "proceedings" obviously do not include the preparations which may be made by the parties by seeing witnesses, taking proofs, indulging in correspondence, and so forth. "Proceedings" are such proceedings as are, for instance, taken into account when you have to deal with the provisions of the staying clause in the Arbitration Act. You may not stay there where the party applying for a stay has taken any step in the proceedings, and by that it is meant a delivery of a pleading, which is specially referred to, or some step analogous thereto, such as taking out a summons, or appearing on a summons, and so forth; and to my mind it is quite a mistake to suppose that an order to stay is to direct the parties to hold their hands from the time when the order is made and to take no further activities with a view to ascertaining what the facts are and

procuring evidence and so forth. Such a view, it is within everybody's experience, would be quite contrary to the ordinary practice. There is no doubt that while a stay is pending for security for costs, or for any other reason, it is the common practice of diligent plaintiffs and diligent defendants to use that time in making some preparation for the trial of the case. They may of course go too far—they may make excessive preparation; and if they make excessive preparation it may well be that the costs will not be allowed; but it is quite plain that nobody understands the order as being an order directing them to do nothing in the action, and I am quite clear that that is not the legal effect of it.

Now, what then is the position? The position seems to me to be that the Court has ordered, in the case of an action on a marine policy, a stay in order that the defendants may be put in possession of all the written documents that are in the possession of the plaintiffs or parties interested, or which they can reasonably procure under the order; and I have no doubt that one reason for which that order is made is to give the defendants information which otherwise would not be in their possession, to enable them to make up their minds as to what they are going to do in the case—whether they are going to fight it or whether they are going to yield, or whether they are going to admit part of it, and so forth. I think that that object ought always to be borne in mind when the master is dealing with the question of costs incurred during that period; but inasmuch as, as I have said, it is not true that the parties are stricken with paralysis, and it is not true that no costs can be recovered merely because they have been incurred in that period, it is always a question of fact for the Taxing Master as to whether the costs were or were not reasonably incurred during that period, always bearing in mind the fact that there is a stay, and also (especially in marine insurance actions) bearing in mind the purpose for which the stay is granted. But, subject to that, it seems to me that it is a pure question of fact for the Taxing Master: was it or was it not reasonable under the circumstances for the plaintiff to have incurred the costs that he did incur, at the time at which he incurred them?

If nothing had been said by the underwriters, and there was no reason to suppose that they would or would not resist the claim, it might very well be that the plaintiffs would find themselves in a difficulty if they incurred elaborate expenditure to prove liability, if in fact the underwriters subsequently admitted liability. But that is not this case, because in this case the defendants' solicitors had written at a very early stage intimating that the defendants intended to resist liability, and expressing their reason in language which certainly might give rise to an apprehension, at any rate, and a reasonable apprehension on the part of the plaintiffs' advisers, that the plaintiffs were going to be charged with fraud, because the trawler in this case undoubtedly foundered at sea, and the suggestion was that she was lost not by a peril insured against. That would certainly, or might, convey to anybody concerned in those matters the suggestion that there was some wilful act alleged, other than a peril of the sea.

In those circumstances the Taxing Master, might, I think, very well take the view that it was reasonable, at the earliest stage possible, for the plaintiffs to take the evidence of the crew and the master of the trawler for the purpose of establishing what the true cause of the loss was, and also to take the evidence of an experienced surveyor who could survey the vessel before she was repaired, with a view of indicating that the loss was in fact a loss from a peril insured against, and was not the result of wilful damage. The ship, I believe, had foundered, and therefore the surveyor would have to report upon the reports of the ship's condition before she had gone to the bottom of the sea.

Now, all that the Taxing Master has taken into account here, and it appears to me to be purely a question of fact for him, and therefore I think in this particular case there is no reason for upholding the objections which have been taken. It is for him to decide whether the costs were prematurely incurred or not; he has in the circumstances of the case decided that they were not, and it is entirely a matter for him.

The other matter that arises, arises as to the costs incurred before the action was commenced. Upon that, one has nothing to do with the question of a stay of the proceedings, but it is a pure question as to whether or not the costs incurred before the writ was actually issued are costs which the plaintiff can recover under an order for the costs of the action; and upon that it appears to me to be very important to bear in mind that the Taxing Masters have got to apply the words of Order LXV, r. 27 (29). That rule is the guiding rule in the taxation of costs. It was intended to be. It is intended to sum up generally the principles upon which costs are awarded, and I cannot help thinking that if that rule were really rigorously applied by everybody—and by "rigorously applied" I mean applied in all cases, giving full effect to the width of its language—there would be much fewer complaints brought by successful litigants than are brought at the present moment, because it is a rule which is intended to give to the successful litigant a full indemnity for all costs reasonably incurred by him in relation to the action. I think it says so in terms, that it is to allow "all such costs as shall appear to him to have been necessary or proper for the attainment of justice." That is the whole principle that the Taxing Master has got to determine.

Now it is quite obvious that those costs are not limited to costs incurred after the

writ has been issued. Costs are allowed every day, as appears by the Taxing Masters' rules which are not binding but which govern the practice in a limited form. I am not at all sure that the conventions fixed by the masters are not too narrow; but they may be very wise, because those may be the costs which are commonly in dispute and commonly raised, and it is desirable to deal with them; but the costs certainly extend beyond that. The Taxing Master has discretion in every case to decide whether the costs incurred before the action were necessary or proper for the attainment of justice, and it may very well be that the costs of which the Taxing Master approves may be included in that term, as in the case which was put in argument, the case of an accident where a bridge breaks down and it is replaced forthwith, and the state of the bridge is the cause of the action, and where it is essential therefore that there should be an inspection by skilled witnesses at once of the state of that bridge. In those circumstances it may very well be that the Taxing Master might hold that such costs incurred before the issue of the writ were necessary for the attainment of justice, because the actual facts to be ascertained from such an inspection could not be ascertained at a later date, and of course the Taxing Master upon that would have to consider the probability or not of the defendant disputing liability or not disputing liability. That again is purely a question of fact for the Taxing Master, and he has not misdirected himself. He says in this case that certain costs were properly incurred in taking evidence and by the professional gentlemen concerned doing what was necessary for the purpose of taking that evidence. I agree that the Taxing Master in this case seems to have been liberal. The costs incurred in this case seem to strike one as being on a liberal scale, but then that is entirely a question for him, and not a question with which we can interfere.

There is one other point which was raised by Mr. Simey, and it was this, that no costs can be incurred (that is to say, properly incurred at all, as I understand him) in the action, until the issues have been determined (that is to say, have been defined); and he says that these costs were incurred before the defendants had delivered their defence or indicated what their defence would be. All I can say is that that goes very much too far. That would mean this, that the litigant would never be entitled to recover any costs, save the actual costs of proceedings, until the defendant had delivered his defence, because until then the issues are not defined. That again does not seem to me to be the right view. The question is, in every case, what is the reasonable thing to do?—and the Taxing Master is not bound by any such limit of time as is mentioned.

For those reasons, it appears to me that the learned Taxing Master gave expression in his answer to the objections to what I cannot help believing is not only the law, but also has been the general practice in these cases. I think he exercised his discretion as to whether or not the costs incurred were premature or not. It seems to me that that is the only question he had to determine, and in those circumstances I think the objections fail.

The result is, I think, that this appeal should be allowed, and the objections should be dismissed, with costs here and below.

Lord Justice LAWRENCE: I agree. The only objection made by the defendants to the taxation by the Taxing Master of the plaintiffs' bill of costs in respect of the relevant items, and therefore the only objection open to them in this Court, was in these terms: "As there was a stay of proceedings for security for costs and ship's papers, the defendants submit that these items were premature."

Now that objection was, I think, intended to raise a question of principle; at all events it was so treated by the Taxing Master; and the only question of principle that I myself can extract from that objection is that an order for a stay, whether it be pending security for costs or pending delivery of ship's papers, operates not only to stay the proceedings in the action, but also operates to stay what the master's rule has aptly described as the activities of the parties in getting up their case or looking further after the interests of their clients.

The Taxing Master has evidently had that question argued before him; his answer shows it, and to my mind it is really the only question of principle that can be raised upon that objection, because of course the order itself would be a factor to take into account as to whether certain costs were premature just as much as any other fact, but that would not make the question decided by the Taxing Master a question of principle.

Now Mr. Simey was reluctant, when I pressed him on the matter, to say that the order stayed the proceedings in the sense that it stayed the hands of the solicitors for either party pending the operation of the stay. All he would say was this, that when such an order had been made the Taxing Master was bound to hold that any costs incurred by the parties pending the stay were premature and would have to be disallowed as a matter of principle.

Now I think in that he was wrong. There can be no doubt, I think, that an order staying proceedings does not apply to staying the ordinary work of a solicitor in getting up the case. As I have stated, they have to be careful in what they do pending such an order, because the Taxing Master would no doubt consider that in coming to a conclusion whether they were premature or not.

That leaves only the question of whether in fact these costs were prematurely

incurred, and in that I agree with my colleagues that it is a pure question for the Taxing Master, and is not open to review in this or any other Court. It is for him to say whether, in the special circumstances of the particular case, the costs are or are not prematurely incurred; and in considering that question he must—and did, no doubt—have in mind the fact that an order to stay proceedings had been made, and no doubt other factors. He having once come to the conclusion, as he has done, that the costs objected to in the present case were not prematurely incurred, in my judgment that is not open to review.

I therefore agree that this appeal succeeds, and ought to be allowed, and that the Taxing Master's answers were perfectly right.

The MASTER OF THE ROLLS: Then, Mr. Le Quesne, the appeal will be allowed, with costs here and below, and the answers of the master to the objections carried in to his taxation will be sustained.

Mr. LE QUESNE: If your Lordship pleases.

COURT OF APPEAL.

Wednesday, Jan. 18, 1928.

WARSAWA v. "WATSNESS" (OWNERS).

Before the Master of the Rolls (Lord HANWORTH) and Lord Justice ATKIN.

Workmen's Compensation—Claim by ship's fireman—Loss of sight of eye—Whether due to accident or to natural causes—Finding of learned County Court Judge that loss was due to natural causes—Appeal dismissed.

This was an appeal from an award of the County Court Judge at Cardiff given against a ship's fireman, named Dovli Warsawa, of West Street, Cardiff, on his claim against Sir William Reardon Smith & Sons, of Cardiff, owners of the steamship *Watsness*, for compensation for the loss of the sight of one eye. According to the case for the applicant, he was in the stokehold of the ship, cleaning the fires, on July 20, 1925, when the vessel was on a voyage to Santos, when hot ash went into his right eye, which resulted in blindness.

Dr. A. Majid (instructed by Messrs. Hardcastle, Sanders & Co.) represented the appellant; Mr. Godfrey Parsons (instructed by Messrs. Holman, Fenwick & Willan, agents for Messrs. Lean & Lean, of Cardiff) appeared for the shipowners.

Dr. MAJID said that the man was already blind in his left eye, and he alleged that this accident had now blinded the other eye. The Judge, in finding that the blindness was due to disease and not to the accident, failed to appreciate the evidence given on behalf of the applicant.

JUDGMENT.

The MASTER OF THE ROLLS, giving judgment without calling upon Counsel for the respondents, said: This appeal fails, for there is really no case at all. The question that arose before the County Court Judge was whether the applicant had established that the glaucoma from which he suffered in his right eye was due to an accident. It was suggested that in 1925 there was some accident in the sense that while the man was stoking he received the impact of a foreign body in his eye, which gave him pain and trouble, and which was the cause of the disease, and that he got that disease in consequence of that accident. But there is the evidence of the captain and engineer that nothing was said by the man at the time that there was any accident. The captain treated the man's eye, but he never complained of the impact of a foreign body, or that there had ever been an accident.

There was also the evidence of the doctor who examined him later that there had been an operation for glaucoma, which had come from natural causes over a period of time. That being the evidence before the Judge, he held that there was no proof of accident under the Act; that the misfortune from which the man was suffering was due to natural causes, and not to an accident; and that the respondents were not responsible. It was a matter entirely of fact, and the Judge rightly directed himself in his decision, and there was no ground on which the decision could be upset. For these reasons the appeal must be dismissed with costs.

Lord Justice ATKIN: I agree. Dr. Majid has said everything that can be said on the question of fact, and it remains a question of fact. There was ample evidence for the decision at which the Judge arrived, and therefore the appeal should be dismissed.

ADMIRALTY DIVISION.

Nov. 14 and 15, 1927.

THE "NORMANSTAR."

Before Mr. Justice HILL, sitting with Captain P. N. LAYTON and Captain A. R. H. MORRELL, Elder Brethren of Trinity House.

Collision between steamships in Punta Indio Channel, River Plate, during dense fog —Plaintiff vessel at anchor—Whether anchoring process complete — Reckless navigation by pilot of defendant vessel —Judgment for plaintiffs.

In this case the plaintiffs claimed damages from the defendants by reason of a collision between their steamship *Kumeric* and the defendants' steamship *Normanstar*, alleging negligence on the part of those in the *Normanstar*. The defendants denied negligence and counterclaimed for damage caused to the *Normanstar*.

Mr D. Stephens, K.C., and Mr. H. C. S. Dumas (instructed by Messrs. Thos. Cooper & Co.) appeared for plaintiffs; Mr. E. A. Digby, K.C., and Mr. Lewis Noad (instructed by Messrs. William A. Crump & Son) represented the defendants.

The collision occurred early on the morning of Dec. 1, 1926, when the *Kumeric*, a single-screw steel steamship, belonging to the port of Glasgow, 6371 tons gross, 460 ft. long and 55 ft. beam, was anchored in the Punta Indio Channel in the River Plate. She was bound from Calcutta to Buenos Ayres and Rosario and was laden with bales of gunnies and jute. At the time there was a dense fog, and the *Kumeric* in consequence had brought up and was riding to her starboard anchor. In these circumstances it was said that the *Normanstar*, although the *Kumeric* was sounding continuously for fog, loomed out of the fog about a ship's length away and, having considerable way on her, collided with the *Kumeric* abreast of No. 4 hatch, doing so much damage that the *Kumeric* rapidly filled and sank. It was said that those on board the *Normanstar* failed to take appropriate helm or engine action on hearing the *Kumeric's* signals, failed to navigate with moderate speed in the fog, and did not sound her whistle in accordance with the regulations.

For the *Normanstar*, a steamship of 6996 tons gross, 415 ft. in length and 56 ft. beam, on a voyage from London to Buenos Ayres, in ballast, it was said that she was proceeding up the north side of the Indio Channel, making about 11 knots. In these circumstances, the *Kumeric*, which the *Normanstar* was overtaking, was observed about half a mile ahead and bearing about a point on the port bow. She (the *Kumeric*) disappeared into a bank of fog, and about the same time the whistle of another vessel bound down river was heard on the port bow. The whistle of the *Normanstar* was sounded in reply, her engines were ordered "stand by" and "slow," and fog signals were given in accordance with the regulations. Shortly afterwards a bell was heard close at hand on the starboard bow. The helm of the *Normanstar* was at once put hard-a-starboard, her engines were put full speed astern, and three short blasts were blown, but before the *Normanstar* felt her starboard helm her stem struck the side of the *Kumeric*, which vessel, it was alleged, had thrown herself across the course of the *Normanstar* without giving any signal and had let go her anchor in such a position that she lay athwart the channel. It was said that the *Kumeric* was negligent in failing to sound two prolonged blasts indicating that she had no way on her; that she let go her anchor at an improper time and place; and that she failed to take proper helm or engine action.

Thursday, Jan. 12, 1928.

JUDGMENT.

His LORDSHIP, in giving judgment, said: This is the second case I have tried in the last two months of a very serious collision in the Punta Indio Channel of the River Plate. In the previous case it was quite obvious that there was reckless navigation by one of the pilots of the River Plate, and in the present case it seems equally obvious that there was reckless navigation by the pilot of the *Normanstar*.

It is very much to be regretted that the collision should have been brought about in this way because, in the previous case, as in this, I feel that if the master or chief officer had been in command of the navigation there would have been no disaster. It is not the first time I have been brought to this conclusion, that while in many cases pilots are of the greatest service in assisting ships from their knowledge of local conditions, currents and so forth, yet as navigators they are not infrequently the cause of disaster and not the means by which disaster is avoided. I am not saying this of pilots in general, but that has been my experience in many cases.

The vessels concerned here are the *Kumeric* and the *Normanstar*, both inward bound for Buenos Ayres, which came into collision between No. 10 and No. 9 buoys, a little beyond No. 9 buoy on the early morning of Dec. 1, 1926, just at about sunrise. The *Kumeric* was a steamship of 6731 tons gross, 460 ft. in length and 55 ft. beam. She was laden and drawing some 25 ft. forward and 26 ft. 2 in. aft—I am not quite sure of the draught—and she was in charge of a pilot. The *Normanstar* was a vessel of 6996 tons gross, 415 ft. in length, 56 ft. beam, and she was light, drawing in fresh water 7 ft. 10 in. forward and 8 ft. 3 in. aft.

The channel at this point runs almost east and west and the collision happened on the north side of the channel, which was the proper side for ships going up river. It happened in a fog. At the time the collision happened it was a dense fog and the visibility has been variously reported as between 250 and 450 ft. The current was of a force of about a knot and was tending at this point to the S.E.

The stem of the *Normanstar* was in collision with the starboard side of the *Kumeric* just abreast of the middle of the No. 4 hatch, and very serious damage was done to the *Kumeric*, because she rapidly filled and sank on the mud.

Now, the plaintiffs' case is: "We were coming up the channel and we ran into some fog which gradually increased to a dense fog. At the beginning the speed was reduced from full speed to half speed and then 12 minutes before the collision we decided to anchor and engines were stopped and a minute later put full speed astern to take off way, stopped again five minutes before the collision and the anchor was dropped." There were then small movements of the engines manœuvring the ship to her anchor, and the collision happened five minutes after the final stopping of the engines with the ship lying at her anchor. They say that they sounded their whistle for the dense fog and at full astern sounded the three blasts, and from the time the anchor was dropped they rang the bell and rang it at short intervals until they became aware of the presence of the *Normanstar*, which they did by hearing a long blast, from which time they began to ring continuously. Then they heard a second long blast; then the *Normanstar* came in sight about a length away a little abaft the beam, and the collision followed.

Her case is that on coming into the fog she decided to do the proper thing and the proper thing to do was to come to anchor. She did it in the ordinary way, with the ordinary engine movements accompanied by the proper whistle signals, and when she came to anchor she began to ring her bell, and was at anchor a substantial time while the *Normanstar* was approaching.

There is only one other circumstance. It is said to be of importance but I am not sure that it is important, and that is that the master of the *Kumeric* said at first that he was partly acting for a ship that was coming down the channel; and it is suggested that he anchored because of this ship and not for the fog, but if from the time he anchored he was at anchor for a substantial time before the collision the motive is quite immaterial, because the ship was in fact a ship at anchor.

Now, the case for the *Normanstar* is this, that at some considerable time before the collision—I think they put it at half an hour or more—they first noticed the stern light of the *Kumeric* a little ahead of them on the port bow. They were coming up at 11 knots or a little more. At 9½ minutes before the collision they observed a denseness which the officer on the bridge thought was a low-lying rain cloud, but which turned out to be fog. Four minutes before the collision the *Kumeric*, then a mile or mile and a half distant, disappeared, and it was then appreciated that she had disappeared in a fog lying on the water, but full speed was continued for another two minutes, about 2½ minutes before the collision, and when the *Normanstar* was entering the fog.

The evidence of the master seems to me to make it two minutes instead of 2½ and, while the engines were slowing but while the speed was still eight or nine knots, a bell was heard about a minute before the collision and the engines were then put full speed astern and the helm hard-a-starboarded. Immediately afterwards the *Kumeric* was perceived at a distance which the master puts at 150 ft., or less than a length, and then the helm was hard-a-starboarded and the collision occurred.

Now, they say, and Mr. Digby, who has done everything possible, as he always does, for his client, has submitted, that the *Normanstar* was not to blame. But that is a pretty bad case having regard to the evidence of the master and chief officer, who said that if they had been in charge they would have taken off speed much sooner. But his main effort has been to make out that the *Kumeric* was also to blame, and the defendants' real case now is that the *Kumeric* knew or ought to have known that the *Normanstar* was astern of her and either that she ought not to have anchored at all, in that case because that was contrary to the rules, or that if she anchored at all she ought to have taken the utmost precautions and ought not to have anchored when she knew the *Normanstar* was so close astern. He asked me to find that in point of time the interval between the anchoring and the collision was very short, and to infer from the evidence that the anchoring was still in process of being carried out.

As I have said, I have no doubt at all, and there never has been any doubt, as to the fault of the *Normanstar*. They saw the *Kumeric* disappear in what they now know was a bank of fog and maintained their speed of 11 knots approaching that fog, and they entered the fog and they still delayed. They saw the *Kumeric* enter the fog and knew she had entered the fog and they still continued at full speed, and it was not until two minutes longer, when they themselves were entering the fog, that they put the engines slow. Now, it seems to me that that cannot possibly be justified. Knowing the fog is ahead and that another steamship is ahead, as to whose manœuvres they cannot be certain, and as to whom at any rate they must conclude that she will reduce her speed to slow, it cannot be justified to run into that fog at full speed; and when they only take action by putting engines at slow when speed should have

been run off—they were still going at eight or nine knots in a fog—and when they see the other ship one length ahead (they do not say a length even, about 100 ft.) it is impossible to do anything to avoid the collision.

How then have the defendants made out a case against the *Kumeric*? First of all, was the *Kumeric* wrong in coming to an anchor here? That depends upon the rules applicable to this position, which are Rules 37 and 44. Rule 37 is a general rule forbidding vessels to anchor inside the channel. The channel is meant for navigation and not for anchoring in. But this general rule must be read in conjunction with Rule 44 which provides that the rules contained in these regulations shall be complied with in so far as in special circumstances that fog, dangers of collisions, fire, damage to engines or rudder or sailing vessel in the channel, &c., shall not oblige them to deviate therefrom as is set forth in Art. 27 of the Regulations for the Prevention of Collisions at Sea. In a fog of this density what ought a ship to do? I am advised that a prudent navigator cannot lay down hard and fast rules, but that prudence says that in this channel in such a fog a vessel should come to anchor. If so, then clearly it cannot be a breach of Rule 37 read in the light of Rule 44. That is to say it was not a wrong thing to do. Of course if a vessel comes to anchor in the channel she has to have due regard for the safety of others.

The defendants' case is that the anchoring was done suddenly when the *Normanstar* was in sight and when the *Kumeric* ought to have known, and further that she should have heard the *Normanstar's* fog signals even if they had not observed her in the earlier stages. Plaintiffs' case is that there was a substantial time while the ship was at anchor and while the *Normanstar* was still a long way down river.

On the evidence, I have come to the conclusion that that given for the *Kumeric* is to be accepted and that it proves that there was an interval, a substantial interval, between the time when she came to anchor and the collision, and that means that the *Kumeric* anchored while the *Normanstar* was still a considerable way down the channel, and that the *Kumeric* in anchoring gave the proper signals and, as soon as the anchor was down, began to ring the bell and was ringing it regularly.

The main reasons that lead me to conclude that are these. First of all, the evidence for the *Kumeric* is very well given. Secondly, I find it impossible to suppose that the evidence of these witnesses was concocted evidence when they told me what they did between the time of the first action towards coming to an anchor and their seeing the *Normanstar*. I do not think these men had the ingenuity to invent a series of stories as to how they spent the time and how and where they were; and when you consider the evidence of one witness after another it all points to a substantial number of minutes elapsing between the *Kumeric* coming to anchor and the *Normanstar* being sighted.

There is the evidence of the man who said that he went into the galley, and of the quartermaster who was sent to take soundings. He took one sounding and again a second sounding before the *Normanstar* was seen. All these things must take time. It might have been a case where they all learned to say a thing and all agreed, but it was not so in this instance. I accept the evidence and also that the bell had been rung quite a number of times before the *Normanstar* came into sight.

What is there on the contrary? There is the circumstance that the navigation lights were still on at the moment of the collision, and if it was night time and you found them still on there might be some grounds for saying that the anchor was only just down. But it was daylight and the sun only just rising and I accept as a fact the explanation that the lights had not been switched off because they had been overlooked.

Another point which Mr. Digby raised is that he asked me to say as a fact that the angle of the blow shows, and to accept the defendants' evidence on the point, that the ship was right athwart the channel and that showed she had not finally come to anchor with the current setting her fast. That all depends upon my finding that the collision was at right angles. I cannot find it so and therefore that argument fails on the fact which is the basis of the argument.

On the other hand, in the defendants' case I find there is considerable corroboration of the evidence of the plaintiffs that there was quite a number of minutes between the dropping of the anchor and the first sighting of the *Normanstar*. I find it in this. The *Normanstar* sees this ship disappear in the fog a mile away or, as was said at Buenos Ayres, a mile and a half, and the *Normanstar* continues at full speed until she comes to the fog herself and then she reduces to slow. The time the *Normanstar* was running that mile and then the further period she was coming up occupied at least six or seven minutes, and I find it was so, after the *Kumeric* entered the fog and came to anchor. That I think is a support to the plaintiffs' case in regard to the length of time that the *Kumeric* had been at anchor before the *Normanstar* reached her.

The result of all that is that the *Kumeric* has come to anchor without its being wrong to do so and has been at anchor for a number of minutes—I do not state precisely the number, six, seven or eight minutes—and during that period has been ringing her bell, having previously sounded her full astern signal as she went astern, and the *Normanstar* is coming along almost at full speed until she sights the *Kumeric*. The *Normanstar* never heard the three blasts and never heard the previous signal. They said that