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[PART 1

HOUSE OF LORDS.

May 17 and 18, 1960.

THE "MARINEGRA".

Before Viscount SIMONDS, Lord REID, Lord RADCLIFFE, Lord COHEN and Lord DENNING, sitting with Captain R. B. HONNYWILL, R.N., and Captain D. DUNN (Elder Brother of Trinity House) as Nautical Assessors.

Collision — River — Starboard-hand rule —
Steerage-way — Vessel not answering helm —
Approaching vessel aware that other vessel
was having difficulty in rounding bend in
river — Altering of course and increasing of
speed — Alleged negligent loss of steerage-way
— Assessors — Observations on functions of
Assessors.

Collision between plaintiffs' outward-bound steamship *Aconcagua* and defendants' inward-bound steamship *Marinegra* in River Elbe, at night—Ebb tide of two knots—Vessels approaching "dog leg" in river, requiring starboard-wheel action by *Marinegra* and port-wheel action by *Aconcagua*—*Aconcagua* proceeding at half ahead (nine knots through the water)—*Marinegra's* speed reduced from eight knots over the ground to half ahead on approaching bend in river—Masthead and green side lights of *Marinegra* sighted by *Aconcagua*, three or four points on her port bow at distance of three miles—Course of *Aconcagua* altered 2 deg. to starboard—Course of *Aconcagua* altered further 5 deg. to starboard when *Marinegra* seen to be maintaining her course—Attempt by *Marinegra* to round bend in river—Two-thirds of turn accomplished when head of *Marinegra* failed to come round to starboard—Engines of *Marinegra* put to "slow ahead"—Continued failure of *Marinegra* to answer her helm—Engines of *Marinegra* put full astern and signal

sounded about three minutes before collision—Engines of *Aconcagua* thereupon put to "full ahead" and wheel hard-a-starboard—Hard-a-port wheel action by *Aconcagua* (to throw her stern to starboard) and her engines stopped, immediately before collision—Collision between port bow of *Marinegra* and port side of *Aconcagua*—Claim by plaintiffs alleging that *Marinegra* was negligent in that she failed to keep to her starboard side of channel and failed to maintain steerage-way—Contentions by defendants that *Aconcagua* was negligent in failing to ease, stop or reverse her engines in due time and that *Marinegra* was affected by an unusual current.

—Held, by KARMINSKI, J., (1) that *Aconcagua* was aware that *Marinegra* was in some difficulty in turning to starboard, but also knew that she was taking steps to overcome that difficulty and thought that *Marinegra* would be successful; (2) that the collision would probably have occurred even if *Aconcagua* had reduced her speed; (3) that there was no evidence of an unusual current in that particular area; (4) that *Marinegra* was negligent in not going either full ahead or full astern when it was realized that she was not answering her helm; that the effective cause of the collision was the over-cautious manoeuvring on the part of *Marinegra* in reducing to "slow ahead" (which reduced further her steering capacity) and then putting her engines full astern (which made matters worse); and that, therefore, *Marinegra* was solely to blame.

—Appeal by *Marinegra*, alleging that *Aconcagua* was partly to blame—Assessors asked by Court (a) what they considered would have been a seamanlike action if, when *Marinegra* sounded her three-short-blasts signal and *Aconcagua* was proceeding on her own starboard side of the channel at half speed (nine knots), the vessels had been (i) half a mile apart; or (ii) 6 to 7 cables apart; (b) whether stopping or reversing *Aconcagua's* engines for two minutes would have had any

effect; and (c) whether putting her engines full ahead had any effect before collision—Answers: (a) "Wheel half over to starboard with engine speed full ahead . . ."; (b) and (c) that the effect of any of the engine manoeuvres on the speed of *Aconcagua* would have been small, but, once the engines were put full ahead, no further action would have been practicable, save to call for emergency full ahead.

—*Held*, by C.A. (Lord EVERSHED, M.R., and ORMEROD, L.J.), dismissing the appeal, that, in view of the advice from the Assessors, and although the learned Judge had understated the distance between the vessels when *Marinegra* sounded her three-short-blasts signal (2½ to 3 cables instead of 5 cables) and had put the full speed ahead order at a later time than the hard-a-starboard order, the *Marinegra* had failed to prove that *Aconcagua* was at fault in the action which she took on hearing *Marinegra's* three-short-blasts signal.

—*Held*, by WILLMER, L.J., *dissenting*, that the distance between the vessels when *Marinegra* sounded her three-short-blasts signal was 6 to 7 cables; that, accordingly, given a good look-out, the *Aconcagua* had had abundant opportunity for weighing up the position with which she was confronted and a fair period of time to make up her mind what action to take; and, rejecting the Assessors' advice, that the *Aconcagua* was negligent in not stopping her engines on hearing *Marinegra's* three-short-blasts signal—Apportionment of blame: *Marinegra*, two-thirds; *Aconcagua*, one-third.

—Appeal dismissed by a majority in the C.A.

—Appeal by *Marinegra*, contending that *Aconcagua* was also to blame.

—*Held*, by H.L. (Viscount SIMONDS, Lord REID, Lord RADCLIFFE, Lord COHEN and Lord DENNING), that *Aconcagua* was not at fault in proceeding as she did until she heard the three-short-blasts signal; that the Assessors in the House of Lords answered, in the same way, a similar question to that put to the Assessors in the Court of Appeal; that there was not sufficient ground to disregard the unanimous opinion of the Elder Brethren and the Assessors; and that therefore the *Marinegra's* appeal failed.

The following cases were referred to:

- Aruba*, (1930) 37 Ll.L.Rep. 225;
Australia, [1927] A.C. 145; (1926) 25 Ll.L.Rep. 141;
Crown (The Adolph Woermann) v. The Hessa (Owners), (1921) 9 Ll.L.Rep. 271;
Llanover, (1945) 78 Ll.L.Rep. 461.

This was an appeal by the owners of the steamship *Marinegra* against a judgment of the Court of Appeal (Lord EVERSHED, M.R., and Ormerod, L.J., Willmer, L.J., *dissenting*) ([1959] 2 Lloyd's Rep. 65) dismissing an appeal from a decision of Mr. Justice KARMINSKI ([1958] 2 Lloyd's Rep. 385), holding the *Marinegra* solely to blame for a collision which occurred between the *Marinegra* and the turbine steamship *Aconcagua*, in the River Elbe, off the mouth of the River Stör, at about 7 6 p.m. (C.E.T.), on Jan. 15, 1957. The appellants did not contest the finding of negligence made against them, but they contended that the *Aconcagua* was also to blame.

At the material time, the *Aconcagua* was outward bound, on a voyage from Hamburg to Bremen, and the *Marinegra* was inward bound, proceeding up river, from Norfolk (Va.) to Hamburg. Both vessels were approaching what was described as a "dog leg" in the River Elbe, just below Glückstadt and near where the River Stör flowed into the River Elbe.

The *Marinegra* conceded that, at the time of the collision, she had wandered on to the wrong side of the channel. Mr. Justice KARMINSKI said ([1958] 2 Lloyd's Rep., at p. 389) that "It appeared to the pilot of the *Marinegra* that his ship was not answering her starboard helm, but was indeed paying off very slightly to port. Clearly, her speed was reducing and still she was not answering to her helm. When the *Aconcagua* was, as the pilot of the *Marinegra* records, something like five cables away, the pilot of the *Marinegra* ordered his engines full astern at 7 3 p.m., also giving three short blasts twice to indicate what he was doing.

"There is some doubt as to the distance between the two vessels when that signal was made and I do not suppose that the differences will ever be resolved. The pilot of the *Aconcagua* says that it was much nearer, and he puts it at 1½ cables. It may well be the distance was between the two estimates, something, in other words, like 2½ or 3 cables; but, still, the distance was close. At that stage, clearly, the *Aconcagua* had noticed that something unusual was happening to the other ship, that she was in some sort of difficulty, although not by any means necessarily out of control.

"A good deal of discussion has taken place as to whether or not the *Aconcagua* was right in maintaining her speed under those circumstances. Again, that is a

matter on which I have consulted the Elder Brethren, and they advise me—and again I at once accept their advice—that the three short blasts from the *Marinegra* indicated to the *Aconcagua* that the *Marinegra* was having, at any rate, some difficulty in completing her turning manœuvre and was taking action to shorten the turn by going astern.

"One of the matters which I shall have to consider is whether or not any difference would have been made, or whether the collision could have been avoided, by the *Aconcagua* reducing speed. I have considered, with the Elder Brethren, whether she could have made any manœuvre farther to starboard, but I am advised—and I again at once agree—that she would have been moving into danger if she had gone farther over to her starboard side, since she might well have gone aground.

"The position, therefore, was this, that the *Aconcagua* continued at her speed of about nine knots while the *Marinegra* was going full astern, and I was much pressed by Mr. Adams, for the *Marinegra*, with the wrong-headedness of the *Aconcagua* under those circumstances; but I have to consider the position the *Aconcagua* was in.

"She knew clearly that the *Marinegra* was in some difficulty about turning to starboard, but she also knew that the *Marinegra* was taking steps to try and overcome that difficulty by shortening her turn and going full astern. I can see no reason why she should not have thought, as she did, that the *Marinegra* would accomplish that object. The alternative was to reduce speed and keep on her course. Again, I have consulted the Elder Brethren on the probable results of that action, and I am advised that, in all probability, the collision would have occurred, though the angle of blow, of course, would have been different, and might indeed have been head on with even more disastrous results than in fact occurred in this case. At any rate, that was the position and it remains unexplained why the *Marinegra* failed to answer her starboard helm. At the end of his statement, the pilot of the *Marinegra* gave it as his opinion that it was due to

... a circular current on the starboard bow, presumably caused by holes in the river bed allowing deep water."

Mr. Justice Karminski then held that the theory that there was some abnormal circular or other currents on the starboard bow was not supported by any corroborative evidence of any kind; and his Lordship went on to find that the cause of the collision was the negligence of the *Marinegra* in not going full ahead or full astern when it was realized she was not answering properly to her starboard helm.

The owners of the *Marinegra* appealed.

Lord Evershed, M.R., in giving judgment in the Court of Appeal ([1959] 2 Lloyd's Rep., at p. 68) said: "Though it was suggested, somewhat faintly, that the *Aconcagua* should have earlier become aware of the defective manœuvres of the defendants' vessel, the real problem for our determination is limited to the single question: Was the pilot of the *Aconcagua* at fault in navigating his ship as he did immediately upon hearing the signal of three short blasts from the *Marinegra*?

"At that point of time, the *Aconcagua* was proceeding down stream on her proper side of the channel at half speed, that is at a speed of about nine knots. Her pilot then was made aware of the *Marinegra* somewhat across the stream (that is, on his side of the water) and showing only her green or starboard light.

"In opening the appeal, Mr. Adams drew attention to certain inconsistencies in the evidence given by the *Aconcagua's* pilot, one Willy Imbeck, with the statements in the plaintiffs' preliminary acts and pleadings; but it is, in my judgment, clear that the time referred to, when the pilot heard the three blasts and became aware of the situation of the *Marinegra* as I have described it, was approximately three minutes before the collision; and, having regard to the probable speeds in the water of the two ships, it must be taken that they were then about 5 or 6 cables distant from each other. What the pilot of the *Aconcagua* then did was to order that her engines be put at full steam ahead and her helm turned hard-a-starboard. The learned Judge, in his judgment, appears to have treated the distance between the two vessels at this critical point of time as appreciably less than 5 or 6 cables; and he seems also to omit to notice the order then given for full steam ahead. But, in my judgment, it appears clear (and Mr. Adams argued upon that basis) that the distance between the ships at the relevant point of time was