

QUEBEC ADMIRALTY DISTRICT

1924
Jan. 4.

No. 566.

THE KAMOURASKA SHIPPING COM- } PLAINTIFFS;
PANY, LIMITED, Et AL..... }

AGAINST

THE SHIP *FANAD HEAD*

AND

No. 567.

THE ULSTER STEAMSHIP COM- } PLAINTIFF;
PANY, LIMITED }

AGAINST

THE SHIP *KAMOURASKA*

Shipping—Collision—Moderate speed—Fog—Article 16 of the Regulations for the prevention of collisions at sea—Evidence.

On the morning of June 20, 1923, at the hour of 3.20 according to the *K.*'s clocks and 3.26 according to the *F.H.*'s clocks—the difference between them being accidental—a collision occurred on the St. Lawrence River near Red Island and Bicquette Island, between the *K.* outbound and the *F.H.* inbound. Both ships ran into dense fog half an hour or a little more before the collision. The *K.* stopped her engines at 2.50 a.m.; about three o'clock she heard a fog signal ahead, started at slow at 3.05 and her engines continued going ahead until 3.18 when they were put full speed astern. Repeated long blasts were heard by the *K.* from the other ship, which, however, was not seen until the ships were within 60 feet from each other. The speed of the *K.* from the time her engines were put at slow ahead until they were put full speed astern was at least 4½ to 5 knots, which was more than necessary to keep steerage way, and when she put her helm hard a-starboard, she swung around to port and her stem struck the port bow of the *F.H.* At 2.53 the engines of the *F.H.* were put at "stand by," then at 2.56 at slow, stopping at 3 when the lights of the other ship were seen 2½ to 3 miles ahead. She then proceeded slowly, stopping her engines at intervals. The *F.H.* had the tide and wind against her and merely had steerage way, making very little, if any, speed over the ground. She did not run into the *K.*, but the *K.* ran into her. Two minutes before the collision the *F.H.* again having the *K.* in sight gave one short blast putting her helm hard aport. This was answered by the *K.* with two short blasts, who put her helm hard a-starboard. The *F.H.* again gave one blast answered by the *K.* with two, and immediately followed by three short blasts. When the cross signals were given the *K.* was four points off the *F.H.*'s port bow. The *K.* contended that the *F.H.* was to starboard, its witnesses basing their opinion of direction on the whistles heard.

Held, that it was bad seamanship for the *K.* to give cross-signals and to put her helm hard a-starboard when she did, and that this, with her excessive speed, was the sole cause of the collision.

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2. That a ship is not justified in altering her course in a fog until there is sufficient indication of the other's position, sufficient indication being a matter of circumstances in each case.
3. Where there is conflict of testimony as to the respective positions of the ships, the court, in view of the fact that sounds in a fog are notoriously unreliable, as between witnesses who testify to the position of a vessel as having seen her, and those whose testimony is only an opinion based upon hearing the whistle, ought to accept the version of the former.
4. That "moderate speed" within the meaning of Article 16 of the rules for preventing collision at sea, is such speed as will permit a vessel to pull up within the distance that she can see.

ACTIONS to recover damages due to a collision between the ships *Kamouraska* and *Fanad Head*, which occurred on the St. Lawrence River between Red Island and Bicquette Island. The former claiming \$25,000 and the latter \$50,000.

November 28, 1923.

Cases now heard before the Honourable Mr. Justice MacleNNAN at Montreal.

W. C. Macdonald, K.C. and *C. Gordon Hyde, K.C.* for the SS. *Kamouraska*.

A. R. Holden, K.C. and *R. C. Holden* for SS. *Fanad Head*.

The facts and points of law involved are stated in the reasons for judgment.

MACLENNAN, L.J.A., January 4, 1924, delivered judgment.

These two actions arose out of a collision between the *Kamouraska* and the *Fanad Head* which took place in the River St. Lawrence on the morning of June 20, 1923. Both ships were single screw steel steamers. The *Kamouraska* was registered at Halifax, N.S., and was owned by the Kamouraska Shipping Company, Limited; her gross tonnage was 4,903 tons; she had a length of 360 feet and 54 feet beam and was drawing 10 feet forward and 15 feet 6 inches aft and was bound from Montreal to Sydney. The *Fanad Head* was registered at Belfast and was owned by the Ulster Steamship Company, Limited; her gross tonnage was 5,200 tons; she had a length of 390 feet and 52 feet beam and was drawing 11 feet 6 inches forward and 17 feet 6 inches aft and was bound from Sydney to Montreal.

The case of the *Kamouraska*, as set out in her preliminary act and statement of claim is that early on the morning of 20th June, 1923, she was proceeding down the River St. Lawrence when she met the *Fanad Head* coming up. The tide was ebb with a current of approximately one and a half knots. About 2.30 a.m. the weather became very foggy; the order "Stand by" was given by the master, and at 2.50 a.m., when the fog had become dense, the engines were stopped and at all times subsequent thereto the vessel was navigated with caution and gave the regulation sound signals for fog. The engines were stopped from 2.50 to 3.05 a.m., when the fog signals of the *Fanad Head* were heard on the starboard bow. The order "Slow ahead" was given at 3.05 a.m. and the vessel continued to be navigated with caution. At 3.15 a.m. a white light was seen two points off the starboard bow and according to the preliminary act this was five minutes before the collision, and the statement of claim states that a minute after this light was seen the fog signals of the *Fanad Head* were heard 4 points off the starboard bow and the speed of the *Kamouraska* then was dead slow ahead, sufficient only to permit her to steer. At approximately 3.18 a.m. one short blast from the *Fanad Head* was heard. The *Kamouraska* immediately answered with a cross-signal of two short blasts and her helm was slightly starboarded. The *Fanad Head* replied by another short blast. The *Kamouraska* immediately gave 3 short blasts and went full speed astern. The *Fanad Head*, with her course altered to starboard and attempting to cross the bow of the *Kamouraska*, came directly on that vessel, her port bow striking the starboard bow of the *Kamouraska*. The fault and negligence attributed to the *Fanad Head* and those on board of her are, that she neglected to reverse her engines and go full speed astern when she got the *Kamouraska's* signal of 3 short blasts; that she wrongfully altered her course to starboard and attempted to cross the bow of the *Kamouraska* rendering a collision inevitable; that she did not keep her course in violation of article 21; that she had no proper or sufficient lookout and did not pay any attention to the signals of the *Kamouraska*; that she was navigated at an improper rate

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of speed under the circumstances and failed or neglected to stop her engines or to navigate with caution and otherwise violated article 16 and neglected the precautions required by ordinary practice of seamen and by the special circumstances of the case.

The case of the *Fanad Head* as set out in her preliminary act and statement of claim is, that she was proceeding up the River St. Lawrence towards Quebec when she met the *Kamouraska* coming down. The tide was flood but with some current down stream and the weather was thick with low lying intermittent banks of fog, the wind being about S.S.W., a fresh breeze. The *Fanad Head* was proceeding at slow speed just having steerage way, when those on board her saw the navigating lights of the *Kamouraska* about 3 miles distant and bearing about half a point on the *Fanad Head's* port bow, and the *Fanad Head* then gave one short blast and altered her course a little to starboard. The fog then again set in and the *Fanad Head* proceeded at slow speed stopping her engines at intervals and navigating with caution and giving the regulation sound signals for fog, when about half a mile distant the navigating lights of the *Kamouraska* were again seen bearing about 4 points on the *Fanad Head's* port bow. The *Fanad Head* again gave one short blast on her whistle and ported, but the *Kamouraska* answered with a cross-signal of two blasts and at once turned and came directly towards the *Fanad Head*, her stem and starboard bow striking the port bow of the *Fanad Head* in spite of all the latter could do to avoid a collision. The stem and starboard bow of the *Kamouraska* struck the port bow of the *Fanad Head* about 26 feet abaft the stem. The fault and negligence attributed to the *Kamouraska* as the cause of the collision are, that she gave improper signals, broke Rule 16 of the International Rules of the Road, was navigated at an improper rate of speed under the circumstances and failed and neglected to stop her engines or to navigate with caution; that she had no proper or sufficient lookout and no competent officers or watch on duty; that she improperly starboarded her helm before the collision and broke Rules 27 and 29 of the Rules of the Road.

It will be seen from the pleadings that the contentions of the parties, with reference to the respective positions of the ships shortly before the collision, are in violent contradiction. The evidence in that connection is of the same character. There appears to have been a difference of 6 minutes between the clocks on the ships. The *Kamouraska* states the collision occurred at 3.20 a.m., while the *Fanad Head* put it at 3.26 a.m. The accident happened between Red Island and Bicquette Island in the River St. Lawrence. The *Kamouraska* bound outwards passed Red Island Light Vessel at 1.45 a.m. and set a course of E.N.E.—N. 68 E. The *Fanad Head* passed Bicquette Island at 1.58 a.m. and set a course S. 68 W. These were opposite courses. According to the evidence of the master of the *Kamouraska* fog set in about three-quarters of an hour after passing Red Island Light Vessel and he gave the order "Stand by" at 2.30. The engines were stopped at 2.50 when the fog was dense and the master says he could not see 20 yards. The fog signals were being sounded continuously. About three o'clock a faint prolonged blast was heard for away off the starboard bow. This signal was heard several times and appeared to be broadening out to starboard and indicated to the master of the *Kamouraska* that the other ship was coming along on the same course passing starboard to starboard. The master testified that he started the engines slow ahead at 3.10 and the chief engineer's log book and the engine room scrap log also state that the engines were put slow at 3.10, but in the *Kamouraska's* statement of claim in the action against the *Fanad Head* and in her defence in the action against her, it is stated that the order "Slow ahead" was given at 3.05 a.m. Whether she started slow ahead at 3.05 or 3.10, it is admitted by all the witnesses on the *Kamouraska* that her engines were kept going ahead until 3.18 when she had a speed of about 3 knots through the water. There was a current with her of about one and a half knots and she also had the wind with her so that at 3.18 the *Kamouraska* must have had a speed of at least from 4 and a half to 5 knots over the ground and probably more. The master admits that after running 7 or 8 minutes slow ahead the ship would have a speed of about 3 knots per hour. He claims in his evidence that

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there was no need of stopping his ship as the fog signals from the other ship were in his judgment broadening. At 3.18 one short blast was heard which the *Kamouraska* answered with two short blasts. The other ship then answered with another signal of one short blast and the master states that he immediately reversed his engines full speed astern and gave three short blasts on the whistle. It may be stated here that, according to the witnesses on the *Fanad Head*, after she had given the signal of one short blast in answer to the *Kamouraska's* signal of 2 short blasts, the latter answered by 2 short blasts followed immediately by 3 short blasts. When the *Kamouraska* gave the signal of 2 short blasts in answer to the *Fanad Head's* first signal of one short blast, the helm of the *Kamouraska* was put hard a-starboard and kept in that position until the collision two minutes later. The pilot of the *Kamouraska* says that at 3.15 he saw a white light 2 points off the starboard bow and that one minute later he heard a short blast which he took to be 4 points off the starboard bow. No one else on board the *Kamouraska* has testified to seeing the *Fanad Head* or any of her lights until immediately before the collision when the ships were about 60 feet apart. The master of the *Kamouraska* says there was a dense fog all the time from 2.50 to 3.20 when the collision occurred. He claims that his ship was going astern through the water at the moment of the collision and that the *Fanad Head's* port bow hit the *Kamouraska's* starboard bow and knocked the latter around to the northward about 5 or 6 points, and after the collision both ships were lying side by side. This swing could have been greatly assisted by the current on the *Kamouraska's* stern. The evidence, including the engine room and chief engineer's log show that the engines of the *Kamouraska* were going astern from 3.18 to 3.25 and were not stopped until 5 minutes after the collision.

According to the witnesses on the *Fanad Head* the weather was clear up to about 2.53 when the order "Stand by" was given to the engine room. At 2.56 the engines were reduced to slow ahead; at 3 o'clock a whistle was faintly heard ahead or slightly on the port bow and the engines were immediately stopped. This was the first fog signal heard ahead. The engines remained stopped until

3.03 when the masthead and side lights of a ship were seen half a point on the port bow at a distance of $2\frac{1}{2}$ to 3 miles, when the engines were put at slow ahead and the ship ported half a point bringing her on a course S. 74 W. These lights were seen for a minute and a half or two minutes. At 3.09 the engines were stopped until 3.15 when she went slow until 3.18 when they were stopped again and remained stopped 3.24, having merely steerage way, when the masthead and side lights of the *Kamouraska* were seen by the master, second officer, pilot and lookout 4 points on the port bow at about a quarter of a mile away and then one short blast was given on her whistle, her helm was put hard a-port, the engines were put full ahead for a quarter of a minute and then stopped. This was two minutes before the collision. The witnesses on board the *Fanad Head* have testified that in answer to her one short blast signal she received a signal of two short blasts from the *Kamouraska* which was answered by one short blast from the *Fanad Head* and answered by the *Kamouraska* with two short blasts followed immediately by 3 short blasts. Two witnesses testified that the *Kamouraska's* lights were visible from the time the cross-signals were given until the collision. The *Fanad Head* under the hard a-port helm went off to W.N.W. It is claimed by the *Fanad Head's* witnesses that her engines were put astern at the impact or a few seconds before it, but no signal of 3 short blasts was given on the whistle. The *Kamouraska* swung to port when her helm was put hard a-starboard and her red light had disappeared when she answered the second signal of one short blast given by the *Fanad Head* and she continued to swing to port until her stem collided with the port bow of the *Fanad Head* about 26 feet abaft the stem, at an angle of about 30 degrees according to the master of the *Fanad Head*. The pilot of the *Fanad Head* was certain that the other ship came into his from aft—from abaft her beam. He seems positive of that. The photos filed as exhibits show that very serious damage was done to the port bow of the *Fanad Head* at or about the point stated by the master.

These actions are of considerable importance not only on account of the serious issues of fact and law involved,

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but because of the heavy claims for damages resulting from the collision, the action against the *Fanad Head* being for \$25,000, and that against the *Kamouraska* for \$50,000. Consideration must be given to the respective speed of each ship before the collision, their respective positions when the cross-signals were given, the starboarding of the *Kamouraska* and the engines of the *Fanad Head* not having been reversed after the *Kamouraska* gave the three blast signal.

Dealing first with the charge which each ship makes against the other of improper speed and violation of article 16 of the Regulations for Preventing Collisions at Sea, it is established that both ships ran into fog half an hour or a little longer before the collision. The *Kamouraska* stopped her engines at 2.50 a.m., about three o'clock heard a fog signal ahead, started slow at 3.05 or 3.10 and her engines continued going ahead until 3.18 or 3.19 when they were put full speed astern. The collision happened at 3.20 according to the clocks of the *Kamouraska*. The master and other witnesses of the *Kamouraska* testified that the fog was dense from 2.30 at the time of the collision, that repeated long blasts were heard from the other ship which was not seen until the ships were within 60 feet of each other. The speed of the *Kamouraska* from 3.05 or 3.10, whichever was the time her engines were put at slow ahead until they were put full speed astern was at least $4\frac{1}{2}$ to 5 knots and when she put her helm hard a-starboard she swung round to port and her stem struck a severe blow on the port bow of the *Fanad Head*. The first fog met by the *Fanad Head* was at 2.53 when her engines were put at "Stand by"; at 2.56 they were put at slow, were stopped at 3 o'clock when the lights of the other ship were seen $2\frac{1}{2}$ to 3 miles ahead, were put slow at 3.03 were stopped at 3.09, slow at 3.15, stopped at 3.18, full ahead for $\frac{1}{4}$ of a minute at 3.24 and then stopped and the collision happened at 3.26. The lights of the *Kamouraska* were seen from the bridge and crow's nest of the *Fanad Head* for the second time two minutes before the collision, and I asked my assessors if there was any reason, if a proper lookout had been kept on the *Kamouraska*, why the *Fanad Head* should not have been seen at the same time as the *Fanad*

Head saw the *Kamouraska* instead of when the ships were 60 feet apart, and I am informed by my assessors that it is quite likely that the *Fanad Head* should see the lights of the *Kamouraska* approaching, while the *Fanad Head* would be shut in from the view of the people on board the *Kamouraska*. The *Kamouraska* was evidently coming down with a bank of fog surrounding her and she was possibly on the leeward edge of the fog bank, which prevented her people from seeing the *Fanad Head* while her lights might shine through that fog bank and be seen from the other ship.

In the half hour before the collision, the *Fanad Head's* fog signals were blowing and her engines had been stopped four times and in the 17 minutes immediately before the collision her engines had been at slow for 3 minutes, full ahead for a quarter of a minute and stopped for 13 $\frac{3}{4}$ minutes. She had the tide and wind against her and merely had steerage way and was making very little if any speed over the ground. She did not run into the *Kamouraska*, but the latter ran into her. The *Kamouraska* did not have sternway on, if she had the ships would have gone clear. There is no room for doubt on that question.

Among the questions which I submitted to my assessors with their answers are the following:—

Q. Considering the way in which you find these vessels in fact approaching each other, would each successive whistle tell the officers and pilot of the *Kamouraska* that the other ship was approaching nearer and nearer?

A. Yes, it would prove beyond question that the vessels were approaching nearer and nearer.

Q. When the officers and pilot on the *Kamouraska* heard the whistle of the other ship approaching nearer and nearer, should the engines of the *Kamouraska* have been stopped again or her speed reduced during the eight minutes before the cross signals?

A. Yes, either to stop dead in the water, give two prolonged blasts on her whistle and allow the *Fanad Head* to pass clear of her, or to reduce the speed to barely steerage way.

Q. Could the *Kamouraska* have had steerage way at less speed than she had before the cross-signals were given?

A. Yes.

Q. Was the speed of the *Fanad Head* for 8 or 9 minutes before cross-signals at 1 $\frac{1}{2}$ miles against tide and wind excessive, considering the fog conditions and the fog signals from the other ship?

A. No, the speed was not excessive, it was necessary to keep her engines turning to keep steerage way on the ship, and this speed with an adverse current and wind against her would allow her to have steerage way without making way over the ground. If the *Fanad Head* had gone at a slower speed, she would have got out of command and lost steerage way.

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The Collision Regulation which governed both ships at the time is article 16, which reads:—

Every vessel shall, in a fog, mist, falling snow, or heavy rain storms, go at a moderate speed, having careful regard to the existing circumstances and conditions.

A steam vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over.

Marsden's Collisions at Sea, 8th edition, p. 350, says:—

Moderate speed is a relative term. It cannot be defined so as to apply to all cases; what it should be in each case depends on the circumstances of the particular case; and the terms of Article 16 recognize this fact. It may be stated as a general rule that speed such that another vessel cannot be seen in time to avoid her is unlawful.

This principle has been repeatedly applied by the courts as a few citations will show.

In the case of *The Emily v. The Elysia* (1), in the Court of Appeal, Brett L.J., said:—

What is the meaning of that rule?

It is that she shall go at a speed that, if she approaches another vessel, she may have time to perform the proper evolutions to avoid a collision.

In *The Dordogne* (2), decided in 1884 and confirmed in the Court of Appeal, Brett M.R., in rendering the judgment in the Court of Appeal, said at p. 12:

That which was moderate speed when the vessels were two or three miles apart, is not a moderate speed when the vessels are within a half a mile of each other; and as the vessels get nearer, he must bring his own to as complete a standstill as possible without putting her out of command, and if it is a steamer she must go at least dead slow, and if the other vessel is really coming at all near to him he ought to obey Article 18 and stop and reverse.

In *The Campania* (3), Barnes J., at page 105, says:—

As a general rule speed such that another vessel cannot be avoided after being seen is excessive—if the fog be not so dense as to require the vessel to stop,—she can go at a moderate speed within the rules by going slowly ahead and stopping her engines from time to time.

This judgment was unanimously confirmed in appeal by Lord Alverstone C.J., A. L. Smith M.R., and Romer L.J.

In *The Oceanic* (4), Lord Halsbury L.C., in condemning *The Oceanic*, said:—

She was going at a speed which rendered it impossible to stop within the limit of observation.

(1) [1882] 4 Asp. M.C. 540.

(2) [1884] 10 P. 6.

(3) [1901] 70 L.J. Adm. 101.

(4) [1903] 83 L.T. 303.

In *The Sargasso* (1), Sir Samuel Evans said at page 13:—

It is obvious if the vessel was proceeding at a speed which would not allow her to pull up in something like her own length, when you could only see one hundred yards off, and if the vessel could proceed and have steerage way at a smaller speed than she was going, she ought to have gone at that speed, and her speed, in so far as it exceeded that, was excessive.

In *The Counsellor* (2), Bargrave Deane J., said:—

You ought not to go so fast in a fog that you cannot pull up within the distance that you can see. If you cannot see more than four hundred feet, you ought to be going at such a speed that you can pull up in that distance. If you are going in a fog at such a speed that you cannot pull up in time if anything requires you to pull up, you are going too fast. If you cannot retain steerage way at such a speed, then you should manage by alternately stopping and putting the engines ahead.

In 1917, in the case of *Smith v. Mackenzie* (3), in condemning a steamer for violation of article 16, I said:—

You ought not to go so fast in a fog that you cannot pull up within the distance that you can see,

and my judgment in that case was confirmed by the Supreme Court of Canada on 10th June, 1918.

The *Kamouraska* for 10 or 15 minutes before the collision had considerable speed; she knew another ship was somewhere ahead getting nearer and nearer; she could have alternately stopped and gone ahead or she could have come to a standstill. She claims to have been stopped from 2.50 to 3 before she heard any signals from the other ship, but after knowing another vessel was in the neighbourhood she put her engines ahead in fog so dense that she did not see the *Fanad Head* until within 60 feet of her, too late to avoid the collision.

The *Fanad Head* was handled in a very different manner, was repeatedly stopped and navigated with caution, merely had steerage way, and if she had gone slower would have got out of command.

When article 16, interpreted by the principles above set forth, is applied to the circumstances of this case, it is clear that the *Kamouraska* was not going at the moderate speed and was not navigated with the caution imperatively imposed by the article and that her speed was improper and excessive, which was sufficient alone to bring about the collision. The speed of the *Fanad Head* was in compliance

(1) [1912] 82 L.J. Adm. 9.

(2) [1913] 82 L.J. Adm. 72.

(3) [1917] 17 Ex. C.R. 497.

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with the article and under the circumstances was not excessive and did not contribute to the collision.

Dealing with the position of the ships when the cross-signals were given two minutes before the collision: they were approaching on opposite courses and, if the evidence of the witnesses for the *Fanad Head* is accepted, they were coming along port to port, while the evidence of the witnesses for the *Kamouraska* is that they were coming starboard to starboard. Four witnesses for the *Fanad Head*, her master, second officer, pilot and lookout (who was in the crow's nest) all testify that they saw the light 4 points off the *Fanad Head's* port bow, when the *Fanad Head* gave her first signal of one short blast, to which the *Kamouraska* answered with 2 short blasts, and two of these witnesses say the *Kamouraska* remained in view from that moment up to the collision. The evidence of the witnesses for the *Kamouraska* that the *Fanad Head* was on the former's starboard bow is not based upon seeing the other ship until immediately before the impact, but is a conclusion or inference drawn from having heard fog signals which appeared in their judgment broadening to starboard and the one blast signal of the *Fanad Head* given twice before she came in sight. The master of the *Kamouraska* admitted in his evidence that the direction of sound in fog is uncertain. It is well known to seamen and mariners that reliance cannot be placed on the apparent bearings or direction of a whistle heard in a fog. The courts have frequently called attention to this difficulty and uncertainty.

In *The Britannia* (1), Gorrell Barnes J., said:—

It is not correct to say that a whistle having been heard, it can be located so as to be certain it is at a precise bearing on the bow. Case after case in this court shows that it is not so.

In *The Aras* (2), the same learned judge said:—

It must not be overlooked that sound, as is quite notorious, is a very difficult thing to be accounted for in a fog.

In *The Naworth Castle* (3), Lord Loreburn L.C., in rendering judgment in the House of Lords, said:—

Sounds in a fog are notoriously unreliable

In *The Chinkiang* (4), Sir Gorrel Barnes, in delivering

(1) [1904] 74 L.J. Adm. 46.

(2) [1906] 76 L.J. Adm. 37.

(3) Smith's Law relating to Rules of Road, p. 111.

(4) [1908] 77 L.J.; P.C. 72.

the judgment in the Judicial Committee of the Privy Council, said at page 76:—

It is notorious that it is a matter of the very greatest difficulty to make out the direction and distance of a whistle heard in a fog and that it is almost impossible to rely with certainty on being able to determine the precise bearing and distance of a fog signal when it is heard.

I do not overlook the evidence of the *Kamouraska's* pilot, that a minute before the *Fanad Head's* first short blast he caught sight of a white light for an instant 2 points on the starboard bow. No one else saw that light. I am not disposed, having regard to the whole of his evidence and his record as a pilot, to accept his statement as being trustworthy. I asked my assessors the following question:—

Q. At the respective speeds of each ship for 8 or 9 minutes before the cross-signals given 2 minutes before the collision, and considering the engine and wheel movements which followed the cross signals, would it have been possible for the ships to have been in their respective positions at the time of the collision if when cross-signals were given the *Fanad Head* had been 4 points on starboard bow of the *Kamouraska*? And their answer was: No, it was impossible.

As between witnesses who testify to having in fact seen the other ship and witnesses who testify on an inference or opinion based on what the highest courts have characterized as notoriously unreliable, I accept the version given by the witnesses on the *Fanad Head* and hold that when the cross-signals were given the *Kamouraska* was 4 points off the former's port bow, and this principle was applied by Gorrel Barnes J. in *The Oravia* (1).

Blame is imputed to the *Kamouraska* for having given a two blast signal and putting her helm hard a-starboard in answer to the first one blast signal from the *Fanad Head*. The *Fanad Head* had seen the lights of the *Kamouraska* before she gave the one blast signal and my assessors advise me it was good seamanship on the part of the *Fanad Head* to give that signal and put her helm hard a-port. The *Kamouraska* was in sight and her position had been ascertained. The situation was very different on the *Kamouraska*. When she gave two blasts and starboarded, she violated article 28, as the *Fanad Head* was not in sight and the inference from the sound of the whistle that the other ship was on her starboard bow was unfounded and erroneous. The sound of the whistles was the only indication

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(1) [1905] 10 Asp. M.C. 100.

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she had of the position of the other ship and it was insufficient and should not have been acted on, having regard to the conditions and circumstances existing at the time. I asked my assessors this question:—

Did the *Kamouraska* give improper signals in answer to one short blast from the *Fanad Head* about two minutes before the collision? And their answer was: Yes, it was improper for the *Kamouraska* to give two short blasts against the one of the *Fanad Head*, and it was further wrong to alter her course to port before seeing the other ship.

In *The Vindomora* (1), Lord Herschell, in the House of Lords, said:—

I should be very sorry to say anything to indicate any dissent from the view that where two vessels are approaching one another in a fog, without any sufficient indication to justify action, neither vessel would be justified in altering her course. I think the proper steps to be taken in such a case would be for each vessel to keep the course on which she was proceeding. But, although I entirely agree that that is a good general rule to lay down, yet that rule must nevertheless be interpreted in each case according to the circumstances of that case. It is impossible to lay down an abstract rule of that description which shall be applicable to all circumstances, to all parts of the seas and to all positions of vessels. I do not understand the Court of Appeal to have thrown any doubt upon the suggestion that it is the general rule, and that in each particular case you must look to see what the circumstances were and inquire in each particular case.

In two cases in 1908, referred to in Smith, p. 116, ships were held to blame expressly on the ground of altering the course in fog under a mistaken opinion as to the position of the other ship. In the first case, *The F. Stobart v. The Cid* (2), Bargrave Deane J., said:—

But further than that I find her (*The Cid*) to blame under article 29. I do not think she behaved with due regard to seamanship in porting her helm as she did.

In the second case, that of *Rotenfels v. The Goyerri* (2), the same learned judge observed:—

I think there would have been no collision but for the fact that the Spanish steamer ported. I think it is a very false and dangerous step to take for vessels to manoeuvre in fog I am of opinion that the only blame in this case rests with the Spanish steamer. She was going too fast and I also think it was unseamanlike action to have ported her helm as she did. Therefore I pronounce her alone to blame.

Another case which shows the great risk of relying on the direction of sound signals in fog is *The Oravia* (3), where the circumstances were almost identical with those now

(1) [1891] A.C. 1 at p. 4.

(2) Smith, Rules of the Road at Sea, p. 116.

(3) [1905] 10 Asp. M.C. 100 and also at pp. 434 and 525.

under consideration, and *The Oravia* was held alone to blame for having starboarded in fog before the other ship was in sight and upon a mistaken assumption as to her actual position. The rule to be deduced from these authorities is that, a ship is not justified in altering her course until there is sufficient indication of the position of the other ship and that what is sufficient indication is a question of circumstances in each case. In my opinion it was bad seamanship for the *Kamouraska* to have given the cross-signals and to have put her helm hard a-starboard when she did and this manoeuvre with her excessive speed was the cause of the collision.

The *Kamouraska* blames the *Fanad Head* for not reversing when the former sounded her three blast signal. Before this signal was given the *Fanad Head* had seen the other ship, sounded one blast, put her helm hard a-port and gave her engines a touch ahead, and on getting two blasts from the *Kamouraska* she again gave a single blast and it was after that the three blasts were given by the *Kamouraska*, whose officers must have known then that the *Fanad Head* was going to starboard under her port helm. I received the following advice from my assessors on this phase of the case.

Q. When the *Fanad Head* saw the *Kamouraska* at what was considered to be 4 points off port bow at a distance of about $\frac{1}{4}$ mile about 2 minutes before the collision, was it good seamanship to have given one blast on whistle, a kick ahead and put her helm hard a-port?

A. Yes, it was good seamanship.

Q. When considered to have been in that position after cross-signals given, should the *Fanad Head* have put her engines full speed astern when three short blasts were given by the *Kamouraska*?

A. No, it would have opened her broadside to the *Kamouraska* and might have resulted in a more serious collision. The *Fanad Head* had already indicated her alteration of course to starboard by having given one short blast twice, and it would have been folly at this moment to contradict this manoeuvre.

Having regard to this advice which agrees with my own view so far as I am competent to form an opinion on the matter, I do not consider that the *Fanad Head* should be blamed for not reversing her engines when the other ship gave the three blast signal.

The *Kamouraska* claims that the *Fanad Head* wrongfully altered her course to starboard and did not keep her course in violation of article 21. The course was altered

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after the other ship was in sight, I am advised by my assessors that it was good seamanship and, in my opinion, it in no way contributed to the collision.

In my judgment nothing was neglected by those on board the *Fanad Head*. She was navigated in a proper and seamanlike manner and everything was done to avoid coming in contact with the other ship, and my advisers concur in this conclusion.

I am also of opinion, and my advisers agree with me, that if the *Kamouraska* had been going at the speed, after having passed Red Island Light Vessel, given by her witnesses, she could not have arrived at the actual point of collision when it occurred and that her speed must have been greater than was admitted by her witnesses.

I have given this matter very long and careful consideration and have come to the conclusion that the collision was caused by the excessive speed and wrongful starboarding of the *Kamouraska*, that she is alone to blame and that no fault or blame can be imputed to the *Fanad Head* or those on board of her, and in this conclusion both my assessors concur.

There will therefore be judgment against the *Kamouraska* and her bail for damages and costs, with a reference to the Deputy District Registrar assisted by merchants to assess the damages and take an account, and the action against the *Fanad Head* will be dismissed with costs.

Judgment accordingly.

Solicitors for SS. *Kamouraska*: Messrs. Markey, Skinner & Hyde.

Solicitors for SS. *Fanad Head*: Messrs. Meredith, Holden Hague, Shaughnessy & Heward.
