

NOVA SCOTIA ADMIRALTY DISTRICT.

1918
Dec. 2.*HIS MAJESTY THE KING,
PLAINTIFF;

v.

THE SHIP "HARLEM" AND HER FREIGHT,
DEFENDANT.*Responsibility—Collision—Right of way—Regulations—Art. 19.*

A collision occurred between the "Durley Chine," bound from Halifax to Norfolk, and the "Harlem," bound from New York to Bordeaux, at 1.19 a.m. on April 22, 1917, some 65 miles southeast of Ambrose Channel lightship, off New York harbour. It was starlight, though the night was dark, and a haze was on the horizon. Just before the collision, the course of the "Durley Chine" was s. 50° w. and that of the "Harlem," s. 52° e., or at right-angles to one another, with the "Harlem" on the starboard side of the "Durley Chine".

Art. 19 of the Rules to Prevent Collision at Sea provides that when vessels are crossing so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way of the other.

Held, that within the meaning of said rule, the "Harlem" was a crossing ship, carrying proper regulation lights, and that being so, the "Durley Chine" was obliged to keep out of her way.

This is an action brought by His Majesty the King in right of the Dominion, as owner of the ship "Durley Chine" claiming \$150,000 from the ship "Harlem", for the loss of the "Durley Chine" following a collision with the defendant.

* Plaintiff appealed to Supreme Court, and the appeal was dismissed.

1918

THE KING
v.
THE
"HARLEM."Statement.

The defendant asserted a counter claim against the master and second officer being the practice when a ship belongs to the Crown.

By Nos. 12 and 14 of preliminary acts of plaintiffs it appears they claim among other things that: Having seen the "Harlem's" white light, and no side lights, about four points forward of starboard beam, the helm of "Durley Chine" was put hard-a-starboard and blew 2 short blasts of whistle. When the bow had swung to port about 4 points she stopped engines and immediately after reversed engines and when headway was off blew 2 long blasts of whistle. Then she saw the hull of "Harlem" low in water on starboard beam heading across bow of "Durley Chine" and the "Durley Chine" still falling off a little to port, blew 2 short blasts several times;—that the "Harlem" was a crossing ship within the meaning of art. 19, of the Regulations for Preventing Collisions at Sea, and, by art. 21 of said regulations, should have kept her course and speed;—that the "Harlem", being bound to keep her course and speed, improperly starboarded her helm when in sight of the "Durley Chine", thereby directing her course toward, instead of away from, the "Durley Chine"; that the "Harlem" should have stopped and reversed before the collision; that the "Harlem" was not carrying or showing proper lights according to art. 2 of said regulations. The mast head or white light, which was seen, was not of such a character as to be visible at a distance of at least five miles. The side lights were not burning, or, if burning, were defective, and were not of such a character as to be visible at a distance of at least 2 miles. The signals sounded on the whistle of the "Harlem" were not in accordance with the courses

taken by the "Harlem" and were misleading and deceptive. In particular she blew three short blasts several times when her engines were not going full speed astern. Having heard apparently forward of her beam, the fog signal of the "Durley Chine" whose position was not then ascertained, the "Harlem" did not stop her engines, nor navigate with caution, as prescribed by art. 16 of said regulations.

The defendant on the other hand claims that when the ships were so close that collision could not be avoided by the action of the "Durley Chine" alone, the helm of the "Harlem" was put hard aport and her engines full speed astern with the requisite signal of three short blasts. As this signal was unanswered by the "Durley Chine", it was twice repeated, before being answered and twice after; that the "Durley Chine" should have kept clear of the "Harlem" which had the right of way. The "Durley Chine" should have ported in time and passed astern of the "Harlem". The "Durley Chine" did not keep a good lookout and was going at an excessive speed, and did not alter her course to port as she should have done when it was known that the "Harlem" had her engines reversed. The "Durley Chine" did not, on approaching the "Harlem" slacken her speed or stop and reverse.

The case turns largely on the question of fact, as to whether or not the "Harlem" was carrying proper regulation lights. The respective position of the ships and their course do not seem to be seriously contested.

W. A. Henry, K.C., for plaintiff claimed that the "Durley Chine" was in ballast, bound from Halifax, Nova Scotia, to Norfolk, Virginia, for a load of coal.

1918
 THE KING
 v.
 THE
 "HARLEM."
 Argument
 of Counsel.

1918
 THE KING
 v.
 THE
 "HARLEM."
 Argument
 of Counsel.

She passed Gay Head Buoy at 12.55 a.m. on April 21st, and took her departure for Winter Quarter lightship, the course being south fifty degrees, west, magnetic. That course was maintained until after the "Harlem" was sighted.

The "Harlem" was bound from New York to Bordeaux, loaded with munitions of which a substantial part consisted of explosives, including a large quantity of dynamite. She passed Ambrose lightship between 5.10 and 5.30 p.m. and for some time before the vessels came in sight of each other she was on a course south forty degrees, east, magnetic, or exactly at right angles to the course of the "Durley Chine."

The lights of each ship were seen on board of the other for several minutes before the collision, but, while those on the "Harlem" made out without difficulty the masthead and starboard lights of the "Durley Chine", those on the "Durley Chine" were able to see only a dim, white light on what proved to be the "Harlem". Those on the "Harlem" first saw the lights of the "Durley Chine" about 4 points on their port bow. The "dim, white light" when first seen by those on the "Durley Chine" bore about 4 points on their starboard bow. These are exactly the proper relative positions on ships approaching each other at right angles, if each is at the same distance from the point where the courses will cross.

The master of the "Durley Chine" not being able to determine the course of the "Harlem", stopped and reversed her engines to take her way off, and, to counteract the effect of reversing with a right-handed propeller, which swings the ship's head to starboard, put the helm hard-a-port. She was practically if not actually still in the water when the

collision took place. It was not until the "Harlem" was close alongside the "Durley Chine" that her course could be determined and then only because her hull could be made out. She was then nearly parallel to the "Durley Chine" and heading nearly in the same direction, but inclining to cross the bows of the "Durley Chine". Had the "Harlem" kept her then course the ships would have gone clear, but almost immediately after she was sighted she changed her course to port and bore rapidly down on the "Durley Chine", (which, with engines stopped, could do nothing to save herself) and cut into the side of the "Durley Chine" so deeply that she had to be abandoned by her crew very soon after, and she sank in the course of the next few hours.

It is claimed on behalf of the "Harlem" that she kept her course and speed until she saw that the "Durley Chine" was crossing her bows, when she reversed her engines and put her helm hard-a-port to avoid the collision or minimise its force.

These two stories are entirely inconsistent, and one or other of them must be knowingly false.

H. Mellish, K.C., for the defendant claimed that the captain of the "Durley Chine" had gone below at 11.15 of the 21st about two hours before the collision leaving the second officer, Granby, on the bridge. With him was one man only at the wheel, a lookout on the upper bridge and two standby men below. The second officer, it is said, called the captain shortly before 2 o'clock and when he came on the bridge he saw a white light "about 4 points forward of the beam, half ways between the bridge and the bow, on the starboard bow." The captain says he looked for and saw no side lights. He says he

1918
 THE KING
 v.
 THE
 "HARLEM."
 Argument
 of Counsel.

1918
THE KING
v.
THE
"HARLEM."
Reasons for
Judgment.

put the helm of the ship hard-a-starboard and kept his ship on that helm until the collision. Shortly after (immediately) he rang her astern and took the way off her. The last course the "Durley Chine" was on previous to starboarding the helm was south fifty west magnetic, and her speed was about 9 knots, perhaps a little over. The "Harlem" had gone 69 miles from Ambrose Channel Light, when the "Durley Chine" was seen by the lookout and the second officer who was on the bridge about 2 or 2½ miles off and about 4 points on the port bow. The ship was steering south fifty-two east true so that the ships were on courses that would cut practically at right angles. The speed of the "Harlem" was about 7¼ knots, three quarter speed. It was a starlight night though dark and there was a haze close to the horizon. The case for the "Harlem" is that when the ships were so close that a collision could not be avoided by the action of the "Durley Chine" alone, although the "Harlem" was the holding on ship, she reversed her engines and went to starboard to assist the "Durley Chine" to keep clear. Notwithstanding this manoeuvre the ships collided. The "Durley Chine" after the collision went away on the starboard bow of the "Harlem" and sank about 5 or 5.30 in the morning.

W. A. Henry, K.C., for plaintiff.

H. Mellish, K.C., for defendant.

DRYSDALE, J. (December 2, 1918) delivered judgment.

This action arises out of a collision between the defendant, ship "Harlem", and the Government boat named the "Durley Chine". The "Harlem"

was laden with munitions bound from New York to Bordeaux. The "Durley Chine" was on a voyage from Halifax to Norfolk. The collision was off New York and the "Durley Chine" was sunk.

The serious controversy here is as to the lights of the "Harlem". The "Harlem" had the right of way and the "Durley Chine" was bound to keep out of her way. The "Durley Chine" really makes her case on the allegation that the "Harlem" was not properly lighted, that is, was running under screened lights and without side lights showing. I find against this allegation: and I find that the "Harlem" before and at the time of the collision was carrying proper regulation lights. I believe the officer of the "Harlem" in this connection. I think the "Durley Chine" solely to blame for the collision. There was no reasonable excuse for such steamer not keeping out of the way of the "Harlem" as she was bound to do.

I find the "Durley Chine" solely to blame for the collision in question here and direct a decree accordingly.

Judgment accordingly.

1918
 THE KING
 v.
 THE
 "HARLEM."
 Reasons for
 Judgment.