

1918
 April 27.

NOVA SCOTIA ADMIRALTY DISTRICT.

*COMPAGNIE GENERALE TRANSATLAN-
TIQUE,

PLAINTIFF;

v.

THE SHIP "IMO",

DEFENDANT.

*Shipping—Responsibility—Gross negligence—Collision—Regulations
 —Art. 27.*

The collision happened in Halifax harbour at 8.50 a.m., in broad daylight. The weather was perfect, there being no wind, and the ships could see each other several miles away.

The "Imo" was keeping as far as practicable to her side of the fairway or mid-channel and blew a signal of three blasts and reversed her engines when about a mile apart, having previously signalled she would keep to starboard; she then reduced speed and did not put on engines again before collision. When "Mont Blanc" blew a two-blast signal, indicating she was coming to port and would cross bow of the "Imo", the "Imo" reversed engines and gave a three-blast signal. The "Mont Blanc" was travelling at excessive speed and, starboarding her helm, attempted to cross the bows of the "Imo". She did not reverse engines nor drop anchor.

The collision happened within the waters of the "Imo", that is on the Halifax side of mid-channel, and after collision the "Mont Blanc" ran upon the Halifax shore, where the explosion took place.

Held, that the collision was wholly due to the last order of the "Mont Blanc" and to the gross negligence of her officers in attempting to cross the bows of the "Imo".

2. That the order could not be justified as an emergency order, in view of the respective positions of the ships.

THE plaintiff by its action claims the sum of \$2,000,000 against the "Imo" for damages caused

* On appeal to the Supreme Court, judgment was rendered, allowing the appeal in part, and finding both ships equally at fault, Sir Louis Davies and Idington, J., dissenting.

them by collision in Halifax harbour in December, 1917, and the defendant by their counterclaim claim the same amount from plaintiff as damages occasioned by the same collision.

In the preliminary acts, filed by the plaintiff, it is claimed in substance that when the "Imo" was first seen the "Mont Blanc" blew one short blast to indicate that she was holding to the starboard side of the fairway and slowed her engines. After this signal had been answered by two short blasts from the "Imo" the "Mont Blanc" again gave one short blast which was again answered by two short blasts from the "Imo". The "Mont Blanc" stopped her engines to avoid what appeared to be otherwise an inevitable collision, blew two short blasts and starboarded her helm, bringing the ships in a safe position on opposite parallel courses. After this order was executed, the "Imo" was seen to swing to starboard. A collision was then inevitable whereupon the "Mont Blanc" reversed her engines full speed. The "Imo" was proceeding at too great a speed. The "Imo" was wrongfully coming down on her port side of the fairway or mid-channel. A good lookout was not kept on the "Imo". The "Imo" wrongfully directed her course to port, across that of the "Mont Blanc" and came in the "Mont Blanc's" water. The "Imo", when the ships were in a position to clear, wrongfully altered her course to starboard and attempted to cross the head of the "Mont Blanc", thus rendering a collision inevitable. The "Imo" was not navigated in accordance with the signals given to her.

The defendant in its preliminary acts claims in substance that the "Imo" was keeping as far as

1918
COMPAGNIE
GENERALE
TRANS-
ATLANTIQUE
v.
THE "IMO."
Statement.

1918

COMPAGNIE
GENERALE
TRANS-
ATLANTIQUE
v.
THE "IMO."
Statement.

practicable to that side of the fairway or mid-channel which laid on her starboard side and blew a signal of three blasts and reversed her engines when ships were about one-half to three-quarters of a mile apart. "Imo's" speed was then reduced to about one mile per hour and engines were not put ahead again before collision, and "Imo" was kept under a port helm and signalled accordingly. When "Mont Blanc" blew a two-blast signal, indicating she was coming to port, and attempting to cross bows of "Imo", "Imo's" engines were immediately reversed and three-blast signals blown. The "Mont Blanc" was travelling at an excessive rate of speed; that she starboarded her helm thus coming to port and attempted to cross the bows of the "Imo" and in so doing committed a breach of the regulations and of good seamanship and caused the collision, and did not reverse her engines nor drop anchor as soon as they thought they heard a cross-signal from the "Imo" indicating, according to their understanding, although such in fact was not the case, that the "Imo" intended to come down the same side of the channel as that on which they were proceeding; that she did not keep as far as practicable to that side of the fairway or mid-channel which was on her starboard side as required by the International Regulations but crossed over to the other or Halifax side; that she did not give the proper whistle signals and did not navigate in accordance with her whistle signals; that she placed herself in the position of a crossing ship in relation to the "Imo", involving risk of collision, with the "Imo" on the starboard bow of the "Mont Blanc", and the "Mont Blanc" did not as required by art. 19 of the regulations keep out of the way of the "Imo". Further the

“Mont Blanc” attempted to cross the bows of the “Imo” in violation of art. 22, and also violated art. 23 in not reversing, and generally did not act with good judgment nor in a seamanlike manner.

Mr. McInnes, K.C., for the owner of the “Mont Blanc”, claimed that the evidence established among other things that at 7.30 in the morning she started for Bedford Basin and undoubtedly kept on her proper side of the harbour, the starboard or right or Dartmouth side. She sighted the “Imo” coming down from the Basin proceeding to sea, at about 8.30 in the morning, and blew one blast to indicate that she was in her own waters and would keep, as the regulations required, the starboard or right side of the channel. The “Imo” had then come out of the Basin and shewed her starboard or right side to the “Mont Blanc”, and was heading also to the Dartmouth shore. Her position when in full view of the “Mont Blanc” was in the waters of the Dartmouth side of the channel. The “Imo” blew two blasts immediately after the signal from the “Mont Blanc”, which the “Mont Blanc” considered an answer to her first signal, and thus indicated to the “Mont Blanc” that she intended to keep to her own port side coming down on the Dartmouth side of the channel. This would be in violation of the International Rules. The “Mont Blanc” almost immediately answered by another one short blast to further advise the “Imo” she intended to maintain her proper course in the waters on her own starboard side. The “Imo” continued on the Dartmouth side of the channel; and it is at the point when the ships were about 400 metres apart that there is any substantial dispute about what occurred. The officers and pilot of the “Mont Blanc” say that the “Imo”

1918

COMPAGNIE
GENERALE
TRANS-
ATLANTIQUE

THE “IMO.”

Argument
of Counsel.

1918
 COMPAGNIE
 GENERALE
 TRANS-
 ATLANTIQUE
 THE "IMO,"
 v.
 Argument
 of Counsel.

answered this second signal given by the "Mont Blanc" with two short blasts, thus reiterating the fact that she was to pass down the Dartmouth side of the channel, and there is other testimony to support their statements. As the "Imo" was coming fast on their side, if the "Mont Blanc's" officers tried to put their ship nearer the Dartmouth shore she must have gone aground, and there was nothing for them to do but to come to port and try to parallel the ships so that the "Imo" would pass on the right of the "Mont Blanc". This manoeuvre they executed as the only one to avoid a collision, giving at the same time the proper signal that they were going to port. It appears from the testimony that the captain and pilot were of one mind as to what was the proper action to take, and independently each of the other took steps to carry out the manoeuvre and placed the "Mont Blanc" in a position of safety. The "Imo" immediately thereafter swung sharply to her starboard, and though the "Mont Blanc" was then travelling slowly under reduced speed or reversed engines, the result was the stem of the "Imo" struck the starboard bow of the "Mont Blanc". The collision took place about the middle of the channel, probably a little nearer the Halifax side, though there is evidence it was on the Dartmouth side, shortly before 9 o'clock in the morning.

Mr. Burchell, K.C., for owners of the "Imo" claimed that the evidence established that the "Imo" left her anchorage on the western shore of Bedford Basin at about eight o'clock. Pilot Hayes was on the bridge in charge of the ship and with him were the captain and the wheelsman. The bridge was all open, not having a wheelhouse. There was a guard

ship anchored in the Basin near the entrance to the Narrows, and before the "Imo" could leave her anchorage it was necessary for the pilot to go on board the guardship and ascertain if permission had been granted for her to leave. Pilot Hayes went on board the guardship that morning between 7.30 and 8 o'clock on his way up to the "Imo" and was informed that everything was in order for the "Imo" to go to sea. When Pilot Hayes got on board the "Imo" it was then necessary for him to order the flags hoisted showing the number of the "Imo" in the commercial code, and this was done. Corresponding flags were then displayed on the guardship and the "Imo" would not have been allowed to pass the guardship unless these flags were flying on both the "Imo" and guardship. There was no wind that morning and the flags on the guardship were hanging limp and it was necessary for the "Imo" to pass close to the guardship to see the signals displayed by her.

There were seven or eight ships anchored in the Basin between the anchorage of the "Imo" and the entrance to the Narrows and the "Imo" had to pursue a zig-zag course through them, and necessarily her speed had to be slow.

When the "Imo" had passed the guardship, but was yet in the Basin, an American tramp steamer in charge of Pilot Renner was coming up the Narrows on the Halifax side, which for an up-going steamer was the wrong side of the channel. The "Imo" blew a one-blast signal to the American tramp to indicate that the "Imo" was directing her course to starboard and keeping the Halifax side of the Narrows, which was the proper side for the "Imo",

1918
 COMPAGNIE
 GENERALE
 TRANS-
 ATLANTIQUE
 v.
 THE "IMO."
 Argument
 of Counsel.

1918
 COMPAGNIE
 GENERALE
 TRANS-
 ATLANTIQUE
 v.
 THE "IMO."
 Argument
 of Counsel.

and that the "Imo" intended to pass the American tramp properly port to port. Pilot Renner on the American tramp, however, wanted to keep up the Halifax, or his port side of the Narrows, on which the American tramp was then although his proper side under the Narrow Channel Rule No. 25 was the Dartmouth or his starboard side of the Narrows. The American tramp, therefore, after receiving the one-blast signal from the "Imo", gave a cross signal of two blasts, indicating that the American tramp intended to keep the Halifax side. In order to avoid a probable collision if the "Imo" had kept on her intended and proper course, Pilot Hayes of the "Imo" was forced away from the Halifax side of the Narrows and was compelled to give, and accordingly gave an answering two-blast signal to the American tramp and the two ships passed starboard to starboard instead of port to port. Pilot Renner frankly admitted that it was entirely his fault that the vessels passed starboard to starboard, as, when the "Imo" blew the first one-blast signal, the American tramp, without difficulty, could have gone on the Dartmouth or proper side of the channel and passed the "Imo" port to port, and Pilot Renner was censured by the Court accordingly.

The American tramp was just above pier 9, close to the Halifax side, and the "Imo" was about 4 ship lengths away when the American tramp blew the improper two-blast signal, which was subsequently answered by a two-blast signal from the "Imo", and the two ships passed opposite the first point north of Tufts Cove shown on the chart and marked by Pilot Renner as point "T" on chart M.B.R.—4.

At the time the "Imo" was forced to give this two-blast signal to the American tramp the "Mont

Blanc" was then distant from the "Imo" at least one mile. When the American tramp was passing the "Imo", Pilot Renner called out to Pilot Hayes and informed him that there was another ship following behind, meaning the "Mont Blanc".

Just after the "Imo" got past the American tramp another ship appeared ahead of the "Imo" and also, like the American tramp, in the "Imo's" waters. This was the ocean going tug, "Stella Maris", towing two barges behind her and going up the Narrows to Bedford Basin on the Halifax side. The "Stella Maris" thus put herself on the wrong side of the channel in what would be the proper course of the "Imo" and in the "Imo's" waters, and his tug and unwieldy tow was a formidable obstacle to the "Imo".

The "Imo" therefore, after being crowded away from the Halifax shore by the American tramp steamer in the upper part of the Narrows above pier 9, and after having been forced to give a two-blast signal to the American tramp, was for the second time prevented from getting close to the Halifax shore by the "Stella Maris" and her two barges. After getting past the American tramp the "Imo" had to turn a bend in the channel at the upper end of pier 9 and being a large ship required considerable room. When the "Imo" was approaching the "Stella Maris" after getting around this bend keeping as close to the Halifax shore as she reasonably could, having in view the fact that the "Stella Maris" and her scows were in her waters, the "Imo" received a one-blast signal from the "Mont Blanc" which signified to her that the "Mont Blanc" intended to keep to starboard, which for the "Mont Blanc"

1918
 COMPAGNIE
 GENERALE
 TRANS-
 ATLANTIQUE
 v.
 THE "IMO."
 Argument
 of Counsel.

1918
 COMPAGNIE
 GENERALE
 TRANS-
 ATLANTIQUE
 v.
 THE "IMO."
 Argument
 of Counsel.

would be the Dartmouth shore. The "Mont Blanc" was then about opposite the dockyard, pretty well in the middle of the harbour, but a little on the Dartmouth side, and the "Imo" was at the upper part of pier 8 or opposite pier 9, and the two ships would be approximately $\frac{3}{4}$ of a mile apart. The "Imo" answered this signal with a one-blast signal to signify to the "Mont Blanc" that the "Imo" was also keeping to starboard which would be for the "Imo" the Halifax side of the channel. As soon as the "Imo" got opposite the "Stella Maris" the "Imo" blew a three-blast signal and reversed her engines. The intention of Pilot Hayes in giving this three-blast signal when opposite the "Stella Maris" and reversing at this time, when the "Mont Blanc" and "Imo" were so far apart, was no doubt, for a two-fold purpose, first, to arrest the attention of the "Mont Blanc", as even at that stage, the "Mont Blanc" was not keeping close in to the Dartmouth side as she should have been but was nearly in mid-channel, a little on the Dartmouth side, but angling across to the Halifax side and, secondly, to stop headway on the "Imo" and by reversing her engines to swing the "Imo's" bow to starboard so as to get around the stern of the barges of the "Stella Maris" and get closer to the Halifax side, the scows being then a little in advance of the "Imo's" bow, and the "Imo" herself being about opposite the tug. From this time when the ships were from one-half to three-quarters of a mile apart until the collision, the "Imo" was heading towards the Halifax side and the engines of the "Imo" were not again put ahead, but remained stopped until shortly before the collision, when they were reversed a second time. After this three-blast signal from the "Imo", the next

signal was a one-blast signal from the "Mont Blanc". This signal was quickly repeated by the "Mont Blanc", causing the witnesses to remark that they were getting excited on board the French ship. This was followed by another one-blast signal from the "Imo", and the course of the "Imo" was then to starboard, or to the Halifax side of the channel, in accordance with her signal. The two ships were then heading courses on which several experienced seafaring witnesses testified they would have properly passed in safety port to port, when in answer to the one-blast signal from the "Imo", the "Mont Blanc" blew the fatal two-blast signal and swung to port, under a starboard helm, to the Halifax side, throwing herself across the channel in front of the bows of the "Imo". Capt. Maclaine on hearing this cross signal immediately called out: "The Frenchman has given a cross signal, a collision cannot be averted."

The "Imo" immediately blew a three-blast signal, being the second three-blast signal given by her that morning, and reversed her engines full speed astern, but with the "Mont Blanc" throwing herself directly across the "Imo's" bows the collision was inevitable and could not be avoided.

The "Mont Blanc" all this time had kept forging ahead through the water. Her engines were admittedly not reversed according to some of the witnesses on board their ship until after the collision, or, according to others, certainly not more than 20 to 30 seconds before the collision.

It may be stated generally that the evidence of practically all the disinterested witnesses disclosed that the "Imo" was properly navigated and gave

1918

COMPAGNIE
GENERALE
TRANS-
ATLANTIQUE

THE "IMO."

Argument
of Counsel.

1918
 COMPAGNIE
 GENERALE
 TRANS-
 ATLANTIQUE
 v.
 THE "IMO."
 Reasons for
 Judgment.

the proper signals and that the "Mont Blanc" was improperly navigated.

By consent the evidence adduced before the Wreck Commissioner's Court was filed to be used on the trial and only one new witness on behalf of the "Mont Blanc" was heard at the trial.

The case turned upon a question of fact. The evidence is contradictory on the main and essential facts, namely:

- 1st. What signals were given;
- 2nd. Course followed by the respective ships;
- 3rd. The actual place of collision.

The Honourable Mr. Justice Drysdale who presided at the trial, found as a fact that the collision took place on the Halifax side of the Narrows, which, by the rules of navigation at such place, is the side which the S.S. "Imo" was obliged to take, and that the collision was due to the gross negligence of the officers of the "Mont Blanc" in cutting across the bows of the "Imo", and that such action on their part was not justified under the rule 27, that it was an emergency order to avoid collision. He refused to believe the witness heard at the trial.

Tried before the Honourable Mr. Justice Drysdale at Halifax, N. S., April 1, 1918.

The trial Judge has not furnished any analysis of the evidence.

H. McInnes, K.C., for the "Mont Blanc".

C. J. Burchell, K.C., for the "Imo".

DRYSDALE, J. (April 27, 1918) delivered judgment.

The actions here are being tried together, viz., the Claim v. the "Imo", now lying in the harbour,

and the Counter-claim v. the "Mont Blanc". The circumstances attending the collision of these two ships were investigated before me, assisted by two of the best nautical assessors in Canada, and by common consent the evidence adduced on the investigation is to be considered the evidence in this case. The only attempt to vary the evidence in the investigation, is that of one Makinney called on the trial herein. As to Makinney's evidence I have only to say that he did not impress me as throwing any light on the situation. His manner was bad and his matter worse. In short, I did not believe him. Although he professed to be an eye-witness of the collision, I am convinced that he did not add any light to the controversy. He failed to convince me that he knew what he was talking about. Notwithstanding, he professes to be an eye-witness to the collision, I am quite sure he could not place the point or place of collision within one-half a mile of the actual place of occurrence. I think this man was a belated occurrence in the enquiry and came with a story, the result of instruction, and that on behalf of the French ship. I do not believe him.

As to fault or blame for the collision I am of the opinion that it lies wholly with the "Mont Blanc". Once you settle where the collision occurred and I think it is undoubted that it occurred on the Halifax side of mid-channel you find the impossibility of the story of Pilot Mackay. Even if you say mid-channel the story of the French ship is absurd. The fault to my mind clearly appears to have been the result of the last order of the "Mont Blanc" when being in her own waters on the Dartmouth side she took a starboard helm and reached for the Halifax wharves thus throwing herself

1918
 COMPAGNIE
 GENERALE
 TRANS-
 ATLANTIQUE
 v.
 THE "IMO."
 Reasons for
 Judgment.

1918

COMPAGNIE
GENERALE
TRANS-
ATLANTIQUEv.
THE "IMO."Reasons for
Judgment.

across the bow of the outcoming ship "Imo". Why this order was given I know not but I feel sure it was gross negligence and in so thinking I am supported by the advice and opinion of both nautical assessors. The order for a starboard helm and to lay a course suddenly across the harbour was justified by the officers in charge of the "Mont Blanc" as an emergency order to prevent a collision but taking into consideration the then position of the two ships this claim will not bear investigation.

I find the "Mont Blanc" solely to blame for the collision. I refer the question of damages to the Registrar and two merchants.

Judgment accordingly.