

an ordinance, and it bears to be irrevocable. I need hardly point out that my view is in no way inconsistent with the continued existence of the powers of the Commissioners and the Universities Committee from time to time to make all necessary internal reforms in the constitution of the united University.

I have endeavoured to deal with the argument which is founded on the supposed policy of the statute, by shewing that the powers of the Commissioners under the 16th section, as interpreted by themselves, are neither contrary to the practice of Parliament nor unreasonable. But, as already indicated, I do not think that the decision of this case ought to depend on the opinion that may be formed by a court of law on such considerations, the relevancy of which I greatly doubt. I think that the Commissioners had authority from Parliament to effect an irrevocable union of the University of St Andrews and the Dundee College by making the order which is sought to be reduced, and that the Lord Ordinary's interlocutor is well founded.

LORD TRAYNER—I concur with the views expressed by the Lord Ordinary, and the opinion expressed by Lord M'Laren.

LORD WELLWOOD—I agree with the majority that the Lord Ordinary's interlocutor should be adhered to. I have also had an opportunity of reading Lord M'Laren's opinion, and I adopt it.

The Court adhered.

Counsel for the Pursuers—C. S. Dickson—Pitman. Agents—J. & F. Anderson, W.S.

Counsel for the Defenders—Asher, Q.C.—H. Johnston. Agent—J. Smith Clark, S.S.C.

Thursday, January 10, 1895.

FIRST DIVISION.

[Lord Kyllachy, Ordinary.]

OWNERS OF "NERANO" v. OWNERS OF "DROMEDARY."

Ship—Collision—Fog—Regulations of 1884 for Preventing Collisions at Sea, Article 18.

By Article 18 of the Regulations of 1884 for Preventing Collisions at Sea, "Every steamship, when approaching another ship, so as to involve risk of collision, shall slacken her speed or stop and reverse, if necessary."

The steamship "Dromedary" was going up the Clyde at a moderate speed, but in a thick fog, when those in charge of her heard the whistle of another vessel ahead, which proved afterwards to be a tug towing the steamship "Nerano" down the river. The "Dromedary" proceeded on her course after hearing the whistle, and did

not reverse until she saw the tug ahead of her. Immediately afterwards she collided with the "Nerano," which was on the wrong side of the river.

Held that the "Dromedary" was not in fault, in respect that it was not her duty to stop and reverse immediately on hearing the whistle of the tug.

Ship—Collision—Evidence—Inferences from Nature of Damage.

Observed (following the opinion of Lord Chancellor Halsbury in the "Ceto," 1889, L.R., 14 App. Cas. 670) that, after a collision between two vessels, where it is desired that the Court should draw inferences from the real evidence supplied by the nature and extent of the damage sustained, it is necessary that witnesses, such as mechanical engineers or shipbuilders, should have spoken to the nature of the damage and the inferences to be drawn therefrom, and that it is not competent to supply the want of such evidence by referring to the opinion of the nautical assessor who hears the case.

The Columbia Steam Navigation Company, Limited, Sunderland, owners of the s.s. "Nerano" brought an action of reparation against Messrs G. & J. Burns, Glasgow, owners of the s.s. "Dromedary" for damage sustained by their steamer while proceeding in tow down the river Clyde through collision with that of the defenders, and caused as they averred by the fault of those for whom the defenders were responsible. The faults alleged against those in charge of the "Dromedary" were "causing it to sail on the wrong side of the river, viz., on the north instead of the south side of the channel, and in causing it to sail at an excessive rate of speed whilst there was a fog, and in failing timeously and properly to stop or reverse before the collision, and in failing to give the fog signals prescribed by the "Regulations for Preventing Collisions." The defenders answered that the "Dromedary" was on her own side of the river and was navigated with all possible care. A good look-out was kept on board, and fog signals were duly made. When the fog became very thick some time before the collision the engines of the "Dromedary" were stopped, and they were not moved again until the tug of the "Nerano" was seen ahead, when they were immediately put full-speed astern. The collision was caused by the fault of those in charge of the "Nerano," for whom the pursuers are responsible. A good lookout was not kept by them. The "Nerano" was being navigated on the wrong side of the channel, at too high a rate of speed, having regard to the fog, and prior to the collision her engines were not timeously stopped and reversed. The fog signals prescribed by the regulations for preventing collisions were not duly made.

The regulations issued in 1884 by virtue of the Merchant Shipping Act 1862 (25 and 26 Vict. c. 63), sec. 25, require, by article 13,

that "Every ship, whether a sailing ship or steamship, shall in a fog, mist, or falling snow, go at a moderate speed;" and by article 18 that "Every steamship, when approaching another ship, so as to involve risk of collision, shall slacken her speed, or stop and reverse, if necessary."

After a proof (the result of which appears sufficiently from the opinions of the Judges in the Inner House) the Lord Ordinary (KYL-LACHY) pronounced the following interlocutor:—"Finds that the collision in question was caused by the fault of both vessels, in respect that both failed timeously to stop and reverse in terms of the 18th article of the regulations: Finds in these circumstances that the joint damage must be divided: Finds no expenses due to or by either party, and with these findings continues the cause.

"*Opinion.*—There is what I would call, in anything but a collision case, a singular conflict of evidence with respect to the respective sides of the river which the two vessels kept before and at the time of the collision, and if it were necessary to solve that conflict, I must say I should have had to take further time for consideration. Similarly there is a conflict with respect to the question of speed. I should not have had much difficulty about that, for I do not think it is proved that either vessel was proceeding at an undue rate of speed. But there is one point on which, as I read the evidence, there is no conflict, at least no real conflict, and that is the matter of the reversing of the engines when the collision was imminent. The duty of both vessels, I am satisfied, was this—that so soon as the whistle of the other vessel was heard, the vessel hearing the whistle should reverse her engines and go astern. That of course is not an absolute rule, but I think I may take it as the result of the authorities that it is a rule applicable where the two vessels are approaching each other in a dense fog and narrow waters, and the whistle is heard right ahead or nearly so. Now, I think that the 'Nerano' beyond all question heard the whistle of the 'Dromedary' almost right ahead an appreciable time before the collision, and I think it is also clear upon the evidence of the captain and officers of the 'Nerano,' that although the whistle was heard previously, they failed until the 'Dromedary' was actually in sight to reverse and go full speed astern. Therefore the 'Nerano' was in fault. But the same argument which satisfies me that the 'Nerano' was in fault also satisfies me that the 'Dromedary' was also in fault, and for the same reason. I have read the evidence, and I am satisfied that the 'Dromedary' heard the whistle of the 'Nerano' about a couple of minutes at least before the order was given to reverse the engines and go astern, and indeed that the order to reverse the engines was not given until the 'Nerano' or the tug of the 'Nerano'—for it comes to the same thing—was actually in sight. That being so, the 'Dromedary' was also in my opinion in fault, and the result is that both vessels being in fault the damage must be divided.

"I shall therefore, in view of the joint-minute which asks me to confine myself to findings, simply pronounce a finding to the effect that on the occasion in question both vessels failed timeously to reverse their engines and go astern, and that therefore both vessels were in fault, so that the damage done to both vessels must be divided."

The pursuers reclaimed, and the case was argued before the First Division, with Captain Atkins, as Nautical Assessor.

Argued for the reclaimers—(1) In any view of the case, the owners of the "Nerano" could not be found liable, because that vessel was, at the time of the collision, under compulsory pilotage—The "*Hector*," 1883, L.R., 8 Prob. Div. 218. (2) The "Nerano" was on the proper side of the river; her position on the south bank after the collision was due to the blow, which had changed her course. She was going at a moderate rate of speed, and the engines had been reversed as soon as it was "necessary," under regulation 18, to do so. (3) The "Dromedary" was entirely to blame for the accident. She was on the wrong side of the river. Her speed was too great; this was evidenced by the foam at her bows, seen by those on board the "Nerano," and by the damage done to the "Nerano" spoken to by the captain. The nautical assessor would probably advise the Court that such damage could not have been done unless at least one of the vessels had been going at some speed. The "Nerano" had been going dead slow. The "Dromedary" had failed to reverse upon hearing the whistle of the "Nerano," or her tug, as should have been done in the circumstances in terms of the regulation 18—The "*Beryl*," June 18, 1884, L.R., 9 Prob. Div. 137.

Argued for the defenders—(1) It was admitted that the defenders could not recover from the "Nerano" as she was under compulsory pilotage. (2) They were in no way to blame, the sole fault lying with the "Nerano." The independent evidence of those on the banks of the river was entirely in favour of the "Dromedary," and proved that the "Nerano," and not she, was on the wrong side of the river. If that were so the evidence of those on board the "Nerano" became worthless. The collision occurred through the "Nerano" being out of her proper course, and then porting her helm when she saw the collision imminent. (3) The "Dromedary" had been navigated in a proper manner. Her speed was moderate; indeed, at the time of the collision her engines were not moving. No conclusion could be drawn from the damage alleged to have been done to the "Nerano," because no skilled evidence had been led—nor indeed any evidence at all except that of the captain—as to the nature and extent of the injury. Evidence on that subject should have been led if any point was desired to be made on that matter. Any theoretical view, even that of a nautical assessor, was irrelevant, and could not supply the place of proper evidence. The "Dromedary" was

not bound to reverse her engines merely upon hearing a single whistle. She was only bound under regulation 18 to reverse when that in the circumstances of the case became "necessary"—The "*John M'Intyre*," June 19, 1884, L.R., 9 Prob. Div. 135 (subsequent to the "*Beryl*"), per M. R. Brett, approved by Lord Watson in the "*Ceto*," 1889, L.R., 14 App. Cas. 670; see also the "*Lancashire*," L.R., 1894, App. Cas. 1. The necessity here did not arise until the danger became apparent, viz., the tug being seen. Then the engines were duly reversed.

At advising—

LORD PRESIDENT—In considering the liabilities of the parties to this action I think it may be convenient, in the first place, to ascertain whether it is or is not the fact that the "Nerano" in going down the Clyde on the morning in question was on the wrong side of the river. And upon that question there is, no doubt, as the Lord Ordinary has said, a large amount—perhaps even more than a usual amount—of conflicting evidence, but, at the same time, the problem does not seem to me to be by any means insoluble, and the conclusion which I have come to is, that the preponderance of evidence shows that, on the morning in question, the "Nerano" was on the wrong side of the river. And when I say that, I do not mean, that, if you were to make an exact computation, she was on the southern side of the middle of the river; I mean that she was substantially upon the south as distinguished from the north side of the river Clyde.

Now, it is unnecessary to go into the evidence in detail; but there are certain facts in the case which seem to me to render that conclusion a highly probable one. I refer, in particular, to the evidence coming to a large extent from the witnesses of the pursuers themselves, which goes to show that, for good reasons or bad, the "Nerano" was, shortly before the accident, turned somewhat to the south side of the river. No doubt a reason is given by those witnesses of the pursuer who state that to have been the fact; but still the important point is that the "Nerano" was guided to the south side of the river.

The next point which I observe is this, that there is no evidence of any change in the course of the "Nerano" after that and before the collision, until the order to port was given, which would take her stem into her own proper side of the stream.

Then, when we come to the facts occurring after the alarm is given, that a vessel is ahead, it is not without significance that, again, for good reasons or for bad, what was done was to port the helm of the "Nerano." Putting these two facts together—the fact that she was turned to the south side, and the fact that at the last moment an attempt was made to redress her course in an opposite direction—I think there is a very open field for the testimony which we have to consider, which goes to show that in fact that was the case. Now we have the evidence of persons, who are independent of interest

in this case, and that evidence goes to place the "Nerano" distinctly to the south of the middle of the river. I refer in particular to the evidence of persons connected with the ferry, and also to the evidence of persons who, attracted by the occurrence itself, go down, and there and then see the position of the "Nerano" in the river. That position, as I have said, is not what on a critical examination of the site would be pronounced to be on the south side of the river—much more than that, she was definitely on the south side, and according to the evidence, near the south bank.

Therefore, upon the whole matter, I come to the conclusion that, on the morning in question when the collision occurred, the "Nerano" was, in violation of her proper course, on the south side of the river. Following the narrative from this point it may be convenient to observe that what happened, once the whistling of the "Dromedary" had disclosed her presence in the immediate neighbourhood, was that an order was given to port. Now, it so happens that upon record it is not alleged as one of the faults of the "Nerano" that she ported her helm at the juncture which I am now discussing. The accusation made at this stage is rather that she did not stop and reverse. But at the same time, if we are to ascertain the facts as to how the collision took place, we must note this very salient fact, that the order given at this emergency was to port the helm. Now, I pray your Lordships to observe, that all the evidence, which deals with the subject, coming from the deck of the "Nerano," as well as from the other quarter, shows that when the whistle of the "Dromedary" was heard by the "Nerano," that whistle came from ahead and somewhat on the starboard side. That being the case, we are advised that the order to port was not good seamanship, and that it conduced to danger rather than to safety; and if it is necessary, or, as I think it certainly is, desirable to ascertain how the casualty came about, we have to note that it seems sufficient to account for the casualty that the "Nerano," being well on her wrong side, tried to redress it by a false manœuvre, viz., porting when the object of danger to be escaped from was on the starboard side, and in front. But, as I have said, I do not rest my judgment upon that bad manœuvring for the reason I have stated. At the same time, in ascertaining how the casualty came about, it is important to notice that this seems the most probable explanation, and so we are advised.

But I leave the "Nerano" now with the observation that, having been placed on the wrong side of the river, she is in fault, and that fault is one which directly causes or contributes to the collision.

Now I turn to the case against the "Dromedary," and here it is necessary to observe that the theory of my judgment necessarily rejects the evidence coming from the "Nerano" as to the relative positions of the vessels. Nay, it goes further, because I am afraid it shows, in the first place, that they were badly navigating

their vessel by being on the wrong side, and whether aided by that or not they were not accurate observers of the situation. So I must own that I think it necessary to largely discount the evidence coming from the deck of the "Nerano" as to the position and the speed and the action of the "Dromedary."

Now, to state in a word the conclusion I come to as regards the "Dromedary," I do not think there is testimony sufficient to show fault on the side of the "Dromedary" as regards speed. I do not think it is made out that at the time of the collision she was going at an undue rate of speed. Secondly, given the facts as to the fog, and as to the moderate speed of the "Dromedary," there comes the question, what was the whistling they heard ahead of them? Now, the whistle which was heard by the "Dromedary" was a faint or small whistle, the whistle, probably, not of a vessel such as the "Nerano," but of the tug in front of the "Nerano." Given that state of the facts, we are advised that it was not the duty of the "Dromedary" to stop and reverse, and that advice accords well with what would be rendered acceptable to the ordinary understanding by what we know of the case. Therefore I find, as regards the "Dromedary," that there is no adequate testimony to the fact that she was going at an undue rate of speed, and that it was not according to her duty to stop and reverse in the circumstances in which she was placed.

But it is necessary that I should observe upon a part of the case which certainly is striking, and if otherwise treated by the parties might have had a cogent effect upon the judgment. It is said that there is real evidence as to the rate of speed of the "Dromedary" to be found in the nature of the injuries which she inflicted upon the "Nerano." It is said, and there is much to support it, that those injuries are of a very serious nature, and of such a nature that they could only have been inflicted by this comparatively light vessel the "Dromedary" upon the "Nerano" if the "Dromedary" was going at a high rate of speed. I say that is a very plausible view, and I have to turn to the evidence to see how that part of the case has been treated by the "Nerano." There is nothing in the evidence at all which develops or elucidates this point so as to make it available as a ground of judgment. The captain, an interested and inculpated party, gives some evidence as to the nature of the injuries, but we have to consider whether that is the sort of evidence we can accept as making good this part of the case. We have to consider also whether it is permissible to us to invite the opinion of the nautical assessor whom, to our great advantage, we have had with us in this case. Upon this particular point I observe that we have the guidance also of the House of Lords in the case of the "*Ceto*," which was cited for another purpose at the bar; for in that case Lord Halsbury says—and this passage which I read (L.R., 14 App. Cas. 674)

sufficiently shows the nature of the facts he was dealing with—"I do not understand the judgment of the Master of the Rolls to be based upon a comparison of the witnesses of either side as to their credit or accuracy, but almost, if not altogether, entirely upon the inferences which he draws from the fracture of the "Lebanon" upon the starboard side of her stem, and the appearance of that fracture as indicated by the photographs. I do not think that inferences of that character can properly be described as questions of nautical skill at all. They are rather questions which should be addressed to mechanical engineers; but in order to place much reliance on them, I should think myself that they ought to have been submitted to some person who had with accuracy and minuteness examined the fracture, and had been capable of stating to the proper tribunal both the inferences he derived from the appearances which he observed, and the reason for such inferences, subject of course to the ordinary test of cross-examination, in which event probably the rival theories presented in argument to your Lordships at the bar might have been minutely discussed, and each hypothesis, viz., the blow from the starboard side, or the dragging of the stem itself after the vessels were in actual contact, might have been considered. But in truth no such question ever was discussed at the trial." Now, that is the position in which we find this point left by the parties. It was not, as Lord Halsbury says, discussed at the trial; it was not made the subject of proper evidence to make it available as a ground of judgment. Therefore, that point being swept out of the case, the impeachment of the conduct of the "Dromedary" stands as I previously stated. I find no adequate evidence to show that the "Dromedary" was guilty of any of the faults alleged against her. I find that the "Nerano" was in fault in being found on the wrong side of the river at the time of the collision, and that that position of the "Nerano" caused the accident.

LORD ADAM—I am of the same opinion and upon the same grounds. I agree with your Lordship in thinking that the first question is, whether at the time of the collision the "Nerano" was in her own water—that is to say, upon what has been called the north side of the mid-channel or upon the south side. Now, as your Lordship has said, the evidence of the crews of the two ships is in conflict upon this point. But then we have what appears to me to be reliable independent evidence on this matter. There is the evidence of the man at the Renfrew Ferry, who tells us very distinctly that immediately before the accident he saw the "Nerano" on the south side of the channel, and very considerably to the south side. That is immediately before the "Nerano" entered the fog bank. We have independent evidence again that immediately after the collision she was lying close to the south bank alongside a Spanish steamer, which was opposite a certain building yard. Now, it has been attempted

to explain how the "Nerano" got there; certain witnesses saying that it was forced there after the collision. For myself, I must say that I am not satisfied with that evidence as giving the true reason of the "Nerano" being found after the collision where she was. It is said that the force of the blow struck by the "Dromedary" was sufficient to turn her head round and to send her across the river. I do not think that is proved. Accordingly, I agree with your Lordships that the weight of the evidence is to the effect that at the time of the collision the "Nerano" was not in her own water, but in the water where the "Dromedary" was entitled to be. Now, if that be so, that is sufficient, as your Lordship has pointed out, to show that there was fault upon the part of the "Nerano" in being in the position where she was.

There is also the other point alluded to by your Lordship, but it is not made a matter of complaint against the "Nerano," and it may be desirable that our judgment should not be rested upon it. We are advised, however, and no doubt correctly advised, that the manœuvre which at that time the "Nerano" performed in porting her helm was a wrong manœuvre.

Well then, if fault be established on the part of the "Nerano," the question comes to be—Was there fault also upon the part of the "Dromedary"? As I understand the case, there are two points in which that vessel is said to have been in fault, the one running into the other. The first point is, that in contravention of rule 13, she was at the moment not going at the moderate rate of speed that she ought, in terms of that rule, to have maintained in mist or fog. The first question is, Is that proved? Now, what might have been, it appears to me, a most material view upon that point, is that evidence must have been furnished by the injury inflicted upon the "Nerano." I can quite well understand that it might be that injury to that extent could not have been inflicted except by a vessel going at a very considerable speed. On the other hand, for anything I know, or for anything that appears upon the evidence, the same amount of injury might have been inflicted by two heavy vessels coming into contact—almost from the mere fact of their coming into contact without any undue speed at all. Reading the evidence, and looking to the evidence only, I find my mind a blank upon that subject. I do not know from the evidence led what amount of speed would be necessary on the part of the "Dromedary" to produce that result. I do not know whether it would have required a great amount of speed to produce it, or whether mere contact would have been sufficient. I say the evidence upon that point is a total blank, and I agree with your Lordship that without further evidence we could not come to any conclusion upon this matter. I quite agree with what your Lordship has read from the judgment of Lord Halsbury, that if this was to be made a point in the case we

should have had the evidence of proper scientific people to inform us upon the matter.

Therefore, putting that out of the case, is there independent evidence that the "Dromedary" was coming up the Clyde at a rate which in the circumstances could not be called moderate? It appears to me that the view we have taken upon the first point must be the same upon this point also. As your Lordship has shown upon the first point, the witnesses who were on the deck of the "Nerano" cannot be considered as accurate observers. If that be so, and I find that their evidence is not to be relied upon, what other evidence is there? We have the evidence of such of the crew as have been examined, including the captain, who tell us that they were going at a moderate speed. We have no other evidence, and I come to the conclusion that it is not proved that the "Dromedary" upon this occasion, at the time of the collision, was going at other than a moderate speed. The effect of that is that she was not in fault under the 13th rule. But then it was said—and this is the ground upon which the Lord Ordinary has arrived at his conclusion—that in the circumstances, when the "Dromedary" heard the whistle, which undoubtedly, as your Lordship has said, was the whistle of the tug, it was her duty then and there immediately to slow and back. Now, the Lord Ordinary has not had the advantage which we have had of being advised upon that matter by a nautical expert. But we are now advised, and it is in conformity with my own judgment in the matter, that there was no such duty upon the "Dromedary" at the time, and that the "Dromedary," then being in her own water, and being entitled to suppose that no vessel was coming down, was quite entitled, when she heard this whistle, to wait, as she did, to see whether there was any apparent danger or not. The moment she saw the tug in front of her coming down the water she reversed; and we are advised that in so acting she violated no rule of navigation and that she was navigated properly. If that be so, then she is not in fault under the 18th rule to which we were referred, because it was only "if necessary" that she was bound under that rule to reverse. We are advised that in such circumstances it was not necessary to do so until she saw whether there was any apparent danger.

Upon the whole matter, therefore, I agree with your Lordship, that in this matter the "Nerano" was to blame, and that the "Dromedary" was not.

LORD KINNEAR—I am of the same opinion. I think it is proved that the "Nerano" was on the wrong side of the river. The evidence is that, as she was being taken down the river by a tug, the tug pulled her head to port for the purpose of passing an obstruction at Renfrew Ferry. Therefore she was, at that point of the voyage, with her head towards the wrong side of the river. The evidence

seems to show that the "Nerano" had simply followed the tug in that direction. But the evidence to which your Lordships have already referred as to the observations of her actual position immediately before and after the collision is certainly to my mind sufficient to show that she was on the wrong side of the river. Now, then, being in fault in her position upon the river she heard the whistle of a steamer, which she judged to be the whistle of a steamer coming up the river upon the starboard bow; and hearing a whistle upon her starboard bow she understood the vessel to be porting her helm, and she ported her helm also. Now, it may very well be—for nothing is said to the contrary—that that would have been a perfectly safe and proper manœuvre if the "Nerano" had had a clear view, and had seen that the ship coming up the river was at such a distance as to leave the two vessels in safety in crossing, the one to the south and the other to the north bank of the river, or crossing one another's bows. But then she did not see; she was in a fog; and one question is whether it was right or wrong of the "Nerano" to port her helm in such circumstances. The result was that the two ships came into collision. We are advised that that was a wrong manœuvre, and that the necessary consequence of the wrong manœuvre was that the two ships came into collision. Now, I agree with your Lordship that it would not be a satisfactory ground of judgment to find that that was the specific fault on the part of the "Nerano" which led to the accident, seeing that it is not made a ground of complaint against her on record; and indeed it was not pressed upon us in argument. But then that leaves the case in this position, that, she being originally in fault by being on the wrong side of the river, the manœuvres which she adopted in order to pass the ship coming up the river were not proper to take her out of the dangerous position which she ought not to have been in. Therefore I agree with your Lordship in thinking that she must be held to have been so far in fault. Whether the "Dromedary" was in fault also depends upon the circumstances which your Lordship has already stated so fully that I do not think it necessary to say more than one word upon that. If the "Dromedary" was coming up the river at a great rate of speed there can be no doubt that she also was to blame. But then the only evidence which appears to me to tend to establish that fault against her, apart from the evidence of those witnesses which we must discard if we are not prepared to accept their statements as to the relative positions of the ships, is the evidence which is said to be derived from the appearance of the fracture of the "Nerano's" bow. For the reason your Lordship has given, I think we can draw no inference from that evidence. We have not, in the first place, any satisfactory evidence as to the facts, because the only witness examined upon the subject is the master of the "Nerano," and if the pursuers had intended to make

a point of the inferences to be drawn from the character of the fracture upon their ship's bow, I think they must have led evidence of a totally different kind from that. The fracture was examined by other people, and if that had been a material point in their case we should have had the evidence of the shipbuilder by whom she was examined and repaired—a skilled person who had had an opportunity of inspecting her. Therefore, I do not think we have sufficient evidence even as to the fact upon which it would be safe to rely. But we have no evidence at all as to the proper inferences which ought to be drawn from the fact, assuming the fact to be as the master of the "Nerano" states it. Therefore, putting that out of view altogether, the result of the whole evidence upon both sides appears to me to be that the "Dromedary" was not going at an excessive rate of speed. Well then, she was in her own water when the accident happened, and the only other question is, whether she was right or wrong in the manœuvres which she adopted after she became aware that there was a vessel approaching her. Now, the evidence of the approach of a vessel was, in the first place, the whistle of the tug. The Lord Ordinary has held that the "Dromedary" was wrong, because she ought to have reversed her engines and gone astern immediately upon hearing the whistle, that is, about a couple of minutes at least before the order to reverse was actually given. I think the Lord Ordinary appears to have thought that the whistle the "Dromedary" heard was not that of the tug but that of the "Nerano." But however that may be, the question we have to consider is whether she was or was not bound immediately to reverse her engines upon hearing that whistle, or whether she was justified in waiting until she saw the position and attitude of the approaching vessel. Now, that is a question of nautical skill, and we are advised that it was not her duty to reverse immediately before she knew anything as to the position of the approaching vessel except what she could infer from her having heard the whistle. That being so, we must hold that there was no fault on the part of the "Dromedary" at all. I therefore agree with the result at which your Lordship has arrived.

LORD M'LAREN was absent.

The Court recalled the interlocutor of the Lord Ordinary, and assoilzied the defenders.

Counsel for the Pursuers—C. S. Dickson—Craigie. Agents—Young & Thomson, W.S.

Counsel for the Defenders—Ure—Younger—Burns. Agents—J. & J. Ross, W.S.