

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Greek Brig "Sotir," D. M. Costalas, Master, v. The British S.S. "Iser," Wm. Burgoyne, Master, from Her Britannic Majesty's Supreme Consular Court, Constantinople (in Vice-Admiralty); delivered 9th February 1895.*

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Present:

THE LORD CHANCELLOR.

LORD WATSON.

LORD MACNAGHTEN.

LORD SHAND.

LORD DAVEY.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

On the 14th December 1892, about 2 a.m., the British S.S. "Iser" and the Greek brig "Sotir," were approaching each other, on opposite courses, in the Cervi channel, which separates the Island of Cerigo from the mainland of Greece. The steamer, of 2,177 tons gross, was on her way from Maddalena to Constantinople, and was making not less than ten knots per hour. The brig, about 307 tons register, was carrying a cargo of grain from Taganrog to Catania. She had not a set course, but was sailing closehauled by the wind, which was light and from S.S.W., her speed being about two and a half miles per hour. The course steered by the "Iser" was E. by N.  $\frac{1}{4}$  N., or E.  $\frac{3}{4}$  N. magnetic; and, according to the evidence, the course of the brig must have been

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somewhere between W. and W. by N. The night was dark, but clear and favourable for the observation of lights.

The two vessels came into collision, and the "Sotir" immediately sank. The present action was brought by the Appellant, her master and part-owner, against the "Iser," in the Consular Court at Constantinople; and, after proof had been led on both sides, was dismissed by the Acting Judge, upon the ground that the "Sotir" was alone to blame for the collision.

Upon some material points, the evidence is not conflicting. It shows, (and it was not controverted) that the steamer's lights were seen and watched by those on board the "Sotir" for a considerable time before her side lights were observed by the "Iser." And the evidence of the "Iser's" own witnesses shows that the period which elapsed, between the time when she first saw the lights of the "Sotir" and the moment of collision, was very brief. The statements made by the witnesses on either side in regard to the lights which they observed, and their bearings, during that period of time, are in all respects consistent. But they differ in their account of the manœuvring of the two vessels by which these results were brought about.

The case presented for the "Sotir" is, that she never deviated from her course, but continued to steer by the wind, from the time when she first saw the lights of the "Iser," until that vessel came close upon her, so close as to leave no doubt in the minds of her crew that she would inevitably be run down, when their only thought was how to save their lives. She first saw the masthead light of the "Iser" ahead, at some miles distance; and shortly afterwards the green light appeared ahead, and continued in sight until the vessels

were quite near to each other, when it suddenly disappeared and a red light appeared in its stead. In an instant, it became apparent that the steamer was crossing her bows, and there was hardly time to call up the crew who were below deck, before the "Iser" ran into her.

In her pleadings the "Iser" alleges that the collision was occasioned, "in the first instance, " by the brig 'Sotir' not having a light, or not " having a light that was visible until the time " aforesaid, when the red light was seen on " board the S.S. 'Iser'; and, in the next place, " by the brig 'Sotir' improperly changing her " course, and going up into the wind after she " had been seen by the S.S. 'Iser'." The case set up by the "Iser" is, that no light was exhibited by the "Sotir" which could be seen from the "Iser," until about ten minutes after 2 a.m., when a red light was observed to appear suddenly about  $1\frac{1}{2}$  to 2 points upon her starboard bow. The chief mate, who was in charge, immediately gave the order "hard-a-port," and telegraphed to "stand " by." The captain, who had gone below a few minutes previously, ran up as soon as he heard the telegraph ring, and, on reaching the bridge, saw both lights of the brig a little on his port bow. He at once telegraphed "full speed " astern"; and,—to use his own language,— " With that almost immediately came the crash." The chief mate says that, after he gave the first order, the captain "immediately appeared upon " the bridge," and that both lights of the "Sotir" were then visible. From the account thus given by these two officers, it is perfectly obvious, that a very short time elapsed between the order to hard-a-port and the collision; that, at the time when the brig's red light was first seen, the two vessels must have been in dangerous proximity; and also that, at the time of the collision,

the "Iser" was crossing the bows of the "Sotir."

In these circumstances, their Lordships entertain no doubt that the fact of no light having been seen by the "Iser," until the vessels were so near as to involve risk of collision, was the main, if not the only cause of the collision. It is therefore necessary to consider, whether the failure of the "Iser" to observe the light of the "Sotir," before the vessels were so near to each other, was owing to her own negligence, or was due, as she alleges, either to the brig carrying no lights, or to her red light being screened by her sails.

The learned Judge of the Consular Court acquitted the "Iser" of all responsibility for that failure. He has not found, or even suggested, that the lights of the brig, which were admittedly in order at and before the time of the collision, had not been burning before the red light was observed by the steamer. There is ample and uncontradicted testimony to the effect that they were. But he came to the conclusion that the red light was so obscured by the sails of the brig, that it continued to be invisible to the "Iser," until it was observed. His reasoning in support of that conclusion is rested, in the first place, upon the assumption that an effective look-out was kept by the "Iser," and, in the second place, upon the fact, stated by the steersman of the brig, that at a certain distance he was unable to see the lights of the "Iser," because they were concealed by the sails. The latter circumstance appears to their Lordships to be of no moment. The steersman's position was aft of the sails, which might at times interrupt his view of the "Iser." But it does not in the least follow, that the side light of the brig was screened by her sails from the observation of a seaman on the fore-castle of the "Iser." There is

little probability in the suggestion ; and no attempt was made to lay any foundation for it in the evidence. Not a single question was put to any witness, with regard to the build and rig of the "Sotir," or as to the position of her sails when set, in relation to her side lights.

Their Lordships are unable to concur in the view which the learned Judge took of the efficiency of the look-out on board the "Iser." It is proved, by two of her crew who had the best means of knowledge, that, during a critical period preceding her observation of the red light, the "Iser" had no look-out. It was the duty of her steersman and her look-out to relieve each other at 2 a.m. At that precise hour, the look-out states that he left the fore-castle, but, instead of going to the helm, went below. About three minutes after the hour, he came on deck, and relieved the steersman, who followed his example, and, instead of looking out, went below. He positively states that not more than five minutes elapsed between his leaving the helm and his reaching the fore-castle ; but that statement shows that the "Iser" was proceeding at full speed on her voyage, without any look-out, for at least eight minutes. It is right to say, that the absence of the look-out does not appear to have been known to the officer who was navigating the ship, but that is not a circumstance which can aid the case of the "Iser."

It was argued for the "Iser" that the absence of a look-out, during the period in question, was immaterial and excusable, inasmuch as it was proved that sometime between 2.5 and 2.10 a.m., her chief mate took the bearing of the light on Cape Spathi, and would necessarily have seen the red light of the "Sotir," if it had been visible at that time. Their Lordships are of opinion,

and they were advised by their assessors, that such a casual and brief opportunity for observation, by an officer whose attention was directed to another point, cannot be regarded as an efficient substitute for the services of a look-out man during the period when no look-out was kept.

Upon the evidence, their Lordships have had no difficulty in coming to the conclusion, that the "Iser" has incurred responsibility for the collision, by her failure to keep a proper look-out, and by not stopping and reversing, in compliance with Article 18 of the Regulations, when the red light of the brig was first seen.

Their Lordships are also of opinion that the "Iser" was alone to blame for the collision. The contributory fault imputed to the "Sotir" is, that she improperly changed her course, "by going into the wind, after she had been seen by the 'Iser'." In support of that assertion, which is positively contradicted by the witnesses from the brig, it was argued that, according to the evidence, the steamer had, a second or two before the collision, succeeded in crossing the bows of the brig, and attaining a course which would have been perfectly safe, if the brig had not run into her, and that the brig must have accomplished that feat by luffing into the wind. The argument mainly rests on the fallacious assumption that the steamer had got clear of the brig before the collision occurred. The fact is that she failed in her rash attempt to cross the bows of the brig. No doubt her captain says that, at the moment of collision, the "Sotir" seemed about head to wind, with her sails flat aback. If that had been the case, she could have had very little, and, more probably, no way upon her. But the chief mate of the "Iser" says, that at the same moment, he "saw the foam

“breaking at her bow,” and that she immediately struck his ship. Their Lordships are not disposed to attach any weight to that evidence; and even if it had been more reliable, they would have hesitated to hold the crew of the “Sotir” responsible for the navigation of their vessel during a period of natural panic, suddenly induced by the fault of the “Iser.”

Their Lordships will humbly advise Her Majesty to reverse the judgment appealed from; to condemn the “Iser” in damages and costs of suit; and to remit the cause to the Consular Court for the purpose of ascertaining and decreeing the amount of damages, and for further procedure therein upon the footing of this order. The Respondent must bear the costs of this appeal.

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