

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Owners of the Steamship "Stephanos," v. The Owners of the Steamship "Craiglee," from His Britannic Majesty's Supreme Consular Court, Constantinople; delivered the 14th December 1906.

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD ATKINSON.

SIR J. GORELL BARNES.

Nautical Assessors :

ADMIRAL RODNEY M. LLOYD, C.B.

CAPTAIN W. F. CABORNE, C.B., R.N.R.

[*Delivered by Sir J. Gorell Barnes.*]

This is an Appeal from His Majesty's Supreme Consular Court for the Dominions of the Sublime Ottoman Porte at Constantinople in an action and counterclaim which arose in consequence of a collision which occurred between the Greek steamship "Stephanos," and the British steamship "Craiglee," about 8 p.m. on the 21st December 1903, about seven or eight miles off Cape Malea. Both vessels were damaged by the collision.

An action was brought by the owners of the "Stephanos" against the owners of the "Craiglee" for the recovery of the amount of the damage alleged to have been sustained by the Plaintiffs in consequence of the said collision, and the owners of the "Craiglee" counterclaimed in that action for the damage

they alleged they had sustained by reason of the said collision.

The hearing took place before the Judge of the aforesaid Court, G. Bettesworth Pigott, Esq., assisted by a Naval Assessor, on the 10th August 1905, and the Court found the "Stephanos" solely to blame for the collision, and pronounced the usual Decree against her and her bail for the damages sustained by the owners of the "Craiglee" arising out of the collision, and costs, with the usual reference to the Registrar and merchants.

From this Judgment the Appellants appeal, contending that the "Craiglee" should be pronounced alone, or in part, to blame for the collision.

At the time of the collision the "Stephanos" was on a voyage from the Black Sea to Barcelona with grain, and the "Craiglee" was in water ballast bound on a voyage to Constantinople for orders. Both vessels were proceeding, in opposite directions, at a speed of about eight knots respectively, carrying their regulation lights, the weather being dark but clear. The course which it was alleged that the "Stephanos" was steering was S.W. $\frac{1}{2}$ S., and that upon which the "Craiglee" was alleged to have been steering was N. 29 E. true. There appears to their Lordships to be some difficulty in ascertaining from the evidence with accuracy what the exact magnetic courses of the respective vessels were.

The case presented on the part of the "Stephanos" was that while proceeding as already stated, the lights of the "Craiglee" were seen about four miles distant on the port side, and that at first the masthead and red lights of the "Craiglee" were seen, and then all three lights, afterwards the red and white lights only, afterwards again all three lights and then

only the green and masthead light; that when all three lights were seen for the second time at about one mile distant, one short blast was given on the whistle and the helm ordered to port slightly; that an answer was received from the "Craiglee" of one short blast and her green light shown, and that shortly afterwards one short blast was again given by the "Stephanos," which was answered by two short blasts; that the "Stephanos" then stopped her engines and they were put full speed astern; that the "Craiglee" gave three short blasts but came on attempting to cross the bows of the "Stephanos," and struck her violently on her port bow with the starboard bow of the "Craiglee."

On the other hand the case presented on the part of the "Craiglee" was that while proceeding as already stated, the masthead light of the "Stephanos" was seen distant about four miles and bearing about half a point on the starboard bow; that afterwards the green light of the "Stephanos" was also seen, but that it afterwards disappeared and the red light appeared; that the red light almost immediately disappeared and again the green light appeared, and that, after the vessels had run green to green for a considerable time, the green disappeared and the red light appeared and continued open until the collision; that when the green light was first seen, the helm of the "Craiglee" was starboarded a little, and that when the red was seen for the second time it was seen from three to four points on the "Craiglee's" starboard bow; that the helm of the "Craiglee" was immediately put hard to starboard and two short blasts given, and that when the risk of collision was imminent the engines were stopped and put full speed astern and three short blasts blown. The contact between the two vessels was by the stem of the "Stephanos" striking the starboard

bow of the "Craiglee" at an angle which, although said to have been to some extent leading forward, seems to have been about a right angle.

The witnesses, with one exception, were not examined before the learned Judge who tried the case, the evidence of those on the part of the Plaintiffs having been taken previously in Constantinople, with the exception of a fireman who had been on board the "Craiglee," and the evidence of the Defendants' witnesses having been taken on commission in London. The learned Judge, in the course of his Judgment, remarked upon the disadvantage he was in in not hearing evidence at first hand, and, after pointing out the conflicting evidence in the case, he proceeded to criticise the evidence compared with the Preliminary Acts and pleadings, and stated that the contention for the "Stephanos" was that the "Craiglee" was showing her red light, and that the ships were approaching red to red, when suddenly the "Craiglee" changed her course and crossed the bows of the "Stephanos" showing her green light, thus causing the danger of a collision, while for the "Craiglee" the exact converse was contended, it being alleged that the "Stephanos" was approaching showing her green light until she suddenly showed her red, and attempted to steer across the bows of the "Craiglee," and the learned Judge concluded by finding that the weight of evidence was in favour of the story as told by the witnesses of the "Craiglee," and found the "Stephanos" solely to blame for the collision.

Their Lordships feel that they are placed in a similar disadvantage to that in which the learned Judge found himself by not hearing the evidence at first hand, but, as the learned Judge had only the depositions of the witnesses before him, with the exception above referred to, they

are, on this Appeal, in practically the same position for re-hearing the case as he was for originally considering it.

Now there are certain points in the case which can, taking the evidence of both sides, be fairly considered to appear therefrom which lead their Lordships to arrive at a conclusion different from that reached by the learned Judge. In the first place, it is to be noticed that the two steamers would, in all probability, be on practically opposite courses, for the one was proceeding from off Cape Malea towards Bella Boulo, and the other was proceeding from off Bella Boulo to off Cape Malea, and although the courses pleaded are not diametrically opposite, yet it is impossible from the evidence to find what was the correct magnetic course of each of these vessels as they approached each other. The probabilities of the case, having regard to the locality, are certainly in favour of their having proceeded on opposite courses. Notwithstanding the contention of one side that the vessels were originally approaching red to red, and the contention of the other side that they were approaching green to green, bearing in mind the fact that they were in all probability on opposite courses (which those on board each vessel should have appreciated, having regard to the proper courses to be followed between Cape Malea and Bella Boulo lights), and the facts disclosed in the evidence as to the lights which were seen, it is almost certain that they were originally approaching each other end on or nearly end on, so as to involve risk of collision, and that Article 18 of the Regulations for Preventing Collisions at Sea was applicable to the case. This view is in accordance with the statements in the Preliminary Acts as to what lights of each vessel were first seen, and afterwards came into view. Moreover, the chief officer

of the "Stephanos," who was in charge of her at the time of the collision, stated in his evidence that his vessel had a white and red light on her port side, and that the "Craiglee" turned so that he could see the masthead and red and green, that is to say, all three lights, about four minutes later; that the "Craiglee" turned again, showing the masthead and red lights, and that he then gave orders to the helmsman to go half a point more to the right, and that about six minutes later, when the vessels were about a mile apart, the "Craiglee" showed the three lights again. On the other hand, the second officer of the "Craiglee," who was in charge of her as the vessels approached each other, stated that he first saw the masthead light of the "Stephanos" about a quarter to half a point on the starboard bow, and afterwards the green light; that he afterwards starboarded somewhat to give a wider berth, but that he saw later the red light, which remained in sight for a short time and was shut in again, and the green shown; so that these two witnesses, dealing with the earlier part of the vessels' approach, show that those on board each vessel were in all probability in the early stages in such a position as to see both the side lights of the other vessel. If this view be correct, the "Stephanos" was right in porting at the commencement, and the "Craiglee" wrong in starboarding, but at a later time, when the two vessels were close together, it seems clear that both were guilty of serious fault.

Again, referring to the evidence of the chief officer who was in charge of the "Stephanos," it is clear that after the green light of the "Craiglee" was visible to him, and while the "Stephanos" was continuing to show the green light, the helm of the "Stephanos" was put hard aport (a manœuvre which, it is significant

to notice, is omitted from the Preliminary Act and Statement of Claim of the "Stephanos"), and yet her engines were not reversed until some time afterwards, so that, in the situation described by that officer, the "Stephanos" was wrong in hard a porting when she did, and in not immediately reversing her engines and taking her way off when danger was seen. There was evidence for the "Stephanos" that the "Craiglee" blew one short blast at first in reply to a short blast from the "Stephanos," and thus gave a misleading signal, but this is not in accordance with the evidence of the witnesses from the "Craiglee," is improbable, and cannot be held to have been established.

With regard to the "Craiglee," even if the true view of the evidence should not be that the vessels were end on to each other, or nearly so, at the outset, but that they were approaching green to green at material times, yet, taking the account given by the officer of the watch and by the chief officer of the "Craiglee," it is apparent that adequate measures, in view of the danger of collision, were not taken with promptitude. The second officer states that when, according to his account, the "Stephanos" opened her red light and shut in her green light for the last time, he ordered the helm hard a starboard, and gave two short blasts of the whistle after the helm was hard to starboard, that he knocked on the deck for the master, who was below in his chart room, that the master came on deck, and after being told by the second officer that the helm was hard a starboard, he went to the telegraph and rang the telegraph "stop, full speed astern," and after that gave three short blasts of the whistle. He also stated that, at the time the "Stephanos" opened the red and shut in the green for this last time, she was from a quarter to half a mile off and three points on the starboard bow, and

that the engines were put full speed astern when the "Stephanos" was two or three ship's lengths off and about four points on the bow. In cross-examination he stated that a minute elapsed between the order "hard astarboard" and the order "full speed astern," though after several questions he reduced the time to "three-quarters of a minute to a minute." The chief officer, who was below, stated that he first heard the two short blasts, and afterwards the three short blasts, and his evidence at page 23 of the Record is to the effect that there was an interval of as much as two minutes between the two sets of blasts, though this is possibly an exaggeration.

It appears, therefore, that there was a considerable interval between the time of the helm being put hard astarboard and the time of the engines being reversed, and this does not depend merely upon the estimates of time given by the two principal witnesses for the "Craiglee," but is made clear by the fact that the second officer himself gave no order to the engines, but waited until the master, who was summoned by the officer from below in his chart room, came on deck, and that it was the master who ordered the engines to be put astern after he came on deck. According to the man at the wheel, the first thing the master did was to blow a second two-blast signal, and then, after that, he went to the telegraph and rang "full speed astern."

It is important to notice that the master of the "Craiglee" did not give evidence, and no explanation of this was offered.

That the difficulty raised by the point now being dealt with did not escape the notice of the representatives of the "Craiglee" appears to be shown by the form in which the 12th Article of the Defendants' Preliminary Act is framed. The position of the two vessels, according to the evidence of the first and second officers

of the "Craiglee," at the time when the "Stephanos" opened her red light and shut in her green for the last time, was one of extreme danger in which it was essential that prompt action should be taken on the part of the "Craiglee" by stopping and reversing her engines in order to avoid the danger, and this was not done. The delay in taking this step until the master came on the bridge was considerable at a most critical moment, and cannot be justified, and contributed to the disaster. Upon this point their Lordships have also been advised by the Nautical Assessors by whom they were assisted at the hearing of this Appeal, whose opinion is to the effect that the engines of the "Craiglee" ought to have been stopped and reversed without any delay immediately the "Stephanos" opened her red light and shut in her green light at the bearing and distance stated by the second officer of the "Craiglee."

Their Lordships therefore are of opinion that both vessels were to blame for the collision in this case. They think that the Order of the Consular Court should be discharged, that both vessels should be pronounced to have been in fault and that the cause should be remitted to the Consular Court for the purpose of ascertaining damages upon that footing, and that there should be no costs in the Court below. Their Lordships will therefore humbly advise His Majesty accordingly.

The parties will bear their own costs of this Appeal.
