

was necessary, or at least obviously desirable, for the purposes of that section to allude to the Lower Ward and the police burghs of the county of Lanark. I am unable to see that the special reference in section 15 to the Lower Ward justifies the inference that the whole county must have been referred to in section 13.

Section 14 of the Act empowers the County Council to borrow whatever may be properly charged upon them under section 13. But the question what can be so charged depends on the true construction of section 13, and section 14 does not in my opinion throw light upon its real meaning and effect. Section 19 is open to a similar observation. It is an addition to section 18, and authorises differential rates for the sales and leases there mentioned; then follow additional words, the precise effect of which is not easy to discover, but they do not in my opinion affect the construction of section 13. They seem to me to refer to the latter part of section 18, and to be applicable to cases in which agreements have been come to as there contemplated.

Sections 14 and 19 appear to me equally consistent with either interpretation of section 13, but that adopted by the Second Division leads to consequences which, to say the least, are very curious and anomalous, whilst the construction adopted by the Lord Ordinary is much more in accordance with good sense.

For the foregoing reasons I am of opinion that the appeal should be allowed, and the order of the Lord Ordinary be restored.

Interlocutors appealed from reversed, and interlocutor of the Lord Ordinary of 15th June 1900 restored, and appellants found entitled to costs in the House of Lords and Court of Session.

Counsel for the Pursuers, Reclaimers and Respondents—Lord Advocate (Graham Murray, K.C.)—Solicitor-General (Dickson, K.C.) Agents—Webster, Will, & Company, S.S.C., Edinburgh, and William Robertson & Company, Westminster.

Counsel for the Defenders, Respondents and Appellants—Haldane, K.C.—H. Johnston, K.C.—Constable. Agents—Bruce, Kerr, & Burns, W.S., Edinburgh, and Grahames, Currey, & Spens, Westminster.

## COURT OF SESSION.

Thursday, December 11.

### SECOND DIVISION.

[Lord Stormonth Darling,  
Ordinary.]

MOATSCHAPPIJ HOEK - VAN-  
HOLLAND *v.* CLYDE SHIPPING COM-  
PANY, LIMITED.  
THE "ARANMORE."

*Ship—Collision—Momentary Delay by Ship  
Placed in Difficulty through Wrong  
Manœuvre of Another—Prescribed Sig-  
nals not made—Presumption of Fault  
Held Rebutted—Repair—Liability  
for Collision.*

On a fine night a steamer, making 11 or 12 knots an hour, and a steam trawler, making three or four knots, were approaching each other "green to green." When they were between half and quarter of a mile apart the master of the trawler let his trawl down over the starboard side and proceeding on a port helm came round to starboard and shut out his green light and opened first his white light and then his red light to the steamer, steering to cross her bows. The mate of the steamer, who was in charge, when he lost the trawler's green light and saw her white light open, waited to see what she was doing, and on her red light opening he stopped and reversed his vessel's engines, and put her helm hard-a-port. A collision followed whereby the trawler was sunk. In an action of damages at the instance of the owners of the trawler against the owners of the steamer, held that the trawler was to blame, and (*rev.* judgment of Lord Stormonth Darling—*diss.* Lord Moncreiff) that the steamer was not to blame, in respect that the mate had acted with due promptitude, the interval between the opening of the trawler's white and red lights not having exceeded the short time to which he was entitled for consideration, when he had been put in a position of difficulty by an improper manœuvre on the part of the trawler; and that any presumption of fault on the part of the steamer, arising out of the fact that she did not give the prescribed blasts with her whistle to indicate that she was going to starboard and reversing, was rebutted by the fact that the signals, if made, would have been too late.

This was an action at the instance of Moatschappij Hoek-van-Holland, of Rotterdam, owners of the steam trawler "Fredrik Cornelis," and mandatories, against the Clyde Shipping Company, Limited, owners of the steamship "Aranmore," in which the pursuers sought to recover damages for the loss of the "Fredrik Cornelis,"

which was sunk by collision with the "Aranmore" off the Wigtownshire coast.

The pursuers pleaded—"(1) The collision in question being entirely due to the fault of the defenders, or of those for whom they are responsible, the defenders are liable to the pursuers for the loss and damage resulting to the pursuers therefrom. (3) *Esto*, that there was any fault on the part of the pursuers (which is denied), the defenders having been in fault, the pursuers are entitled to damages apportioned in terms of the rule in Admiralty cases."

The defenders pleaded—"(1) The said collision having been entirely due to the fault of the pursuers, the defenders should be absolved from the conclusions of the summons with expenses."

A proof was led before the Lord Ordinary sitting with a nautical assessor.

The following narrative of the facts is quoted from the opinion of the Lord Ordinary:—"The 'Fredrik Cornelis' was a steam trawler of 153 tons gross register. She was 106 feet long, and was manned by a crew of twelve hands. The 'Aranmore' is a screw-steamer of 1170 tons, is 241 feet long, and at the time of the collision was on a voyage from Plymouth to Glasgow with a crew of twenty-six hands. When she first sighted the trawler, nearly an hour before the collision, the latter was engaged in trawling near the scene of the collision, and was exhibiting the regulation lights for vessels of her class. By the time that the two vessels came within half-a-mile or thereby of each other the trawler lay  $1\frac{1}{2}$  points on the starboard bow of the 'Aranmore,' to which she was exhibiting her green light, her course being to the S.E., while the course of the 'Aranmore' was N.E. by N. The trawler had just taken in her net, and she then commenced to execute a manœuvre but for which the collision would not have occurred. Without waiting till the 'Aranmore,' which was going at a speed of 11 or 12 knots, had passed her, she paid out her trawl, and in order to keep the net clear of her propeller she had to come sharply round to starboard, changing her course from S.E. to N.W., and exhibiting first her white and then her red light to the 'Aranmore.' She did this (the trawl being down) at a speed of, I think, not more than four or 5 knots, but her engines were never stopped or slowed, and indeed she took no steps to avert the collision of which her manœuvre created an imminent risk, except by thrice giving one short blast of her whistle to indicate that she was going to starboard. The officer in charge of the 'Aranmore' was the second mate, and he saw what the trawler was doing. The night was fine, with bright moonlight, and the sea was moderate. He first lost the trawler's green light, then he saw her white light, and then her red. I think it is the result of the evidence that he did not take action till he saw the red light, and the action he took was first to stop and then reverse his engines, and to port his helm. During that interval of hesitation, which he excuses by saying that he wished

to see what the trawler was going to do, and that she might have stopped, the 'Aranmore' had come about a quarter of a mile nearer the trawler—a distance which at her then speed she would cover in about 1 minute 15 seconds. It is unsatisfactory that there is no evidence from the engine-room of the 'Aranmore,' except that of an engineer who happened to be a passenger, and who, when he heard the telegraph ringing, ran forward to the engine-room door. His evidence certainly negatives the statement in condensation 5, that the engines were not reversed till after the collision had occurred, but, on the other hand, it shows that the number of revolutions (18 to 24) was not sufficient to make any great impression on her speed. She struck the trawler aft of amidship, probably not more than 20 feet from the stern, and cut into her about 6 feet, so that a very little less speed, particularly with her helm hard-a-port and the additional cant to starboard caused by the operation of reversing, would have enabled her to pass clear astern. She did not sound any blasts with her whistle either to indicate that she was directing her course to starboard or that her engines were going full speed astern."

The evidence of the second mate of the "Aranmore" with regard to the action which he took, and the belief in which he acted was, *inter alia*, as follows:—"From the moment I lost the green light my view was that the (the trawler) was coming round and that a collision would take place. (Q) Why didn't you stop and reverse then?—(A) It was then I did it. (Q) No, you waited till the white opened and the red opened?—(A) Well, it just opened immediately."

The engineer of the "Aranmore" was not examined, but a scrap log-book kept by him was lodged in process and admitted by parties to be in his handwriting. In it the following entries appeared:—"Stop, 1.50 a.m., 31st March. A/S full, 1.52 a.m., Collided with trawler. Stop, 1.54 a.m."

The nature of the evidence otherwise sufficiently appears from the opinions of the Lord Ordinary and the Judges in the Inner House, *infra*.

The regulations for preventing collisions at sea provide, with regard to sound signals for vessels in sight of one another, as follows:—"A steam vessel under way, in taking any course authorised or required by these rules, shall indicate that course by the following signals on her whistle or syren, viz., one short blast to mean—'I am directing my course to starboard.' . . . Three short blasts to mean—'my engines are going full speed astern.'"

The composite light carried by steam trawlers in lieu of those carried by ordinary steam vessels is described as follows in the regulations for preventing collisions at sea:—"On or in front of the foremost head and in the same position as the white light which other steamships are required to carry, a lantern showing a white light ahead, a green light on the starboard side, and a red light on the port side, such lan-

thorn shall be so constructed, fitted, and arranged as to show an uniform and unbroken white light over an arc of the horizon of four points of the compass, an uniform and unbroken green light over an arc of the horizon of ten points of the compass, and an uniform and unbroken red light over an arc of the horizon of ten points of the compass, and it shall be so fixed as to show the white light from right ahead to two points on the bow on each side of the ship, the green light from two points on the starboard bow to four points abaft the beam on the starboard side, and the red light from two points on the port bow to four points abaft the bow on the port side."

On 5th March 1902 the Lord Ordinary (STORMONTH DARLING) pronounced the following interlocutor:—"Decerns against the defenders for payment to the pursuers of the sum of £2700 sterling in full of the conclusions of the summons: Finds no expenses due to or by either party, and decerns."

*Opinion.*—"The problem here is to determine the responsibility for a collision which occurred about 2 a.m. on 31st March 1901, a few miles to the south-west of Ailsa Craig, between the Dutch steam trawler 'Fredrik Cornelis' and the steamship 'Aranmore' of Glasgow, which unhappily resulted in the sinking of the 'Fredrik Cornelis,' with the loss of seven hands, including her master and mate.

"There is less conflict of evidence than often happens in collision cases, and the main facts may therefore be stated with tolerable certainty—[*His Lordship narrated the facts ut supra*] . . .

"In these circumstances the question is essentially one turning rather on good seamanship than on credibility of evidence, and for that reason I attach all the more importance to the opinion of the Trinity Master who sat with me on the case.

"The following are the questions which I addressed to him, and the answers which he returned—

"*Question 1.* Having regard to the fact that on the night of the collision there was clear moonlight and a moderate sea, and that the 'Aranmore' was in full view of the 'Fredrik Cornelis' for about an hour before the collision, was the 'Fredrik Cornelis,' in your opinion, to blame in executing the manœuvre by which her head was brought across the course of the 'Aranmore'?"

"*Answer.* 'The "Fredrik Cornelis" was, in my opinion, to blame for executing the manœuvre of altering her course from S.E. to N.W. when on the starboard bow of the "Aranmore," and distant a quarter-of-a-mile, by which her red light was suddenly exhibited, indicating that her course had been changed and leading across the course of the "Aranmore." There was clear moonlight, and the master of the "Fredrik Cornelis" may have assumed that having been visible to the "Aranmore" for fully an hour he might presume on altering his course when close to that ship. It would have been more seamanlike

to have waited until the ship had passed, and I cannot approve of his manœuvre.'

"*Question 2.* Having regard to the aforesaid conditions as to weather and sea, and that the 'Fredrik Cornelis' was in full view of the 'Aranmore' for about an hour before the collision, did the officer in charge of the 'Aranmore,' in your opinion, take all the steps which a prudent seaman ought to have done to avert the collision?"

"*Answer.* 'The "Aranmore" did not take prompt action to avert the collision by stopping and reversing when distant a quarter-of-a-mile, neither did she sound her port-helm signal, and signal for reversing engines full speed astern. The "Fredrik Cornelis" had been in sight for an hour, the weather was fine and clear, smooth sea, and clear moonlight, the steering powers of the ship were good, and in the weather recorded there was nothing to impede her turning circle under port-helm, or the reversing power of her screw. I consider the manœuvres of the "Aranmore" under the direction of her second mate were not those of a prudent seaman, or calculated to avert the collision.'

"These answers are in accordance with my own opinion. Looking to the conditions of weather and sea, it is impossible to say that this collision was a pure accident. Undoubtedly it ought not to have occurred. The primary cause was, I think, the sudden manœuvre by which the trawler changed her course from S.E. to N.W., regardless of the fact that the steamer was rapidly approaching within half-a-mile of her. Why she did not adopt the simple plan of waiting till the steamer had passed before putting down her trawl I cannot conceive, except on the supposition that her master considered it to be the 'Aranmore's' duty to keep out of his way whatever he might do. It is of course a misfortune that death has deprived the pursuers of his evidence, but there is probability, although perhaps not much reason, in the answer given by the first witness for the pursuers to the question, 'Don't you think you should have waited before shooting your nets till the steamer had passed?' His answer is, 'There are so many boats passing you might as well wait all night.' It is, I am afraid, according to human nature that, even when their own lives are at stake, men will doggedly go on with what they are doing rather than give way to somebody else whom they regard as bound to keep clear of them. It seems to me that, apart altogether from the regulations, the trawler was to blame for executing this sudden manœuvre.

"With regard to the 'Aranmore,' I do not overlook the fact that her second mate was placed in a position of some difficulty by the conduct of the trawler. If it could be said that after he saw what she was doing there was no time to avert the collision except by the exercise of more than ordinary skill or judgment, this defence would probably avail the defenders. But he admits that he saw what she was doing from the moment he lost her green light. If at that instant he had done what he pre-

sently did, it is, I think, certain that there would have been no collision. But he hesitated. There was probably not much more than a minute of hesitation, but it was enough to seal the fate of the trawler. I cannot accept the suggestion of the pursuers that he ought to have starboarded his helm. If he had done so I think he would have incurred a very serious responsibility, because he would have been attempting to cross the bows of the trawler. What he did was I think right, but he did it too late. Strictly speaking he ought also to have sounded his whistle to show that he was going to starboard and that he was reversing his engines. But the essential fault was that he ought to have stopped, reversed, and ported at once, instead of going on at full speed in the hope that the trawler might do something to avoid him.

"Both vessels being thus, in my opinion, to blame for the collision, and the admitted damages being £5750 in the case of the trawler, and £350 in the case of the 'Aranmore,' the result is that I give decree for £2700, and find neither party entitled to expenses. The finding as to expenses will not of course prejudice the pursuers' right to recover from the defenders one-half of the sums paid by them to the Nautical Assessor."

The defenders reclaimed.—The case was heard with a nautical assessor, Captain A. W. Clarke.

Reclaimers argued — The trawler alone was to blame. The speed at which she was turning would necessarily make the interval between the opening of her white and red lights very short, and the mate of the "Aranmore" being placed in a position of difficulty by her fault did not delay unduly, even if the danger should have been apparent when the white light opened—*Hine Brothers v. Clyde Trustees*, March 7, 1888, 15 R. 498, 25 S.L.R. 364; *The "Kwang Tung" v. The "Ngapoota,"* (1897) A.C. 391. The engineer of the "Aranmore" not having been examined, his scrap logbook could not be accepted as contradicting the weight of the evidence. By the time the "Aranmore's" engines were stopped and reversed and her helm put hard aport it was too late for any information by signal as to her movements to be of any use to the trawler.

Argued for the respondents—The sole blame was attributable to the "Aranmore"; the fact that she neglected to indicate her course by the prescribed blasts on her whistle relieved the trawler of responsibility. The engineer's logbook was good evidence against his own ship—*The "Singapore" v. The "Hebe"* (1866), L.R., 1 P.C. 378. The entries in that book being contemporary evidence should be relied on. According to those entries there was a considerable period between "stop" and "full speed astern." The "Aranmore" should have stopped and reversed the moment the trawler's movements became apparent, which was at latest when the white light was opened—*The "Nord Kap" v. The "Sandhill,"* (1894) A.C. 646; *The "Voorwarts" v. The*

*"Khedive"* (1880), 5 App. Cas. 876; *The "Stanmore"* (1885), 10 P.D. 134.

At advising—

LORD JUSTICE-CLERK—This case is not unattended with difficulty as regards the question whether both vessels were to blame, and I should not venture to differ from the Lord Ordinary unless, on a very careful consideration of the evidence, with the aid of the views of a skilled nautical assessor, my opinion was decided that a different view should be taken from that at which the Lord Ordinary arrived. In so far as the Lord Ordinary has found that the trawler was to blame, I entirely agree with him. The master of the trawler let his trawl down over the starboard side and steamed full speed ahead on a port helm, knowing that this would take his vessel directly across the course of a steamer at such a slight distance that they must cross one another within a very short space of time, if the approaching steamer was running at anything like the ordinary speed of most steam vessels. The danger of doing so was aggravated by two circumstances. First, the fact that the trawl was being set, which necessarily hampered the trawler in manœuvring, and second, the vessels being at the time green to green, the master of any approaching steamer was in the position of being entitled to assume that there was no danger under the maxim "green to green or red to red, perfect safety go ahead." I have therefore no doubt or hesitation in saying that the trawler was improperly handled in the circumstances.

As regards the steamer "Aranmore," her position was made exceptionally difficult by the circumstances to which I have referred. The mate, who was in charge, was bound to keep on his course as long as the trawler's green light showed on his starboard bow. Doing so, I think the evidence warrants the belief that when the trawler showed her red light it was a question of seconds as regards the time when the vessels would cross and whether a collision could be avoided or was inevitable. That the change from green to white light might not indicate a real change of course but might be attributable to a mere yaw of the trawler, was a thought which might well present itself to the mind of the mate of the "Aranmore," and this is the view of the nautical assessor. But the different colours in the trawler being all shown by one composite lamp, the transitions from one to another are necessarily more sudden than where the lights are not together, the coloured lights being on the sides of the vessel, and shielded from view by projecting boards until the vessel pays off a slight distance. The real question is whether there is ground for holding that the mate of the "Aranmore," on the red light opening to him, did not act with sufficient promptitude in putting his helm to port and stopping and reversing. Did he exercise such prompt decision as can be expected from a man of such good nerve and professional practice as justifies holding the position of responsibility in which he stands. Having considered all the evidence

I come to the conclusion that he did. I think his conduct falls within what was laid down in the case of the "*Kwang Tung*," that a seaman placed suddenly in a difficulty by the fault of another vessel must have time—it may be a very short time—for thought. The question turns then upon whether any momentary delay was as described in that case "a faulty delay." Accordingly it is not a question of requiring from every seaman placed by another in a difficulty that he shall be up to "the highest standard," as it was expressed in *Hine's* case, but a question of reasonable promptitude. It is certain that he did what was right. The case against him turns on the narrow question whether he did it sufficiently promptly. Now, I think there is evidence of a trustworthy character to the effect that the "Aranmore" was stopped and reversed fully a minute before the collision. The captain and the steward say they were awakened by the actions of the telegraph and engines, in their berths, and a ship's engineer who was on board as a passenger proves that the engines had made a dozen revolutions astern before the collision. That in the very short time a considerable amount of the way had been taken off is proved by a fact of real evidence, for but for a great reduction of speed it is certain that the trawler would have been cut in two, looking to the weight of the colliding vessel. I do not go into the evidence in detail, but only make this remark, that in all such cases the evidence as to time is very conflicting, but I am satisfied that the time must have been very short from the whole tenor of the evidence. As regards the engineer's log, I do not think it can be held to have much weight. It gives two exact periods making four minutes as applicable to events which I am satisfied were all crowded into a minute and a half at most. It was of course put down after an interval from memory, and it is open to this remark, that if it were correct the "Aranmore" must have gone into the trawler at nearly full speed, and the engines could not have gone astern till after the collision, which would be contrary to the weight of the evidence, oral and real in the case.

As regards the real evidence, it seems to be certain that the "Aranmore" remained locked in the trawler, this being done to keep her afloat as long as possible. Now, if she was only put astern after the collision that would have pulled her out of the trawler. Taking the log as evidence, I am of opinion that it is not correct, and is disproved by the evidence. Lastly, I do not think that any fault was committed in not signalling by whistle when the "Aranmore" was put to port, nor do I think that any signal by whistle was given by the trawler in time to be of any use. In this I am guided by the opinion of the nautical assessor. As regards the latter, I am not satisfied that any whistle signal was given except at a time when the master of the trawler had practically made a collision inevitable by going ahead on a port helm full speed. As regards the

former, no signal could be of any use. The whole attention of the mate was properly directed to avoiding or mitigating collision, and there was no time for sending information to the trawler by whistle which could be of any use.

Upon the whole matter I have come to the conclusion that the defenders are entitled to absolvitor.

LORD YOUNG—I am substantially of the same opinion. The only questions are questions of fact as to the cause of the collision and as to the amount of damage done to the vessels, and parties are agreed as to the amount of damage done to each vessel.

The question of fact on which parties are not agreed is, whether either or both, or if only one, which, vessel was in fault. Upon this question evidence has been led, and we have to consider that evidence in reviewing the judgment of the Lord Ordinary, with the aid of a nautical assessor, which the law permits, and indeed requires us to take. Having considered the evidence with that assistance, I am of opinion, as I understand your Lordship to be, in accordance with the view of the nautical assessor, that only one of the vessels was in fault, differing from the Lord Ordinary who has arrived at the conclusion upon the evidence that both were in fault. My opinion is that the trawler alone was in fault, and that the "Aranmore" and those in charge of her were not in fault, and therefore the judgment which divides the loss between them must be altered.

LORD TRAYNER—I agree with the Lord Ordinary in holding it to be clearly established that the trawler was in fault, but differ from him in thinking that the "Aranmore" was also in fault. The view I take of the case admits of brief statement. When the two vessels were from half to quarter of a mile from each other they were showing "green to green." So long as that position was maintained there was no danger of collision. The vessels when at the distance from each other which I have mentioned were advancing towards each other, the "Aranmore" at the rate of 11 or 12 knots an hour and the trawler 3 or 4 knots, and accordingly, that rate of speed being maintained, the distance between them would be covered in about two minutes or less. In these circumstances the trawler suddenly changed her course, shut out the green light, opened the white light, and instantly thereafter opened up the red light, throwing herself thus directly across the bows of the "Aranmore." I do not think that anything which the "Aranmore" could then have done would have enabled her to avoid the collision altogether. But what was done by the "Aranmore" was in accordance with the rules of good seamanship and the regulations for preventing collisions at sea. Instantly upon the opening of the red light the "Aranmore" stopped and reversed her engines and put her helm hard-a-port. The Lord Ordinary thinks the "Aranmore" to blame because her engines were not

stopped and reversed when the trawler opened up her white light, and says there was an interval between that and the opening up of the red, during which the mate of the "Aranmore" hesitated as to what he should do. But I think there was no hesitation, and certainly no undue hesitation. The interval between the opening of the white light and of the red must have been barely appreciable. The composite lantern of the trawler would change sooner than ordinary side lights, and the trawler was coming round on a sharp turn, and as our assessor said, the mate of the "Aranmore" was entitled to a second or two to see what the trawler was going to do for (the assessor was of opinion) the mate of the "Aranmore" was entitled to think that the opening of the white light was only the result of "yawing" on the part of the trawler, and no indication—no necessary indication—of a deliberate change of course. I agree in this. It has been frequently recognised by the courts of law, both here and in England, that when one vessel is placed in a position of peril or difficulty by the wrong manœuvring of another, the former is not bound to act instantaneously but has right (as was said in the *Kwang Tung* case) to "a short, but a very short time" to resolve upon his action and to give effect to it. I think the mate of the "Aranmore" acted with great promptitude, and that the collision, which in my opinion was rendered inevitable by the fault of the trawler, can in no way be attributed to fault or negligence on the part of the "Aranmore."

It was said on behalf of the trawler, however, that fault must be presumed on the part of the "Aranmore" because she did not give one blast with her whistle to indicate that she was going to starboard, or three blasts to indicate that her engines were reversed. But such presumption can be rebutted, and I think it has been. It may be the case that these blasts of the whistle were not given, but that does not change my opinion. What these blasts would have indicated an intention to do was in fact done. It was too late, and indeed useless, when the trawler opened up her red light to indicate anything by blasts of the whistle, it was best at once to do the thing, and I agree with our assessor, who says in his report that the want of these blasts in no way "affected the case," as not in any way contributing to what happened. The collision could not have been prevented by giving these blasts.

LORD MONGREIFF—I agree with your Lordships and the Lord Ordinary that the "Fredrik Cornelis" was undoubtedly in fault.

Your Lordships, however, hold, differing from the Lord Ordinary, that the "Aranmore" was not in fault. That view is practically supported by the Nautical Assessor whose assistance we had. On the other hand, the Lord Ordinary's opinion is fortified by that of the Nautical Assessor who sat with him.

I regret that we should not be unanimous in this case, but I am not satisfied

that the judgment of the Lord Ordinary is wrong, and I shall state very shortly my reasons for coming to this conclusion.

I fully recognise the authorities which have been cited to us, to the effect that if in a moment of extreme peril and difficulty caused by another ship those in charge of a ship do not act with the same promptitude and accurate judgment which in ordinary circumstances would be expected of them, allowance will be made for them, they will be allowed reasonable though necessarily short time to decide, and they will not legally be held responsible even if they adopt what proves to be a wrong course. But each case depends on its own circumstances, especially upon the means which the ship not originally in fault had of perceiving the course which the ship originally in fault intended to take. The cases in which a ship suddenly placed in such a position has been absolved will be found on examination to be cases in which there was a reasonable doubt as to the course of the approaching ship until it was too late to avert collision.

If in the present case the only indication that the trawler was about to change her course had been the disappearance of the green light, I should have had difficulty in holding that the "Aranmore" was in fault simply because the mate hesitated before deciding whether he should reverse and put his helm hard-a-port or not. But he had had a good view of the trawler for a long distance, and knew that she was fishing, and there is evidence, which I think sufficient, that in addition to the change of light from green to white, there were more than one blast from the trawler intimating that she was going to starboard, and that the first of these blasts was given when the vessels were at least between half and a quarter of a mile apart. Houtwitper, a seaman on board the trawler, says—"Three blasts from the whistle were given from the "Cornelis"—separate blasts, an interval between each. The first whistle was given about five minutes before the collision. The "Aranmore" was then from a quarter to half-a-mile off. It was a good three minutes before the next whistle was given, and the last was given about a minute before the collision." Unfortunately both the skipper and mate of the trawler were drowned, and we are deprived of the best evidence from that vessel. But the evidence quoted is strongly corroborated by the defenders' witness M'Laughlin, who was on the look-out on the "Aranmore" that night. He says—"I heard two blasts of the whistle—two separate blasts. (Q) May it have been more than that?—(A) It may have been. I was not paying much attention. I was more watching the trawler. There may have been more than two blasts, but I did not notice them. The first whistle was immediately after the trawler altered its course—just at the time I saw him coming round." He had already said—"At the time he altered his course he would be about a quarter of a mile or a little more from us. I saw him alter his

course to starboard. I could see his hull perfectly distinctly. When I saw him alter his course in that way I thought a collision was imminent;" and a little earlier in his evidence he says—"I observed him (the trawler) suddenly closing in his green light. At that time, as near as I can go, he was between a point and a-half and two points on our starboard bow. To my judgment the "Aranmore" would be a quarter of a mile or may be a little more from him at that time."

Further, for what it is worth, the entry in the log of the engineer of the "Aranmore" tells against that vessel, because it discloses an interval of two minutes between the order to stop the engines, 1:50 a.m., and the order at 1:52 to go full speed astern.

Now, if Black, the mate of the "Aranmore," not only saw the trawler's lights change from green to white, but also heard a blast from the trawler's whistle when the vessels were more than a quarter of a mile apart, he should have been in no doubt as to what the trawler intended to do, and if he had immediately reversed his engines and put his helm hard-a-port the collision would probably not have occurred. The trawler was struck only 30 feet from her stern, and as the "Aranmore" was going free and at a fair speed (while the trawler was encumbered with her trawl) she would have answered her helm quickly, and in the interval, short as it was, would have prevented collision. The trawler was not approaching stem on, she was coming round in a curve, and therefore there was all the longer time for the "Aranmore" to clear her.

From the evidence of the mate of the "Aranmore" it appears that he did not give the order to reverse followed by the order to put the helm hard-a-port until the vessels were within 200 yards of each other (as he puts it, between 2 and 3 lengths of the "Aranmore") by which time it was probably too late to avert the collision. But he knew or ought to have known at latest when the vessels were a quarter of a mile apart that the trawler was coming round and going to cross the "Aranmore's" bows, and that there was a risk of collision. Indeed, he says so—"From the moment I lost the green light my view was that he was coming round and that a collision would take place." And again—"When I saw him putting about I stopped the engines. I did so because I knew he was putting about, and he might be coming round, coming out towards me. When I got the red I immediately put her full speed astern. It was almost as clear as daylight." He was asked why he did not give the order to reverse when the trawler opened her white light. The explanation he gave was—"If he (the trawler) did stop there was no reason why I should alter;" and he says—"After I lost the trawler's green light there was an interval of time before I gave the order to reverse, but he was coming round so fast that it was done almost immediately. (Q) But you did not do it at

the moment?—(A) No, not at the moment. It was in the expectation that there might be some change in his speed that I did not give the order at once."

Now, this is just where I think he was to blame. In my opinion the trawler's intended course was clearly defined when the first blast was given and the green light disappeared, and the mate of the "Aranmore" should have been in no doubt as to what the trawler was doing. He says that he only heard one blast, and that when the trawler was only 2 or 3 lengths (130 to 200 yards) from the "Aranmore"; but in my opinion it is proved that at least one blast was given when they were at a greater distance apart than a quarter of a mile.

Now, no doubt the time was short, but if it be the case that the mate of the "Aranmore" should have been in no doubt as to the course of the trawler, he could and should have been able to avoid collision.

For those reasons, though necessarily with considerable doubt, I am not prepared to concur in the proposed judgment.

The Court recalled the interlocutor reclaimed against and assolizied the defenders from the conclusions of the action.

Counsel for the Pursuers and Respondents—Solicitor-General (Dickson, K.C.)—Spens. Agents—J. & J. Ross, W.S.

Counsel for the Defenders and Reclaimers—Salvesen, K.C.—Horne. Agents—Webster, Will, & Co., S.S.C.

*Thursday, December 11.*

SECOND DIVISION.  
HUTCHISON v. HUTCHISON'S  
TRUSTEES.

*Agent and Client—Expenses—Charging Order—Property Preserved—Law Agents and Notaries Public (Scotland) Act 1891 (54 and 55 Vict. cap. 30), sec. 6.*

The Law-Agents and Notaries Public (Scotland) Act 1891, sec. 6, enacts that where a law-agent has been employed to pursue or defend an action, the Court before whom such action has been heard may declare the law-agent entitled "to a charge upon and against, and a right to payment out of the property . . . recovered or preserved on behalf of his client by such law-agent in such action . . . for the taxed expenses of or in reference to such action."

An action was raised against a body of trustees for payment of an account alleged to be due by the trust estate. The trustees informed the beneficiaries that they were unable to resist the pursuer's claim, and that unless the beneficiaries sisted themselves as defenders they would raise an action of multiplepoinding. The beneficiaries sisted