

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal in the Action and Cross-action of the Greek Brig "Ilias" (Sclias, Mate) v. the steamship "J. M. Smith" (Eggleton, Master) from Her Britannic Majesty's Supreme Consular Court at Constantinople (in Vice-Admiralty); delivered 23rd June 1888.*

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Present :

LORD WATSON.

LORD HOBHOUSE.

SIR JAMES HANNEN.

SIR RICHARD COUCH.

[*Delivered by Sir James Hannen.*]

This is an appeal from the judgement of Her Majesty's Supreme Consular Court, Constantinople, in Vice-Admiralty, in an action arising out of a collision between the Greek brig "Ilias" and the British steamship "J. M. Smith," which happened on the night of the 21st and 22nd October 1886, in the Sea of Marmora.

The learned Judge of the Court below found the "Ilias" alone to blame.

The case for the "Ilias," as pleaded, was that she was on a voyage from Constantinople to Zante, that she was being navigated with all sail set between Heraclea and the island of Marmora, with a favourable wind from the north, when a steamer's masthead light was reported at a considerable distance; later on, when the steamer (the "J. M. Smith") was about four miles distant, her red light was reported. The "Ilias" continued her course, keeping the red light in view and watching it.

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The steamer also kept her course till she arrived at about half a mile distant from the "Ilias," when she was seen to change her course, shutting out her red light, and, immediately after, showing her green light and crossing the bows of the "Ilias" at a very short distance.

Seeing a collision imminent, and at the last extremity, the helm of the "Ilias," to ease the blow, was ported a little, but the steamer, at full speed, struck the "Ilias" at the aft rigging on her port side, and caused her to sink in a few minutes.

A charge was also made against the "J. M. Smith" of having deserted the brig, but this charge has not been persisted in, and it was, their Lordships think, properly withdrawn by the Appellant's Counsel.

For the "J. M. Smith" it was pleaded that, as she was proceeding up the Marmora, towards Constantinople, the "Ilias" was observed under sail at about five or six ship's lengths off about one point on the starboard bow of the "J. M. Smith"; immediately after, a faint glimmer of a green light was observed on the same bearing. That the order was immediately given to starboard, at once followed by the order "hard-a-starboard," and both these orders were obeyed.

Simultaneously with these orders the telegraph was rung to warn the engineer to stand by. That the "J. M. Smith" obeyed her helm and went to port, so as to avoid the "Ilias," but the green light of the "Ilias" was observed to disappear, and in a few seconds the red light appeared close under the bows of the "J. M. Smith." Before seeing the red light, orders were immediately given to stop and reverse; that, notwithstanding the engines were going full speed astern for about one minute and a half before the collision, the "J. M. Smith" struck

the "Ilias" abaft her mainmast on the port side, the bows of the steamer being considerably damaged.

The respective courses of these vessels are not given in the pleadings, but it appears from the evidence that the "Ilias" was sailing W. by S., and the "J. M. Smith" E.  $\frac{3}{4}$  N. These courses cross one another, though at a slight angle, and as the speed of the steamer was but little greater than that of the brig, there was risk of their meeting near the point of intersection.

The first question which arises is, with what lights open to one another did the vessels approach one another?

The statement in the pleadings of the "Ilias," that the red light of the steamer was seen at a distance of four miles, is no doubt exaggerated, but the evidence of the mate of the "Ilias" shows that the red light of the steamer was seen at a considerable distance. He states that upon seeing the red light (he does not give its bearing) he ordered "to go to the right for as to show "well our red light," and that he went a quarter of a point to the right. If this evidence is correct, and if the course thus altered was continued, the vessels would be approaching on parallel lines, and they would have passed red to red, and in that case the steamer must have starboarded her helm when near the "Ilias," and attempted to go cross her bows. On the other hand, the evidence for the "J. M. Smith" is clear and consistent, that, while still on her original course, the green light of the "Ilias" was seen on the steamer's starboard bow, from half a point to a point. To determine between these conflicting statements, their Lordships are compelled to look to the probabilities of the case.

It appears in the highest degree unlikely that the steamer should have starboarded to cross the

bows of the "Ilias" when they were closely approaching one another red to red.

It is not stated by the witnesses for the "Ilias" that, after her helm was ported the fourth of a point, she was steadied on that course; and, if the helmsman fell back the fourth of a point to her original course, the "Ilias" may have passed the point of intersection of the two courses just before the steamer reached it, and have brought her green light into sight on the starboard bow of the steamer. This was the view taken by the learned Judge below and his assessors, and their Lordships see no reason to think that this view of the facts is erroneous. But even on this supposition their Lordships are advised that the steamer ought to have stopped and reversed when the green light of the "Ilias" was seen. However this may be, the question remains whether those navigating the "J. M. Smith" can be excused for not having seen the "Ilias" sooner than they did. It is stated by Hall, the look-out man, that he did not see the "Ilias" till she was about six ship's lengths off, the length of the ship being 285 feet. He says he reported it, but his report was not heard by the mate. The mate, however, says that he saw the green light at a distance of two or three cable's lengths, and that he immediately ordered "starboard," and "hard-a-starboard" in a few seconds, and "stand by," to the engineer. It is evident from these orders that he considered himself in a position of dangerous proximity to the other vessel, and he had been placed in this position through the "Ilias" not having been seen sooner. Three causes for this are suggested,—“defective lights, “or lights placed in such a position that they “could not be seen, or to lights having been “put up at the last moment.” With regard to the first, it was admitted by the mate of the "J. M. Smith" that the green light he saw was

a good light, and no fault was found with the red light. As to the second complaint, that the position of the lights prevented their being seen, this seems intended to suggest that they were obscured by the sails. This, however, is not only not proved, but no questions were put to the witnesses of either vessel for the purpose of raising this objection to the lights of the "Ilias." There are, therefore, no materials upon which their Lordships can base any opinion adverse to the "Ilias" on this point. The same remarks apply to the charge that the lights were put out at the last moment.

Their Lordships are thus led to the conclusion that there was a defective look-out on the "J. M. Smith," and that through this she was brought into such a position with regard to the "Ilias" that a risk of collision arose.

A steamer ought not to be navigated, with reference to a sailing vessel, on the assumption that the movements of the latter can be counted on with mathematical certainty. Allowances must be made, not merely for contingencies that can be foreseen, but also for possible errors on the part of the sailing vessel, to which a sufficiently wide berth should be given to prevent those in charge being frightened into a wrong manœuvre.

But while holding the "J. M. Smith" to blame, their Lordships cannot acquit the "Ilias." It is admitted that her helm was ported, and after the green light of the steamer was seen. It is said that it was only a little, and in the last extremity, but it was sufficient, and soon enough to bring the "Ilias" across the bows of the "J. M. Smith," for the blow was received by the "Ilias" on her port side aft.

Their Lordships are, therefore, of opinion that the "Ilias" was to blame in not keeping her course.

On the whole case their Lordships will humbly advise Her Majesty that the judgement of the Court below be varied, and that both vessels be condemned, and that each party do bear his own costs, both on the appeal and on the proceedings in the Court below.

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