

Thursday, February 21.

SECOND DIVISION.

[Lord Hunter, Ordinary.

CROWN STEAMSHIP COMPANY,
LIMITED (OWNERS OF THE
"CROWN OF CORDOVA") v.
EASTERN NAVIGATION COM-
PANY, LIMITED (OWNERS OF
THE "ETHELREDA").

Ship—Collision—Fog—End-on Rule—Excessive Speed—Division of Loss—Regulations for Preventing Collisions at Sea, Articles 16 and 18—Maritime Conventions Act 1911 (1 and 2 Geo. V, cap. 57), sec. 1 (1).

Two steamers were approaching each other in a dense fog, not quite end-on. One of the vessels was at the time proceeding at full speed, contrary to Article 16 of the Regulations for Preventing Collisions at Sea. On seeing her loom, but before her outline was distinct, the captain of the other vessel directed the course of his ship to starboard on the assumption the vessels were end-on to each other, although as matter of fact they did not come within that case as laid down by Article 18 of the Regulations. The captain of the other vessel, almost simultaneously, seeing the approaching vessel to be on his starboard bow, went to port. The ships collided.

Held that both vessels were in fault.

Held further, that the vessel which was proceeding at full speed ought to bear two-thirds of the damage and the other one-third.

The Regulations for Preventing Collisions at Sea, 1897, *inter alia*, provide—Article 16—"Every vessel shall, in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed, having careful regard to the existing circumstances and conditions. A steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines and then navigate with caution until danger of collision is over." Article 18—"When two steam vessels are meeting end-on, or nearly end-on, so as to involve risk of collision, each shall alter her course to starboard, so that each may pass on the port side of the other. . . . The only cases to which it" (Article 18) "does apply are when each of the two vessels is end-on, or nearly end-on, to the other—in other words, to cases in which by day each vessel sees the masts of the other in a line, or nearly in a line, with her own . . ."

The Crown Steamship Company, Limited, registered owners of the steamship "Crown of Cordova," *pursuers*, sued the Eastern Steam Navigation Company, Limited, registered owners of the steamship "Ethelreda," *defenders*, for £26,000 as damages sustained by the "Crown of Cordova" in a collision with the "Ethelreda."

The *facts* are given in the opinion of the

Lord Ordinary (HUNTER), who after a proof on 13th July 1917 assozied the defenders.

Opinion.—"About ten minutes past four p.m. on Monday 24th April 1916 a collision took place off the south-east coast of Ireland between the s.s. 'Crown of Cordova' of Glasgow and the s.s. 'Ethelreda' also of Glasgow. The 'Crown of Cordova' is a vessel of 3471 tons gross and 2238 tons net registered tonnage, while the tonnage of the 'Ethelreda' is 2218 gross and 1403 net.

"On 23rd April 1916 the 'Crown of Cordova' left Glasgow on a voyage to Santa Rosalia in the Gulf of California. On the afternoon of 24th April she passed the Tuskar Lighthouse off the south-east coast of Ireland and then proceeded on a course west-by-south magnetic. There was a strong south-south-west wind blowing with a moderately heavy sea. According to her own case and evidence the weather became foggy about four o'clock. The 'Ethelreda' was proceeding upon a course east magnetic. It may be taken as common ground that the density of the fog was such that the vessels did not come into sight of each other until they were only about $\frac{1}{4}$ mile apart.

"Notwithstanding the fog the 'Crown of Cordova' was proceeding at full engine speed until after she sighted the 'Ethelreda.' I am advised by the assessor that this was imprudent, and that there was nothing in the direction and strength of the wind or in the state of the sea to justify this course being followed. According to the first paragraph of Article 16 of the Regulations for the Prevention of Collisions at Sea, 'Every vessel shall in a fog, mist, falling snow, or heavy rainstorms, go at a moderate speed, having careful regard to the existing circumstances and conditions.' No attempt was made by the master to take off speed when the 'Crown of Cordova' entered the fog at four o'clock. His explanation for not doing so is that if he had reduced his speed his vessel would not, owing to the state of wind and sea, have steered properly and might have become unmanageable. The wind, however, was not blowing a gale, but only a strong breeze some points on his port side. The evidence in support of the pursuers' contention as to the probability of his vessel becoming unmanageable appeared to me to be neither satisfactory nor convincing.

"The engine speed of the 'Crown of Cordova' is about 9 knots an hour, and there was a $1\frac{1}{2}$ -knot tide behind her. The master and other witnesses for the vessel 'Crown of Cordova' put her speed, immediately prior to the time when her engine speed was altered, at about 5 or 6 knots an hour over the ground. This is manifestly a mere estimate. Looking to the distances, according to the log, covered by the vessel in the immediately preceding 24 hours, and in 55 minutes between 2 o'clock and 2:55, I think that the master underestimates the speed, but the assessor advises me that even the admitted speed of 5 or 6 knots was in the circumstances excessive.

"It appears to me to be impossible to say that the excessive speed of the 'Crown of Cordova' was not the cause, or at all events

a contributory cause, of the collision, but I think that upon their own evidence those navigating that vessel committed at all events one other error.

"According to the log kept by the chief officer of the 'Crown of Cordova,' at 4.5 p.m. a vessel's whistle was heard on her starboard bow giving one blast, at 4.7 the order to stand by engines was given, and at 4.8 p.m. slow ahead. The second paragraph of Article 16 of the Regulations provides that 'A steam vessel hearing, apparently forward of her beam, the fog-signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines and then navigate with caution until danger of collision is over.' If the entry in the log be taken as strictly accurate there would appear to have been a contravention of this regulation. The master of the 'Crown of Cordova,' however—and in this he is supported by the mate—says that when the blast was heard at 4.5 he thought that it might be proceeding from the Barrels Lightship, and he sent the chief officer who was beside him on the flying-bridge to the chartroom to find out definitely what the signal from the lightship was. He gave no order to the engine-room either to stop or slacken speed. His uncertainty about the whistle increased the obligation imposed upon him, at all events, to reduce speed in the prevailing fog. Before the mate returned the captain says he heard a second whistle, and immediately thereafter he sighted the 'Ethelreda,' and gave an order to the engine-room to stand by, starboarded his helm, and sounded two short blasts to indicate that he was directing his course to port. There is no reference to this second blast in the log-book, and I think it not improbable that a short blast given by the 'Ethelreda' to indicate that she was directing her course to starboard was mistaken by the 'Crown of Cordova' for a full blast. Those on board the latter ship do not admit to having heard the short blast, but in my opinion it was given. In his deposition the master of the 'Crown of Cordova' says that when the 'Ethelreda' was first seen she was three points on his starboard bow. In his evidence before me he put it at one or two points. I prefer the evidence given for the 'Ethelreda' that when the vessels first came in sight they were practically end on. On sighting the 'Ethelreda' the master of the 'Crown of Cordova' as I have just indicated ordered the engines to slow ahead and starboarded his helm. On record the pursuers (*i.e.*, the owners of the 'Crown of Cordova') say that when first sighted the two steamships were proceeding upon courses which if maintained would have enabled them to pass starboard to starboard in complete safety. In the argument submitted to me for the 'Crown of Cordova' it was maintained that the vessels were on crossing courses. I am advised by the assessor that in neither view was the 'Crown of Cordova' justified in the circumstances in not stopping or in going to port. One minute after the order 'slow ahead' the order 'full astern' was given, in another minute the

collision occurred. The 'Ethelreda's' stem struck the 'Crown of Cordova' a practically right-angled blow about opposite the foremast. Before the latter vessel cleared the former she was struck in at least two other parts, but neither of the latter blows was struck by the stem of the 'Ethelreda.' These blows were struck by the bow just about the break of the forecastle. At the time of the collision the 'Crown of Cordova' had in my opinion much more way upon her than the 'Ethelreda.' If the latter vessel had been going at the speed attributed to her by the former it seems probable that the plates of the 'Crown of Cordova' would have been driven through.

"It remains to be considered whether or not there was fault on the part of those navigating the 'Ethelreda' that caused or contributed to cause the collision. The complaint against that vessel that she was being navigated at an excessive speed fails. For some considerable time prior to the collision her engines were reduced to half speed and she had the tide against her. Full engine speed gives about 8 knots through the water, and half speed, as spoken to by the chief engineer, about 4 or 4½ knots. As the tide was against her, her speed would be under the former of these two figures. Prior to sighting the 'Crown of Cordova' her speed was probably under 4 knots, and she was sounding fog-signals. When the 'Crown of Cordova' was sighted the master of the 'Ethelreda' at once stopped her engines and directed his course to starboard, giving a short blast to indicate that he had followed this course. In his evidence before me the captain said that when the 'Crown of Cordova' was first sighted her loom seemed straight ahead, and by porting he intended to give the vessels more room to pass port to port. Reliance was placed by the pursuers on the deposition of the master as contradicting his evidence in Court. An examination of the deposition shows that what he said was that he heard a steamer's whistle right ahead and about the same time a steamer was observed looming through the fog, but that afterwards he alleged that when he first saw the outlines of the 'Crown of Cordova' she had his vessel on her starboard bow. There is no necessary inconsistency between this evidence and that given before me. The loom of the approaching vessel would be visible before her outlines, and the change of the latter's course to port would soon bring about the position to which he speaks. If the vessels when they sighted each other were apparently end on, or practically so, I am advised by the assessor that the manœuvre adopted was prudent. Even on the assumption of the vessels being on crossing courses, it would not have been prudent in the fog and with the vessels so close together for the 'Ethelreda' to have kept her course and speed. Observance of Article 16 of the Regulations became more imperative than the sailing rule requiring her to keep her course and speed. From the chief engineer's log it appears that the engines of the 'Ethelreda' were stopped at 7½ minutes after 4 and ½ minute after they were put full astern.

This latter order was given by the master when, after signalling that he was going to starboard, he got the 'Crown of Cordova' signal that she was going to port. Each vessel then signalled the other that she was going full astern, but if I read the evidence aright the signal was first given and the manœuvre executed by the 'Ethelreda.' At the time of the collision the way was almost off that vessel. After the collision the 'Ethelreda' stood by for some time before resuming her course, but the 'Crown of Cordova' disappeared in the mist and was not sighted.

"For the reasons I have given, responsibility for the collision rests with those navigating the 'Crown of Cordova,' and the defenders therefore fall to be assolized from the conclusions of the summons."

The pursuers having reclaimed, the case was heard by the Judges of the Second Division along with a nautical assessor.

Argued for the reclaimers—The wrong navigation of the "Ethelreda" was alone to blame for the collision. Any fault there might be on the part of those responsible for the "Crown of Cordova" was entirely due to the error committed by the "Ethelreda" in not keeping on her course when the loom of the "Crown of Cordova" became visible, and in not continuing to do so until she could make out the latter's outline as required by Article 18 of the Regulations for Preventing Collisions at Sea. The vessels were not quite end-on, there being a difference of a point between their courses. But even if the latter vessel had been swinging there was still time to avoid a collision. The speed of the vessels had nothing to do with the collision as they sighted one another at a distance of a quarter of a mile. When the "Ethelreda" saw a ship ahead and was uncertain of that ship's course she ought to have stopped instead of porting her helm—"The Rona," (1873) 2 Asp. M.L.C. 182; *Windram v. Robertson*, (1905) 7 F. 665, per L.P. Dunedin at p. 674, 42 S.L.R. 602; "The Constitution," (1864) 2 Moore P.C. (N.S.) 453 at p. 455. Counsel also referred to Marsden on Collisions, 399-400.

Argued for the respondents—The "Crown of Cordova," in steaming at full speed in a dense fog and thus acting contrary to the Regulations was to blame for the collision. The fact that owing to her construction she was unable to proceed at the reduced speed which the circumstances demanded did not suffice to absolve her from responsibility for any ill results that might ensue therefrom and she was bound to take the consequences—"The Campana," [1901] P. 289, per Gorell Barnes, J., at p. 294. The "Crown of Cordova" was in fault for the following reasons—proceeding at full speed in a dense fog, delaying for two minutes after sighting other vessel before standing by, failure to stop, improperly starboarded her helm under Article 27 of the Regulations, failure to take way off the vessel. Article 18 of the Regulations applied here as the vessels were nearing each other practically end-on, and the "Crown of Cordova" failed to comply with it—"The

Constitution" (cit.) per Dr Lushington at p. 456; "The Rona" (cit.), at p. 184; "The Jesmond," (1871) L.R., 4 P.C. 1; Marsden on Collisions, p. 399; "The Vandomora," [1891] A.C. 1, per Lord Herschell at p. 4. The proximate causes of the collision were the "Crown of Cordova's" excessive speed and her subsequent faulty manœuvres. Counsel also cited *Crawford v. Granite Steamship Company, Limited*, (1906) 8 F. 1013, 43 S.L.R. 732; "The James Joicey," 1908 S.C. 295, 45 S.L.R. 216.

LORD JUSTICE-CLERK—In this case the question arises whether in the collision which took place between the "Crown of Cordova" and the "Ethelreda" on the 24th of April 1916, off the south-east coast of Ireland, fault should be held to have lain entirely with the "Crown of Cordova" or entirely with the "Ethelreda," or whether both vessels are to be held to blame.

So far as the "Crown of Cordova" is concerned, I see no reason to interfere with the result at which the Lord Ordinary has arrived. The state of the weather was admittedly foggy, and we see from the records kept at the Tusker Lighthouse that, from noon on the day in question till after the collision, the state of the weather was marked foggy according to the official notification. It is quite true that that was some 10 miles or thereby away from the actual place of the collision; but there is no question on the evidence that for some considerable time before the collision the "Crown of Cordova" was in fog, and that she did not reduce her speed as required by the Regulations—it is admitted that she certainly did not stop; and, in my judgment, the fact that the "Crown of Cordova" proceeded, as the evidence shows she did, is sufficient to establish (as the Lord Ordinary has found) that she was in breach of Regulation 16 in respect of her speed when there was a condition of foggy weather.

That had two results. Not only was the speed of the vessel too great, but the capacity of those on board her to hear signals and to appreciate properly what the signals meant was affected while her engines were going at the speed at which I think it is proved that they were going. And it may well be that that condition of things explains why they did not hear the signal of the "Ethelreda" to the effect that she was going to starboard, because I think the evidence is sufficient to show that such a signal was, in point of fact, given by the "Ethelreda."

The Lord Ordinary has found that the "Ethelreda" was not at fault. In disposing of that question he has proceeded mainly, if not altogether, on a consideration of the evidence relating to her speed. But in addition to the question of speed, the question was also argued before us whether the "Ethelreda" was entitled to alter her course as she did, relying on Article 18 of the Regulations, which sets out the conditions under which the end-on rule comes into operation. I think the question as to the speed of the "Ethelreda" is not free from difficulty, and I am not sure that I should

have been able to accept the view that she had sufficiently cleared herself even as to speed. But, on the other hand, I am satisfied by the argument which was addressed to us on behalf of the "Crown of Cordova" that the only conditions under which Article 18 applies did not exist at the time when the "Ethelreda" altered her course.

Article 18 begins with these words, "When two steam vessels are meeting end-on, or nearly end-on, so as to involve risk of collision, each shall alter her course to starboard so that each may pass on the port side of the other." And then in a later paragraph, which was added after some experience of the original rule had been had, it is provided that the only cases to which the rule applies are "when each of the two vessels is end-on, or nearly end-on, to the other—in other words, the cases in which by day each vessel sees the masts of the other in a line, or nearly in a line, with her own, and by night to cases in which each vessel is in such a position as to see both the sidelights of the other." The interpretation clauses of that rule make no express provision to meet the case of vessels approaching one another in a fog. And I am rather inclined to think that the true view is that which was indicated in some authorities that were cited to us, that in such a state of matters Article 16 is the *regula regulans*.

It is admitted by the master of the "Ethelreda" that when he gave the order to port the helm he had not seen any more than the loom of the "Crown of Cordova," and he draws what seems to me to be quite a clear distinction between what he calls the loom of the vessel and what he calls the "outline" of the vessel. Having regard to his evidence, I think it is quite plain that when he gave that order he did not fall within these words "each vessel sees the masts of the other in a line, or nearly in a line, with her own." He did not see any of the masts. And whether the assumption he formed was correct or incorrect, I think that he was not justified in proceeding on the view that he had seen the masts in a line or nearly in a line. Therefore I am of opinion that he was in fault in giving the order to port the helm before all the conditions which make Article 18 apply were in existence, and that he was not entitled to act as if Article 18 did in fact apply.

The result is, I think, that the captain of the "Ethelreda" was in fault in altering his course without stopping, in a fog at a time when there was no justification for his doing so. I am unable to see that that alteration did not contribute to the collision, although I cannot go so far as Mr Sandeman wished us to go and say that it was the sole cause which brought it about. I think, however, that it was a breach of the general rules of good seamanship which contributed to the collision, and upon that ground, without expressing any view for the present as to the relative amount of blame of the two ships, I think the Lord Ordinary was wrong when he absolved the "Ethelreda" altogether from blame, and that we should find that the collision was brought about by fault on the part of both vessels.

LORD DUNDAS—I have arrived at the same conclusion as your Lordship and for the same reasons.

LORD SALVESEN—It seems to me that this is a case in which we are able to reach the result which your Lordship has indicated without considering any evidence except the evidence from each of the vessels as bearing upon the question of that vessel's fault.

The "Crown of Cordova" admittedly proceeded for some considerable time in a fog which was so dense that another steamer could not be seen at a greater distance than a quarter of a mile with her engines going full speed ahead. I think it was the duty of the master of the "Crown of Cordova" when he entered a fog of that description to reduce his speed to a moderate speed in terms of Article 16 of the Regulations, and that he was on his own confession guilty of that breach of duty. The rule, as I read it, is imperative, and it is intended to avoid just such an accident as happened here. If the master had reduced his speed by stopping his engines as soon as he entered the fog, which was the only practicable way of reducing speed, two advantages would have been gained from the point of view of avoiding collision with another vessel—(first) he would have given his own and the other vessel more time to manoeuvre when they came in sight of each other, and (second) he would have heard more clearly and more frequently the fog blasts sounded by the other vessel, and so have been able to locate her position more accurately.

The master and crew of the "Crown of Cordova" attempted to make out that while the engines were going at full speed the vessel herself was not moving through the water at a speed exceeding 5 knots. I think they have entirely failed to show that. In almost similar conditions as regards weather and tide the patent log of the vessel showed prior to 2:55 p.m. that the vessel had been proceeding at a rate approximately of 9 knots through the water; and it is proved here, contrary to the statement of the master, that the tide, so far from retarding him, was actually helping him at the time. No doubt he had the wind pretty nearly ahead and a heavy sea, but it was not a wind of exceptional violence, but only what mariners call "a fresh breeze;" and I think it is not unreasonable to suppose that the effect of the wind in retarding his movement would be counterbalanced by the influence of the tide. The conclusion I reach upon the evidence is that during the period between 2:55 and the time of the collision the "Crown of Cordova" must have gone at a rate over the ground of about 9 knots an hour, and consequently must have covered a distance of approximately 11 miles during that time.

Now that was according to all the authorities a clear breach of Article 16, and I agree with the Lord Ordinary when he says that it is impossible to say that that excessive speed was not the cause, or at all events a contributing cause, of the collision.

With regard to the speed of the other vessel, the "Ethelreda," I think on her own

showing she makes a better case than the "Crown of Cordova," because it is in accordance with all the evidence adduced from her that her engines were going at half-speed from about 2.45, but she had a following sea and a strong wind helping her on, and assuming her half-speed to have been in the neighbourhood of 5 or 6 knots, she must have been going somewhere about that rate over the ground, taking into account that she had the tide against her. That would mean that she would cover the distance to the place of collision, which I have already fixed as 11 miles from the point outside the Tuskar where the "Crown of Cordova" set her course, a distance approximately of 8 knots, and so her speed must have been somewhere about 6 or 6½ knots. I agree with the Lord Ordinary that even such a speed under the circumstances that prevailed, under which neither vessel could see the other at a greater distance than a quarter of a mile, was in excess of what is permitted by Article 16. The error of the "Ethelreda" in that respect was certainly less serious than that of the "Crown of Cordova," because the "Ethelreda" was proceeding with her engines at half-speed, or at a rate of two-thirds of the full speed of the vessel.

What happened was that the vessels came in sight of each other when they were about a quarter of a mile apart. The "Crown of Cordova's" case is that, seeing the other vessel on her starboard bow about two points, the captain at once starboarded her helm to give the other vessel more room to pass. That was a perfectly proper manœuvre, because on the courses on which the vessels were approaching they were on slightly crossing courses, there being a difference of a point between the courses. And if anything may be taken to be accurate in the logs of these two vessels (which logs were very badly kept, and are full of omissions that it is difficult to account for and of errors which are not satisfactorily explained), I think the courses which they set at particular points may be taken to be so.

Accordingly the master of the "Crown of Cordova," seeing the vessel on his starboard bow, was entitled to give the other vessel a little more room to pass by starboarding his helm and going to port. Unfortunately very shortly before, possibly seconds before, he gave the order to starboard his helm the other vessel had ported her helm, and the result was that they collided, the "Ethelreda," which apparently came faster round on her port helm, striking the "Crown of Cordova" almost at a right angle. This is common ground. That collision could not have occurred but for the two manœuvres which were made almost simultaneously. If either had kept her course and speed and the other had ported or starboarded no collision would have occurred. The misfortune was that they both acted, and, according to the view which they took of the situation, although it was an erroneous view so far as the "Ethelreda" was concerned, they acted correctly as seamen.

The fault of the "Ethelreda" was that she acted too quickly, and acted on an assumption which was not in accordance

with the facts. Her captain, when he saw only the loom of the other vessel and before even the officer on the bridge beside him had seen her, ordered his helm to be ported. Now he says that he did that because he judged that the two vessels were end-on. He might think that the "Crown of Cordova" was right ahead of him, but whether she was end-on to him he could not possibly say until he saw her outline, and by that time he had been committed to his port helm and hard-a-port helm at that. I think that was a grave and serious error, and but for it this collision would never have happened. I do not think it reflects on the seamanship of the captain except to this extent, that he acted before he ascertained exactly, as he ought to have done, what the course of the approaching vessel was. But I think it is proved that in fact the vessels never could have been end-on to each other so as to justify that order. They were on courses which were at least one point apart, and the nautical assessor has advised us that when vessels are approaching at such an angle one could never have the condition of things prescribed in Article 18, namely, that the three lights at night of each vessel will be seen by the other. Accordingly not merely did the master of the "Ethelreda" act before he had ascertained the position, but he acted on the erroneous assumption that the two vessels were approaching end-on when in fact they were not approaching end-on.

That I think is sufficient to condemn the "Ethelreda" as at all events contributing to the collision. Whether her fault was as great as the fault of the "Crown of Cordova" is a matter upon which we are to hear argument following upon our judgment, and on which I do not express any opinion just now. But I think that the porting of the "Ethelreda's" helm at the point of time when that was done was a cause of the collision, and but for that the collision would never have occurred, just as it may be said that the collision would have been averted but for the fact that the "Crown of Cordova" starboarded her helm and so neutralised the effort of the "Ethelreda" to pass port to port.

I think it is right to express an opinion on one other point which was very strongly put by Mr Watson but which is not noticed by the Lord Ordinary. Mr Watson says that upon the evidence at all events of his crew the porting of the "Ethelreda's" helm took place before the starboarding of the helm of the "Crown of Cordova." And he says that it was gross fault on the part of the "Crown of Cordova" to starboard her helm when she heard—or ought to have heard—the single short blast which was given by the "Ethelreda" intimating that she had ported her helm to go to starboard. It is not proved that that single blast was heard on board the "Crown of Cordova," although there was nothing to prevent them hearing it, but it may have been mistaken for a long blast. What appears to me to be the most important consideration is that the two manœuvres were practically simultaneous, that each cap-

tain acted—the captain of the “Crown of Cordova” when he saw the outline, and the captain of the “Ethelreda” when he saw the loom of the approaching vessel. The captain who acted wrongly when he saw the loom acted first, but the other vessel, assuming that she did not hear or that she misinterpreted the single blast from the “Ethelreda,” acted with propriety if, as I believe to be the fact, the “Ethelreda” was at least a point on her starboard bow. If the vessels had continued their courses no doubt they would have passed clear, but nevertheless it was a seaman-like thing to do to give greater room to a vessel approaching in that fashion, and the captain could scarcely have anticipated that the “Ethelreda” whose duty it was to keep her course, would have run across his. The misfortune is that by going at the great speed that he did he had given himself a very short time in which to manœuvre, with the result that he put himself and the other vessel in great difficulty as to what was the proper course to adopt under the circumstances which occurred.

I have no hesitation in agreeing with your Lordship that in this case both vessels were to blame for the collision.

LORD GUTHRIE—The Lord Ordinary holds it proved that when the vessels first came in sight of each other they were practically end on. But he condemns the “Crown of Cordova” for two faults, namely, excessive speed and failure to stop or slacken speed when she heard a single blast, which turned out to be from the “Ethelreda,” although the captain of the “Crown of Cordova” thought it might have come from the Barrels Lightship. It is not necessary to decide the question as to whether the vessels on sighting each other were or were not end-on or nearly so in order to find that the “Crown of Cordova” was in fault, and I agree that so far as the “Crown of Cordova” is concerned the Lord Ordinary has arrived at a correct result.

In regard to the “Ethelreda” I do not proceed upon a question of speed. I think it is sufficient to hold, with your Lordship in the chair, that the “Ethelreda” erred by directing her course to starboard at a time when she was not in a safe position to make any manœuvre. But it is said that, even if that were so and she proceeded on a mere guess, she turned out to be right, because she has proved, as the Lord Ordinary holds, that when the vessels sighted each other they were end-on or nearly end-on. I do not think this would free her from fault, although it might be a fault which did not in the legal sense contribute to the accident. But I think the “Ethelreda” has failed in the proof which she undertook. The Lord Ordinary unfortunately gives no reason for the conclusion at which he has arrived.

I agree with Lord Salvesen that the just result of the evidence is to show that the vessels when they sighted each other were neither end-on nor nearly end-on within the meaning of Rule 18.

Counsel were then heard on the apportionment of damages.

Argued for the reclaimers—The case had now assumed the character of cross-actions. The error of the “Crown of Cordova” in proceeding so fast contributed to the accident by creating an emergency, but the “Ethelreda” in manœuvring wrongly failed to act properly in that emergency. As a result the two ships should be found jointly liable according to the Maritime Conventions Act 1911 (1 and 2 Geo. V, cap. 57), sec. 1 (1) (a). Counsel also cited “*The Peter Benoit*,” (1915) 13 Asp., M.L.C. 203.

Argued for the respondents—Three-fourths of the damage should be laid upon the “Crown of Cordova” and one-fourth upon the “Ethelreda.” The initial fault was traceable to the former vessel, and she increased the damage done by her excessive speed at the moment of the impact—“*The Rosalia*,” [1912] P. 109; “*The Sargasso*,” [1912] P. 192; “*The Bravo*,” (1912) 12 Asp. M.L.C. 311, per Sir S. Evans, P., at p. 313.

LORD JUSTICE-CLERK—We think that the “Crown of Cordova” should bear two-thirds, and “Ethelreda” one-third of the damage.

The Court recalled the interlocutor of the Lord Ordinary, found both vessels jointly to blame for the collision, found that the loss sustained by the owners of each vessel ought to borne by the owners of the “Crown of Cordova” to the extent of two-thirds, and by the “Ethelreda” to the extent of one-third, and found no expenses due to or by either party.

Counsel for Pursuers and Reclaimers—Sandeman, K.C.—C. H. Brown. Agents—Smith & Watt, W.S.

Counsel for Defenders and Respondents—Hon. W. Watson, K.C.—Gentles. Agents—Boyd, Jameson, & Young, W.S.

HIGH COURT OF JUSTICIARY.

Friday, March 8.

(Before the Lord Justice-General, Lord Mackenzie, and Lord Skerrington.)

MONTGOMERIE v. MACKENNA.

Justiciary Cases—War—Statutory Offences—Military Service Acts—“Regular Minister”—Denomination Believing Unscriptural the Having Clergymen Attached to Separate Congregations—Military Service Act 1916 (5 and 6 Geo. V, cap. 104), sec. 1 (1) and First Schedule.

A sheriff-substitute decided that an itinerant preacher, appointed *ad vitam aut culpam* by a religious denomination which believed it unscriptural to have clergymen attached to separate congregations, who, however, devoted his whole time to the duties as such preacher, and was paid a salary dependent upon voluntary contributions, was not a regular minister in the sense of the Military Service Act 1916, First Schedule (4).