

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of the S.S.  
" Diana " of the Austrian Lloyd Steamship  
Company v. the S.S. " Clieveden " of New-  
castle, from Her Britannic Majesty's Supreme  
Consular Court, Constantinople ; delivered  
14th July 1894.*

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Present :

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

Shortly after mid-day of the 19th October 1892, and in clear weather, the Austrian steamship " Diana," and the British steamship " Clieveden," met and collided in the river Danube, at or near the point where the Sulina arm diverges from the St. George's arm of the river. The Sulina arm which runs a separate course eastwards from that point until it reaches the Black Sea, branches off from the north side of the St. George's arm, and commences with an artificial cut, more than three quarters of a mile in length, and about 400 feet in width, measuring from bank to bank.

Throughout the upper half of its length, the water of the cut in question is much deeper to the south of mid-channel than to the north of that line, where it gradually shoals out until it reaches a mud-bank ; and the breadth of available waterway depends upon the draught of the vessels navigating it. The length of the " Diana " was 270, and her breadth of beam

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35 feet; whilst the "Clieveden" was 250 feet long, and 37 feet across her beam. Each vessel was a little over 1,000 tons burthen, and was drawing  $16\frac{1}{2}$  feet of water. For ships of that draught, the waterway of the upper half of the cut, during average low water, did not exceed from 180 to 200 feet in width, and was confined to the south of the mid-channel line.

At one point, about 250 feet below its divergence from the St. George's arm, the available waterway of the cut is, for a very short distance, greatly reduced in width, by shoal water on the north. For vessels with a draught of  $16\frac{1}{2}$  feet, it is not wider, during average low water, than 120 feet at that point. The evidence shows that, on the day of the collision, the water of the Danube was exceptionally low; and, although there are not sufficient data for a precise calculation, it must, in the opinion of their Lordships, be assumed, that the width of the navigable channel, at the point in question, was, at that time, appreciably less than 120 feet. It is also established by the evidence that, at the upper end of the cut, and for some distance above it, there is a cross current from north to south, which makes it impossible to keep the head of an ascending steamship steady, without the aid of a port helm.

The "Diana" was on her way down the river, with a two-knot per hour current in her favour, and with the intention of descending the Sulina arm. The "Clieveden" was ascending that arm against the same current, on her way to a port above. The two ships appear to have first sighted each other, across the land, when they were about three miles apart; and, from that time until the collision occurred, they continued in sight, although, owing to a curve in the river, their hulls did not become mutually visible, until the distance between them was considerably

less than a mile. The proper course for two steamships approaching each other under such circumstances, in any part of the channel where there is room for them to pass, is to meet port to port, the descending vessel keeping on the south, and the ascending vessel on the north of the channel. The evidence from both ships makes it apparent that, from the time when they first came in sight, it was the deliberate purpose of each to pursue her course without stopping until she met and passed the other.

At the time when the "Diana" and the "Clieveden" first came in sight of each other, a tug, with four craft in tow, was slowly ascending the Sulina arm, about a mile ahead of the "Clieveden." She moderated her speed, in order to allow the tug and her tows to get clear of the cut before she overtook them. The "Diana" also saw the position of the tug, and slowed, so as to permit the tug to pass her before she entered the cut. The tug accordingly met and passed the "Diana" in the St. George's arm, at a point somewhat less than half-a-mile above the entrance to the cut; and, at that moment, the evidence appears to their Lordships to show, that the "Clieveden" must have reached a point somewhat more than one-third of a mile below the entrance to the cut. From these points, the two vessels went on their way, with the result that they came into collision at the entrance to the cut, immediately after the stern of the "Clieveden" had cleared the narrow passage already described,—her stem striking the port side of the "Diana" nearly at right angles. At the instant of collision, the "Diana" was heading to the south-east, and somewhat across the stream, that position being apparently due to her having turned her engines astern. Amid much uncertainty, two things appear to their Lordships

to be tolerably certain. The first of these is, that at the time when the tug passed the "Diana," it must have been clear to both vessels that, if they both continued to advance they would meet near or in the narrow passage; and the second, that, at the time when the "Clieveden" struck her, the "Diana" was on the south side of the channel, and in the water which she was entitled to occupy, if she was justified in pursuing her course.

The "Clieveden" maintains that the collision was wholly attributable to the fault of the "Diana," upon these two grounds. In the first place, she contends that it was the duty of the "Diana" to stop and wait above the entrance to the Sulina cut, until the "Clieveden" had passed through it. In the second place, she alleges that the "Diana," when two or three ship lengths above the entrance to the cut, executed a wrong manœuvre, by first starboarding her helm, and thereby opening her starboard bow to the "Clieveden," so as to indicate that she meant to cross the bows of the "Clieveden," and to pass down between that vessel and the north bank; and then suddenly changing her course, and sheering back to the south.

The "Diana," on the other hand, maintains that the "Clieveden" was solely to blame for the disaster. She attributes the collision (1) to the failure of the "Clieveden" to stop and wait below the narrow neck of navigable water near the top of the cut, until the "Diana" had cleared it; and (2) to the "Clieveden" having, just before the collision, rendered it inevitable, by changing her course from the north to the south side of the channel.

The case thus presented in argument involves two separate questions. The first of these is, whether it was the duty of one of these ships to

stop and wait until the other passed ; and, if so, upon which of them that duty was incumbent? The second relates to their mutual charges of faulty manœuvring, at the time when they had come within a few ship lengths of each other. In considering the first question, their Lordships enjoy the advantage of having the main facts necessary to its determination ascertained beyond reasonable dispute. But, in so far as it bears upon the second question, the evidence from the two ships is conflicting, and, if it be reconcilable at all, cannot be reconciled without giving the witnesses on either side credit for a considerable amount of exaggeration.

In discussing the first of these questions, both parties relied, with equal confidence, upon Article 32 of the Regulations applicable to the Navigation of the Lower Danube, which contains, *inter alia*, this provision, — “ When a vessel “ ascending the river finds itself exposed to “ meeting a vessel descending, at a point which “ does not afford sufficient breadth, she must “ stop below the passage till the other vessel has “ cleared it ; and if the ascending vessel should be “ actually in the passage as the other approaches “ it, the descending vessel must stop above until “ the passage is clear.”

It is a comparatively easy matter for a ship steaming against a two-knot current to come to a dead-halt, without stopping her engines, and without losing her steerage way. But a ship descending with the current cannot, by stopping her engines, and without reversing, reduce her speed below two knots an hour ; and, when her speed is reduced to that limit, she drifts, and her helm practically loses all control over her movements. These considerations afford an obvious reason for requiring that, in the circumstances to which the first part of the rule refers, the ascending shall give way

to the descending vessel. In their Lordships' opinion, that part of the rule becomes imperative, whenever an ascending ship, approaching "a point which does not afford sufficient breadth" has notice that, if she proceeds, she will be exposed to the risk of meeting a descending ship at or near that point. The second part of the rule is not, in their opinion, meant to come into operation, except in cases where the ascending ship has reached the point of danger, and has actually begun to navigate the contracted passage, before any such notice was conveyed to her.

The Sulina arm may fairly be described, throughout its whole length, as a narrow channel, its waterway being more or less contracted at various points in its course. That a "narrow pass" is not, within the meaning of the Regulations, the same thing with a passage which does not "afford sufficient breadth" is evidenced by the terms of Article 36, which provides for one steam vessel overtaking and passing another "in a narrow pass." But their Lordships entertain no doubt, and their view was confirmed by the opinion of their assessors, that the short neck of contracted waterway, just below the entrance to the Sulina cut, did not, on the day of the collision, afford sufficient breadth to permit two vessels of the size and draught of the "Diana" and the "Clieveden" to navigate it at the same time with safety. They are not prepared to affirm that the channel below that point, though somewhat contracted, came within the scope of Article 32. They were advised by their assessors, in whose opinion they concur, that the "Clieveden" would have been justified in proceeding up the north side of that channel, if she had stopped short of the narrow neck, leaving sufficient room for the "Diana" to pass her on the south.

Their Lordships are of opinion that the "Clieveden" could not, except through negligence, have failed to observe that, by advancing as she did, she would probably if not certainly encounter the risk of meeting the "Diana" at or near the point of danger. It was therefore her plain duty to stop and wait before she reached that point. No doubt, her master states that it would not have been "prudent" for the "Clieveden" to stop her engines. But the only reason which he assigns for that view is "because we intended to go out of the other channel before the other ship came in." That the "Clieveden" acted in gross violation of her duty in endeavouring to press through the narrow neck before the "Diana" could reach it, does not appear to their Lordships to admit of reasonable doubt. That she was maintaining an undue rate of speed, for the purpose of attaining that object, is evidenced by the fact, that, although she was going against the current, with her engines reversed, at the moment of contact, she, after collision, had still sufficient way on to push aside the stem of the "Diana," and proceed upstream.

The "Clieveden" being clearly to blame, it remains for determination whether the other colliding vessel can be acquitted of contributory fault; and, upon that point, their Lordships have been unable, upon a careful consideration of the evidence, to come to the conclusion that the "Diana" was free from responsibility.

Their Lordships attach no importance to the allegation of the "Clieveden" witnesses to the effect that the "Diana" manœuvred so as to indicate that she meant to cross the bows of the "Clieveden" and go down the north side of the cut. In order to get into her proper position on the south side of the cut, it was necessary for the "Diana," whose course had

been down the middle line of the St. George's arm, to make some use of her starboard helm; and the probable, if not the inevitable result of her doing so, owing to the cross-current which prevailed at that part of the river, would be to make her head unsteady, and at times to expose her starboard instead of her port bow to the "Clieveden." That fact ought to have been known to those who were navigating the "Clieveden." It is difficult to suppose that they really believed the "Diana" was crossing to the north side of the channel; and, if they did entertain the belief, it was in the circumstances without justification.

It does not appear to their Lordships to be doubtful, that, although the "Clieveden" was clearly wrong in forcing her way first through the narrow neck, it became the equally plain duty of the "Diana" to refrain from any attempt to exercise her right of precedence, whenever the intention of the "Clieveden" to violate the regulations became reasonably apparent. And they cannot, taking into account the evidence given by witnesses from the "Diana" herself, come to the conclusion that she fulfilled her duty in that respect. According to these witnesses, they observed that the "Clieveden" was coming up the cut at a high speed, and that she maintained her speed up to and beyond the point where she ought to have stopped and waited. The "Diana" paid no heed to these indications. Her captain says, "Even if there had been another steamer alongside the 'Clieveden,' it would have been safe and practicable for them to come out, and a third to enter at the same time, with the precautions taken by 'Diana' to enter, to go slow with her engines." Accordingly she went on, intending to pass the "Clieveden,"



port to port, whether the latter vessel had cleared the neck or not; and she did not stop and reverse, until she saw that the "Clieveden" was coming straight into her. That, in the opinion of their Lordships, was an unseamanlike and an unwarrantable proceeding. The "Clieveden" could not, in the then state of the river, enter and pass upwards through the neck, without coming so far towards the south side of the channel as necessarily to interfere with the course of a vessel of similar size going down that side.

Being of opinion that both vessels were in fault, their Lordships will humbly advise Her Majesty to reverse the orders appealed from; to pronounce a finding to that effect; to order that no costs be allowed to either party in the Court below; and to remit the cause for farther procedure in terms of the finding. There will be no costs of this appeal.

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