

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of the
Owners of the S.S. "Macedonia" v. J. C.
Diricq, from the Supreme Consular Court of
Constantinople; delivered 1st April 1898.*

Present :

THE LORD CHANCELLOR.

LORD HERSCHELL.

LORD MACNAGHTEN.

SIR RICHARD COUCH.

SIR FRANCIS JEUNE.

Nautical Assessors :

CAPTAIN JAMES KIDDLE, R.N.

CAPTAIN RICHARD DYER, R.N.

[*Delivered by Sir Francis Jeune.*]

This is an appeal from the Supreme Consular Court of Constantinople sitting in Vice-Admiralty, which, on a rehearing, reversed a previous decision. The case was in the first instance heard before the Acting Judge sitting with assessors, and on the rehearing it was heard before two learned Judges who were not assisted by assessors as their presence was not requested by either party.

The collision which was the subject of the action took place at a little after 5 a.m., on the 8th August 1895, at the entrance to the Golden Horn off Seraglio Point between the *Macedonia* a steamship 365 feet long, and 2,520 gross tonnage, and a lighter which was the foremost of two heavily laden lighters then being towed by the *Salambo*, a steam tug. The *Macedonia* had shortly before left her moorings on the Stamboul

side of the Golden Horn near the bridge, and proceeded to the Sea of Marmora. The *Salambo* with the two lighters in tow, the three vessels together occupying a space of about 360 feet, was making her way from off Leander Tower with the intention of entering the harbour of Constantinople between Seraglio Point and two vessels, the *Apollo* and the *Venus*, which were lying at the Austrian buoys to the northward of that Point. There was a current down the Bosphorus running at the time at a rate which their Lordships think may be taken as about two knots. Off Seraglio Point the current divides, one portion running with a gradually diminishing force into the Golden Horn. The effect of this current was that the *Salambo* and her tows would in the ordinary course of navigation be compelled to keep up their heads in a northerly or north-westerly direction against the current until a certain point in the entrance to the harbour was reached, when the turning of the current to the westward would enable them to keep their heads, and also their course, in that direction. So far there is no dispute in the case.

But there is a material dispute as to the respective positions of the Appellants' and Respondent's vessels when they were first seen by each other. It is common ground that the collision took place somewhat to the west of south from the *Venus*, and their Lordships think, on the evidence, that its place was nearer to the *Venus* than to the shore. In the opinion of their Lordships the true effect of the evidence is to show that the *Macedonia* and the *Salambo* observed each other at about 800 yards distance, and when they were practically equidistant from the place of collision. It would seem to be clear, especially having regard to the evidence produced on behalf of the *Macedonia* that at the place of collision the

current, though probably it had begun to turn to the westward had not altogether lost its southerly direction. In this state of circumstances, it appears to their Lordships most material to enquire, whether the *Salambo* and her tows or any part of them were on the starboard bow of the *Macedonia* at or near the time when the vessels first observed each other.

The evidence on behalf of the Respondents is clear and consistent on this point. Their Preliminary Act describes the port bow of the *Macedonia* as slightly open, and their Petition is to the same effect. All the evidence from the *Salambo* and her tows speaks of seeing the port side of the *Macedonia*, and it is particularly to be observed that the two men called from the last lighter both state they saw the *Macedonia's* port side, the second of the two who was at the helm, and, therefore, in the best position to see if any part of either lighter was on the starboard bow of the *Macedonia*, exactly describing the situation by saying that as the *Macedonia* started to turn he saw her starboard side very little. If this evidence be correct not only the *Salambo*, but also both her tows, were on the port bow of the *Macedonia*, when the *Macedonia* and the *Salambo* first became apparent to each other. The independent evidence from the *Venus* and *Apollo* does not appear to their Lordships to have been specially directed to this point, but there is certainly nothing in that evidence to shew that the *Salambo* when first seen was on the starboard bow of the *Macedonia*, on the contrary her position as marked by the boatswain of the *Venus* puts her well on the *Macedonia's* port bow. How is this met by the evidence on behalf of the *Macedonia*? Her Preliminary Act states that the other vessel when seen was "bearing right ahead." In her Petition it is stated that the steam tug with two lighters

in tow "was observed right ahead almost end "on." The official log contains the phrase "observed tug with two lighters in tow right "ahead." The Chief Officer's log says "tug "reported right ahead" adding however the words "setting to the southward." The evidence from the ship with the exception of that of the Captain is in substantial agreement. The third officer speaks of the tug and two tows as "nearly ahead coming down to us;" the carpenter as "right ahead slightly on starboard "setting down to the Point," one seaman says "I noticed a tug and two lighters, lighters a little "to S. of tug, starboard bow slightly open," another says "I saw tug and two lighters coming in opposite direction little to starboard bow," and the Chief Officer not only says "I reported "a tug right ahead a shade on the starboard "bow," but adds in answer to the Court, "tug "and barges were in fore and aft line, if night "we should see all three lights." The Captain alone, as it appears to their Lordships, places the *Salambo* somewhat more definitely on the *Macedonia's* starboard bow. He says "I noticed "a tug and two lighters ahead or nearly quite, "he was coming right into the harbour. I "watched him for a few seconds and I saw him "set off our starboard bow *i.e.* to the south" The three independent witnesses, a pilot and two boatmen, called on behalf of the *Macedonia*, do not appear to have observed the relative position of the vessels till a time considerably after their first seeing each other. It appears to their Lordships that not only is this evidence, so far as it states or suggests that the *Salambo* and her tows got on the starboard bow of the *Macedonia*, a departure from the statement in the preliminary act and the petition of the *Macedonia*, and also somewhat faint in contradiction of that on behalf of the *Salambo*, but that it conveys an

impossibility in describing the tug, and it may be added, her tows also, as ahead and end on. It would seem clear that so long as the *Salambo* was in the southerly current, and she was so, as has been pointed out, up to the time of the collision, she could not have been end on to the *Macedonia*, much less she and her tows have been seen by anyone on the *Macedonia* end on in a direct line.

The probabilities also appear to their Lordships to be in favour of the *Salambo's* story. If she even got on to the starboard tow of the *Macedonia* there is no imaginable reason why she should have endeavoured to drag her tows up against the current across the bows of the *Macedonia*. On the other hand to suppose that the *Macedonia* starboarded, and quickened her speed though the *Salambo* and her tows were on her port bow does not carry with it an equal semblance of improbability. It may well have been thought as the *Salambo* had been coming to some extent to the south, that before her course became one to the west there would be time for the *Macedonia* to get across her bows.

This finding of fact is one which appears to have commended itself to the minds of the two learned Judges who reheard the case. Their Lordships in agreeing with them, have not failed to give due weight to the important consideration, that the learned Judge who heard the case and had the advantage of seeing the witnesses must, their Lordships think, though his language as reported is not quite clear as to the time of which he was speaking, be taken to have considered that the *Salambo* was, at or soon after the time she was first seen a little to the starboard of the *Macedonia* and her tows still more on that bow of the *Macedonia*. As regards the absence of assessors on the rehearing, there does not appear to their Lordships

to be any similar reason for hesitation, as the above conclusion is one of fact, and does not depend on nautical experience.

The effect of this conclusion appears to their Lordships clear as to the conduct of the *Macedonia*. She cannot be justified in starboarding, and in increasing her speed in order to endeavour to pass across the bows of vessels which were at the time on her port bow, although it might have been thought that their subsequent course would enable this manœuvre to be effected with success.

It appears clear also, on this state of the facts, that the *Salambo* was not wrong in porting even supposing she did so when the *Macedonia* was first observed. Their Lordships are not, however, by any means certain that she did in fact port more than was necessary to keep her head up against the current, until just before the collision.

It is, however, also alleged on behalf of the Appellants that the *Salambo* should have stopped as soon as the starboarding of the *Macedonia* showed that there was risk of collision. But a consideration of the circumstances of the moment appear to show that this allegation is not well founded. Having regard to the action of the *Macedonia* in reversing, it appears to their Lordships highly doubtful whether a collision would have been averted in fact; and if the tug stopped long enough to allow herself and her tows to be carried southward by the current, and so clear the *Macedonia*, their Lordships think it may well be doubted if the tug could have recovered herself and her heavy tows before they drifted upon Seraglio Point. The captain of the *Salambo* may also reasonably, as it appears to their Lordships, have expected that the *Macedonia* would rectify her mistaken course of starboarding towards them, as in fact she did though too late.

This conclusion renders it unnecessary for their Lordships to decide what view should be taken of the conduct of the *Macedonia* if it had appeared to them that the *Salambo* or her tows were on the starboard bow of the *Macedonia*, and, therefore, that the *Salambo* had wrongly ported. It would, in that case, have been a matter for grave consideration whether the *Macedonia* ought not, under the circumstances, to have stopped, which she probably could have done, as she had shortly before, while still in the western current, or, at least to have abstained from increasing her speed, especially as it was the latter proceeding which, in their Lordships' judgment, was the main cause of the collision. It is of great importance that large vessels in making their way out of such a harbour as the Golden Horn should pay careful attention to the smaller craft in their vicinity, especially to tugs with their tows.

Nor is it necessary to consider a point decided in one though not in the other of the Courts below, whether the place in question constitutes a narrow channel within the meaning of Article 21.

Their Lordships, therefore, are of opinion that this appeal should be dismissed with costs, and they will humbly advise Her Majesty accordingly.
