

The Ship "Imo" - - - - - *Appellants*  
v.  
La Compagnie Générale Transatlantique - - - - - *Respondents*  
La Compagnie Générale Transatlantique - - - - - *Appellants*  
v.  
The Ship "Imo" - - - - - *Respondents*  
(*Consolidated Appeals.*)

FROM

THE SUPREME COURT OF CANADA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 22ND MARCH, 1920.

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*Present at the Hearing :*

VISCOUNT HALDANE.  
LORD DUNEDIN.  
LORD ATKINSON.  
THE LORD JUSTICE CLERK.

*Nautical Assessors :*

ADMIRAL SIR R. NELSON OMMANNEY, K.B.E.  
COMMANDER CABORNE, C.B., R.N.R.

[*Delivered by LORD ATKINSON.*]

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La Compagnie Générale Transatlantique, a French Company, are the owners of a ship named the "Mont Blanc." The Southern Pacific Whaling Company, Limited, are the owners of a ship named the "Imo."

On the 6th December, 1917, at about 8.45 in the morning, these two vessels collided in the harbour of Halifax, Nova Scotia. The "Imo" was outward bound in ballast, the "Mont Blanc" inward bound, heavily laden with high explosives. By the collision the "Mont Blanc" was set on fire. Her cargo ultimately exploded with the most disastrous results. Many persons, including the Captain, Chief Officer, and the highly-skilled pilot

of the "Imo," were killed, a portion of the city of Halifax wrecked, and the ship herself blown to pieces. The "Imo" was a steel single-screw steamship belonging to the port of Christiania in Norway, 5,041 tons gross and 3,161 tons net register, fitted with triple-expansion engines of 424 horse-power nominal. She was 430 feet long, 45 feet beam, her draught 22·2 inches, and her speed 11 to 12 knots. She was bound for New York, was employed in carrying food to Belgium, and is in the proceedings occasionally styled the Belgian ship or Belgian Relief ship. The "Mont Blanc" was also a single-screw steamship, registered at St. Nazaire, of 3,121 tons gross and 2,252 net register. She was 330 feet long and 40 feet beam; her draught on the day of the collision was 20·5 inches aft and 19·5 inches forward, and her full speed was about 7½ to 8 knots. The "Imo" was therefore the larger, more powerful and faster vessel of the two, and being in ballast was much lighter than the "Mont Blanc," which was heavily laden. At the time of the collision the weather at the part of the harbour where it took place was clear, though slightly hazy somewhat higher up, and those on board both ships admit that there was no wind or very slight wind, and no tide of any force.

The land on the north-east side of the harbour is called Dartmouth; on its opposite or south-western side the shore is styled the Halifax side. Along this latter shore are erected piers numbered, proceeding upwards from 2 to 9 inclusive, a sugar refinery, a dockyard, a dry dock and other buildings. At Pier No. 9, which is something over 1 mile from Pier No. 2, the Halifax shore bends considerably to the westward. The opposite shore is rather irregular in outline.

Just opposite No. 9 a cove called Tuft's Cove indents it, and some distance above this cove the land juts out towards the Halifax shore, forming a kind of blunt hill called Turtle Head. Above this hill the harbour opens out into a considerable expanse of water, forming what is called the Bedford Basin. In this basin in December, 1917, several ships had, under Admiralty regulations, assembled for the purpose of being convoyed to their respective destinations. The "Imo" was one of those ships. She was on and before the 6th December, the day of the collision, anchored in the western part of the basin.

The "Mont Blanc," whose ultimate destination was some French port, was on the morning when the collision took place seeking to make her way to this basin for the same purpose, namely, to get convoy. The reach of the harbour from Pier No. 2 upwards to the basin, though admittedly a narrow channel within the meaning of the 25th of the Regulations for Preventing Collisions at Sea, is in fact of considerable width. At its narrow part it is called the Narrows, but even in this reach at the place where the collision occurred it is 500 to 600 yards wide. This being the breadth of the Narrows, the stretch of water between mid-channel and each of the bounding shores would be 250 yards, *i.e.*, 750 feet, so that each incoming and outgoing ship would, in the absence

of obstructions, have ample room to steam to her destination exclusively through her own water. Again, as the "Imo's" length was 133 yards and that of the "Mont Blanc" 110, the former ship might have 100 yards of her length in the "Mont Blanc's" water and at the same time 33 yards of her length in her own, and the "Mont Blanc" might on the other hand have 20 yards of her length in her own water and 90 yards of it in the "Imo's" water. The mid-channel being an imaginary line, these facts may perhaps account to a great degree for the conflict in the evidence of the witnesses, some of whom observed the movements of the ships from different points on the Halifax shore, as to the precise position of the place of collision, namely, whether it was in mid-channel or some distance on the Halifax side of this imaginary line.

The action out of which the present appeal and cross-appeal have arisen was brought by the owners of the "Mont Blanc" to recover \$2,000,000 in respect of the damage done to their ship by the collision, and the defendants, the owners of the "Imo," counterclaimed to recover the like sum for damage done to their ship.

An enquiry into the circumstances attending the collision was held in the Wreck Commissioner's Court at Halifax before Mr. Justice Drysdale, a Justice of the Supreme Court of Nova Scotia, assisted by two nautical assessors. The action, already referred to, was subsequently tried before the same learned Judge, when only one witness, whose evidence he considered of little value, was examined orally. It was then agreed between the parties litigants that the evidence taken before the Wreck Commissioner's Court should, with that of the one witness examined orally, be taken as the evidence given in the action upon the issues therein raised. That may have been, on the whole, a prudent, it certainly was an economical, course. It has, however, these disadvantages. Much, if indeed not the greater part, of the evidence is irrelevant to those issues; and in addition, no precise issues having been knit in the proceedings before the Court of the Wreck Commissioner, the evidence which would be relevant to the important points in controversy in the action has not been elicited so fully, or with the same precision and directness as it, doubtless, would have been had it been given orally on the trial of the action. In the result Mr. Justice Drysdale held that the "Mont Blanc" was alone to blame. The owners of the "Mont Blanc" appealed direct to the Supreme Court of Canada against this decision as in this, an Admiralty case, they were entitled to do. The Chief Justice and Mr. Justice Idington were of opinion that the "Mont Blanc" was alone to blame; Mr. Justice Brodeur and Mr. Justice Mignault were of opinion that the "Imo" was alone to blame, and Mr. Justice Anglin that both ships were to blame. In this division of judicial opinion an order was made allowing the appeal, reversing the judgment of Mr. Justice Drysdale, finding that both ships were to blame, directing that the damages should be assessed accordingly; and further ordering that the respondents, the owners of the "Imo,"

should pay to the appellants, the owners of the "Mont Blanc," the costs incurred by these latter in the Supreme Court of Canada, but that no costs incurred in the Exchequer Court of Canada should be paid to either party.

From that judgment an appeal to this Board has been taken by the owners of the "Imo," and a cross-appeal by the owners of the "Mont Blanc." Having regard to these facts it is but right that the evidence given on both sides should be examined by this Board critically and at length. The case of the owners of the "Mont Blanc," the plaintiffs in the action, as set forth in their printed case, is comparatively clear and simple. They have the advantage of having alive and available as witnesses to sustain it the members of the ship's crew, charged with the duty of navigating their ship, in addition to the skilled pilot who was taken on board. According to this case the "Mont Blanc" came to anchor on the evening of the 5th December, 1917, much lower down the harbour than the Narrows, got under way at 7.30 next morning, and proceeded up the harbour, passing the "Highflyer" at about 100 metres distant on the Dartmouth side, and of course in her own water, and heading up the harbour for Purple Head. Those on board her allege that they first observed the "Imo" at the upper end of the Narrows; that she appeared to them to be just leaving the Bedford Basin; to be nearer to the Halifax than to the Dartmouth side; to be heading across the course of their ship; to be bearing 2 to 2½ points on the latter's port bow, and having the starboard side of the "Mont Blanc" open to her. They further allege that on seeing the "Imo" in this position they put the helm of their ship a little to port in order to approach nearer to the Dartmouth side, sounded one short blast upon her whistle, and caused her engines, which had been at half speed ahead, to be put to slow speed ahead. To this signal they allege that the "Imo" replied by sounding on her whistle two short blasts, and as that signal would indicate, changed her course a little towards the Dartmouth shore; that thereupon in a few seconds the "Mont Blanc" again sounded one short blast, ported her helm a little more to bring her also closer to the Dartmouth shore, and stopped her engines. Whereupon the "Imo" again replied to this signal by sounding two short blasts on her whistle. Owing to these manœuvres it is alleged that the two vessels approached to within 150 metres of each other, the "Imo" still showing to the "Mont Blanc" her starboard side and heading to cross the latter's course; so that a collision then became imminent; that thereupon the "Mont Blanc" took the only course open to her to avoid this collision, namely this: she put her helm hard a starboard, and went to port, that being heavily laden she maintained some little speed, answered her helm and went to port, bringing the two ships on parallel courses, starboard side to starboard side; that the "Mont Blanc" kept her engines stopped; and that the two ships might have passed each other safely, but that the "Imo" then sounded three blasts on her whistle, ported her helm, put her engines full

Stem/

speed astern, which, her propeller being a right-handed one, swung her head round more to starboard. The "Mont Blanc" then for the first time put her engines full speed astern, but in 20 to 30 seconds the ~~stern~~ of the "Imo" struck the "Mont Blanc" at a right angle about the first hold, and cut into her a considerable distance. The spot where the collision occurred was about mid-channel, or if not, a little to the Halifax side thereof and a little to the seaward of pier No. 6.

It is practically not disputed that the distance of the "High-flyer," as she lay at anchor, from Purple Head was  $1\frac{1}{2}$  miles, and that the place of collision, whether in the mid-channel or a little to the Halifax side of it, was midway between these objects,  $\frac{3}{4}$  mile from each. It is alleged on behalf of the "Mont Blanc" that at the time of the collision pier No. 9 was open to her, bearing about one point on her port bow; that she was heading to a point between that pier and pier No. 8; that her head was by the force of the collision diverted to port from  $1\frac{1}{2}$  to  $1\frac{3}{4}$  points; that just before the collision the two ships were only about 150 metres apart; that the "Imo" was then crossing the "Mont Blanc's" course, in the direction of the Dartmouth shore, though the ships were never quite end to end; that she did not at this stage reverse her engines and go full speed astern, because such a manœuvre would have precipitated a collision, but took the only course open to her under the circumstances to avoid this result. As she did not reverse her engines and go full speed astern, the burden of proving that the omission to do so was good seamanship would seem to rest upon her. See *City of Berlin* (1908), P. 110. That case, unlike that of the *Khedive* (5 A.C. 876), was not decided on any imperative rule touching the reversing of engines, but on an Article similarly worded to Article 29 of the Regulations of 1910, merely providing that nothing in the rules should exonerate any vessel or the owner, master or crew thereof, from the consequences of any neglect to carry lights or signals or to keep a proper look-out, or of the neglect of any precaution which might be required by the ordinary practice of seamen or by the special circumstances of the case. There a steamship going down the river Elbe, and seeing three lights of a steam tug a little on her port bow, ported to give the tug more room, thereby bringing herself over to her proper starboard side of the channel, but the tug starboarded and got on to the starboard bow of the steamship, whereupon the latter slightly starboarded and steadied, bringing the lights of the vessels green to green at one-half to three-quarters of a mile distant, and about a point and a half upon her starboard bow. The tug then ported back again and while crossing the bows of the steamer was sunk in a collision. The tug was found by Mr. Justice Bargaive Deane to be solely to blame. The Court of Appeal, consisting of Lord Alverstone and Buckley and Kennedy, L.JJ., reversed this decision and held that the steamship was also to blame, on the ground that when those in charge of her saw that, though they had starboarded and steadied, the light of the tug did not broaden, but for an appreciable time

was getting finer on their starboard bow, they ought to have realised that there was risk of collision within the meaning of the Regulations, and as a matter of good seamanship have to at once stopped and reversed their engines.

These are the main lines of the "Mont Blanc's" case. Her preliminary acts are consistent with it. It is necessary now to turn to the very voluminous evidence to see if this case is substantially sustained. Her pilot, Francis Mackey, who was charged with her proper navigation, is a local pilot admittedly fully qualified and skilled. He proves that he passed the "High-flyer" at about 100 feet distant from her on the Dartmouth side; that he then ported his helm and straightened his course to follow up on his own proper side of the channel, being then approximately about 320 to 330 feet distant from the Dartmouth shore; that after proceeding some distance, his course being about N.W. or N. by W. and heading to some land west of Tuft's Cove, he for the first time saw over the land the mast of the "Imo," then about one mile or a little more distant. When he subsequently saw her hull and was able to make out what she was, she was about three-quarters of a mile or a little more distant, steaming on a course right down the channel, heading S.E. or probably  $\frac{1}{2}$  S. or S.E.  $\frac{1}{4}$  S., which course of S.E.  $\frac{1}{4}$  S. would, if continued, intersect the course of his own ship. The "Imo's" speed appeared to him to be above the speed fixed by the Admiralty Regulations, namely, five knots per hour. He, the pilot, to use his own words, immediately "established his proper side and his right to the channel by blowing promptly and distinctly on his whistle one short blast." There was no confusion, he says. He did not give any order to the Captain or helmsman just at that time. A few seconds later he received in reply from the "Imo" a signal of two short blasts. To relieve himself of all doubt he then blew another signal of one short blast, and then changed his course a little to starboard in order to let the "Imo" see his port bow. To this second one short blast signal which he gave, he again received in reply from her a signal of two short blasts, and then directed his ship's head to port in order to give the "Imo" plenty of room to pass (*i.e.*, starboard side to starboard side); that he succeeded in bringing the ships on parallel courses; that they would have passed safely had they kept those courses; that the "Imo" did not do that, but suddenly gave a three-blast signal and reversed her engines, her head being twisted to starboard; that he gave the order to go astern, but did not think there was time to carry it out; that the "Imo" came on at a pretty good speed, struck the "Mont Blanc" at right angles abreast of No. 1 hatch just abaft the forecastle head, cut her down 9 or 10 feet, he thought, to the water's edge, and that before the "Mont Blanc" received this blow she was heading up the Narrows with pier No. 9 on her port bow. The blow caused her head to slew round so as to point to pier No. 6. The reversing of the "Imo" with a right-hand propeller caused her head to swing to starboard, and her speed was, in his estimation, rather too fast. The witness gives his

excuse for not reversing his engines and going full speed astern instead of putting his helm hard to starboard and going to port. He said under the rules of the road, knowing them as he did and following them particularly: "I consider it was right for me to exercise my judgment, that the clause in the rules says act, port, or starboard, or stop her. In the exercise of that judgment I directed her head to port in order to get the two ships parallel, leaving plenty of room for the 'Imo' to pass safely." starboard side to starboard side if she continued her course. The reversing by the "Imo" of her engines, he insisted, rendered this manœuvre abortive. He, however, gave no reason or excuse for not having reversed his engines earlier, long before the two vessels had approached so near each other as 400 feet, less than the length of one of them, and little more than the length of the other.

This witness was cross-examined at great length, but nothing of importance was elicited, save that he said that between his ship and the "Imo" when he first saw her there were no ships save a small barge loaded with stones at pier No. 8. Aime Le Medie, the master of the "Mont Blanc," tells practically the same story. He states that when they passed the "Highflyer," they were 150 metres from the Dartmouth shore. That when the "Imo" was first seen she appeared to be leaving the basin. Her starboard side was then visible to those on the "Mont Blanc." She seemed to be cutting across the latter's course, and was bearing about 2 to 2½ points on the latter's port bow. He then proves that the signals as described by Mackey were given in the order Mackey mentioned. He further says that seeing the "Imo" on the port side his ship was put a little to the right, but that they could not go much to the right, they were so near the land. He says the "Imo" was going to port while he was going to starboard; that the "Imo" continued on her course as when she was first sighted, keeping a little more to the left, that is to port; that when he got the second signal of two blasts from the "Imo," the ships were only 150 metres apart, and that a collision was inevitable if the two ships continued their courses; that it was not possible at this time for the "Mont Blanc" to have gone further to starboard; that if she did so there would inevitably have been a collision; that when he saw the collision was unavoidable if the ships continued their courses, there was only one manœuvre to be made, namely, to go to port; that he gave orders to the helmsman to bear all to the left, and he gave two short blasts of his whistle; that though his ship had little speed on she obeyed her helm at once; that the ships were then on parallel courses, starboard to starboard, and were about 50 metres apart laterally; that when the "Imo" reversed (giving three blasts), going full speed astern, she being very light and having speed, came to starboard; that judging by the force of the collision the "Imo" must have had at the time great speed on.

This witness was also cross-examined at great length, but nothing material was elicited. Jean Baptist Glotin, the first

officer of the "Mont Blanc," was next examined. He proved that the "Mont Blanc" was registered at St. Nazaire, that her burden is 2,252 tons net, that her speed was  $7\frac{1}{2}$  knots, that there were on board four officers in addition to the Captain, that she carried a chief and four other engineers. He stated he was not on the bridge when the first one short blast signal was given by his ship, that when he heard it he looked to see what they were blowing for and saw the "Imo" about half a mile away or more, bearing about 25 degrees on his own ship's port bow, and heading in such a way as would cut his ship's course. He concurs with the pilot as to the number, character and sequence of the blasts given, and said that after the first two short blasts were given by the "Imo" she changed her course. His evidence is in substantial agreement with that of the pilot and master on all the material points. He gives the particulars of the damage done to his ship by the collision. The "Imo," he says, collided with his ship at No. 1 hold at an angle of 90 degrees, penetrated with force into her almost to the side of the hatch combings, and cut into her 9 feet in length almost down to the water's edge.

The distances given by these three witnesses are matters of very great importance if their evidence be accurate. They all agree in stating that when the signal of two short blasts was given by the "Imo" for the second time the two vessels were only 400 to 500 feet apart. The pilot and Captain fix the distance of the "Imo" from the "Mont Blanc" when the first one blast was given at three-quarters of a mile. This witness, the first officer, states that he looked up when he heard the first single blast and saw that the "Imo" was distant about half a mile or more, bearing 25 degrees on his port bow. All agree that she was heading on a course which, if continued, would cross the course of the "Mont Blanc." The ships therefore must have been proceeding at a rate, which while the two single and two double blasts were being given, had reduced the distance between them from about three-quarters of a mile to 400 or 500 feet. Even at the maximum Admiralty rate of 5 knots each of these ships would steam three-quarters of a mile in about 9 minutes, if both were proceeding at that rate in about  $4\frac{1}{2}$  minutes. A very serious question arises here, namely, whether having regard to the size of these ships, their speeds, courses and respective bearings of the one to the other, sound and prudent seamanship did not, if this evidence be accurate, imperatively require that each ship should have reversed her engines and gone full speed astern long before they were allowed to approach so close to each other as 500 feet. The two ships were together nearly 800 feet long. It certainly appears to their Lordships that it was a most hazardous position for such big ships to be allowed to get into; that it necessarily involved risk of collision; and that both captains were to blame for not having prevented their respective ships from getting into it. So that beside the question which, if either, of the two ships is blameable for the manœuvres they resorted to in order to escape from the perilous position in which



they found themselves almost in the agony of the collision, there is the other and anterior question whether they are not both blameable for the earlier and reciprocal omissions which created that position.

Joseph Leveque, the "Mont Blanc's" third officer, does not in his evidence cover so wide a field as the pilot and master, but with all the points with which he deals he is in substantial agreement with them. Alphonse Serre, the wheelman on board the "Mont Blanc," states that he was not steering by compass, but as he was ordered by points on the shore. He corroborated the pilot and captain as to the number, character and sequence of the blasts given by the two ships, and says that after the second of the two short blasts given by the "Imo" he put his ship's head hard to port. As he was in the wheel-house he says he could not give any evidence as to distances. Antoine Le Gat, the chief engineer, said that the highest speed they could get out of the "Mont Blanc" even in fine weather was  $7\frac{1}{2}$  knots. He could not recollect the earlier orders which he got, but that the last orders he got just before the collision were first half-speed, then slow, then stop, and then full speed astern; that about three minutes elapsed between the order for half-speed and the collision; that the order for slow was not marked on his boards as they had not time to mark it.

So much for the evidence given by those on board the "Mont Blanc." Of the independent witnesses examined, several, on points other than the whistling, corroborate, in substance, the officers and crew of this ship. They differ from them on the question of the nature, number and sequence of the signals. On the question of the whistling, the evidence is, on the whole case, so conflicting that it is impossible to found upon it any precise and confident conclusion. This difficulty does not exist to the same extent as to the movements of the ships themselves, of which these signals, at best, ought merely to be the heralds. The evidence as to these movements is, on the whole, comparatively clear by whatever whistles they rightly or wrongly may have been announced. John Makiny, the commander of the "Nereid," which lay at the No. 4 Dockyard Pier, and who states he saw the collision, gives most important evidence in favour of the "Mont Blanc." The learned trial Judge rejects it as untruthful, and as he saw and heard the witness it is best to put it aside.

Whitehead, the commander of a drifter, says he saw the two ships steaming through the Narrows, one, the "Mont Blanc," steaming up on the east or Dartmouth side, and the other, the "Imo," steaming down on the same side. He could not say which was nearer to the Dartmouth shore; they seemed to him from where he stood to be approaching each other almost end on, and, when he first observed them, to be only 600 to 700 yards apart. He said they were not more than 100 yards apart when the "Mont Blanc" blew a two-blast whistle and went to port, going very slowly but answering her helm; that the "Imo"

when this signal was sounded was going much faster than the "Mont Blanc." Nothing was elicited to discredit this witness. He is in a responsible position. Two of the learned Judges of the Supreme Court rely strongly on his testimony. If his evidence be true it shows, as does that of the chief officer of the "Mont Blanc," that both these vessels had been guilty of fatally neglecting to reverse their engines and go full speed astern, before they allowed their respective ships to approach so near each other as 400 feet, involving as it obviously did the risk of collision.

Charles Mayers, the third officer of the "Middleham Castle," a ship which, when the collision occurred, lay outside the Halifax graving dock, said he was on the deck of his steamer when he saw both these ships, the "Mont Blanc" passing about midway between the "Highflyer" and the Dartmouth shore. When the two were first seen by him they were both on the Dartmouth side of the channel, they were about 500 yards apart, the "Mont Blanc" heading up the harbour, the "Imo" heading down. He corroborates the pilot and captain of the "Mont Blanc" as to the number, character and sequence of the signals given by the two ships. It was urged that this witness was unworthy of credit, as he had been under some fantastic delusion about his being driven through the air for a great distance by the force of the explosion. Well, it is not unnatural that the shock given by such an appalling disaster should cause one of the victims to be under a delusion as to its effect upon himself; but though one may not have the same confidence in his evidence as if he was free from this delusion, yet his testimony ought not to be put aside as entirely untrustworthy.

Bert Henry, an employee of Messrs. Burns and Kellaher, deposed that he saw the two ships about two minutes before the collision; both were near the Dartmouth shore; they were going in practically opposite directions, the "Mont Blanc" heading up towards the basin, the "Imo" directly down the harbour. The "Mont Blanc" turned a little to the Halifax side, then they came together with a great thump, the bow of the "Mont Blanc" was turned more to the Halifax side by the blow, she was after that pretty straight across the channel. Nothing material was elicited on the cross-examination of this witness.

The statements made by the officers of the "Highflyer" are on the whole, in their Lordships' view, more consistent with the case of the "Mont Blanc" than with that of the "Imo," though in some particulars they differ slightly from both. There is no evidence as to the circumstances under which these statements were obtained. The parties have by their agreements made them admissible as evidence, which legally they would not be, but without making the slightest reflection upon the honour, accuracy or truthfulness of these gentlemen, their Lordships feel that they cannot rely upon those statements with the confidence with which they would naturally rely upon them had they been made to on oath in the witness-box and were subject to cross-examination.

So much for the case of the "Mont Blanc." The case of the "Imo" is in several respects in conflict with it. Under Article 25 of the Rules for Preventing Collisions at Sea, it was the bounden duty of the "Imo" to keep on the Halifax side of the mid-channel as she passed down from the basin to the sea if it was safe and practicable for her to do so. Once it is shown to have been safe and practicable for her to do so, the Article becomes a rule of imperative obligation.

Accordingly, her case opens with an excuse or justification for steaming from the basin down to and past pier No. 9 on the Dartmouth side of mid-channel. It is alleged on behalf of her owners that by reason of the configuration of the channel she was, on leaving the basin, obliged to approach the Dartmouth shore, and that having yielded to that necessity, she was prevented from getting back into her own water, first by the obstinate refusal of an American tramp to leave the water on the Halifax side of mid-channel in which she then was, and second by the manœuvres of the tug "Stella Maris."

The American tramp had advanced so far into the basin that really nothing turns upon the alleged obstinacy of her navigators. It is otherwise with the tug. In the "Imo's" printed case it is alleged that just after being compelled to pass the American tramp starboard to starboard, those on board of the "Imo" saw the "Stella Maris," which according to the words of the case "appeared in front of her." The tug, it is alleged, was at that time heading to cross from the dry dock on the Halifax side to the Dartmouth side, and was then about midway in the channel; that when those on board the tug saw the "Imo" approaching they turned her back to the Halifax side, and thus she lay across the channel. It is not alleged that the "Imo" gave any signal of any kind to the tug, but strange to say, it is alleged that while she was abreast of the tug and off pier No. 9, she gave one blast signal to the "Mont Blanc," though that ship must have been more than three-quarters of a mile away from her at the time, since from pier No. 9 to the place of the collision marked on the chart has been measured to be three-quarters of a mile, and of course the "Mont Blanc" could not at this time have reached the place of collision. But if she in fact gave that signal it only could have meant that she desired to alter her course to starboard and thought it possible to do so. It is not alleged that there was any crowding of her own waters to prevent her from entering them. It is alleged that the "Imo" then, as soon as she had given the one short blast signal, gave three blasts and reversed her engines, her head swung to starboard so that the witnesses on board steamers moored at the dockyard could see her port side. It is stated in the "Imo's" case that at this time the "Mont Blanc" was one-half to three-quarters of a mile distant. For the reasons already given the distance between them must have been more. According to this case the "Mont Blanc" was working out to mid-channel, angling across to the Halifax side and cutting across the course of the

“Imo.” Why the “Mont Blanc” should have done anything so irrational, unless indeed the “Imo” was heading so as to pass between her and the Dartmouth shore, is not suggested. But that is not all. If the “Imo’s” head swung round to starboard in the way described, so that the people at the dockyard saw her port side, no reason is given why did she not steam ahead, get well into her own water, and steam down through that water towards the sea? The “Mont Blanc” was half or three-quarters of a mile distant. Half the breadth of the narrows is only 250 yards. Even if the “Imo” while reversing was only 50 yards from the Dartmouth shore, she would have only 200 yards, plus her own length, 143 yards, 343 yards in all, to steam to get bodily into her own water. It is absurd to suppose that the “Mont Blanc” could have steamed up nearly four times that distance and come near her before she was well away in her own water. It appears to their Lordships to be difficult to suppose that the latter ship’s movements could have imposed any difficulty in the way of the “Imo’s” reaching her own waters, if those navigating her had desired to make her do so. The movement would have been apparently both safe and practicable at this precise time. There is not a suggestion in the “Imo’s” preliminary acts that there was anything to prevent her, after she had passed the “Stella Maris,” from getting into her own water and steaming down through it in her course to the sea. On the contrary, the statement, contained in the answer to question 12 is that before she gave those three blasts and reversed her engines she was keeping as far as practicable on that side of the channel which lay on her starboard side; that the “Imo’s” speed was reduced to 1 mile an hour; that the engines were never put ahead again before the collision, a statement which (considering the nature of the blow) seems incredible; and that the “Mont Blanc” was while all this occurred from one-half to three-quarters of a mile distant. In the “Imo’s” case it is said that before the collision the “Mont Blanc” had worked out pretty well to mid-channel, but that the two ships were then in their respective waters and were heading on courses on which they should have passed in safety port to port, that the “Mont Blanc” then blew a cross signal of two blasts and swung to port on a starboard helm, throwing herself across the channel in front of the bows of the “Imo” and making a collision inevitable. These statements appear to their Lordships to be incredible. It would appear to be impossible that the “Imo,” after having reduced her speed to 1 mile an hour, kept her engines steady while she traversed half a mile at least of the harbour, and again reversed her engines going full speed astern, could have struck the “Mont Blanc” at right angles with a force capable of inflicting the injury actually sustained by the latter ship. Again it seems impossible to assign any reason for the “Mont Blanc” doing what she is alleged to have done, namely going across into the “Imo’s” water and throwing herself across the channel in front of that

ship. It is not really disputed that the "Mont Blanc" passed the "Highflyer" well in her own water, well over towards the Dartmouth shore. It is scarcely conceivable that the "Mont Blanc" should leave her own water, which according to the statement was safe and unobstructed, to cross into the water of the "Imo" in the manner described as if she was struggling to bring about a collision. The "Mont Blanc's" action in getting out towards mid-stream would, however, be intelligible enough if the "Imo" having got close to the Dartmouth shore before entering the Narrows, those navigating her had determined to keep their course down the "Mont Blanc's" waters and to pass between that ship and the Dartmouth shore. This is just what it is alleged on the part of the "Mont Blanc" the "Imo" attempted to do. It explains and reasonably accounts for the collision, which the "Imo's" case fails to do.

The evidence given on behalf of the "Imo" to support their case was as follows: Peter B. Jonnas, the mate of the "Imo," a Norwegian, states he did not see the "Mont Blanc" till he heard two blasts from his own ship. The two ships, he says, were about 400 metres apart and nearly straight ahead, the "Mont Blanc" being a little on the "Imo's" port bow and about the middle of the channel, steaming straight up. That is very much the position in which the ships were placed by Glotin, the chief officer of the "Mont Blanc." It was, in their Lordships' view, as has been already stated, a perilous position, involving imminent risk of collision. This witness gives a different account of the character and sequence of the whistles from that given by the witnesses of the "Mont Blanc." Birkland, the third officer of the "Imo," did not give any evidence of importance. John Johansen, the helmsman of the "Imo," states that the "Imo" passed the American tramp port to port; that his ship was in the middle of the channel when she came into the Narrows; that he then saw the "Stella Maris," with two scows abreast of one another, behind her; that he saw the "Mont Blanc" abreast the "Highflyer," heading up the channel. After passing the tug the speed, he said, of his ship was about 2 miles per hour; that he then got an order steady or a little to port; that he paid no attention to the whistling. The only whistling he mentioned was a two-blast signal from the "Mont Blanc" when the ships were close together. At the moment of the collision the "Imo," he says, was pointing to the sugar refinery. The "Mont Blanc," he said, came up the channel a little on the Dartmouth side. The collision occurred a good deal on the Halifax side. This leading question was then put to him: "You were going down a little on the Halifax side of the channel?" And he answered, "Yes, sir." He had never mentioned this before the leading question was put to him. He gave no explanation of how a collision occurred if the "Mont Blanc" was on the Dartmouth side of the channel and the "Imo" on the Halifax

side, nor does he make any mention of the alleged reversing of the "Imo's" engines the first time. He further says that when the pilot of the "Imo" blew three blasts he put his helm hard a-starboard, and that it was at that, *i.e.*, hard a-starboard, when the collision occurred. He does not explain if this were so, and his ship was in her own water, how the collision could have occurred.

Lewis Skarre, the first engineer of the "Imo," twenty-nine years of age, holding a Norwegian certificate as first engineer, says the "Imo" started from her anchorage at full speed ahead. The next order he got was (he does not say how soon) dead slow, half-speed, dead slow, half-speed, and several different orders. He never got the order full speed between that and the collision. The fourth engineer, he says, marked the orders in a scrap log. He got orders full speed astern twice; the first reverse was longer than the second. It was a little longer than 1 or 2 minutes. Then he got an order to stop, and then the second order for the reverse several minutes after. He could not fix the time between the order for the first reverse and the order for the second. He could not say whether it was 4 or 5 minutes or 3 or 4 minutes. When he reversed the last time he heard three short blasts. He did not hear any other blasts either from his own or any other ship. The last order to reverse was repeated twice. This witness failed to fix any times definitely and precisely. According to the case the engines were first reversed ahead of pier No. 9 three-quarters of a mile above the place of collision. None of the other engineers were examined.

That concludes the evidence of those on board the "Imo." It will be observed that there is not in it a mention of the "Imo" being in her own water save the single answer given by Birkland to the leading question put to him. Neither is there any indication given of the purpose for which the first reverse of the engines was ordered, or any explanation why the "Imo" did not then cross to her own water. A number of onlookers were next examined as witnesses on the "Imo's" behalf. George Dixon lives at Tuft's Cove, which he says is abreast of pier No. 9. He was on the 6th December working in the open then right down on the shore. He first noticed the "Imo" coming down when she got near the north end of pier No. 9. He could not tell her speed. She was about the middle of the channel. After she passed him she seemed to turn to the Halifax side. She was heading down pretty straight, he says, as they could see all her port side; she followed the middle of the channel pretty well. He first saw the "Mont Blanc" when she was pretty near the Richmond Pier. He thought she was going to dock in No. 8. He heard no whistles. He says the "Imo" was about the centre of pier No. 9 when the "Mont Blanc" was coming across to the Richmond pier (No. 8); that the "Imo" then started to go across to the Halifax side, and they thought she intended to go round the bows of the "Mont Blanc." He saw her reversing,

and after that he saw her heading, swing to the Halifax side, and looked to be heading to the Sugar Refinery. This is wholly inconsistent with the "Imo" case. She, according to the case, was reversing abreast of pier No. 9, and the "Mont Blanc" was from half to three-quarters of a mile down the channel. Dixon makes no mention of the American skipper or of the "Stella Maris," and in a subsequent part of his evidence he says he thinks he did not see the "Mont Blanc" before the "Imo" reversed, while the case of the "Imo" is that she gave one blast for the "Mont Blanc," then heading up in her own water before his ship gave three blasts and reversed.

Edward McCrossan, a seaman on board his ship the "Caracas," lying bow up stream along pier No. 8, says he only saw the two ships two minutes before the collision; he heard no signals. The "Mont Blanc" was lying straightway across the river, and the "Imo" heading down the river coming straight into her very slowly. It was only a light touch the "Imo" gave her. He could see the propeller of the "Imo," and it was not moving till after she hit the "Mont Blanc." The case of the "Imo" and all the evidence up to this is that the "Imo's" engines were going full speed astern, after the "Mont Blanc" had put her helm hard a-starboard. If the "Imo" never reversed so as to avoid the collision she would be in gross default. Again, if this witness be right, the two ships must have been in collision 500 feet from his own ship, and adding the beam of his ship, not more than 540 feet from pier No. 8, and if the channel be 500 yards broad there the collision must have taken place over 200 feet on the Halifax side of mid-channel. The case of the "Imo" is that she was not anything like that on the Halifax side of mid-channel. In addition this witness only saw these two ships in the agony of the collision, and knows nothing of their previous courses.

John Sullivan, who was in the employ of Messrs. Burns & Kellaher, on the 6th December, 1917, though not a seafaring man, was in charge of their motor-boat on that day, but was not at the wheel. He says he first saw the "Mont Blanc" that morning on the Dartmouth side of the centre of the channel, opposite the dry dock. His motor-boat was astern of her. He judged that the "Mont Blanc" was travelling about four to five knots. He saw the "Imo" about the same time. She was heading down past the Narrows on the Halifax side. If they passed on the courses they were going they would be about 100 feet apart, with the "Mont Blanc" on the eastern side. The "Imo" came into the Halifax side a little more. He did not hear any whistle, not even just before the collision. He saw the French boat coming over the Narrows to the Halifax side. He was about 150 yards when they collided on the port side of the "Mont Blanc." After the collision the "Mont Blanc" moved towards the Halifax shore. He would put the place of collision more towards the Halifax side than the middle of the channel, something to the Halifax side. There was room enough, he thinks, for the "Mont Blanc" to go to starboard instead of to port, when there would have been no

collision. He is not a navigator, does not know the rules of the road. He knows nothing about bearings, and is not a very good judge of distance. The first thing that strikes one about this evidence is that it would have been quite a purposeless and rash act of the "Mont Blanc," when going up through her own waters, the "Imo" coming down through hers, their courses being 100 feet apart laterally, to have deliberately turned to port and invaded the "Imo" water. The witness probably refers to what occurred in the agony of the collision. The "Imo," he says, was heading towards the Sugar Refinery, the French ship heading down towards the Narrows. In addition, this evidence is inconsistent with what Peter B. Jonnas, the third mate of the "Imo," says, namely, that after he heard the two blasts from the "Imo," the "Mont Blanc" was nearly straight ahead, steering straight up the channel and about its middle; the ships were then about 400 metres apart. Afterwards when he heard the three-blast from the "Imo" they were only 100 metres apart.

McLaine, the master of the "Douglas H. Thomas," says he just saw the "Mont Blanc" when she passed the "Highflyer." He then heard two blasts from the "Imo" when she was up in the Narrows coming out of the basin, and heading towards the Dartmouth shore; he saw her whole starboard side. At the moment of collision she was going 1 to 2 knots; from the time she blew the two blasts, up to the collision she was not going more than that speed. He next heard one blast from the "Mont Blanc," she—the "Mont Blanc"—was then opposite the dockyard, a little on the Dartmouth side of the mid-channel. The next signal from the "Imo" which he heard was three blasts. She went astern, took off her headway, her bow coming to ~~stern~~ about 2 points. She was heading to the Dartmouth side when she gave the three-blast signal. The "Mont Blanc" was then heading pretty straight up the channel; the vessels were then one-half or three-quarters of a mile apart. At the moment of collision the "Mont Blanc" was heading towards the Halifax side and the "Imo" was coming pretty straight down, but her head was a little to the Halifax side too; she struck the "Mont Blanc" at less than a right angle. The nature of the damage done and the absence of all twisting of the "Imo's" stem would go to show that this last opinion is inaccurate. In addition this witness, who professes to have observed the vessels at the time, says nothing about the "Imo's" steaming down her own water from the time she first reversed till just before the collision, 100 feet on the Halifax side of the mid-channel. His evidence is quite in conflict with that of the witness Dixon.

John Joseph Rourke, the chief engineer of the "Douglas H. Thomas," says he first saw the "Imo" up towards the basin. The first signal he heard was two blasts from the "Imo." The "Mont Blanc" just as she was passing the "Highflyer," he says, was going 6 or 8 miles an hour. The "Imo" was coming down from the basin at something like 3 or 4 miles an hour. She was heading towards the Dartmouth shore. The vessels were at this time about

*starboard*



1 mile apart. The next signal he heard was one from the "Mont Blanc," one blast. The next signal was three blasts from the "Imo"; she had changed her course slightly to the Halifax side; she then reversed her engines, her bow swung to the Halifax side. She was reversing a long time. She came ahead to starboard. She was then half a mile from the "Mont Blanc." The "Imo" then blew a one-blast signal, and the "Mont Blanc" then a one-blast signal. The "Mont Blanc" did not then change her course; but afterwards gave a two-blast signal and went to port; they were then getting within 300 or 400 yards of each other. Prior to this going to port the vessels were coming fairly parallel as far as he could say. The "Mont Blanc" was keeping for the Dartmouth shore, the "Imo" headed for the Halifax shore. Their courses were not quite parallel, but both ships would pass one another. The reason, he suggests, for the "Mont Blanc" giving the one-blast signal he has described was that both ships were getting handy to each other and the "Mont Blanc" people were getting a little nervous. The "Mont Blanc," he says, was on the Dartmouth shore; the "Imo" was about mid-channel, somewhat inclined to the Halifax shore. The only reason he can suggest for the "Mont Blanc" giving a one-blast signal was that she wanted to get more room. That is a very significant answer. Why should she want to get more room and go away to starboard closer to the Dartmouth shore unless, as her witness says, the "Imo" was passing her till they came within 400 feet of one another? This evidence leads to the conclusion, already mentioned, that both ships neglected to reverse their engines before they had approached at all so near each other as 400 feet.

Ralph E. Smith, a marine engineer in the employment of Messrs. Burns & Kellaher, says he has been eight years at sea, that he first saw the "Mont Blanc" at the Ferry Wharf on the Dartmouth side going up towards the basin. He estimated her speed probably at 5 knots. He then went below on his own ship. Someone called him up saying there was going to be a collision, and when he came up the "Imo" was into the "Mont Blanc" and shoved her around just about crossways in the channel. He was 300 or 400 yards away from the ships. It appeared to him that the French ship had not any way on, but the "Imo" must have had some on because she shoved the other boat right round.

The evidence of the other onlookers does not carry the case further.

Walter Brannen, the mate of the "Stella Maris," states that he was at the northern end of the Sugar Refinery pier when he first saw the "Imo" up in the entrance to the basin, coming down. She was more on the Dartmouth side. He kept his vessel on the Halifax side. He was always more to that side. When the "Imo" was nearly down to them she blew one blast. He looked astern and saw the "Mont Blanc" coming up. She was on the Dartmouth side of the channel and they were about a third

of a mile apart. It was not necessary for the "Imo" to give any signal to him. (This statement of the distance is clearly erroneous.) Soon after giving the one blast the "Imo," before she had got past the tug, gave three blasts. He noticed a whirl under her stern and thought she was going astern. He does not recollect that any vessel sounded any whistle after the "Imo" passed him. The "Imo" was 150 to 200 yards to the eastward of his tug when she passed him. Her speed was then 5 miles an hour. She had not passed him when she went astern. She straightened down the harbour after she passed him. He noticed that before the collision the "Mont Blanc" turned her head to port. Before that she was on the Dartmouth side. This witness must according to the "Imo's" case and to the measure distances have been three-quarters of a mile away from the place fixed by her as the place of collision, yet he is asked the question whether he could tell whether the two vessels would have gone clear if the "Mont Blanc" had not changed her course, and he takes upon himself to answer that if they kept their courses and their speeds about equal he thinks they would have collided, because when he first noticed the "Mont Blanc," she was heading across the harbour, coming up under the stern of the "Highflyer."

It is abundantly proved that the "Mont Blanc" passed the "Highflyer" well over towards the Dartmouth side of the channel. The witness is then asked: "When the 'Imo' blew her one-blast signal, did you think it was for you"? He replied: "I did at first, and then I noticed the position she was in and I thought she could not be blowing it for me." The reason he gives is that the "Imo" was practically close on them, and there was no need for her coming to starboard to clear them. What happened when the "Imo" passed the tug up abreast of pier No. 9, as the "Imo's" case fixes it, is of comparatively little importance. It gives little help as to the course of the "Imo" down the channel after she had passed this point.

Their Lordships have thus examined critically and at great length the evidence bearing upon the points in issue in the action. They have upon the whole come to the following conclusions:—

First, that the "Mont Blanc," from the time she passed the "Highflyer" till she starboarded her helm in the agony of the collision, never left her own water, though she may, no doubt, before she was actually struck, have forged ahead so as to cross the middle line of the channel.

Second, that as she steamed up through her own waters her speed was not immoderate.

Third, that the "Imo" in order to inflict the injury to the "Mont Blanc," which it is proved she did inflict must have struck that ship with more force and at a higher rate of speed than her witnesses admit.

Fourth, that the "Mont Blanc" must at the time of the collision have had little if any way on her, else the ~~stem~~ of the "Imo" would have been twisted to some extent, which it was not.

stem/

Fifth, that the inclination of their Lordships' opinion is that the "Imo" could, when she first reversed her engines, have crossed into and remained in her own water, as she was bound to do, but never did.

It is not necessary, however, absolutely to decide this last point, because on the case of both ships it is clear that their navigators allowed them to approach within 400 feet of each other on practically opposite courses, thus incurring risk of collision, and indeed practically bringing about the collision, instead of reversing their engines and going astern, as our assessors advise us, they, as a matter of good seamanship, could and should have done, long before the ships came so close together. This actually led to the collision. The manœuvre of the "Mont Blanc" in the agony of the collision may not have been the best manœuvre to adopt, and yet be in the circumstances excusable. But their Lordships are clearly of opinion that both ships are to blame for their reciprocal neglect above-mentioned to have reversed and gone astern earlier than they did.

They are therefore of opinion that the appeal and cross-appeal both fail, that the judgment appealed from should be affirmed, and they will humbly advise His Majesty accordingly.

There will be no order as to the costs of the appeal and cross-appeal.

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In the Privy Council.

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THE SHIP "IMO"

v.

LA COMPAGNIE GÉNÉRALE TRANSATLANTIQUE.

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(*Consolidated Appeals.*)

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