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April 27.

## QUEBEC ADMIRALTY DISTRICT.

CANADIAN PACIFIC RAILWAY COMPANY,

PLAINTIFF,

v.

THE STEAMSHIP "STORSTAD,"

DEFENDANT.

*Shipping—Collision—Fog—Rule of road—Liability.*

A collision occurred between the plaintiff's ship, an outward-bound vessel, and the defendant ship, an inwardbound vessel, while passing each other in converging courses on open water of the St. Lawrence river during a fog,

*Held*, that the rules governing the open sea applied, and that the former having complied with art. 23 of the Rules of the Road was blameless in manœuvering herself out of the danger of a collision; that the collision was brought about by the negligence of the officers of the defendant ship in altering her course in the fog and failing to slacken her speed, in violation of arts. 16, 21 and 29 of the Rules.

**ACTION** for damages resulting from a collision.

Tried before the Honourable Mr. Justice Dunlop, Local Judge of the Quebec Admiralty District, Captain Francis Nash, Assessor, on February 15, 16, 18, 19, 22, 23, 25, 26, and March 1, 2, 3, 4 5, 1915.

*A. Geoffrion*, K.C., for plaintiff.

*J. W. Griffin*, and *W. P. Sedgwick*, of New York Bar, for defendant.

DUNLOP, Loc. J. (April 27, 1915) delivered judgment.

The plaintiff, as the owner of the Steamship "Empress of Ireland," claims the sum of three million dollars against the Ship "Storstad" for the loss of the Steamship "Empress of Ireland," and the amounts paid or that may hereafter be paid for loss of life, or personal injury to members of the crew or others, whether under the *Workmen's Compensation Act* or otherwise, and for other and all losses and damages occasioned by the collision which took place in the St. Lawrence River, near Father Point, on May 29th, 1914, and for costs.

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Whereas the plaintiff, by its statement of claim, alleges as follows:

(1) That between 1.45 and 2 o'clock A.M., on the 29th May, 1914, the Steamship "Empress of Ireland," 8028 net registered tonnage, of which the plaintiff is the owner, whilst on a voyage from Quebec to Liverpool, with passengers and general cargo, was between 6 and 7 miles to the northward and eastward of Father Point, which is on the south shore of the River St. Lawrence; (2) there was fog and no wind and the tide was about half flood, although there remained a current down stream running at the rate of about one and a half knots; (3) the "Empress of Ireland" had dropped her pilot near the Father Point gas buoy, and had then got under way, taking a course of N.470 deg. E. magnetic, until she had the Cock Point gas buoy abeam, when the course was changed to N. 73. deg. E. magnetic; (4) that the lights of another ship, which turned out to be the "Storstad," were first seen several miles off before the fog shut in and bearing at first about 4 points on the starboard bow of the "Empress of Ireland," but when the latter altered her

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course, off Cock Point buoy, the "Storstad's" lights bore about a point or a point and a half on the starboard bow of the "Empress of Ireland" and the vessels would have passed each other starboard to starboard, at a safe distance, if the "Storstad" had not subsequently altered her course in the fog; (5) there had been intermittent fog earlier in the night, but the weather was clear when the "Empress of Ireland" left Father Point, and it was somewhat later, a little after altering the course off Cock Point buoy, that fog coming from the south shore was seen to be dimming the "Storstad's" lights; the "Empress of Ireland" was duly exhibiting the regulation lights for a steamship under way; (6) that seeing said fog, the engines of the "Empress of Ireland" were reversed full speed and her whistles blown three short blasts, which signal was a few minutes later repeated. When the "Empress" was stopped in the water her engines were stopped and two long blasts were twice sounded on her whistle. When the lights of the "Storstad" were seen coming out of the fog, the Master of the "Empress" hailed the "Storstad" to go astern and in the hope of avoiding or minimizing the effect of a collision, the engines of the "Empress" were ordered full speed ahead and her helm hard-a-port; (7) nevertheless, the "Storstad" came on at a considerable speed and the "Storstad's" stem struck the starboard side of the "Empress of Ireland" about amidships, causing her to sink soon after; (8) that the helm of the "Storstad" was improperly ported; (9) that the "Storstad" failed to keep her course and pass the "Empress of Ireland" starboard to starboard; (10) that the "Storstad" was navigated at an immoderate rate of

speed; (12) that those in charge of the "Storstad" failed to reduce her speed and sound her fog signal before she ran into the fog; (13) that the engines of the "Storstad" were not in due time slowed, stopped or reversed; (14) that no competent officers were on duty on the "Storstad"; (15) that those in charge of the "Storstad" neglected to comply with articles 16, 27 and 29 of the International Rules in force in Canadian waters. *And plaintiff claims—*

(1) A declaration that it is entitled to the damage proceeded for; (2) the condemnation of the defendant and its bail in such damage and costs; (3) to have an account taken of such damage with the assistance of merchants; (4) such other and further relief as the nature of the case may require.

The defendant, by its statement of defence and counter-claim, alleges in substance the following: (1) That except as hereinafter admitted, the several statements contained in the plaintiff's statement of claim are denied; (2) the defendant is owner of the Norwegian Steamship "Storstad," of 6028 gross tonnage; (3) that at about 2 A.M., on the 29th May, 1914, the "Storstad," while on a voyage from Sydney, Cape Breton, to Montreal, with a cargo of coal, came into collision with the "Empress of Ireland" at a point about 7 miles to the northward and eastward of Father Point, in the River St. Lawrence; (4) the "Storstad," proceeding up the river, passed Metis Point at about 12.35 A.M. There was no wind; the tide was flood, but in spite of the tide, there was a current setting down the river at the speed of between one and two knots; the "Storstad" left Metis Point about 3 miles off and proceeded on a course of west one-quarter south magnetic, for a distance,

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measured by patent log, of 6 miles, and then on a course of west of one-half south magnetic for a distance, measured by patent log, of 5 miles; and thence on a course of west by south magnetic, which course she held until the collision; (5) that at about the time when the "Storstad" changed her course to west by south, those in charge of her sighted the masthead lights of a steamer, which proved to be the "Empress of Ireland"; the lights were several miles away and were on the port bow of the "Storstad." As the vessels proceeded, those on board the "Storstad" saw the green light of the "Empress" still on the "Storstad's" port bow. Shortly afterwards the "Empress" changed her course, so that, in addition to her masthead lights, her red light was visible to those on the "Storstad" and her green light was shut out. The vessels were then 2 miles away and the "Empress" was a point or more on the "Storstad's" port bow; (6) that shortly after a bank of fog, which had been moving out from the southern shore of the river, dimmed and finally shut out the lights of the "Empress." The "Storstad's" engines were at once slowed, and, about 2 minutes later, when the fog bank enveloped the "Storstad" also, her engines were stopped; (7) that 4 or 5 minutes after the "Storstad's" engines had been stopped, her wheel was ported in order to prevent the current swinging her head to port and in the direction of the "Empress" and in order thus to insure ample space for clearance. The "Storstad" did not swing under the port wheel, since her steerage way was lost, or nearly so. The engines of the "Storstad" were then ordered slow ahead, because it was desirable to preserve steerage way, and immediately

thereafter the green light and masthead lights of the "Empress" were seen on the "Storstad's" port bow, moving across her bow. The "Storstad's" engines were at once put full speed astern and kept so until the collision. The stem and the bluff of the starboard bow of the "Storstad" struck the starboard side of the "Empress" about amidship, the vessels, at the moment of the contact, forming an angle of about  $3\frac{1}{2}$  points. The "Empress" continued to go ahead across the bow of the "Storstad," which was swung around in the direction of the "Empress's" movement. As soon as the vessels touched, the "Storstad's" engines were ordered ahead, for the purpose of keeping her stem in the wound, but the headway of the "Empress" caused the vessels to separate. At the time the vessels came together, the "Storstad" was still heading west by south. (8) That as soon as the fog set in, fog whistles of one long blast were blown by the "Empress," and were answered by the "Storstad." Shortly thereafter, 2 signals of 3 whistles each were heard from the "Empress;" all the "Empress's" whistles sounded on the "Storstad's" port bow. The "Storstad," so long as she retained headway, continued to blow fog signals, but when it was found that she had lost steerage way, a signal of 2 long blasts was sounded on her whistle. When, after the lights of the "Empress" were seen through the fog, the "Storstad" went full speed astern, a signal of 3 blasts was blown on her whistle. (9) The defendant charges against plaintiff, its agents and servants, the following faults: (a) In keeping a bad look-out; (b) in that she was in charge of incompetent officers; (c) in attempting to cross the bow of

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the "Storstad" although the vessels, when the fog shut in, were clear to pass port to port; (d) in failing to hold her course and to pass the "Storstad" port to port; (e) in changing her heading and course to port in the fog; (f) in that, having headed across the bow of the "Storstad," she put her engines full speed astern, reduced her speed, and thereby caused collision; (g) in that she attempted to pass the "Storstad" too close; (h) in that she failed to comply with articles 15, 16, 18, 19 and 22 of the International Rules of the Road at Sea, which were then and there in force; (i) in that she blew a signal of 3 whistles when the vessels were enveloped in fog, contrary to article 28 of the said rules; (j) in that she failed to indicate her position and manœuvres by blowing proper or sufficient whistles; (10) that no blame and resulting damage is attributable to the steamship "Storstad" or to any of those on board of her; *And by way of counter-claim defendant says:* That the collision has caused great damage to the defendant and to the steamship "Storstad," and claims:

(1) A declaration that the defendant is entitled to the damage asked under its counter-claim; (2) the condemnation of the plaintiff in the damage caused to the "Storstad" and to defendant, and in the costs of this action; (3) to have an account taken of such damage with the assistance of merchants; (4) such further and other relief as the nature of the case may require.

The plaintiff, in answer to the foregoing defence, prays *acta* of the allegations contained in the 3rd, 7th and 8th paragraphs of the said defence; as to paragraph 9, it takes exception to the allegations as

to "other faults that may develop at the hearing" and "others in future respect which will be pointed out at the trial," the same being illegal, otherwise denies said paragraph; that plaintiff denies all the other allegations of the defence, except in so far as the same are in accordance with the statement of claim and this answer. And as to the so-called counter-claim, plaintiff alleges: That the same is illegal and incompetent to the defendant; and without waiver of said allegations, it denies the same in any event.

The pretensions of the parties are set forth in the pleadings, a summary of which is given in the present judgment.

The plaintiff moved to strike from paragraph (9) of the defence, the words "(k) and in other and further respects which will be pointed out at the trial" . . . as being illegal. This motion was granted by judgment of this Court of date the 15th December, 1914.

After the issues had been joined on the 12th February, 1915, the plaintiff moved to amend its preliminary act and statement of claim by adding the words "in the middle of the river but at the place of the collision and all along the shores the current ran up stream" to paragraph 6 of the plaintiff's preliminary act and paragraph 2 of the statement of claim, on such conditions, as to costs, as the Court may deem appropriate.

I thought it better to hold this motion over until the trial, and I am of opinion that same can be granted, and it is granted, costs of same to be paid by plaintiff, as appears by judgment on said motion, of even date.

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I grant this motion more especially because evidence in support of it has been adduced before this Court, without any objection being made thereto.

Evidence in this cause is very voluminous because, by consent of parties, it is agreed that all the evidence taken and exhibits filed before the Commission of Enquiry into the casualty of the "Empress of Ireland," held at Quebec on the 14th June, 1914, and following days, would be read and used as evidence to all intents and purposes as if taken in this case, the whole as appears by consent of the parties of date the 23rd June, 1914, and filed the 12th August, 1914.

Under said consent, the right was reserved to each party to recall any witness examined in said enquiry and to put in further evidence, if desired, and that said agreement was made effective in all respects, in and for any class of action, counter-claim, or any action or proceedings against the "Empress of Ireland."

A very large amount of additional evidence was taken before this Court, in Montreal, and the record is, consequently, very voluminous.

The question as to who, if anyone, is to blame for the collision in this case depends largely on which of the two stories put forward by the respective owners of the respective vessels, is to be accepted.

The evidence on material points is absolutely contradictory.

The main difference between the two vessels' stories is to be found in the description of the way in which the two vessels were approaching each other at the time when the "Empress of Ireland"

changed her course after having obtained an offing from Father Point. Father Point is the place where the "Empress of Ireland," the outwardbound ship, had dropped her pilot; it is also the place where the inwardbound ship, the "Storstad," was to pick up her pilot. It is situated on the south side of the river.

The witnesses from the "Storstad" say they were approaching so as to pass red to red, while those from the "Empress of Ireland" say they were approaching so as to pass green to green.

I feel that I am safe in making the assertion that the "Storstad" never saw the red light of the "Empress" at any time, which can be proved by converging courses. But it is within the bounds of possibility that the "Empress" might have seen the green light of the "Storstad" at some time, and the Assessor quite agrees with me in this finding.

I am going to prove later that the "Empress" was stopped in a position which is indisputable, and the present position of the wreck will verify it, whereas the "Storstad," having nothing to verify her position by, might have been somewhat to the south, in which case the "Empress" might have seen the "Storstad's" green light at some time. The fact that the "Storstad" ported her helm and ran into the "Empress" on the starboard side shows that the "Storstad" must have been somewhat to the south. So, of the two stories of green to green of the "Empress," and red to red of the "Storstad," the "Empress" has the best of the argument, as hers is a possibility, but the "Storstad's" is an impossibility. Now, having shown that there is a possibility of the "Empress" having seen the green

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light of the "Storstad" at some time, it immediately places her in the enviable position of being a passing ship instead of a crossing ship. The stories are absolutely contradictory and we have to determine which is the more probable.

The whole trend of the evidence taken at Quebec was evidently made with the purpose of establishing which of the two vessels had changed her course in the fog, and this was the main question the commission had to decide.

The defendant, in opening its case, charged the plaintiff with three faults: (1) that the alteration of the "Empress's" course at Cock Point buoy was, according to it, a wrong thing to do; (2) that the speed of the "Empress" was maintained until the collision took place, and (3) the "Empress of Ireland" is charged with not having a proper lookout.

As to the alteration of the course at Cock Point buoy, the defendant pretends that by so doing, a risk of collision was produced.

A manœuvre is wrong if it creates a risk of collision. The test, therefore, is whether this manœuvre created a risk of collision. A further test is again if it did create a risk of collision, did it contribute to the disaster in question? If a given manœuvre creates a risk of collision, it would be a breach of the rule, and if it creates a risk of collision which contributed to the collision or caused it, then it would be a fault. As is well known, there is a difference between the English law and our law that used to exist and which has been very recently abolished. All the English jurisprudence is under the old law. In England, formerly, a breach of the rules was pre-

sumed to have contributed to the collision or caused it, unless the contrary was proved. Whilst, in our law, the plaintiff has to prove the breach of the rule, and also that it caused or contributed to the collision.

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In this particular case, either the ships were, for some minutes to the knowledge of each other, green to green, or they were, for some minutes before the collision, to the knowledge of each other, red to red, after the Cock Point buoy alteration.

There is no suggestion that the ships were head-on or nearly head-on. The ships were passing ships, each one seeing the other. Even if the ships were either red to red, or green to green, to the knowledge of each other, for some minutes before the fog, the courses were safe: there was no risk of collision at that moment.

The anterior manœuvre had not created a risk of collision and the material and vital question is, as was stated in Quebec by everybody before the commission, which ship destroyed the safe position? The ship which altered its course was at fault.

If the ships entered the fog red to red, the courses were absolutely safe. If red to red is safe, then green to green is equally safe.

I cannot see that there should be any difference in the "Empress's" favour in that risk. What is true of red to red must be true of green to green, so on defendant's statement, there is nothing in the suggestion that the initial manœuvre created a risk of collision, or otherwise created a dangerous position, or that the initial manœuvre, in any way, caused or contributed to the collision, since the ships

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were each on passing courses and each knew that they were on passing courses before the fog set in.

As to the second alleged fault, that the speed of the "Empress of Ireland" was maintained until the collision took place, I will take this into consideration when I treat of the responsibility for the accident.

As to the third alleged fault, that the "Empress of Ireland" had no proper look-out, this has certainly not been established, as the witness Carroll was in the crow's-nest look-out and faithfully fulfilled his duty and remained there to the last moment.

It has also been charged that the "Empress of Ireland" changed her course, not by reason of any wilful alteration of her wheel, but in consequence of some uncontrollable movement which was accounted for on the assumption that the telemotor steering gear was out of order and on the theory that having regard to the fulness of the stern of the "Empress," the area of the rudder was insufficient.

It may be remarked that this was not pleaded by the defendant and, in my opinion, the evidence shows clearly that the steering gear was in good order, and there is not a shadow of evidence to show that there was anything wrong with it at the time of the collision, or that it, in any way, contributed to the said accident.

In addition to the evidence taken before the commission at Quebec, which will hereafter be referred to by the number of the questions applicable to the different matters at issue in this cause, the Liverpool Pilot, who was examined for the first time before this Court, testified that he had been pilot in

charge of the "Empress of Ireland" while she was proceeding to sea ever since the ship was launched, sometime in the year 1906, and he spoke in the highest terms of her steering gear. I do not think this question requires a more detailed explanation.

Much comment has been made on the fact that Captain Kendall says, just before the ship sank, he looked at the compass and found her head S.E. The present position of the wreck is with her head N.E.

When we take into consideration the fact that there was no light for him to see the compass by, and take into consideration that he was steering eastward, it would be easy for him to confound S.E. with N.E. There is also another explanation. Nothing will cause deviation of the compass more than a heavy jar. The "Empress" had jar enough to send her to the bottom. Then the angle of the ship was 45° or more, and no ship has her compass adjusted for such a serious heeling error, so that this compass which he looked at might be altogether useless, and the S.E. that Captain Kendall imagined he saw might be several points out.

The evidence being so contradictory, the witnesses from the "Storstad" saying that they were approaching so as to pass red to red, while those of the "Empress of Ireland" say they were approaching so as to pass green to green, the stories are irreconcilable, and we have to determine which is the more probable.

In order to place the responsibility for the disaster, the first point I will dispose of is the position of the "Empress" at the time of the collision, say at 1.55 A.M. I think I am entitled to state positively that it was 1200 to 1500 feet to the eastward or past

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the place where the wreck now lies and that is marked on the defendant's chart or diagram No. 3, produced by Mr. Griffin, one of the defendant's counsels, in illustration of his argument from the position of the churches, namely:

It lies N.62½°.W., 7 1-6 miles from Ste. Flavie church.

It lies N.11°E., 4 2-5 miles from St. Luce church.

It lies N.45° E., 6¾ miles from Father Point Light-house.

The position of the wreck has been checked by me, with the assistance of the assessor, and it agrees with the above bearings.

I know the position of the wreck and I know by many witnesses that there was a current of one mile an hour running westerly, and it is well known that the "Empress" sank 15 minutes after the collision. She drifted back with the current 15 minutes after she was struck. This places her position exactly at the time of the collision 1200 to 1500 feet to the eastward or past the wreck, provided she was lying dead in the water, as she claims to be at the time of the impact.

We have the evidence of Captain Kendall, (Q. 20), Captain Murray (Q. 4079), Brennan (Q. 138), Murphy (Q. 2177 to 2194), that she could be stopped dead in the water from 2 to 3 minutes, and cases have been cited where it has been done, such as off Point Lynas, off the Welsh Coast, in 2 minutes and 15 seconds (Q. 4199).

On the present occasion, we have the evidence of Captain Kendall (page 26), Brennan, that on seeing the "Storstad's" light being shut out by the

fog, they reversed their engines for 3 minutes, blowing, while doing so, 2 whistles of 3 short blasts, to let the "Storstad" know that she was reversing. Then, according to the evidence, she blew 2 whistles of 2 long blasts, indicating that she was stopped in the water, which is verified by Jones, the First Officer (Q. 1764), Captain Kendall (Q. 218), John Murphy (Q. 2194), Brennan (Q. 2149), Liddell (Q. 2540), and Miss Townsend (Q. 7205). Tufteness and Saxe heard the three short blasts twice (Q.Q. 1092, 1094), which is important and material evidence, as Tufteness admits he heard the "Empress's" 3 short blasts about one or two minutes apart. Therefore, he admits she was reversing for that time, sufficient to bring her to a standstill.

Saxe (Q. 4650) also admits the same, though the "Storstad" denies at all times hearing the "Empress's" 2 whistles of 2 long blasts saying she was stopped.

After carefully considering all the evidence, I have come to the conclusion that the "Empress" was stopped. I think it has been established that the "Empress's" position, at the time of the collision, was 1200 to 1500 feet eastward from the wreck, notwithstanding the contradictory evidence that has been produced. The fact remains that she was dead in the water 15 minutes before she sank, and she had to be from 1200 to 1500 feet past the position where the wreck now lies, notwithstanding all arguments to the contrary.

Having established the position of the "Empress" dead in the water at the time of the collision, I will review the action of the vessels which led to the collision.

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I will first speak of the courses of the two ships, which I consider as most important. The evidence is emphatic that the "Empress" was steering a final course of N.73° E. and never varied this course. I am forced to accept it, and the Assessor concurs, and the same applies to the "Storstad's" course of W. by S.

Now, it is shown by the chart or diagram prepared at my request by the Assessor, verified by me, and signed by me and the Assessor for identification and hereto annexed,<sup>1</sup> that these two courses were converging and that two ships approaching each other, in opposite directions, on these courses would meet or cross each other at a given point. This crossing point must be the position of the "Empress" after she was stopped in the water at the time of the collision.

It having been proved that the "Empress" was stopped in the water, and that her position was from 1200 to 1500 feet to the eastward of the wreck, by looking at the chart, it will be seen that during the whole time the "Empress" was following her N.73° E. course. She had the "Storstad" on her star-board bow and disposes finally of the contentions of the "Storstad" that she saw the "Empress's" red light. At a distance of a mile and a half or two miles apart, where both parties agree they last saw each other before the collision, and when their lights were commencing to be dimmed by the fog, the "Empress" would be showing the "Storstad" her green light, and the "Storstad" would be showing the "Empress" her red light, unless the "Storstad" was to the southward, as I think she was, then she would be showing her green light. This

<sup>1</sup> At p. 183 *post.*

can be verified by looking at the chart. I think it is quite probable that at this time the coloured lights of both ships were obscured by fog, but if they saw any coloured lights at this time, they would have to be as stated by me.

Now, I will take up the question of the action of the two ships when they both arrived at the position of one mile and a half to two miles apart, after which they were obscured by the fog until the time of the collision, which is proved to be about 8 minutes. They enter this area of one mile and a half to two miles going full speed, say 16 miles per hour for the "Empress" and 11 miles per hour for the "Storstad." Therefore they were approaching each other at the rate of 27 miles an hour. At this rate of speed, they would have either collided or passed clear in 3 or 4 minutes.

Considering the close proximity of the vessels at this time, any change of course might have been imprudent, particularly as they were running into a fog bank, and this explains the fact that at this point, say at 1.47 A.M., the "Empress" ordered her engines full speed astern, and notified the "Storstad" by the appropriate whistle of 3 short blasts that she had done so.

Instead of following the example of the "Empress" and reversing her engines, the "Storstad" merely slowed her engines and continued her speed; about 8 minutes after the "Empress" started to reverse her engines, the collision occurred, say at 1.55 A.M.

Any difference of opinion as to the time here seems to be absolutely of no importance, as we have the evidence of the "Empress" that she was re-

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versing for 3 minutes and the evidence of the "Storstad" that she knew the "Empress" was reversing, having heard her signal of 3 short blasts.

Now, what happens in this interval of 8 minutes before the collision occurred?

The "Empress" goes about a quarter of a mile, or practically 3 ship lengths, under reversed engines before she is brought to a standstill. The evidence shows that this took 3 minutes. During these 3 minutes the "Storstad" is going on with no effort to check her speed other than slowing her engines, and must be going at a speed of say 8 knots, which is a compromise between full speed, 11 knots, and slow speed, 5 knots. She would cover the distance of nearly half a mile.

This leaves the ships about three-quarters of a mile apart, and 5 minutes yet to go before the collision occurred. The "Empress" is dead in the water and the "Storstad" is continuing on her course. At some part of this period, she claims she came to a dead stop, then ported her helm, only affecting her heading a quarter or half a point, and ordered slow speed ahead again.

I will make some observations as to the probable speed of the "Storstad" at the time of the collision.

At a mile and a half apart, the "Storstad" was going 11 knots an hour with the current. She then slowed her engines. At the time of the order to slow down, she was still going 11 knots. It would take some time to come back from her 11 knot speed to slow speed, which is about 5 knots an hour. Therefore, when the next order to slow the engines was given 2 minutes later, by the evidence, it was reason-

able to suppose that she was going at 8 knots per hour. As it would take her some time to come to a standstill from a speed of 8 knots an hour without reversing her engines, and taking into consideration how close she was to the "Empress" after these first orders were given, I cannot see how she can have lost her way, particularly as she again started slow speed ahead before the collision, and after her order to stop.

Her next order was full speed astern and that was only 30 seconds before the collision.

She therefore seems to have maintained her speed all through the short period before the collision, and it is my opinion that at the time of the impact she was going at not less than 6 knots an hour, and probably more.

The depth she penetrated into the "Empress's" side, which the evidence gives all the way from 10 to 18 feet, and the condition of her own bows after colliding, would go to substantiate this speed.

I would mention that the "Storstad" is built longitudinally, or Isherwood system, and consequently very strong, and the damage to her bows was very extensive.

In my opinion, three facts have been established.

The position of the "Empress" when she was stopped in the water, 15 minutes before she sank—

The fact that the "Empress" was stopped in the water—and

The fact that at the time of the impact, the "Storstad" was travelling at least at a rate of 6 knots an hour, or probably more.

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In arriving at my finding as to the responsibility for the collision, other considerations come in, which I will enumerate later, but I would like to mention that I consider the evidence on both sides, other than that above referred to, immaterial and of little value.

For instance, the defendants, on their chart and in the calculations of course and distance, &c. . . . have gone on the assumption that the current was against them at the rate of a mile and a half per hour, while it was in their favour one mile per hour, so that on their own contentions, with their own chart, they would be in a position past the wreck before they ever started the manœuvres that occurred just previous to the collision.

They base their contention that the "Empress" could not cover the distance to the wreck and remain dead in the water for some time before the collision, on the theory that when the "Empress" started from a point one miles N.43° W. from Father Point buoy, she had stopped to let her pilot off, but it appears that her engines had never been stopped, but were only slowed down, as is the usual practice, as I am advised by the Assessor, and, therefore, she did not lose any time in the warming-up process of her engines, which would have happened had they been stopped, but was able to increase her speed rapidly.

The coloured lights were as I have represented them. If you will follow out the courses of the ships to the time of impact, on the chart hereto annexed and above referred to, you will see that the lights would appear as I have stated.

I am confirmed in my opinion that these vessels approached each other on their converging courses more rapidly than they realized, and as the "Empress" had the "Storstad" on her starboard bow, she adhered to the green light story, and as at the same time the "Storstad" had the "Empress" on her port bow, she adhered to the red light story, in order to evade responsibility for the collision.

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*Art. 23 of the Rules of the Road says:*

"Every steam vessel which is directed by these rules to keep out of the way of another vessel, shall, on approaching her, if necessary, slacken her speed, or stop or reverse."

The "Empress" obeyed this rule.

*ART. 16.*—"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."

*ART. 21.*—"When, in consequence of thick weather, or other causes, such vessel finds herself so close that collision cannot be avoided by the action of the giving-way vessel alone, she also shall take such action as will best aid to avert the collision."

*ART. 29.*—"Nothing in these rules shall exonerate any vessel . . . of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

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Attention might be called to the way the "Empress of Ireland" was navigated. She had 3 first-class officers on the bridge, namely: Captain Kendall, Mr. Jones, first officer, and Mr. Moore, third officer.

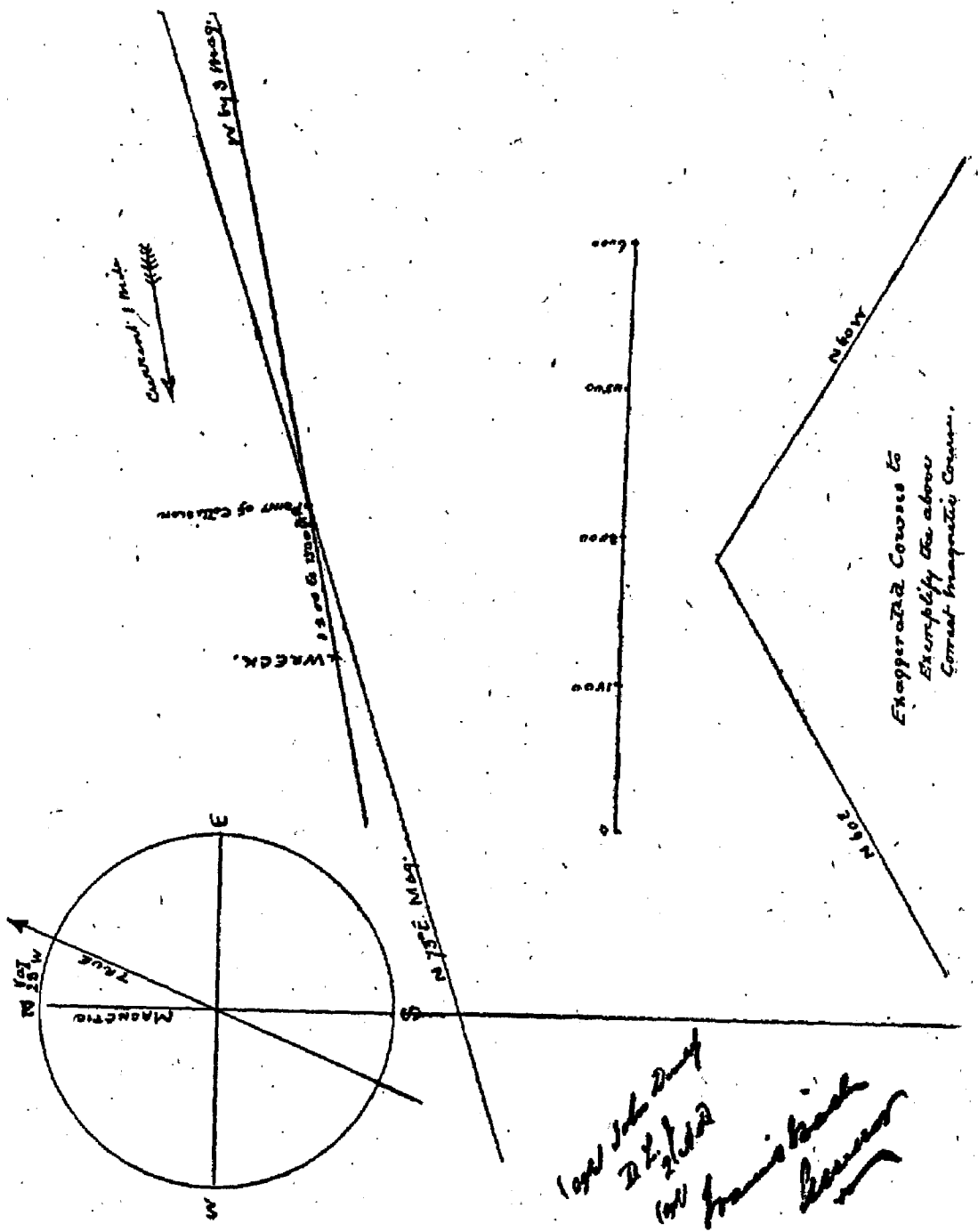
On the "Storstad," Mr. Tufteness, first officer, was in charge, perhaps assisted by Mr. Saxe, third officer, though the latter claims he had nothing to do with the navigation of the ship.

In my opinion, Mr. Tufteness, in not stopping the "Storstad," when he heard the first 3 blasts from the "Empress," made a great error of judgment, and to my mind, had Captain Andersen, the Master of the "Storstad," been called earlier and had been on deck, he would immediately have stopped his ship and avoided the whole calamity.

I cannot emphasize this neglect too strongly.

I regret very much to have to find Mr. Tufteness at fault in violating Articles 16, 21 and 29 of the Rules of the Road above quoted. Through his neglect or inexperience, in my opinion, the cause of the accident was the speed of the "Storstad," and the porting and hard-a-porting of her helm, and the "Storstad" is entirely to blame for the said accident, because Mr. Tufteness had the opportunity to take the speed off his ship, the same as the "Empress" did, and if he had not ported her helm, I believe he would have gone clear and the collision would not have occurred.

I regret very much to have to impute blame to anyone in connection with this lamentable disaster and I would not have done so, and would not do so, if I had felt that any reasonable alternative was left to me.





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There is nothing to show that the disaster was in any way attributable to the St. Lawrence route, and, being open water, all sea rules apply.

In conclusion, I am of the opinion that Mr. Tuffeness, the first officer of the "Storstad," was wrong and negligent in altering the course of the "Storstad" in the fog, as he undoubtedly did, and that he was also wrong and negligent in keeping the navigation of the vessel in his own hands and in failing to call the Captain when he saw the fog coming on.

I am further of opinion that no fault or blame is attached or attributable to the "Empress of Ireland," and, consequently, I am of opinion that plaintiff's action must be maintained, with costs, and the counter-claim of the defendant rejected, and the defendant is condemned by the present judgment to pay to the plaintiff the sum to be found due to said plaintiff, and in costs, and doth further order that an account should be taken and doth refer same to the Deputy-registrar, assisted by merchants, to report the amount due the plaintiff in respect of its claim, and that all accounts and vouchers, with the proof in support thereof, shall be filed within 6 months from the date of the present judgment.

*Judgment for plaintiff.*

Solicitors for plaintiff: *Meredith, Macpherson, Hague, Holden, Shaughnessy & Heward.*

Solicitors for defendant: *Duclos & Bond.*