

BETWEEN:

THE SHIP *ARGYLL* AND HER OWN-
 ERS, (Defendants and Counter-Claim-
 ants) } APPELLANTS;

1961
 March 23, 24
 1962
 May 2

AND

THE OWNER OF THE SHIP *SUNIMA*,
 AKSJE SELSKAP I.M.A. (Plaintiff) . } RESPONDENT.

Shipping—Collision in Quebec City Harbour—Negligence of defendant ship sole cause of collision—Contravention of Rules 29, 25 and 22 of the International Rules of the Road—Appeal dismissed.

Respondent recovered judgment against the appellants for damages resulting from a collision between its vessel and that of the appellants. From that judgment the defendants now appeal to this Court.

Held: That on the facts as found by the learned trial Judge the appeal must be dismissed.

2. That the collision and resulting damage were caused solely by the negligence and fault of those in charge of appellant ship in contravening rules 29, 25 and 22 of the *International Rules of the Road* in that they failed to keep to the side of the fairway or mid-channel which lay on their starboard side, in failing to post a look-out on the bow of the vessel and in altering the course of their vessel to port which brought her on a course which crossed that of plaintiff vessel.
3. That this court sitting in appeal in admiralty matters will not interfere with the judgment of the lower court as regards pure questions of fact or the quantum of damages unless it appears clearly erroneous. The *S.S. Ethel Q v. Adelard Beaudette*, 17 Ex. C.R. 505 applied.

APPEAL from the judgment of the District Court in Admiralty for the Quebec Admiralty District.

The appeal was heard before the Honourable Mr. Justice Dumoulin at Montreal.

Jean Brisset, Q.C. and *Bruno Desjardins* for appellants.

R.C. Holden, Q.C. and *A. S. Hyndman* for respondent.

DUMOULIN J. now (May 2, 1962) delivered the following judgment:

This is an appeal from a decision rendered June 29, 1960, by Honourable Justice Arthur I. Smith, District Judge for the Admiralty District of Quebec, maintaining the Plaintiff's action and, consequently, dismissing the Defendants and Counter-Claimants' pleas.

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The maritime mishap, from which stems the instant suit, happened between 0200 and 0205 or 0206 hours, the night of May 27, 1959, within the limits of Quebec City harbour.

Weather conditions were excellent, a clear, starry night, no wind, a calm sea. An ebb tide was flowing east at an approximate velocity of 3 to 3½ knots.

Despite these favourable climatic factors, a serious collision occurred causing considerable damage to both ships when they rammed one another in the circumstances here-under narrated.

The vessels concerned, the *Sunima* and *Argyll*, can be described as having respectively:

The *Sunima*: an overall length of 354.95 feet, a breadth of 48.65 feet; 3,903.06 tons gross, 2,118.97 tons net register, and manned by a crew of 34. At full speed, loaded, she could develop 14¼ knots, hourly.

Of Norwegian registry and build (1958), the *Sunima* is a steel, single screw, diesel cargo motor ship, with a draught of 9'9" forward and 15'10" aft. Her bridge is located amidships and her housing quarters aft.

The *Argyll*, built in Japan in 1957, has an overall length of 504 feet, a breadth of sixty-two feet six inches (62'6"), a gross tonnage of 10,657 and a net register of 6,304 tons. She attains, at full speed, 15 knots, and 11 at half speed on 60 R.P.M. This ship, an oil burning one, has a single right-hand propeller; her draught, if travelling light, as on this ill-fated trip, reads 6'6" forward, and 19'6" aft. Her wheelhouse is located 366' aft of the stem. Of Liberian registry (Port of Monrovia), the *Argyll*, on May 27, 1959, had a Greek crew of 37 men.

The *Sunima's* Master was Captain Sverre Swertsen, the *Argyll's* Captain, Antonios Corcodilos. Pilot Moise Dionne navigated the *Sunima* and Pilot E. Gourdeau the *Argyll*.

At the material time, the *Sunima*, laden with 741 tons general cargo, had begun a voyage from Montreal to the British West Indies, whilst the *Argyll* made way, in ballast, from Port Alfred to Sorel, P.Q.; the plaintiff ship, therefore, going down river, in an out-bound direction, and defendant vessel steering an in-bound upstream course.

In a general way, it may be said that the collision took place about two miles (nautical) below Quebec City pilotage station, but of this more will be written.

Possibly not the most concise mode, but I believe, a helpful and revealing one, of setting forth the flatly divergent explanations resorted to by the contending parties, will consist in textually inserting paragraph 12 and, partially paragraph 16 of the Combined Preliminary Acts.

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In paragraph 12, then the *Sunima's* version is that:

She was on a voyage to the British West Indies, via Halifax, N.S. As the *Sunima* approached the Pilotage Station in the Harbour of Quebec her engines were stopped and her way reduced. After changing pilots, the *Sunima* proceeded on down the channel on the usual outward bound course. When about opposite the entrance to the St. Charles River Basin and in about mid-channel the red side light and masthead lights of an upbound ship (which turned out to be the *Argyll*) were sighted about two points on *Sunima's* starboard bow and distant about 1½ to 2 miles. *Sunima* was altering course gradually to starboard and expected to meet and pass the *Argyll* port to port in the usual manner but shortly afterwards it was noticed that the *Argyll* appeared to be altering her course to port, opening her green light and closing her red.

The course of *Sunima* was altered further to starboard and a signal of one short blast was sounded by her. The *Argyll* did not reply and continued to swing to port evidently intending to cross ahead of *Sunima*. The engines of *Sunima* were put full speed astern and her wheel hard to starboard and an attention signal of several short and rapid blasts was sounded, but the *Argyll* came on, crossing in front of *Sunima* and making collision inevitable.

Next, the *Argyll's* plea reads thus:—

The *Argyll* had been proceeding upriver with her engines turning at full speed and her telegraph on stand-by; upon entering the limits of the Harbour of Quebec, her speed was reduced to half.

After sighting the lights of the *Sunima*, the *Argyll* kept her course and speed, keeping well on her own side or north side of the channel and expecting to meet the *Sunima* which was down-bound, red to red; about 4 cables above Buoy 87½B the course of the *Argyll* was altered to 250° True, in order to make the bend in the channel leading into the dock area of the Harbour of Quebec, bringing Buoy 138B to bear fine on the starboard bow; the green light of the *Sunima* which was then bearing fine on the port bow of the *Argyll* was kept under close observation as those on board the *Argyll*, expected her at any moment to alter course to starboard in order to effect a port to port meeting; the *Sunima*, however, kept on showing her green, shaping to be on a course crossing that of the *Argyll* from port to starboard at very close quarters, whereupon it became apparent that a collision would be unavoidable unless action was taken by the *Argyll*; the wheel of the *Argyll* thereupon was ordered hard-a-port and a signal of 2 short blasts blown and the *Argyll* began to swing to port; simultaneously, the *Sunima* was seen to alter her course sharply to starboard closing her green and opening her red on the starboard bow of the *Argyll*, and the collision occurred after which the engines of the *Argyll* were stopped; by reason of the impact, the swing of the *Argyll's* bow to port was accentuated and the *Sunima* continued to swing to starboard until both vessels came to head south; various manoeuvres being made until both vessels were clear.

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The point of impact can be fairly well located, the weight of evidence lending reasonable probability to Pilot Dionne's reckoning who indicated it by letter "D" on chart 1321 (Plaintiff's ex. P-1), and on page 28 of the transcript is reported to have said that:

- A. It happened in between the two (2) dry docks, just at the end of the outfitting dock there It would be between the Lorne and the Champlain dry docks, a little to the east of the outfitting dock.

Such an estimation disagrees with the marking "G", pencilled in red on the same map, as giving Pilot Gourdeau's and Captain Corcodilos' versions, situating the critical spot well to the north of mid-channel. This suggestion is inadmissible for several reasons, the first of which shows through appellants' paragraph 12 of the Combined Preliminary Acts. The *Argyll's* emergency step is therein given as "hard-a-port" order, with the subsequent recognition that "both vessels came to head south" manifestly implying south of mid-channel and in *Sunima's* starboard lane.

On this significant point I share the learned trial Judge's opinion that:

There is no evidence to show that the *Sunima* was at any time to the North of mid-channel save and except for the calculations made by the *Argyll's* Pilot and Master as to the place of the collision.

The testimony of these witnesses however on this point is confused and, in particular, that of Pilot Gourdeau appears to have completely disregarded and failed to take into account the *Argyll's* alteration from course 270 to 250 and the fact that the *Argyll* was undoubtedly on course 250 for upwards of two minutes prior to her going hard-a-port just prior to the collision.

The position of impact suggested by Pilot Dionne differs somewhat from that found by the Court below, and would be about 4 cables beyond Buoy 87½B; however, I quite agree with my assessors that it had no material bearing on the actual cause of the collision.

According to the indications jotted down on chart 1321, i.e., the letters "S" and "A", Pilot Dionne, who testified to this, sighted the *Argyll's* red side lights and masthead lights when his own ship stood opposite the entrance to the St. Charles River Basin, a stretch of roughly two (2) miles separating the vessels (cf. Dionne, p. 17). On the other hand, the *Argyll's* Master, Antonios Corcodilos (cf. his evidence, pp. 27-28), perceived the down-bound *Sunima* a few

minutes later, at 0203, when Pilot Gourdeau rang a half speed signal preparatory to altering the course from 270° to 250°, as required by a rather sharp bend in the channel.

Now, this variation, which swung the in-bound *Argyll* to port, towards the *Sunima*, must, if imprudently made, bear a heavy burden of responsibility as a proximate cause in the genesis of the accident, especially so since its critical phase evolved within, probably, no more than two minutes, from 0203 to 0205. Athanasios Klendos, the *Argyll's* Chief Engineer, reported that as closely as he could figure, the impact occurred at 0205, "because at that time it is between two movements", very likely those of half speed and hard-a-port (p. 133). In line with the verbal indication of 0205 is the mute evidence of appellants exhibit A, the Chief Officer's log book, registering under date of May 27, 1959, a gyro course of 270° at 0200, continuing until 0205, when the reading is 250°.

Constantinos Valmas, Second Officer on the *Argyll*, corroborates Klendos as to the time, 0203, at which a half speed order was rung.

In Valmas' evidence some assertions sound unconvincing. For instance he says the *Sunima* was 2 or 3 cables distant when he last saw her prior to the collision, and that her green and masthead lights were open to the *Argyll's* port side (trans. p. 154). He then descended below deck and, less than two minutes later, when the tremendous shock took place, no possibility of a collision came to his mind, but this only and I quote (p. 157):

A. I thought that the ship was aground and that is all.

Q. by Mr. Brisset, Q.C. Why did you think the ship was aground?

A. Because we had passed very near the West Point Light.

Q. Where did you think the other ship was? You did not think there was a collision with the other ship?

A. No.

Q. Where did you think the other ship was?

A. That she was far away.

Q. Where did you think the other ship was?

A. Far to the port side, I thought.

Whatever credence this testimony might deserve the fact persists that Second Officer Valmas positively felt the course steered by the *Sunima*, a few score seconds before the mishap, offered no danger because the latter "was far to the port side". If this be better than guesswork, what then did

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bring the vessels in immediate contact? Manifestly a false move; but on whose part? Such is the moot point the Court must solve.

The respondent's story, if I be permitted this expression, is coherently related in a precise, unvacillating manner by Pilot Dionne, who sighted the in-bound *Argyll* two miles off, abeam Ste. Petronille light, showing her 2 masthead lights and her red ones. Dionne had set a course of 070, which he increased to 080 on perceiving the other ship's "red and green side lights and the two (2) mast lights almost in line or practically in line . . . and at the same time watching the *Argyll*" (Trans. pp. 17-18). As the on-coming steamer passed abeam of Buoy 87½B, continues Dionne, "with all her lights in line toward me", there lay an intervening space of roughly three quarters of a mile (p. 19). The *Sunima's* wheel was turned to starboard on an 080° run. From there on, Dionne could not understand the unusual route on which the other boat kept going and he next saw her green lights as both ships came very close (p. 20). He ordered another five (5) degrees, and a few seconds later, one short warning blast and hard to starboard. Nonetheless, the *Argyll* "seemed to go more to port; so then I gave the order to stop the ship and to go astern; but by then the two (2) ships were pretty close together", pursues Pilot Dionne, who finally states that the *Argyll* headed across the *Sunima's* way at an angle of two or three points, with the dire consequence that the *Sunima's* stem hit the other vessel's starboard bow 20 or 25 feet abaft her stem. (cf. exhibits P-8 (a & b), P-9 (a & b), and pp. 21-22).

On appellants' behalf the Master, Captain Antonios Corcodilos, and Pilot Ernest Gourdeau, of Quebec City, testified at great length. A diligent sifting of their evidence leaves me skeptical, and under a persistent impression that in some measure, on crucial points, it results from after-thought or even wishful thinking.

The Court does not alone entertain a somewhat dubious opinion. For motives different, doubtless, but verging towards comparable results, the appellants' learned counsel could not compile a 57 page "Synopsis of Argument" without incurring the annoyance of taking polite yet firm exception to some important parts of the evidence adduced by his four principal witnesses, the Captain, the Pilot, the Chief Engineer and the Engineer of the Watch.

Starting on page 36 of this written submission, we find Pilot Gourdeau reproached thus:

Pilot Gourdeau in his evidence in chief evidently made a mistake at Page 164 of the Transcript of the Evidence at the trial, when he stated her course (i.e. the *Sunima's*) as being 020°T. to 025°T. He later corrected that to in between 045°T. and 055°T. at P. 207.

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I may remark that this so-called correction on pages 207 and 208 does wear a conjectural appearance.

On page 38 of the Synopsis, Gourdeau is blamed for his inaccuracy in stating that the *Sunima* was bearing about 3 points on the *Argyll's* port bow.

Lower, on the same page (38), we read that:

In the *Argyll's* Preliminary Act, it is alleged that such change of course took place 4 cables above Buoy 87½B, while in her Statement of Claim, it is alleged that this change took place between 3 and 4 cables above Buoy 87½B.

The evidence of Captain Corcodilos (Trans. *Argyll*, P. 32) is to the effect that the change of course was made 4 cables past Buoy 87½B.

Pilot Gourdeau in his evidence (Trans. Trial, P. 165), gave this distance as being 5 cables past Buoy 87½B. He stated, however, that the green light on the Outfitting Wharf of Lorne Drydock was bearing 60° on his port side when he made the change, this being his usual mark; however, according to our plotting, this places the *Argyll* more like 4 cables above Buoy 87½B (the emphasis is not in the text).

In a wide expanse of river those discrepancies would be of slight moment, but in the restricted harbour lanes within which the collision happened, a matter of two cables more or less, 1,200 feet, spells the difference between safety and disaster. Furthermore, must we deal with three separate course plotters, the Master, the Pilot and some eerie helmsman, anonymously hinted at by the expression "according to our plotting"?

More indicative, still, of the many inconsistencies alluded to above, are Mr. Brisset's criticisms aimed at certain statements of the Engineer of the Watch, Valmas, and Chief Engineer Klendos. I deem appropriate to reproduce the whole paragraph from page 40 of the Appellants' Synopsis of Argument:

The only witness on the *Argyll* who gave 0205 as the time of the collision was the Engineer of the Watch, but in this he is contradicted, and we submit that he was in error; in any event, he contradicted himself by stating that the collision occurred one minute before he received the stop order which he recorded as having been rung at 0208. The Chief Engineer, it must be conceded, had recorded in his own Log Book that the collision had occurred at 0205 but it seems that this was an estimate on his part, which might have been based on a hasty consideration of the actual events, but evidently, having made the entry,

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the Chief Engineer was committed although he conceded that the time was purely an estimate and that the time he entered would not necessarily be as accurate as the time of an order received from the bridge. The estimate in any event was made only after the collision (Trans. *Argyll*, P. 33, 34 & 35). The engine of the *Argyll* was not stopped until 0208 which, if the collision occurred at 0205, would mean that it was kept turning at half speed ahead for 3 minutes after the collision. This is hardly likely and much more probable that the engine was stopped not long after the collision and that therefore the collision occurred at 0207 rather than at 0205.

If the preceding analysis of the reliance attaching to such a style of hypothetical and *ex post facto* evidence, should extend from the learned counsel's mind to my own, I could, possibly, feel warranted, to dismiss the appeal without further ado. I will, however, persist in disposing of the remaining angles of the case.

My attention was also attracted by certain answers of Captain Corcodilos in reply to his principals' lawyer. The excerpts hereunder are taken from pages 36, 37 and 38 of the transcript.

By Mr. Brisset:

Q. Now, we would like you to tell us in your own words what happened after that?

A. Yes. I saw that the ship (*Sunima*) was not changing her course, a thing that we thought he ought to do before that. Then I saw her very close, the distance was getting smaller and there was danger of a collision as we were going. It was about a cable (600') or something like that so I decided the only manoeuvre I could do was to put the wheel hard to port to pass—to port to pass green to green, because we were very close. Also at the same time the pilot gave the ORDER "Hard to port".

Next, ten lines down, on page 37 of the transcript, a suggestive question is put to Captain Corcodilos in examination in chief; I quote:

Q. Now, in what direction was she heading in relation to your bows? Was she (*Sunima*) crossing your bows in one way or another?

A. She was crossing our head.

Q. In what direction?

A. From port to starboard.

* * *

Q. Now, Captain, at that stage would it have been possible for you to go to starboard?

A. No.

Q. Why?

A. First there was very close the shallow water to the north. The river is very shallow water here.

As one might expect, those leading questions met with due compliance, though not dispelling all doubts regarding the feasibility for the *Sunima* to keep on her course, (“was not changing her course”, has just said Corcodilos), and, simultaneously, be crossing the *Argyll’s* stem “from port to starboard”.

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The alleged proximity of shallow water to the *Argyll’s* starboard at point “G”, marked by Corcodilos and Pilot Gourdeau on plaintiff-respondent’s exhibit P-1 (official chart no. 1321), reveals, on the Master’s part, sailing up-river for the second time only, his ignorance of the soundings reported on that map; the depth, thereabouts, ranging from 121 to 128 feet. The Beauport shoreline, in a north-easterly direction, with an outer depth of 40 feet, lies about 4 cables to the right of point “G”, surely affording sufficient room for a swing to starboard of a vessel with a forward draft of 6’6” and an aft one of 19’6”.

A last instance of conflicting testimonies will finalize this chapter. Pilot Gourdeau, on examination by defendant-appellant’s counsel, is asked (transcript p. 171, top line):

Q. Now, how far off was she (the *Sunima*) when you altered course from two seven oh (270) to two five oh (250)?

A. She was about a mile and one-quarter (1-¼) above me.

Oddly enough, the *Argyll’s* Master, who at the time stood “in the wheelhouse, close to the pilot” (trans. p. 33), answers, to this selfsame question, that the other ship was then distant: “About three (3) cables” (trans. p. 33, bottom line). Quite a gap indeed between a mile and one quarter, or 6,600’, and three (3) cables, or 1,800’, on the part of two trained seamen, had their attention been really focussed upon an identical object.

SPEED—

The appellants’ statement of defence and counterclaim at paragraph 14, affirms that:

The *Sunima* was proceeding at an excessive and immoderate rate of speed in contravention of the Regulations of the National Harbours Board in force in the Harbour of Quebec;

Operating regulations of the National Harbours Board, Order in Council (P.C. 1954-1981), dated December 16, 1954, section 35(1) enacts that:

35(1) No vessel shall move in the harbour at a speed that may endanger life or property

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(2) without restricting the generality of subsection (1) no vessel shall move at a rate of speed exceeding at Quebec—nine knots.

Apparently, these cautioning directions were disregarded by Pilot Dionne, and the learned trial Judge was so advised by his assessors. I also had the assistance of experienced seamen in whose estimation the *Sunima* proceeded at a speed of 18 knots over the ground. Pilot Dionne at page 112 of his evidence suggests the reason for such regulations. Explanations are, of course, predicated on their respective degree of plausibility, but, at all events, it seems worthwhile to relate this one at length.

Dionne, asked by cross-examining counsel:

. . . Pilot, do you not agree that a speed of this kind makes it very easy to miss the turn when the turn has to be made?

replies:

No, sir. The speed of a ship at Quebec—the regulation is made for ships alongside the wharfs here, so as not to make too much sea, too much waves. It is not for the waves that regulation is made but it is made for the ships that are alongside the wharf. And that night there were no ships at Quebec, there, and the weather was very clear and calm (trans. p. 112)

Irrespective of Dionne's interpretation, this is not a penal action for infringement of speed regulations, and this derogation concerns the Court insofar only as the evidence indicates it was a proximate cause of the accident.

The Court below deleted speed as a contributing element, and nothing in the record perused would justify me to hold differently.

LACK OF PROPER WATCH ON THE ARGYLL—

The learned trial Judge, at page 8, last paragraph, writes:

Those on board the *Argyll* were, moreover, guilty of fault and negligence in failing to post a lookout on the bow of the vessel having regard to the admitted difficulty of distinguishing ships' lights against the back-ground of the lights of Quebec City and harbour front. I have no doubt that the failure to post a lookout contributed to the bringing about of the collision, since I am convinced that the *Sunima* was not sighted by those in charge of the *Argyll* as soon as she should have been.

I fully agree with the tenor of this finding, both as to the poor seamanship and grave imprudence of omitting the regular look-out and watch precautions, especially at night, within frequented harbour lanes, and also as to the confusing glare of city lights shimmering on the glossy surface of calm waters.

The *Argyll*, a bulk dry cargo vessel, 504 feet overall length, has her bridge and wheelhouse aft, a peculiarity which, presumably, does not detract from the urgency of posting the usual look-out.

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Nonetheless, Captain Corcodilos, at pages 75, 100 and 101, admits that the look-out and second officer went down, two or three minutes before the collision, to inspect the port and pilot ladders.

Some seconds before the impact, Captain Corcodilos, new to St. Lawrence sailing intricacies, and Pilot Gourdeau, busy with the ship's navigation, stood alone on the aft deck. This unusual state of affairs is conceded in the Appellants' Synopsis, and an attempt had at brushing it aside as of slight consequence, since, so the allegation goes, watch or no watch, look-out or no look-out, the accident would have taken place just the same; an assumption presupposing, at best, a brimful measure of surmising.

Sighting the *Argyll*, the *Sunima* could expect the former had also located her, as normally she should have, and would not resort to an unpredictable alteration from 270° to 250°, plus a further deviation hard to port, thereby rendering the collision unescapable.

As for so sudden a change of course, my assessors believe it happened "prematurely, and had (the *Argyll*) continued on 270 degrees for a little longer time, the risk of collision would not have existed and both vessels would have passed safely port to port". The preponderance of evidence favours this opinion. And the origin of all errors attributable to the *Argyll's* navigators springs from a lack of diligent surveillance.

The pertinent jurisprudence, of which two instances follow, insists on the urgent need of having continuous and properly posted look-outs.

In Re: *The Silver City*¹, Mr. Justice Higgins, sitting in the Supreme Court of Newfoundland, (in Admiralty) wrote:

. . . To constitute a good look-out on a ship there must be a sufficient number of persons stationed for the purpose, who must know and be able to discharge that duty. The look-out should not have any other duty to perform (*The Glannibanta*, 1 P.D. 283). *The officer of the watch or the man at the wheel does not satisfy the requirements as to look-out* (the *Hibernia*, (1874) 2 Asp. 454. (Emphasis is mine).

¹ (1935) 51 Lloyd's List L.R. 135 at 143.

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and Mr. Justice Willner (The Admiralty Division), in Re: *The Dea Massella*¹ spoke to this effect:

. . . Having prefaced what I have to say with those remarks, I do want to go on to say that I am not satisfied as to the look-out which was kept on board either of these vessels. *In particular, I am not satisfied with the fact that both vessels sought to station their look-out men on the bridge, the navigating bridge.* That is a matter on which I have already, in previous cases, on the advice of the Elder Brethren, commented adversely; and I thought it right to ask the Elder Brethren who are advising me in this case what is their view of the practice of stationing the look-out man on the navigating bridge. They, like other Elder Brethren who have previously advised me, again condemn that as bad practice. *They tell me that the look-out should certainly be stationed somewhere else in the ship; forward, if possible, if the weather conditions allow it. If, however, the weather is such as to forbid the possibility of a look-out being posted forward, then at least he ought to be stationed on the upper bridge. They express the view, which I think I have already included in my judgment in previous cases in this Court, that it is most important to station the look-out in a position where his attention will not be distracted by what is going on on the bridge, where he will not be perpetually listening to discussions taking place between the master and the officer of the watch, or between the officer of the watch and the helmsman, but where he can give his undivided attention to what he is himself able to see and hear . . .*

Lastly, there exists little room for doubt but that Appellants' officers contravened the *International Rules of the Road*, particularly articles 29, 25 and 22, hereafter cited according to their chronological sequence of occurrence.

Article 29: Nothing in these rules shall exonerate any vessel, or the owner, or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.

Article 25: In narrow channels every steam vessel shall, when it is safe and practicable keep to that side of the fairway or mid-channel which lies on the starboard side of such vessel.

Article 22: Every vessel which is directed by these rules to keep out of the way of another vessel shall, if the circumstances of the case admit, avoid crossing ahead of the other.

For an ultimate summing up of my findings in this appeal, I could do no better than adhere to the learned trial Judge's conclusions who then wrote:

I am satisfied that the casualty was brought about solely by the fault and negligence of those in charge of the *Argyll*, in that they improperly failed to keep to the side of the fairway or mid-channel which lay on their starboard side and instead of altering course to starboard,

¹ [1958] 1 Lloyd's Rep. 10 at 21.

as they could and should have done when the *Sunima* was sighted, they altered to port in a manner which brought the *Argyll* on a course which crossed that of the *Sunima*.

Those on board the *Argyll* were, moreover, guilty of fault and negligence in failing to post a lookout on the bow of the vessel having regard to the admitted difficulty of distinguishing ships' lights against the back-ground of the lights of Quebec City and harbour front. I have no doubt that the failure to post a lookout contributed to the bringing about of the collision, since I am convinced that the *Sunima* was not sighted by those in charge of the *Argyll* as soon as she should have been.

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Finally, *ex majore cautela*, merely, and nowise restricting my full concurrence with the above pronouncement, the doctrine applicable in an appeal such as the instant one, was adequately formulated by the late Mr. Justice Audette in the matter of *The S.S. Ethel Q v. Adélarde Beaudette*¹, I quote:

Sitting as a single judge in an Admiralty Appeal from the judgment of a trial judge, while I might feel obliged to differ with great respect in matters of law and practice, yet as regards pure questions of fact or the quantum of damages, I would not be disposed to interfere with the judgment below, unless I came to the conclusion that it was clearly erroneous.

For the reasons preceding, this appeal and the corollary counter-claim are dismissed. The respondents will recover the costs incurred in both this Court and that below.

Judgment accordingly.

Reasons for judgment of A. I. Smith, D.J.A.:—

This litigation, comprising Principal Action and Counter-Claim, arises out of a collision which occurred between the Ships *Sunima* and *Argyll* within the limits of the Harbour of Quebec at approximately 0205 hours (E.S.T.) on May 27, 1959.

The case for the plaintiff is as follows:— The plaintiff is and was at the time of the collision hereinafter referred to, the owner of the Norwegian motor-vessel *Sunima*, a steel single screw cargo vessel of the Port of Oslo, Norway, of 3,903.06 tons gross and 2,118.97 tons net register, 354.95 feet in length

overall and 48.65 feet in breadth and manned by a crew of 34 all told. On May 27, 1959 the *Sunima*, laden with about 741 tons general cargo was on a voyage from Montreal to the British West Indies. The weather was clear with good visibility and there was little or no wind. The tide was ebb of a force of about 2 knots. The *Sunima* was exhibiting the regulation navigating lights which were burning brightly and a good lookout was being kept on board her. Early in the morning of the said May 27 the *Sunima*, when approaching the Pilotage Station in the Harbour of Quebec, reduced her speed and then stopped her engines, taking off her way in order to

¹17 Can. Ex. C.R. 505 at 506.

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change pilots. After changing pilots, the *Sunima* proceeded on down the channel on the usual outward bound course. When about opposite the entrance to the St. Charles River Basin and in about mid-channel the red light and masthead lights of an upbound ship (which turned out to be the *Argyll*) were sighted about two points on *Sunima's* starboard bow and distance about $1\frac{1}{2}$ to 2 miles. *Sunima* was altering course gradually to starboard and expected to meet and pass the *Argyll* port-to-port in the usual manner but shortly afterwards it was noticed that the *Argyll* appeared to be altering her course to port, opening her green light and closing her red. The course of *Sunima* was altered further to starboard and a signal of one short blast was sounded by her. The *Argyll* did not reply and continued to swing to port evidently intending to cross ahead of *Sunima*. The engines of *Sunima* were put full speed astern and her wheel hard to starboard and an attention signal of several short and rapid blasts were sounded, but the *Argyll* came on, crossing in front of *Sunima* from port to starboard. The collision then occurred, the starboard bow of *Argyll* a short distance abaft her stem striking the stem of *Sunima*, causing serious damage to the *Sunima*. The collision and the damage occasioned to the *Sunima* were caused by the fault and negligence of the *Argyll* and those on board her as herein alleged. Those on board the *Argyll* improperly failed to keep to the side of the fairway or mid-channel which lay on their own starboard side. They failed to alter their course to starboard in due time or sufficiently or at all. They improperly altered their course to port. They negligently failed to keep a good lookout. They proceeded at an immoderate and excessive speed under the existing circumstances. They improperly failed to keep out of the way of

Sunima. They improperly attempted to cross ahead of *Sunima*. They failed to ease, stop or reverse their engines in due time or at all. They failed to sound proper signals in accordance with the regulations. They failed to exercise the precautions required by the ordinary practice of seamen or by the special circumstances of the case. They failed to take in due time or at all proper or any steps to avoid the collision. They contravened Rule 18, 19, 22, 23, 25, 27, 28 and 29 of the *Regulations for Preventing Collisions at Sea*.

The case of the Defendants and Counter-Claimants is as follows:—The Defendants and Counter-Claimants, Villaneuve Compania Naviera, S.A. of Panama, are and were at the time of the collision hereinafter referred to, the Owners of the Liberian Steamship *Argyll* a steel, single screw cargo vessel registered at the Port of Monrovia, of 10657.46 tons gross and 6304 tons net register, 504' in length overall and 66.90' in breadth, equipped with steam turbine engines developing 7150 S.H.P. and manned by a crew of 37 all told. In the early hours of May 27, 1959, the *Argyll* whilst on a voyage from Port Alfred to Sorel in ballast, was proceeding up the River St. Lawrence, approaching the limits of the Harbour of Quebec where a change of pilots was going to take place. Her engines were turning at full speed with her telegraph on stand-by. The weather was fine and clear with good visibility and there was little or no wind. The tide was ebb and of a force of about 3 to 4 knots (Spring tide) flowing in an easterly direction. The *Argyll* was exhibiting the regulation navigating lights which were burning brightly, and a good lookout was being kept on board her. West Point Light at the western tip of Orleans Island was abeam at about 0200 on a course of 270° True and at 0203 the speed

was reduced to half. In these circumstances shortly after the reduction in speed, the masthead lights and green sidelight of a down-bound vessel which turned out to be the *Sunima* were sighted bearing about 25° on the port bow of the *Argyll* distant about 1½ to 1¼ miles. The *Argyll* kept on her course of 270° keeping well to her own side or north side of the channel, expecting to meet the *Sunima* red to red. Between 3 and 4 cables above Buoy 87½ B which was left 2 cables to port, the course of the *Argyll* was altered to 250° True in order to make the bend in the channel leading into the dock area of the Harbour of Quebec bringing Buoy 138B to bear fine on the starboard bow. The green light of the *Sunima* which then came to bear fine on the port bow of the *Argyll* was kept under close observation as those on board the *Argyll* expected the *Sunima* to manoeuvre so as to effect a port-to-port meeting. The *Sunima* however kept on showing her green shaping instead to be on a course crossing that of the *Argyll* from port to starboard at very close quarters, whereupon, as it became apparent that a collision would be unavoidable unless action was taken by the *Argyll*, the wheel of the *Argyll* was ordered hard-a-port and a signal of 2 short blasts blown. As the *Argyll* began to swing to port, the *Sunima* was observed to alter her course sharply to starboard closing her green and opening her red on the starboard bow of the *Argyll* and the collision occurred, the stem of the *Sunima* striking the starboard bow of the *Argyll* just abaft the stem. The engines of the *Argyll* were then stopped and by reason of the impact the swing of the *Argyll's* bow to port was accentuated and the *Sunima* continued to swing to starboard until both vessels came to head South, various manoeuvres being then made until both vessels were clear. The collision and the damage

occasioned thereby to the *Argyll* were caused by the fault and negligence of the *Sunima* and those on board her as herein alleged: The navigators of the *Sunima* negligently and improperly failed to keep a proper and efficient lookout. They failed to keep to that side of the fairway which lay on their starboard side. They failed to alter course to starboard sufficiently or at all or in due time in order to effect a red to red meeting with the *Argyll*. They failed to keep out of the way of the *Argyll*. Generally, they failed to take the proper or any, or sufficient action with helm and/or engines in due time or at all. They failed to indicate signals and at the appropriate time the action which they actually took with helm and engines. The *Sunima* was proceeding at an excessive and immoderate rate of speed in contravention of the Regulations of the National Harbours Board in force in the Harbour of Quebec. The navigators of the *Sunima* failed to take in due time or at all proper or any steps to avoid the collision. They failed to exercise the precautions required by the ordinary practice of seamen and by the special circumstances of the case. The navigators of the *Sunima* contravened Articles 19, 22, 25, 28 and 29 of the *International Rules of the Road*, and Article 31 of the *National Harbours Board Regulations for the Harbour of Quebec*.

Evidence was brought on behalf of the Plaintiff that at 0152 the *Sunima's* engines were stopped, the vessel then being opposite the Pilot's station, and at 0155 Pilot Dionne came aboard. The engines were put full ahead at 0153, the ship then being about mid-channel almost opposite Queen's Wharf heading 023. The *Sunima* was kept on course 023 until abreast of Shed 26. Course was then altered to 030 and the vessel continued on 030 until Ste. Pétronille Light was open to the North with Buoy 89B. Her course was then altered to 050 on

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which course she continued until Shed 29 was slightly open with the inner Blue Light on the breakwater and as the *Sunima* passed the entrance to the St. Charles Basin the *Argyll* was first sighted, apparently in the vicinity of Ste. Pétronille Light and about two miles from the *Sunima*. The *Argyll's* mast lights and her red light were first sighted bearing about two points on the *Sunima's* starboard bow. At about that time the *Sunima* altered course to 070 and when the *Argyll's* leading lights came into line the *Sunima* altered another 10° to bring her onto course 080. At that time the *Argyll* was from $\frac{1}{2}$ of a mile to a mile distance and just abreast of Buoy 87 $\frac{1}{2}$ B. The *Sunima* then commenced to see the *Argyll's* green light and her red shutting out, whereupon the *Sunima* altered another 5° to starboard and seconds later sounded one short blast and put her helm hard astarboard just before the vessels collided. The *Argyll* appeared to go further to port, so the engines of the *Sunima* were ordered stopped and full astern. The stem of the *Sunima* hit the starboard bow of the *Argyll* 20 to 25 feet abaft the stem. The *Sunima*, at the time of the collision, was slightly South of mid-channel opposite a point midway between Lorne and Champlain dry-docks, a little East of and about 3 cables from the outfitting dock. The angle of collision was between 40 to 45 degrees and the time of collision about 0204 according to Pilot Dionne and Plaintiff's Preliminary Act.

Evidence adduced on behalf of Defendants and Counter-Claimants shows that the *Argyll* upward-bound went onto course 270 slightly below Marand Buoy and continued on this course past Ste. Pétronille Light (West Point) which she passed at a distance of about two cables. Her estimated speed over the ground at that time was twelve knots (full speed) there being an ebb tide giving a current of 3 to 4 knots. On

the bridge with Pilot Goudreau were the Master and Wheelman. The *Argyll*, when abeam of Ste. Pétronille Light at 0200, was put on stand-by and at 0203 her engines were put at half speed, she still being on course 270, and about two cables off and slightly below Buoy 87 $\frac{1}{2}$ B. Shortly thereafter the *Sunima* was first seen by those on board the *Argyll* at a distance of 1 $\frac{1}{2}$ to 1 $\frac{1}{4}$ miles. The *Sunima's* green light and leading lights were first sighted about 3 points on the *Argyll's* port bow and those in charge of the *Argyll* estimated that the *Sunima* was on course 20° and 25°.

The *Argyll* continued on course 270 until she was about 5 cables above Buoy 87 $\frac{1}{2}$ B when she altered 20° to port to come onto course 250. After altering to course 250 those in charge of the *Argyll* saw the green light of the *Sunima* about 10° on the *Argyll's* port bow and her course was then estimated to be between 45° and 50° and her distance about 1 $\frac{1}{4}$ miles. According to Pilot Goudreau the alteration from course 270 to 250 occurred at 0205 hours. He testified that prior to this alteration he had Buoy 138B on his port bow and that after coming onto course 250 a buoy which was assumed to be Buoy 138B (but which may actually have been Buoy 140B) was about 10° on his port bow and he was still seeing the *Sunima's* green light. He then saw the leading lights of the *Sunima* closing so rapidly that he cried: "Oh, my God, to protect myself I will have to take action" so he went hard-a-port and about 7 or 8 seconds later the *Sunima* altered to starboard about one cable. The only time Pilot Goudreau saw the *Sunima's* red light was just prior to the collision. In giving his estimate as to the place where the accident occurred Pilot Goudreau expressed himself as follows: "We figured that we were about 5 cables above Buoy

87½ a mile and a cable above West Point which was bearing about 80 to 81°.

By Defendants Preliminary Act the place of collision is stated to have been "In the Harbour of Quebec well to the North of mid-channel line about 11 cables above West Point Light bearing 81°."

At the time of collision the *Argyll's* Pilot, Master and Wheelman were on the bridge. Those in charge of the *Argyll* estimated that the collision occurred at about 0205 (although in Defendants' Preliminary Act the time is stated to have been between 0206 and 0207).

The evidence offered on behalf of Plaintiff as to the speed of the *Sunima*, courses steered by her and times of alteration of courses was not contradicted, and I am advised by the Assessors that they would have brought the *Sunima* to approximately that point at which, according to her Preliminary Act and the testimony of Pilot Dionne, the collision occurred.

There is no evidence to show that the *Sunima* was at any time to the North of mid-channel save and except for the calculations made by the *Argyll's* Pilot and Master as to the place of the collision.

The testimony of these witnesses however on this point is confused and, in particular, that of Pilot Goudreau appears to have completely disregarded and failed to take into account the *Argyll's* alteration from course 270 to 250 and the fact that the *Argyll* was undoubtedly on course 250 for upwards of two minutes prior to her going hard-a-port just prior to the collision.

There are, moreover, other reasons for believing that those in charge of the *Argyll* were in error in estimating the place of the collision.

Although these witnesses estimated that the *Argyll* passed West Point at a distance of 2 cables, I

am convinced and, am so advised by the Assessors, that having regard to the testimony of Pilot Labrie, who was on the downbound Richard de Larrinaga which met the *Argyll* about ⅓ of a mile below West Point, the *Argyll* passed West Point at a distance of about 2.6 cables and that her speed from then until the collision occurred averaged not more than 10 knots over the ground, so that in the time of approximately 3 minutes it took the *Argyll* to cover the distance from a point opposite West Point to the place at which she altered course from 270 to 250 the *Argyll* had reached a point approximately abeam of and about 1.1 cables off Buoy 87½B instead of 5 cables above and 2 cables North of said Buoy, as estimated by Pilot Goudreau.

I find that the collision occurred at about 0205 hours.

It appears therefore that there elapsed approximately 3 minutes between the time at which the *Argyll* passed West Point until the time she altered course to 250 and about two minutes from the time the *Argyll* altered course to 250 until the collision occurred and that the *Argyll* in the course of approximately 5 minutes at an average speed which, I am convinced, would not have exceeded 8 to 10 knots an hour, would have covered not more than 8½ cables and that her position at the moment of the collision would have been South of mid-channel approximately 2.3 cables above Buoy 87½B, which position corresponds substantially with that testified to by those in charge of the *Sunima*.

On behalf of the *Argyll* it was urged that the *Sunima* was at fault, in that she was proceeding at an excessive speed in contravention of the legal limit which applies within the Harbour of Quebec. There is no doubt that the *Sunima's* speed was in excess of that permitted by law, but I am convinced that her speed was not the proximate cause or a

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contributing cause of the collision. On the contrary, I am satisfied that the casualty was brought about solely by the fault and negligence of those in charge of the *Argyll*, in that they improperly failed to keep to the side of the fairway or mid-channel which lay on their starboard side and instead of altering course to starboard, as they could and should have done when the *Sunima* was sighted, they altered to port in a manner which brought the *Argyll* on a course which crossed that of the *Sunima*.

Those on board the *Argyll* were, moreover, guilty of fault and negligence in failing to post a lookout on the bow of the vessel, having regard to the admitted difficulty of distinguishing ships' lights against the back-ground of the lights of Quebec City and harbour front. I

have no doubt that the failure to post a lookout contributed to the bringing about of the collision, since I am convinced that the *Sunima* was not sighted by those in charge of the *Argyll* as soon as she should have been.

On the whole therefore I reach the conclusion that the collision was brought about solely by the fault, negligence and lack of seamanship of those in charge of the *Argyll*.

Plaintiff's action accordingly is maintained and Defendants' Counter-Claim is rejected, the whole with costs. Failing agreement by the parties as to the quantum of damages to which Plaintiff is entitled, there will be a reference to the Registrar for the purpose of having these damages fixed in accordance with the usual practice.

Judgment accordingly.