

yacht? A. No, sir; her stern would have swung in on the yacht; her stern was coming in all the time on the yacht.

"Q. Now, when you saw the collision imminent, was the stern of the yacht across or nearing the course you were steering? A. Well, she was coming pretty near the line that I was steering on.

"Q. Was she moving? A. Yes, sir, she was moving.

"Q. Did her stern, when she was backing out, move towards the course you were steering on? A. Yes."

And this is confirmed by the evidence of the customs officer, Mr. Corner, the agent, Mr. Horsey, who were on deck, and the chief engineer Leslie of the "Caspian," all of whom said that the "Magedorna" had not stopped up to the time of the collision, and that she was still going backwards; two of them adding that the "Magedorna" was moving to cross the bow of the "Caspian." And it is proved that the captain of the "Magedorna" waved his hand to the "Caspian" and towards the lake.

This evidence, that the "Magedorna" was moving, has not been contradicted, but is confirmed by the evidence of the captain of the "Magedorna" and one of her crew, both of whom said they would not swear that the "Magedorna" had no sternway on her when the boats came together; and the force of the blow on the "Caspian," which made a breach in her side aft of the paddle wheel of about 3 or 4 feet and back about 10 or 12 feet, confirms this.

The statement of defence further states: "Those in charge of the 'Caspian' disregarded the provisions of the Navigation Rules adopted by order in council on 25th April, 1905, and amended on 18th May, 1906, and particularly arts. 19-27, 28, and 29." Before considering these Rules, it may be proper to cite here the view expressed by the Supreme Court of the United States on the right of a backing steamer as against a steamer on her regular course in mid-river.

In giving judgment in *The "Servia"* (1892), 149 U. S. at p. 156, the Court said: "The 'Noordland' (the backing steamer) was, at no time before the collision, on a definite course, as contemplated by the statute and Rules of Navigation; and on the facts found she cannot claim she had the right of way against the 'Servia.' The statutory and steering and sailing Rules have little application to a vessel backing out of a slip before taking her course; but the case is one of 'special circumstances' under Rule 24 (Canadian Rules