

the vessels came together in the manner indicated by the officers of the "Irwin," that is to say, that the "Regina B." had just come up in the wind and was in the act of tacking; that the "Irwin" in the effort to clear her under a port helm, struck with her stem and port bow. As to the manner of collision, I accept the statement of the officers of the "Irwin." I am satisfied that when the two vessels were so close that risk of collision existed, the "Regina B." improperly undertook to go about without being compelled to, and without any good reason for so doing; that her conduct in this respect embarrassed the "Irwin," which would otherwise have cleared her; that she was guilty of a violation of Article 21, and such violation was the cause of the collision.

It was contended that the "Irwin" was in fault in not slackening her speed or stopping and reversing earlier. As to the speed the "Irwin" was making, I find it was about 7 miles an hour, which under the circumstances seems reasonable. I accept the statements of the officers of the "Irwin" as to her course out of the harbour, and as to the positions of the vessels just before the collision. When the captain speaks of minutes during which he was under a starboard helm, I think allowance must be made always as to time; the substance of the statement is in the fact that he went to port enough to bring green to green, and after the "Regina B." tacked so close as to make a collision almost inevitable. No fault or delay can be attributed to the "Irwin's" captain in his effort to stop and reverse or in any of his emergency orders. It is true it is the duty of a steamer, where there is risk of collision, whatever may be the conduct of the sailing vessel, to do everything in her power that can be done to avoid collision. At the same time, as stated in the leading case on the subject, if a steamer is to be condemned for having omitted to do something which she ought to have done, it seems right to require proof of three things; first, that the thing omitted was clearly in the power of the steamer to do; second, that if done it would in all probability have prevented collision, and thirdly, that it was an act which would have occurred to any officer of competent skill and experience in command of the steamer. When the captain of the "Irwin" brought green to green, as I find he did, the original risk of collision was determined, and going at a moderate rate I do not see he was then under any obligation to slacken or stop. And after the "Regina B." tacked in front, I do not think, under the evidence, there is any-