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*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Laird and others v. Tindall and others (ship "Ulster"), from the High Court of Admiralty of England; delivered 16th July, 1862.*

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Present:

LORD CHELMSFORD.

LORD KINGSDOWN.

SIR JOHN TAYLOR COLERIDGE.

THIS is an appeal from the sentence of the Judge of the Admiralty Court in a cause of collision between the steam-ship "Ulster" and the schooner "Tagus," by which the "Ulster" was pronounced to be solely in fault, and her owners were condemned in damages and costs.

The facts of the case are few and simple, and upon the greater part of them there is no material difference between the parties. The collision happened in the River Mersey, about 4 o'clock in the afternoon of the 28th April, 1860. The wind was southerly, and the tide within half-an-hour of high water. The "Ulster," a steamer of considerable size, was proceeding down the river to the London Dock at Liverpool, for the purpose of being fitted with machinery, in tow of two tug-steamers, one towing from a-head, with a hawser of from 60 to 70 fathoms, the other lashed to her port quarter. The "Tagus," a schooner of 123 tons, had just left the basin of the St. George's Dock at Liverpool, on her outward voyage to Lisbon, under all sail except the outer jib, in charge of a pilot, who was at the wheel. Her course, on leaving the basin, was west-by-north across the river, and she had her helm hard a-port for the purpose of turning her head down the river. Both vessels appear to have sighted

each other at the same distance of about half-a-mile. The witnesses on the part of the "Tagus" state, that upon seeing the "Ulster" they immediately scandalized the mainsail, which is effected by lowering the peak and hauling the tack of the mainsail close up, the object being to diminish the action of the after-sails so as to enable the fore-sails to act with more power in turning the vessel's head down the river. The intended effect, however, was hindered by the flood tide checking the "Tagus" under her starboard bow, and so preventing her falling-off. In this state of things the "Ulster" came on, towed by the two tug-steamers, in her proper course down the river, viz., on the eastern side of the mid-channel, being that which lay on her starboard side. The statement on the part of the "Tagus" is, that, as the "Ulster" approached, those on board of her hailed the "Tagus" to port her helm; upon which she replied that it was hard a-port, and hailed the "Ulster" to port her helm and go under the "Tagus's" stern. It is admitted on the part of the "Ulster" that her helm was not shifted to port. A witness proves that the captain of the "Ulster" ordered the helm to be starboarded, but almost in the same breath gave an order to steady; and it does not appear that she had any starboard helm upon her.

The "Ulster" excuses herself for not obeying the call from the "Tagus" to port her helm, on the ground that it would have been impossible for her to have altered her course in the least without running into something; as on their port-side there was a large emigrant ship at anchor, and on her starboard-side several small vessels. Thus continuing her course without any alteration, she came stem on into the port-side of the "Tagus" abreast of her mainmast, and so the damage was occasioned. If, therefore, the "Ulster" was wrong in not having ported her helm, and the "Tagus," when danger was seen to be imminent, resorted to such measures as were calculated to avoid it, the Decree in favour of the "Tagus" may be successfully maintained. But their Lordships, guided by the advice which they have received from their Nautical Assessors, cannot adopt either of these conclusions.

With regard to the conduct of the "Tagus," it appears to them that she failed to use the most

obvious means for accomplishing her intended object. According to her statement, on seeing the "Ulster" she scandalized her mainsail, for the purpose of turning her head down the river. But, though baffled by the flood tide checking her under her starboard bow, she never attempted to do anything else to aid this operation. It was admitted in the argument that if she had run up her outer jib (the only one of her sails that was not set), it would have had an immediate effect upon her head. Now it is impossible to accept the suggestion of the Appellant's Counsel that the "Tagus" might have had no outer jib bent at the time, because the statement of her captain is that he left the basin under all sail except the outer jib, which almost necessarily implies that this sail was on the vessel, but was not set. This view of the case allows full credit to the statement of the Appellant's witnesses that the helm of the "Tagus" was kept hard a-port from the time of her leaving the basin, but shows at the same time that more was required to be done by her to exonerate her from blame. Although, however, she may thus be deprived of the right to insist upon the entire decree in her favour, the conduct of the "Ulster" may have been such as to make her liable to a share of the damages which have been incurred. Now the blame imputed to the "Ulster" is that she did not port her helm when she saw the "Tagus," or, at all events, did not shift her course in some manner to avoid the collision. But their Lordships are advised that, in the actual state of things, it would have been an unsafe and improper proceeding for the "Ulster" to have attempted to alter her course. She saw that the mainsail of the "Tagus" was scandalized, and must have known with what object this was done. She was entitled to take for granted that the "Tagus," intending to turn her head down the river, would resort to all the means proper for the purpose, and would have no difficulty in succeeding in her object. Had the "Tagus" turned her head in the intended direction, she would have gone to the starboard side of the "Ulster," and the only effect of the "Ulster" porting her helm under these circumstances, would have been to have carried her directly into the "Tagus." She pursued the safe and proper course, of not shifting her helm, under

the reasonable expectation that the "Tagus" would do what she evidently proposed to do, and which she had the means at command of accomplishing. Quite independently, therefore, of any difficulty of altering her direction from the different vessels in that part of the river at the time, the "Ulster" appears to have done exactly what she ought in keeping her course, and she must be wholly exonerated from the charge of having in any respect contributed to the collision.

Their Lordships, therefore, feel that they must recommend to Her Majesty to reverse the Decree appealed from, with costs.

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