

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Grindlay v. Stevens and Atkinson (ships "Falkland" and "Navigator"), from the High Court of Admiralty of England; delivered 31st July, 1863.*

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Present :

LORD WENSLEYDALE.

LORD CHELMSFORD.

LORD KINGSDOWN.

THE questions upon these Appeals from Decrees or sentences of the learned Judge of the Court of Admiralty do not involve any dispute upon facts, but require the application of nautical skill and experience to determine to which of the two vessels the blame of the collision is attributable.

The facts may be shortly stated.

The "Navigator," an American barque, and the "Falkland," a British ship, about 5 o'clock in the morning of the 6th February, 1863, were off Dungeness. The wind was west, and the morning thick and hazy. Both vessels carried the usual lights. The "Navigator" was proceeding down Channel on the port tack, close hauled under two double-reefed topsails and foretopmast staysail. The "Falkland" was following the "Navigator" at the distance of about three quarters of a mile on her starboard quarter, also close hauled on the port tack, under topsails, jib, fore topmast stay-sail and spanker. The "Navigator" intending to change from the port to the starboard tack, instead of going about in the usual way by tacking, put her helm a-port, and commenced wearing round. While in the act of wearing, the "Falkland" was, for the first time, seen from on board the "Navigator," her red light appearing about two points on the "Navigator's"

starboard bow, the green light of the "Navigator" becoming visible to those on board of the "Falkland."

The "Navigator," in order to complete the operation of wearing, continued her port helm. The "Falkland," still upon the port tack, kept her wind until shortly before the collision, when her helm was put down for the purpose of diminishing the force of the expected blow. The "Navigator," as she approached the "Falkland," put her helm hard a-port, and ran stem on into the "Falkland's" starboard bow, leaving there her billet-head and part of her cutwater. Cross suits were instituted in the Court of Admiralty by the owners of the respective vessels for the injuries they had both sustained by the collision. On the part of the "Navigator" it was insisted that the "Falkland" was alone to blame for not having ported her helm, by which (it was said) the collision might have been avoided. It was contended, on behalf of the "Falkland," that the "Navigator," before she attempted to go about, ought to have ascertained that there was room for her to wear a-head of the "Falkland," and that when she found that this could not be done, she was bound to go astern, and that she could not force the "Falkland" to port her helm, and in effect to wear round also.

The learned Judge of the Court of Admiralty, with the assistance of the Elder Brethren of the Trinity House, held that "the 'Falkland' was solely to blame; that those on board of her were well aware that the 'Navigator' was wearing, and ought to have ported in time, and not starboarded; and that no blame attached to the 'Navigator,'" and he dismissed the suit of the "Falkland" against the "Navigator" with costs; and in the suit by the "Navigator" against the "Falkland," he pronounced for the damage proceeded for, and condemned the Defendants in costs. From both these Decrees the owners of the "Falkland" appealed. On the hearing of the Appeals their Lordships had the usual advice and assistance which they require in all cases where nautical knowledge is necessary to enable them to arrive at a satisfactory determination.

It would have been a great satisfaction to them if their Nautical Assessors had agreed with the Trinity Masters, by whose skill and judgment the learned Judge of the Court of Admiralty was guided; but

unfortunately there is a complete difference of opinion between them. The difficulty which this conflict of opinion throws upon the Committee in cases like the present which require technical knowledge for their correct decision has been often felt, and was acknowledged in the case of the "Julia" (14 Moore, 235), to which reference has been made more than once during the present sitting. Undoubtedly their Lordships did not mean by their observations in that case to express a determination never to disturb a Judgment in the Admiralty Court which was founded upon a question of seamanship, but merely (as was stated in the case of the "Minnehaha") that they would always feel extreme reluctance in reversing a decision the propriety of which depended upon the correctness of the judgment formed by persons of nautical skill and experience. But if aided by technical knowledge and experience of equal authority their Lordships are satisfied that the view taken in the Court below is erroneous, they cannot shrink from the duty of acting upon their own judgment, thus informed and enlightened, without abandoning their functions as an Appellate tribunal in all cases of this description. In the observations which follow, their Lordships must be understood as expressing their own conclusions, derived from the advice of their Nautical Assessors, and the reasons which have induced them to adopt their opinions in preference to those of the Trinity Masters in the Court below.

The first matter to be considered is the manœuvre of the "Navigator" in wearing round. When a vessel is sailing upon a wind and passes from one tack to another the usual and ordinary mode of effecting this change is by tacking and not by wearing. As vessels which are navigating near to the one which is changing her tack naturally expect that the ordinary method of going about will be pursued, the unusual, and therefore unexpected, operation of wearing ought not to be resorted to, unless for some good reason, nor without sufficient sea room for the purpose.

The learned Judge of the Court of Admiralty put it to the Trinity Masters to determine why the "Navigator" wore instead of tacking, to which it does not appear that they gave any answer. In the printed case of the "Navigator," it is stated, "that

the weather having cleared up, vessels at anchor in Dungeness Roads could be seen, and it was deemed prudent to wear the barque from the port on the starboard tack." The approach of the "Navigator" near to the vessels in the Dungeness Roads may have been a good reason for her going about, but affords no explanation of the preference of wearing to tacking. But it is evident that the sails which the "Navigator" was carrying were not sufficient to keep her under command, and there can be no doubt that she wore because she was unable to stay for want of a proper amount of canvas. She was certainly at liberty to wear or to stay if there was no impediment to either course, but before she decided upon wearing she ought to have been sure that there was room to perform that evolution. Now, before she wore it is quite certain that the "Navigator" had never seen the "Falkland" at all, although the "Falkland" had seen the "Navigator." The course of wearing was therefore adopted without reasonable and proper precaution. But assuming that wearing instead of tacking was a justifiable course for the "Navigator" to pursue there could be no good reason for her perseverance in it, and her determination to complete the circuit to the other tack, when she found the "Falkland" in her way. Having in the act of wearing observed the light of the "Falkland" about two points on her starboard bow, it was the duty of the "Navigator" to pass to leeward, and not to attempt to cross the "Falkland's" bows. At the time when the "Navigator" first saw the "Falkland" on her starboard bow her head was about south-east, and the wind being west she was going free, and was bound to give way to a vessel close-hauled as the "Falkland" was. With respect to the "Falkland," although she saw the "Navigator" in the act of wearing, there was nothing to indicate to her that the "Navigator" was merely changing her tack, but the act of wearing itself might reasonably lead to the belief that she was intending to bear away up Channel. At all events when the "Falkland" saw a vessel with the wind free coming towards her she was perfectly right in acting upon the well-known rule and keeping her tack instead of giving way by porting her helm. And when a collision appeared inevitable she was quite right in starboarding her helm at the last

moment in order to diminish the force of the coming blow.

For these reasons their Lordships cannot concur in the Judgment of the learned Judge of the Court of Admiralty, but they must recommend to Her Majesty to reverse the Decrees in both suits, and in the suit of the "Falkland" against the "Navigator" to pronounce for the damage proceeded for, but in both suits without costs of the Appeal on either side.

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