

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal and Cross-Appeal of Girvin and others v. Bibby and others (ships "Mæander" and "Florence Nightingale"), from the High Court of Admiralty of England; delivered 2nd February, 1863.*

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Present:

LORD CHELMSFORD.

LORD JUSTICE KNIGHT BRUCE.

LORD JUSTICE TURNER.

SIR JOHN T. COLERIDGE.

THESE Appeals are from sentences pronounced by the High Court of Admiralty in two causes of damage instituted on the ground of a collision which, in the evening of the 22nd of February last, took place at sea near Liverpool, between a home-ward-bound steam-ship called the "Mæander," and an outward-bound sailing-vessel called the "Florence Nightingale;" the latter was at the time in tow of a steam-tug called the "Reliance." By the collision both the "Mæander" and the "Florence Nightingale" were damaged, one of them, if not both, considerably so. In one suit the owners of the "Mæander" sought to recover against the owners of the "Florence Nightingale;" and in the other, the latter against the former. On each side evidence was entered into, and both causes were heard together by the learned Judge of the Admiralty, assisted by two Trinity Masters. The learned Judge, with their concurrence, decided that the "Florence Nightingale" was not to blame, and that the "Mæander" was to blame: but that, as bound to have a licensed pilot on board, she had one accordingly, and as, in the opinion of the learned Judge and the Trinity Masters, the blame

was attributable to the pilot of the "Mæander" altogether, and not in any degree to her Captain or any of the crew, there could be no recovery by the owners of the "Florence Nightingale" against the owners of the "Mæander."

Neither suit, therefore, produced anything but costs on either side; and with respect to costs, the Court dismissed the suit of the owners of the "Mæander" with costs, but gave none in the other cause. There having been Appeals in both causes to Her Majesty in Council, the whole case on each side in both was fully and ably argued here; and their Lordships having attentively considered the arguments, the pleadings, and the evidence of the numerous witnesses, are now prepared to state the advice which it is their intention humbly to lay before the Queen in the matter. They desire, first, to say that the expression, "at sea," just now used, has been used deliberately; for though it was argued that the collision took place in a "narrow channel," within the meaning of the 297th section of the Statute 17 & 18 Vict., cap. 104, or so near a "narrow channel" as to bring that section into operation, their Lordships, upon the whole of the evidence, are of opinion, as was the learned Judge of the Admiralty, that the collision did not take place in a "narrow channel," or in such waters or in such a manner as to bring the 297th section into operation, and that the case is not, on one side or the other, affected by that section.

The Preliminary Acts of the parties were thus:—

"Preliminary Act on behalf of the Owners of the  
" 'Florence Nightingale.'

"1. The names of the vessels which came into collision, and the names of their masters.—The 'Florence Nightingale,' Robert Walker, master; the 'Mæander.'

"2. Time of collision.—About 6.30 P.M. on the 22nd February, 1862.

"3. Place of collision.—Near the Bell buoy, off the entrance of the Queen's Channel leading to the port of Liverpool.

"4. Direction of wind.—Light air from the southward.

"5. State of the weather.—Rather hazy overhead.

"6. State and force of the tide.—Ebb tide, about half of a knot per hour.

"7. The course and speed of the vessel when the other was first seen.—Steering west-north-west in tow of the steam-tug 'Reliance,' at the rate of five to six knots per hour.

" 8. The lights, if any, carried by her.—Red on the port side, green on the starboard side.

" 9. Distance and bearing of the other vessel when first seen.—About a mile distance, and two points on the port bow.

" 10. The lights, if any, of the other vessel which were first seen.—The mast-head and green lights.

" 11. Whether any lights of the other vessel other than those first seen came in view before the collision.—The red light.

" 12. What measures were taken, and when, to avoid the collision.—When the 'Mæander' was observed under port helm as if about to run into the tug, the pilot on board the 'Florence Nightingale' ordered her helm to be put hard to port, and the engines of the tug to be eased.

" 13. Parts of each vessel which first came in contact.—The 'Florence Nightingale's' starboard bow. The screw-steamer 'Mæander's' stem.

" This 21st day of March, 1862.

" Signature of party or his proctor,

" R. GIRVIN."

" Preliminary Act on behalf of the Owners of the  
" 'Mæander.'

" 1. The names of the vessels which came into collision, and the names of their masters.—The 'Florence Nightingale,' Robert Walker, master; the 'Mæander,' Trant, master.

" 2. Time of collision.—6:20 P.M., 22nd February, 1862.

" 3. Place of collision.—South-east side of the entrance to the Queen's Channel, leading to the port of Liverpool.

" 4. Direction of wind.—Eastward.

" 5. State of the weather.—Thick and hazy.

" 6. State and force of the tide.—Ebb, running two knots.

" 7. The course and speed of the vessel when the other was first seen.—About three-quarters speed, steering from the Bell buoy to the south side of the Queen's Channel.

" 8. The lights, if any, carried by her.—Admiralty Regulation lights.

" 9. Distance and bearing of the other vessel when first seen.—A little on starboard bow, distant about a mile.

" 10. The lights, if any, of the other vessel which were first seen.—Masthead and green lights of the tug towing the 'Florence Nightingale.'

" 11. Whether any lights of the other vessel, other than those first seen, came into view before the collision.—The red light of the tug, then the green light again.

" 12. What measures were taken, and when, to avoid the collision.—The helm of the 'Mæander' was partly put a-port, but before it was over it was put hard a-starboard, and so kept. The engines were stopped and reversed.

" 13. Parts of each vessel which first came in contact.—Starboard bow of 'Florence Nightingale' and starboard bow of 'Mæander.'

Upon the evidence, then, was the "Mæander" in fault? It appears to their Lordships that she was; that *prima facie* and presumptively, it was

her duty to port for the purpose of avoiding a collision, whether with the "Florence Nightingale" or with the steam-tug; that if there had been evidently good reason for acting differently, the "Mæander" might with propriety have acted differently; but that there was not, evidently or plainly, any sufficient reason for not porting: that still, if there had been starboarding firmly and in good time, the collision might probably have been avoided, but that there was neither starboarding in good time, nor proper porting. The Captain of the "Mæander" either ordered or suggested porting, which, if he was justified in giving an order, or making a suggestion, was, in their Lordships' judgment, right. The pilot, who was at that time aft, not on the bridge as the Captain was, may have been misled by seeing the green light of one of the vessels that he was approaching. But however this may have been, the pilot stopped the porting before it was complete, and directed the starboarding, which took place accordingly, but too late to do any good. There was a confused mixture of porting and starboarding which, in their Lordships' judgment, was certainly wrong, and the fault was (they think) his exclusively. For if the Captain gave any order, it was an order to port, which the pilot did not pursue, and which if he had pursued, the collision probably would not have occurred.

As to the behaviour and conduct of the "Mæander" and her pilot, and the exemption of the owners of her from paying for the damage done, their Lordships therefore agree altogether with the learned Judge of the Admiralty and the Trinity Masters. This conclusion, however, must be taken as subject to the question whether the "Florence Nightingale" or the "Reliance" was also to blame, and to the consequences, if any, of a correct answer to that question. Was each or either of these two vessels also to blame for the collision? Their Lordships think not. It appears to us that the pilot of the "Florence Nightingale" was justified and right in porting as he did. The behaviour of the "Mæander" was vacillating and perplexing, and there may have been a cause of additional perplexity in the light carried by a fourth vessel mentioned in a portion of the evidence.

In these circumstances their Lordships consider

that the pilot of the "Florence Nightingale" correctly acted on the general rule. If, however, he was wrong, it was still his act alone. But he was a licensed pilot, and the employment of a licensed pilot was as obligatory on the "Florence Nightingale" as it was on the "Mæander."

We consider the whole of the sentence in each cause to be right, and in that conclusion have the satisfaction of not differing from either of the nautical gentlemen whose assistance we have in the case.

Then as to the costs of the Appeals, we think that each Appeal should be dismissed with costs, except only so far as the costs in the Appeal of the owners of the "Florence Nightingale" have been increased by the adherence to that Appeal by the owners of the "Mæander." The costs occasioned by that adherence ought, we think, to be paid by the owners of the "Mæander."

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