

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Royal Netherlands Steam Navigation Company as the Owners of the barque 'Ellen Radford' (the 'Orion'), from the High Court of Admiralty; delivered June 15th, 1871.*

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Present :

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

LORD JUSTICE JAMES.

LORD JUSTICE MELLISH.

IN this case their Lordships do not think it necessary to trouble the Respondent's counsel. They need not say that they proceed entirely upon the sailing rules in force; and although there may be an expression here and there in the reported Judgment of the learned Judge of the Court of Admiralty which may make the ingenious argument of Dr. Deane plausible, they cannot but suppose that that learned Judge also intended to proceed not upon the old but upon the new and existing sailing rules. According to those rules it is perfectly clear that it is the duty of a steamer to keep out of the way of a sailing vessel, and that it lies upon every steamer which has run down a sailing vessel to show that she has complied with that rule. If, at the same time, the sailing ship altered her course, and thereby broke the rule which obliges her to keep her course, that would raise the question whether the damage was attributable to the faults of both vessels, or whether it was due solely to the fault of the sailing vessel; but then it must be shown by clear and satisfactory evidence that the sailing vessel did break the rule by altering her

course. Now, upon weighing and considering the evidence, and after full consultation with the nautical gentlemen by whom we are assisted, it appears to their Lordships that the evidence cannot be taken to establish that fact. We cannot believe that the barque did so alter her course, as the witnesses on the other side have sworn. If she had so altered her course, we are assured by our nautical assessors that the result must have been to throw the vessel up in the wind, so that she would have greatly lost way; and that it is inconceivable that in that case she could have come, as she appears to have come, into the steamer with the force sufficient to inflict the injury which, by the photograph and other evidence, it is shown that she did inflict. Therefore, their Lordships conceive that there must be error in the evidence on the part of the steamer, in some way or other. They are disposed to believe that those on board the steamer mistook the light which they first saw; and if it were the red and not the green light which they first saw, the steamer ought to have ported her helm, in which case she would have gone clear port side to port side. It is, however, not necessary for their Lordships to form a theory of their own, or to show how the accident happened. It is sufficient for them to state that the steamer, which was bound to show that she performed the duty which the rules cast upon her of getting out of the way of the barque, did not do so. She saw the other vessel a mile off, she might therefore have got out of the way, and it is obvious by the event that she failed to do so. She suggests a fault on the part of the other vessel, which the evidence, in their Lordships' opinion, fails to establish. The Trinity Masters and their Lordships' nautical assessors being all agreed that the fault was the fault of the 'Orion,' it is the duty of their Lordships humbly to recommend Her Majesty to affirm the judgment of the Court of Admiralty and to disnaiss this Appeal with costs.



