

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of the
Owners of the "Jesmond" v. Morton and others,
(Ships "Earl of Elgin" and "Jesmond,") from
the High Court of Admiralty; delivered 13th
November, 1871.*

Present :

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

SIR MONTAGUE SMITH.

IN this case their Lordships must hold that it has been conclusively found that the two colliding vessels were meeting each other end on or nearly end on within the meaning of the thirteenth of the Sailing Rules; that the "Jesmond," in obedience to that rule, ported her helm, whether sufficiently or not is a question which will be afterwards considered; that the "Earl of Elgin" violated that rule by starboarding instead of porting, and thereby put herself clearly in the wrong, and became *primâ facie* responsible for the collision which took place. But the learned Judge of the Admiralty Court having found these facts proceeds to say: "We think that the 'Jesmond' did err in
" porting as slightly as she did. The evidence
" came to this,—she ported and then steadied,
" and did not port again till the collision became
" nearly inevitable; but it is not upon this ground
" that I should come to the conclusion that such
" blame attaches to the 'Jesmond' as to disentitle
" her to recover if she succeeded on other points,
" but I mention it as a fault on the part of the
" 'Jesmond.' The real blame that attaches to
" the 'Jesmond' and the 'Earl of Elgin' is, their
" not easing and stopping their engines before
" this collision took place. The more it is
" examined the less defensible it appears that
" two steamers should be going at the joint speed
" of 18 or 19 miles an hour, nearly on opposite

“ courses, seeing each other a mile and a half off,
 “ and not take the common precaution of stopping
 “ or easing their engines under such circum-
 “ stances.”

That part of the judgment, therefore, raises two propositions—first, that the “Jesmond” did not port sufficiently, but at the same time qualifies that finding by saying that of itself that circumstance would not disentitle the “Jesmond” to recover. The learned Judge, however, as their Lordships understand his judgment, would couple the insufficiency of the porting with an assumed obligation to slacken the speed under the 16th Article, and finds that under the whole circumstances of the case the “Jesmond” ought to have slackened as well as the “Earl of Elgin,” and that by reason of that fault on the part of the “Jesmond” the damage, according to the rule of the Court of Admiralty, is divisible between the two vessels.

Their Lordships think that it will be desirable in dealing with these two propositions to deal with them, in the first instance at least, separately, as has been done in the argument. They see no reason to doubt the truth of the evidence given by the first witness, John Addison Hall, the second mate of the “Jesmond.” They believe upon his evidence, and the learned Judge of the Court of Admiralty has certainly not found that that evidence was to be disbelieved, that when the three lights of the “Earl of Elgin” were first seen, the order to port the helm was given. They believe that the vessel paid off upon a port helm a point and a half, but that before she had gone so far the mate had given the order to steady the helm, which ultimately brought back the vessel to within half a point of her original course. Their Lordships were urged by Dr. Deane in his able argument to consult upon this point the nautical gentlemen by whom they are assisted. They have done so, and those gentlemen, so far from finding, as Dr. Deane expected, that the evidence must be inaccurate in asserting that the vessel went so far under the port helm as to pay off a point and a half, think that there is nothing inconsistent or unreasonable in that statement; on the contrary, that upon principles of navigation, the fact is credible and what might be expected.

Their Lordships therefore accept the statement of the witness as given. Again the nautical assessors also concur in thinking that the "Jesmond" having paid off so far as a point and a half was, though brought back within half a point of her original course when the helm was steadied, placed upon a line on which she would have gone clear of the other vessel if the latter had even kept her course; that she had brought the two vessels in the position of red light to red light, and that the danger of the collision was at an end. *A fortiori*, if the "Earl of Elgin" had obeyed the rule and had done what she was bound to do, namely, port her helm, the distance between the two vessels would have been increased, and the collision would have become still more improbable. That being the state of the case, their Lordships cannot concur with the learned Judge in thinking that the alleged insufficiency of the porting did in any degree contribute to the accident.

They next proceed to consider whether they ought to hold that those on board the "Jesmond" in omitting to slacken the speed of their vessel were guilty of a default which justifies the judgment under appeal. Now the 16th Article says: "Every steamship when approaching another ship so as to involve risk of collision shall slacken her speed." It is not necessary to read further, because nobody contends that the "Jesmond" was bound to stop and reverse her engines except at the moment when a reversal of the engines had almost become impossible, namely, when the other vessel was nearly run into. The Article imposes this obligation only upon a ship which is "approaching another ship so as to involve risk of collision." It may be said that there was a moment at which the two vessels were in that condition, for if they had not been in that condition they would not have been within Article 13. But it seems to their Lordships, taking the two Articles together, that Article 16 only applies when there is a continuous approaching of the two ships, and, indeed, it was admitted candidly by Dr. Deane that there was not an obligation to slacken the speed the moment the two vessels sighted each other, and when the first porting took place. If their Lordships are right in their

view of what was then done, the original risk of collision was determined when the vessels were brought port light to port light. Nor can it be said that after that porting the "Jesmond" was approaching the "Earl of Elgin" so as to involve a risk of collision, unless the true construction of the term "risk of collision" be that for which in one part of his argument Dr. Deane contended. As their Lordships understood his argument, he was prepared to insist that the term must be taken to include either a default on the part of the other vessel to do what the 13th Rule required of it, or the disabling of that vessel by some accidental cause of which the "Jesmond" was not, and probably could not be aware. It does not appear to their Lordships that the first of those elements can be reasonably imported into the risk of collision; there is no foundation in fact for supposing that "the 'Earl of Elgin' was prevented by any accident from doing what she ought to have done; nor are their Lordships aware that in obeying these rules it is necessary for persons navigating vessels to foresee and to provide against every possible accident.

Their Lordships would be extremely sorry, by any decision of theirs, to diminish the stringency of any rule tending to prevent the great loss of property and destruction of life which are but too common in our narrow seas; but they do not feel at liberty to extend the application of the 16th Article beyond what seems to them to be its proper construction, and therefore they must respectfully differ from the learned Judge in what he has found with respect to the obligation which lay upon the master and crew of the "Jesmond."

The result therefore will be that their Lordships will humbly advise Her Majesty to allow the present appeal; and to declare and order that the "Earl of Elgin" was solely responsible for the collision, and must be condemned in damages accordingly, and of course the costs in the court below and the costs here will, according to the ordinary rule, follow the result.