

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
the Owners of the steamship "Rona" v.
the Owners of the steamship "Ava," ships
"Rona" and "Ava" from the Vice-Ad-
miralty Court of Hong Kong; delivered
December 6th, 1873.*

Present :

SIR JAMES W. COLVILLE.

JUDGE OF THE HIGH COURT OF ADMIRALTY.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THESE are Appeals from two decrees of the learned Judge of the Vice-Admiralty Court of Hong Kong, pronounced against the Appellants, in two causes of damage promoted in that Court, one by the present Appellants, the owners of the steamship "Rona," against the present Respondents, the owners of the steamship "Ava," and the other by the present Respondents, the owners of the steamship "Ava," against the present Appellants, the owners of the "Rona." The "Rona" was a paddle-wheel steamer of 784 tons and 150 horse-power, belonging to the Union Steam Navigation Company of Shanghai, and was on a voyage from Shanghai to Swatow, with passengers and cargo. The "Ava" was one of the French mail packets, a screw steamer of upwards of 3,000 tons (English), belonging to the Messageries Maritimes, and was carrying the mails from Hong Kong to Shanghai.

The suits arose out of a very lamentable accident, caused by a collision of the two vessels, which took place about 7.40 on the evening of the 14th April 1872, in the Formosa Channel, on the east coast of China, about 20 miles south-west of Turnabout Island, and 20 miles north-east of Ocksen. Each of the parties contended that the collision was caused solely by the fault of the other. There were no pleadings in the suits, but each party filed a preliminary act, which is set out at page five of the record. The two causes were heard together upon the same evidence, which was taken orally in open Court. The learned judge was assisted by two nautical assessors, to whom, after hearing the evidence, he submitted two questions:—"1. Was there such negligence or want of ordinary care or caution on the part of the "Ava," the "Rona," or both, as, but for such negligence or want of care or caution, the collision would not have occurred? 2. Was the collision, in your judgment, occasioned by inevitable accident, understanding by the term inevitable accident whether the collision could not possibly have been prevented by proper care and seamanship, under the particular circumstances of the case?"; and he further asked the nautical gentlemen, if they answered the first question affirmatively, to be pleased to state in what, in their opinion, such negligence or want of care or caution consisted.

It may be convenient to deal with the second question first, for their Lordships concur entirely with the opinions of the learned judge and of the two assessors, that the collision was not the result of inevitable accident. They will proceed to consider the first question—whether there was negligence on the part of the "Rona," or of the "Ava," or of both.

Their Lordships are of opinion that the "Rona" was to blame in maintaining such a high rate of speed when she was aware that her own lights and those of any approaching vessel would be, as they in fact were, obscured by the smoke from her own funnel. It was proved by Henry Archibald McInnes, her own master, that from 4 p.m. to the time of collision they were going at from $9\frac{1}{2}$ to 10 knots an hour. He said, "We went very regularly, and kept up the same pace all through." The officer of the watch, the chief officer, the engineer on watch, the two look-out men, and all those who were on the deck of the "Rona" at the time when the "Ava" was sighted were unfortunately lost when the "Rona" went down. There was, therefore, no one at the trial who could speak as to the nature of the look-out on board that vessel. It may fairly be assumed, as against the "Rona," that a good look-out was kept, and that it was in consequence of the smoke which obscured her view that the "Ava" was not sighted until the time at which the signal whistle was sounded, about 18 or 20 seconds before the collision. If, however, the "Ava" might have been seen in time, if a good look-out had been kept on board the "Rona," and was not seen, or, being seen, the "Rona" did nothing to avoid the collision, there was equally negligence on the part of those on board the "Rona," and such negligence contributed to the accident. The learned judge held that the case was one of two vessels meeting "end on," each vessel having the other not more than a point on the bow; and that there was neglect on the part of the "Rona" in not porting her helm; from which their Lordships understand him to mean that the case was one falling within Article 13 of the Sailing Rules of the 9th January 1863. By that article it is laid down:—"If two ships under

“ steam are meeting end on or nearly end on, so
 “ as to involve risk of collision, the helms of
 “ both shall be put to port, so that each may
 “ pass on the port side of the other.” That rule
 is explained by the Order of Her Majesty in
 Council of the 30th July 1868. It is there
 said :—“The said two Articles, numbers 11 and
 “ 13 respectively, only apply to cases where
 “ ships are meeting end on or nearly end on, in
 “ such a manner as to involve risk of collision.
 “ They consequently do not apply to two ships
 “ which must, if both keep on their respective
 “ courses, pass clear of each other. The only
 “ cases in which the said two articles apply are
 “ when each of the two ships is end on or nearly
 “ end on to the other ; in other words, to cases
 “ in which, by day, each ship sees the mast of
 “ the other in a line or nearly in a line with her
 “ own, and, by night, to cases in which each
 “ ship is in such a position as to see both the
 “ side lights of the other. The said two articles
 “ do not apply, by day, to cases in which a ship
 “ sees another ahead crossing her own course, or,
 “ by night, to cases where the red light of one
 “ ship is opposed to the red light of the other,
 “ or where the green light of one ship is opposed
 “ to the green light of the other, or where a red
 “ light without a green light, or a green light
 “ without a red light is seen ahead, or where
 “ both green and red lights are seen anywhere
 “ but ahead.”

There can be no doubt, even if the additional
 rules had not been made, that Rule 13 would
 not properly apply to a case such as the present,
 for their Lordships are of opinion that it must be
 taken on the evidence that the “Rona,” when
 her smoke was first seen by the “Ava,” was
 steering S.S.W. by compass, and that the “Ava”
 was then steering N. 41 by compass, which may
 be taken as somewhere between N.E. and N.E.

by N. It is clear that two vessels so steering could not be considered as vessels each having the other not more than a point on her bow, or as meeting end on within the meaning of the rule. But however this may be, it cannot be held that the vessels were within the 13th rule when neither of them could see the other, and when they were at such a distance from each other as by the evidence they are described to have been when the "Ava" first saw the smoke. The vessels were clearly not within the rule when the "Ava" first saw the white light, or when almost immediately afterwards she saw the green light of the "Rona" and when, as it is to be concluded from the evidence, the "Rona" could not see the "Ava;" nor were they within the rules when the "Rona," first sighted the "Ava," about 18 or 20 seconds before the collision, and when, from the evidence, it appears that all the lights of the "Ava" were seen, and when she was about a point before the starboard beam of the "Rona," and only 300 or 400 feet from her.

The fault on board the "Rona" was not in not porting her helm, in obedience to the 13th rule, before she saw the "Ava," or when she saw the three red lights of the "Ava" almost on her starboard beam. It is clear that at that time the vessels were not meeting end on or nearly end on. The fault of the "Rona" was in proceeding at the rate of $9\frac{1}{2}$ or 10 knots an hour when she could not from her own smoke see, and when she must have known that she could not be properly seen by, other vessels.

The next question to be considered is, whether there was any fault or negligence on the part of the "Ava" which contributed to the accident. The learned judge, concurring in opinion with the two assessors by whom he was assisted, held that there was not. One of the assessors in his answer, says:—"Although the 'Ava' appears

“ to have acted right in porting her helm, the
 “ question naturally occurs—‘should she have
 “ ‘slackened her speed when the white light
 “ ‘appeared, in accordance with section 16?’
 “ I am of opinion that this would not have
 “ been right under the circumstances, for her
 “ officer of watch having seen the smoke of the
 “ ‘Rona’ for some time previous, would know,
 “ when he saw the mast-head light, that she was
 “ coming in his direction, and would assume
 “ that she, the ‘Rona,’ would, on seeing his
 “ lights, port her helm, and that, therefore, if he
 “ slackened speed, he would be increasing the
 “ chance of collision.”

Their Lordships cannot concur in the opinion
 of the learned judge that the “Ava” was free
 from all blame. The “Ava” according to her
 own account was going at, at least $8\frac{1}{2}$ knots when
 she first saw the smoke of the “Rona.” The
 second captain in his evidence says,—at first
 it resembled a shower of rain 15° or 20° on
 his port bow. In about a minute or a minute
 and a half he smelt smoke, and, supposing it
 might be a steamer, he ported his helm a little;
 that his first impression was that it was $2\frac{1}{2}$ or 3
 miles distance, but at that time he could only
 estimate it approximately. Afterwards, and when
 he had ported a little more, he saw a white light
 through his glass three points on the port bow,
 about a mile or 700 or 800 metres off. He then
 ordered his helm hard-a-port, considering that in
 doing so he was conforming to the regulations.
 It appears to their Lordships that in this con-
 struction of the regulation he was mistaken.
 The ships at that time were not, according
 to his own showing, end on, or nearly end on
 within the meaning of the rule. It appears to
 their Lordships that when he first saw the smoke
 and had reason to believe it was caused by a
 steamer, he ought to have slackened his speed,
 for he could not tell whether the steamers were

end on or nearly end on, or whether they were passing or crossing, or at what rate of speed the "Rona" was going. It is clear from the position and bearing of the two vessels at the time of the collision, taking them according to the evidence of the "Ava's" own witnesses, that the "Rona" must have crossed from port to starboard the line of the "Ava's" course, that is to say, the course which the "Ava" was taking at the time when she first knew that the smoke was the smoke of a steamer on her port bow. At that time the "Ava," as already pointed out, was steering N. 51 true, or N. 41 by compass, or between N.E. and N.E. by N., whereas at the time of the collision she was, according to the evidence of her own second captain, steering E. by S. by compass, or true course east. In this he was corroborated by the pilot on board the "Rona." The second captain says, "At the time of the collision I did not see the compass, but I think I was three to four points to starboard on my course; that would be E. by N. by compass, true course E. The "Rona's" head would be S.E. by E. Judging from the position of the "Rona's" head, and her coming down channel, she must have been starboard sometime. To shift the "Ava's" helm from hard-a-port to hard-a-starboard would take 1½ to 2 minutes." See his evidence in answer to the Assessors' questions, page 28 of the Record, line 30. The pilot on board the "Rona" says, "The course of the "Ava" when I first saw her was E. southerly as far as I could judge." It is evident that if the "Ava" had kept her course and slackened her speed instead of porting in the first instance, and afterwards putting her helm hard-a-port when she saw the white light of the "Rona," the collision would not have occurred as it did after the "Rona" had crossed the line of the "Ava's" original course. If the "Ava," when she first saw the white light of the "Rona," almost immediately before she saw the green light, had known what were

the real position and bearing of that vessel, it would certainly have been a wrong manœuvre to put her helm hard-a-port. If it be said on the part of the "Ava" that at that time the "Rona" was nearly enveloped in her own smoke, the answer is that if from the first the "Ava" had slackened her course until she knew what the real position of the "Rona" was, she need not have been in a position of having to make any manœuvre in ignorance of the real state of things. The second captain of the "Ava" says, "I could not tell which way the steamer was going; it was impossible to form any opinion when I saw nothing but a cloud."

After considering the whole of the evidence attentively, their Lordships have arrived at the conclusion that the "Ava" was in fault in not slackening her speed, and waiting to ascertain, before she ported her helm, what was the real position of the "Rona."

For the above reasons their Lordships are of opinion that each of the vessels was in fault, and that the fault of each contributed to the accident.

They will therefore humbly advise Her Majesty in Council, that the decree of the Vice Admiralty Court in each of the causes be reversed; that it be declared that both vessels were in fault, and that such fault contributed to the accident, and that a decree be made in each case accordingly.

Looking at all the circumstances of the case, and considering that each of the parties was to blame, their Lordships are of opinion that each ought to bear their own costs in the Court below and of these Appeals.

Their Lordships have only to add that the view which they have taken of this case is entirely in concurrence with the opinions of the nautical gentlemen by whom they have been assisted, and of whose great experience and practical knowledge in cases of this nature they have had the benefit.