

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
the Owners of the barque "Anglo-Indian"
v. John Prust and others ("The Anglo-
Indian" and "Excel"), from the High
Court of Admiralty of England; delivered
Thursday, April 29th, 1875.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR HENRY S. KEATING.

THIS was a suit brought by the owners of the "Excel," a brigantine of 210 tons, against the "Anglo-Indian," a barque of 440 tons, in consequence of a collision, for which the "Excel" maintained that the "Anglo-Indian" alone was to blame. The collision took place in the Bay of Biscay, about 50 miles off Cape Finisterre, in the open sea at between 2 and 3 a.m. in December 1874. The "Excel" was going in a westerly direction at about $1\frac{1}{2}$ or 2 knots an hour. The "Anglo-Indian" was proceeding at a rate of somewhere about 6 knots an hour in the same course, behind the "Excel." The "Anglo-Indian" ran into the stern of the "Excel," and the "Excel" was sunk. The learned Judge of the Admiralty Court has found that the "Anglo-Indian" was alone to blame.

The question involved in this case is chiefly one of fact, and their Lordships repeat what, indeed, they have often said, that they are extremely loath to interfere with the finding of the Court below on a question of fact, that Court

having had the advantage, which they have not, of seeing and hearing the witnesses, unless they come to a very clear conclusion that that finding was wrong.

Now, the findings of fact of the learned Judge are these: first, with respect to the state of the night, in regard to which there was some conflicting evidence, those on board the "Excel" representing that the night though dark was clear, with passing clouds; those on board the "Anglo-Indian" representing that it was dark and very stormy, with rain, or, at all events, occasional rain. The learned Judge says:—
" But on the evidence I am satisfied that the
" night was not of the character described by
" the 'Anglo-Indian' witnesses. I am satisfied
" that the 'Excel' ought to have been visible
" to those on board the 'Anglo-Indian' at the
" distance that she says, viz., at the distance
" of at least 300 or 400 yards." Their Lordships accept that finding, and are of opinion that it is borne out by the evidence. Then the learned Judge goes on and finds another most material fact, namely, "that if there had been
" a proper look-out on board the Anglo-Indian
" —and in my opinion," the learned Judge says,
" and the opinion also of the Elder Brethren,
" there was not—she would have seen the
" 'Excel' in time to have got out of her way,
" and to have crossed her stern by starboarding
" at an earlier period." Their Lordships are of opinion that this finding also is entirely supported by the evidence. Indeed, in their Lordships' view it might not be incorrectly said that upon the evidence there was no look-out at all on board the "Anglo-Indian." The man upon the look-out says that when he first saw the vessel, the "Excel" was "ahead a little on
" the starboard bow;" that he first saw her masts; that when he saw the masts "she was

at no distance at all," and "When I saw the masts," he says, "on the starboard bow, I wheeled round and sung out, 'There is a vessel 'on the starboard bow,' but I was too late; we were foul of her already." And he subsequently says, "I was foul of her the moment I saw her." He further adds that he saw no light whatever on board her, and also that he heard no hailing on board her which other people on board the "Anglo-Indian" did hear. This certainly would point to the conclusion that the man Robinson, who was keeping the look-out, as it is supposed, on board the "Anglo-Indian" was really keeping no look-out at all. That being so, and having reference to the 17th Article, which provides that "Every vessel overtaking any other vessel shall keep out of the way of the said last-mentioned vessel," their Lordships have no doubt whatever that the finding of the learned Judge was right, that the "Anglo-Indian" was to blame.

The question remains whether there was negligence contributing to the accident on the part of those navigating the "Excl." On this subject there has been a discussion before their Lordships as to the meaning of three articles in the regulations for preventing collisions at sea; those articles being the 2nd, the 19th, and the 20th. The second is to the effect that "the lights mentioned in the following articles," numbering them, "and no others, shall be carried in all weathers from sunset to sunrise." Article 19 is in these terms:—"In obeying and construing these rules, due regard must be had to all dangers of navigation; and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger." Then the 20th is: "Nothing in these rules shall

“ exonerate any ship, or the owner or master, or crew thereof, from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper look-out, or of the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case.” It has been argued on the one side that Article 2 is absolutely prohibitory to a vessel under any circumstances showing any light except the lights prescribed. On the other hand it has been argued that although undoubtedly it would not be proper for a vessel under the circumstances in which the “Excel” was to keep up a fixed light at her stern, nevertheless, that under the circumstances of a vessel approaching her which would not be able to see her as well as she would see that vessel, it was her duty to have exhibited a light in time to avoid the collision; that she might have done this, but neglected to do so. Their Lordships do not entirely accept either of the views which have been thus expressed. Undoubtedly it is *prima facie* the duty of the overtaking vessel to keep out of the way of the vessel ahead of her, but their Lordships would be loath to lay it down that no duty whatever attaches under such circumstances as the present to the vessel ahead. If that vessel saw another approaching her, whether keeping a good look out or not, which she had reason to suppose did not in fact see her, and was likely to come into collision with her, they would be loath to say that no duty was cast upon her. On the contrary, they are of opinion, under those circumstances, it would be her duty to give some warning to the approaching vessel, not necessarily by exhibiting a light, but by some signal, such as the firing of a gun, the showing a light, or otherwise, which would indicate her whereabouts to the approaching vessel, and call the attention of that vessel to the danger of a collision. The ques-

tion therefore comes to this, whether in this case it has been established that the "Excel," in the words of Article 20, did neglect any precaution which might be required by the ordinary practice of seamen whereby she might have avoided the collision?

Now, the facts with reference to this subject may be taken to be these: The "Excel" saw the "Anglo-Indian" approaching at a distance of about 300 or 400 yards. That is found as a fact by the learned Judge, and their Lordships think rightly. It appears that simultaneously with her sighting this vessel she sighted the green light of the vessel, and that green light would then indicate that there was no danger of collision; that the "Anglo-Indian" would pass behind her stern. Very soon after both lights opened, the red and the green, and then undoubtedly there was imminent danger of a collision. The evidence on the part of the "Excel" is that under those circumstances, after an ineffectual attempt to obtain the globe light, the green light was taken from the starboard side of the vessel and exhibited from the stern. That fact appears to be proved, and their Lordships are by no means satisfied upon the evidence that that green light was not shown in sufficient time to have enabled the overtaking vessel, if she had kept a good look out, to have avoided the collision, which might have been in all probability prevented by a very trifling starboarding of the helm.

Under these circumstances, in their Lordships view, it is not established that the "Excel" did neglect any precaution "which may be required by the ordinary practice of seamen," and that no case of contributory negligence has been made out against her.

Under these circumstances, their Lordships will humbly advise Her Majesty to affirm the decision of the Admiralty Court, and to dismiss this Appeal with costs.

