

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the owners of the steamship "Abbotsford" v. The Peninsular and Oriental Steam Navigation Company, the owners of the steamship "Indus" (the "Abbotsford"), from the High Court of Admiralty of England; delivered 23rd July 1875.*

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Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR HENRY S. KEATING.

THIS is a case of collision between two very large steamers, the "Indus" and the "Abbotsford," which took place on the morning of the 24th November 1874, nearly off Dover pier. The "Indus," which is one of the steamers of the Peninsular and Oriental Company, was on her voyage from London to Bombay; the "Abbotsford" was on her voyage from Antwerp to some port in America. Both vessels were therefore bound down channel, and it is a fact common to both cases that the "Indus," proceeding through the Downs, passed within the Goodwin sands, while the other vessel, coming from Flushing in charge of a Flushing pilot, passed on the outside of the Goodwin sands. When the two vessels sighted each other the "Indus" was about four miles astern of the other vessel; and it then, or shortly afterwards, became obvious to those on board the "Indus" that the "Abbotsford" was heading in for the shore either to land her pilot at Dover, or at all events to communicate with the shore.

The "Abbotsford" then was obliged at some distance and in some way to cross the course of

the "Indus"; and that she did so without danger to either vessel is clear. It seems to be also agreed that, after she had done that, the two vessels proceeded at about the same rate of speed for some way, on parallel or nearly parallel courses, the "Abbotsford" being inside and nearer the shore, and the "Indus" still some distance behind the "Abbotsford." The dispute is as to what afterwards happened. The case of the "Abbotsford" is that almost immediately after she had put her pilot into the boat which came off from Dover for the purpose of receiving him, and while she was still lying almost motionless on the water, the "Indus" came down suddenly upon her, and did not starboard her helm in sufficient time to prevent her quarter swinging round against the bow of the "Abbotsford," and thereby causing the collision. The case, on the other hand, of the "Indus" is that she was on her proper course, that the "Abbotsford," having got inside some vessels that were lying at anchor, came suddenly out at a considerable rate of speed, and with her head far more to the southward than it ought to have been if she had been pursuing her ordinary course down the channel, and that she approached the "Indus" so rapidly that, although the latter took the proper measure of starboarding her helm, it was impossible to avoid the collision, which was thus occasioned by the misconduct of those on board the "Abbotsford." It is impossible to reconcile the two cases, and the learned judge of the Court of Admiralty has found that the sole blame of this collision lies upon the "Abbotsford;" and the grounds of his decision are the following: He first dealt with a question which was much disputed in the cause, viz., the place of collision, which he found, according to the evidence of the "Indus," to be about two miles off Dover. He

says, "According to the evidence given on the  
" part of the 'Abbotsford,' it was not above  
" three-quarters of a mile, but looking to the  
" probabilities of the case, as well as comparing  
" the evidence on each side together, I have  
" arrived at the opinion, with the concurrence of  
" the Elder Brethren of the Trinity House, that  
" in this respect the statement of the 'Indus'  
" is correct, and that this collision must have  
" happened about two miles off Dover." As  
to the collision he says, "Now it appears that  
" the 'Abbotsford' was originally, so to speak,  
" in the history of this transaction, on the  
" port side of the 'Indus,' and considerably  
" ahead, three or four miles; that she crossed  
" the bows of the 'Indus' going towards  
" Dover to land her pilot, and in so doing  
" came inside certain ships; she came out  
" again suddenly, and in our opinion heading  
" too far to the southward. Directly the  
" 'Indus' (which was at that time under  
" a starboard helm, as is proved by all the  
" evidence in the case) sighted the 'Abbotsford'  
" on her starboard beam, she put her helm hard-  
" a-starboard, and under the influence of that  
" helm went off four points."

Before stating how far their Lordships agree or dissent from the findings of the learned judge, it might be as well to mention shortly what were the respective duties of these two vessels under the sailing rules. The "Indus" was gaining on and overtaking the other vessel. If the case is to be regarded as that of one vessel overtaking another, it was her duty to keep out of the way of the "Abbotsford," and it was the duty of the "Abbotsford" to keep her course. If, on the other hand, they are to be treated as crossing vessels, then the "Indus," having the "Abbotsford" on her starboard side, was equally bound to keep out of the way of

the "Abbotsford," whose duty was also in that case to keep her course.

It is hardly necessary to observe how reluctant their Lordships are to set their judgment upon a pure question of fact against the judgment of the learned judge of the Court of Admiralty, who has had the advantage of seeing the demeanour of the witnesses, and hearing them give their evidence. It has been repeatedly laid down here that this Board will not interfere with such findings of facts on light grounds, or unless it sees very clearly that there has been some miscarriage in the appreciation of the evidence; or in other words, that the finding is very decidedly against the weight of evidence. In the present case their Lordships have not the advantage of having before them a judgment which weighs the conflicting evidence on the one side and the other, or expresses any opinion touching the credibility of the particular witnesses who have given their testimony in the Court below. They have merely the statement of certain general conclusions, conclusions from which, no doubt, the inference is that upon the whole the learned judge accepted the testimony given for the "Indus," in preference of that which was given on the part of the "Abbotsford."

Their Lordships, considering the evidence in the cause, find themselves constrained to dissent from the conclusion at which the learned judge arrived touching the place of the collision. He seems to have proceeded in a great degree upon "the probabilities of the case," by which their Lordships understand him to mean the improbability of this large vessel, the "Indus," being so close to the shore. But, on the other hand, he seems to have taken no account of a probability so high that it almost amounts to a certainty, namely, that if the "Abbotsford" went in to put out a pilot (as she unquestionably



did) she would approach the shore, particularly in the middle of the night, as nearly as she could safely approach it, and that the boat would not come out further than was necessary. Therefore their Lordships have no doubt whatever that the place where the pilot was put out was not more than three-quarters of a mile from the shore.

Again, the statement on the part of the "Indus" is that the "Abbotsford" came out suddenly from behind a vessel at anchor. Their Lordships are advised that the place at which vessels would be anchored is not likely to have been more than three-quarters of a mile distant from the shore. She is said to have so come out when the colliding vessels were only a quarter of a mile distant, and therefore at a distance considerably less than a quarter of a mile from the point at which her course would intersect that of the "Indus." Their Lordships, putting these facts together, cannot fix the place of collision at a greater distance than one mile from the shore. The learned Judge, however, has accepted the statement of the pilot that it was at about two miles from the shore.

Upon this point it is not immaterial to observe that a space of even two miles is far short of the distance at which the Master of the "Indus" in his examination before the Receiver of Wrecks put the place of collision. He put it at five miles from the shore; and that statement, which is inconsistent with all the evidence in the cause, begets a suspicion that there was a notion in his mind that even two miles was within the distance at which his vessel ought to have been from the shore. This loose and exaggerated statement of his cannot but throw some amount of discredit upon the case of the "Indus." Nor do their Lordships find that the pilot and the third mate of the "Indus" are altogether

consistent in their statements of the manner in which the collision was brought about; whilst on the other hand those on board the "Abbotsford" are consistent in the account they give of the manœuvres of their vessel, and are confirmed by the independent witnesses in the cause. Assuming the place of collision to have been not more than one mile from the shore, can it be said that the "Indus" discharged herself of the duty which lay upon her, viz., that of keeping out of the way of the other vessel? She had seen the other vessel. She knew that that vessel had gone in shore in order to land her pilot or communicate with the shore, and that she would in all probability come out again almost immediately in order to resume her course. It seems to their Lordships that in that state of things it was emphatically her duty to keep a good look out. But it was in a still higher degree her duty to do this if, as their Lordships think, she was nearer to the shore than in prudence she ought to have been. As far as the evidence goes, there seems to have been next to no look out on board the "Indus," and therefore their Lordships have come to the conclusion that whatever may be the case as to the "Abbotsford," the "Indus" must be pronounced to be in blame for this collision.

The next question is whether the "Abbotsford" was also to blame. If the evidence for the "Abbotsford" is to be taken as true throughout, she was really lying in almost the same condition as a vessel at anchor. And although she seems to have seen the "Indus" coming down upon her at the distance of a quarter of a mile, and did not immediately reverse her engines, their Lordships think that she had fair grounds for concluding that the "Indus" would have starboarded before she did, in which case she would have gone clear. When those on board the "Ab-

Abbotsford" saw that a collision was imminent, they did reverse the engines. In order to impute blame to the "Abbotsford," it is necessary to find that she was going ahead at a considerable speed with her head too far to the south. The only difficulty which their Lordships have felt upon this point is, whether the account which has been given of the manœuvres and of the orders given with reference to the engines is strictly accurate in order of time; whether she may have gone ahead, not at the time at which and for the purpose for which she says she did, viz., in order to steady her and get steering way upon her before the boat came off to her, but after she had put the pilot out, and in order to get back to her natural course. Their Lordships, however, do not think that they are at liberty to find upon the evidence as it is before them, that not only the captain, the first officer, and the two engineers have foresworn themselves, and have fraudulently transposed the entries in the engineer's log, but that the independent witnesses, who speak to the collision having taken place almost immediately after the pilot was put out, have also sworn falsely in corroboration of the case made by the "Abbotsford." Their Lordships are assured by their assessors that there is no improbability in the account given of the manœuvres of the "Abbotsford" before landing the pilot. Therefore they are of opinion, upon the facts, that the "Abbotsford" was lying to, and in fact almost motionless, at the time of the collision, and it appears to them from the photographs and the other evidence that the damage done is more likely to have been caused by the scraping sort of collision which took place according to the statement of the "Abbotsford," than by the sudden impact of the stem of the "Abbotsford" coming out at considerable speed on the quarter of the "Indus,"

in which case their Lordships are advised that she would have cut far deeper into the "Indus" than she appears to have done.

Upon the question, which was suggested rather than argued, viz., whether the "Indus" can escape from responsibility by reason of her being under the charge of a pilot, it is sufficient to observe that their Lordships' judgment proceeds on the ground that there was not a proper look-out on board of the "Indus," and therefore, that although the pilotage in this case may have been compulsory, the owners of the defaulting vessel are not relieved from their general liability. Their Lordships may further observe that upon the facts as found by the learned judge it would almost appear that the "Indus" was to blame in the matter of look-out, because if the pilot was put out at a distance of little more than three-quarters of a mile from the shore, and the collision did not take place till the "Abbotsford" had proceeded at a considerable rate of speed to a distance of two miles, it is difficult to see how, if there had been anything like a good look-out on board her, the "Indus" would not have seen the "Abbotsford" in time to avoid her by starboarding, much earlier than she did in fact starboard, her helm.

For these reasons their Lordships have come to the conclusion that they must humbly advise Her Majesty to reverse the judgment of the Admiralty Court, and to find that the "Indus" was alone to blame for this collision. The costs in the Court below and of this Appeal will follow the result.