

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Hunter and others v. The Steam Ship  
"Hesketh". (consolidated actions), from the  
Vice-Admiralty Court of New South Wales;  
delivered February 11th, 1892.*

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Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD HANNEN.

SIR CHARLES BUTT.

[*Delivered by Sir Charles Butt.*]

THE question which their Lordships have to decide in this case is entirely one of fact, and has to be decided on evidence which, as is not unusual in collision cases, is conflicting.

The facts are shortly these. The Plaintiffs' vessels, the "Royal Shepherd" and the "Countess of Errol," were coming out of Port Jackson, and before the collision, had rounded the south head of that port, the "Countess of Errol" being a three-masted schooner in tow of the steamer "Royal Shepherd." The "Hesketh," which is a screw steamer, was inward bound, and she was heading at the outset on a course about N.W. half N. up for the harbour.

The case set up by the Plaintiffs and their witnesses is this. They allege that the "Royal Shepherd," with the "Countess of Errol" in tow, coming out of the harbour, had rounded the headland before they sighted the light of the "Hesketh," and had straightened down along the coast on a course of something very like S.S.E., and that then they saw the red light of the "Hesketh" on their starboard bow. There

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were red lights of other vessels in view, to which reference will be made presently, but the red light of the "Hesketh," according to the Plaintiffs' witnesses was open on the starboard bow of the "Royal Shepherd"; and from that time until the collision, according to the Plaintiffs' case, they never altered their helm; they say, moreover, that the "Hesketh," which was further from the land than themselves, instead of keeping her course up for the harbour, suddenly starboarded, and hard-starboarded, her helm, came a long way off her course, and ran into the port side of the "Royal Shepherd," striking her at an angle which they describe as very nearly a right angle. There was afterwards a collision between the "Hesketh" and the "Countess of Errol," the tow.

Now that being the story of the Plaintiffs, what is the case set up on the other side? The case of the "Hesketh" is this. She was proceeding up for the harbour, on the heading which has been already described, and she saw the green light of the "Royal Shepherd" coming out with the "Countess of Errol" in tow. It has been said that she did not observe that the towing vessel had two white lights at her mast head. That may be so; but her witnesses have all said that she was a vessel towing, and they knew that she was a vessel towing. The "Royal Shepherd" and her tow, according to the "Hesketh," came out from the headland, crossed the course of the "Hesketh," and got on to her starboard bow, so that the two vessels were in this position, that each had the other's green light open, or, in other words, they were starboard bow to starboard bow. Under those circumstances the order was given on board the "Hesketh" to starboard her helm a little, and ease her engines, in order to give the tow, which was following the "Royal Shepherd" a little

more room. If they were green light to green light no possible harm could accrue from so starboarding; and it was a perfectly justifiable manœuvre; but they say that, having got into that position of safety, starboard bow to starboard bow, the "Royal Shepherd" suddenly ported her helm, opened her red light, and came across the bow of the "Hesketh," the collision thereupon happening, the stem of the "Hesketh" striking the port side of the "Royal Shepherd,"

It is thus manifest that the great point in dispute in the case is—were the "Royal Shepherd" and the "Hesketh" ever in the position described as green light to green light, or in other words starboard bow to starboard bow? If they were, then the collision was brought about by the improper porting of the "Royal Shepherd," and she must be held to blame.

On which side, then, does the truth lie? The first fact of importance as bearing on the probabilities of the case is this. There were four incoming vessels meeting the "Royal Shepherd" and her tow, or three if the ketch in tow of the "Peterborough" is excluded. It is an admitted fact in the case that the "Royal Shepherd" stood across the bows of three of those four vessels, and got from their port on to their starboard bow, and it does not seem very improbable, if that were her course of navigation with reference to the three, that it should also have been her course with reference to the fourth vessel, the "Hesketh."

The learned judge of the court below has found that she did in fact cross the bows of the "Hesketh" as well as of the other three vessels, and that then, having got on to the starboard bow of the "Hesketh," she ported and brought about the collision. In dealing with the evidence he has relied very strongly on that of t

independent witnesses called by the Defendants from the steamer "Peterborough." The first of those is Wilson, who was the mate of the "Peterborough"; he says, after generally describing the situation, "I was watching the " 'Royal Shepherd,' and her tow, and they " appeared to me to be going straight out. The " distance between the two green lights did not " seem to narrow, they kept the same distance " apart. I kept in a little, and the 'Hesketh' " kept in a little. The green light of the 'Royal " Shepherd' went on till it was shut out by the " bow of the 'Hesketh.' I then saw the green " light of the 'Royal Shepherd' over the " 'Hesketh.' The 'Hesketh' was heading in the " right course for the entrance, about the " centre. I generally steer for the Manly Lights " myself, and she was about in a line with the " Lights when the 'Royal Shepherd' passed her. " After seeing the green of the 'Royal Shepherd' " over the 'Hesketh,' I next saw the red light of " the 'Royal Shepherd' coming in across the " bow of the 'Hesketh'." That is, having been on the starboard bow of the "Hesketh," the "Royal Shepherd" had ported in across the course of that latter vessel. That evidence is fully corroborated by the testimony of another witness from the "Peterborough," Alexander Helsing, who was at the helm.

Beyond this evidence there is the following fact to be borne in mind, that the manœuvre ascribed by the witnesses on the part of the Plaintiffs to the "Hesketh" is one which their Lordships do not say is absolutely impossible, but which it is very difficult to believe was ever resorted to. It is an agreed fact here that the course of the "Hesketh" was N.W. half N. before the vessels manœuvred for each other. The Plaintiffs' witnesses have sworn that at the time of the collision the heading of the "Royal

Shepherd" was S.S.E.; and that the blow, to use the language of the captain of the "Royal Shepherd," was "nearly at right angles." Of course, witnesses are not bound to half a point or a point in these matters, but from that evidence what results? Why, that the "Hesketh" must have starboarded from N.W. half N., or thereabouts, to W.S.W., because, to strike a vessel heading S.S.E., *i.e.*, on a course differing some 14 points from her own, a blow at right angles, she must have been heading W.S.W. In other words, the "Hesketh" must have starboarded, for no reason that their Lordships can understand, or have heard suggested in the course of the case, some six or seven points of the compass, so as to bring her head right in towards the shore, and place herself in imminent risk of going on shore. That is a story which would want a very great deal of evidence to support it, even if there were no evidence on the other side. The learned Judge has come to the conclusion, and their Lordships are of the same opinion, that the story told by the "Hesketh" is the more probable story of the two. But that is going further than is necessary in a case of this sort, because the learned Judge of the Court below had the advantage, which their Lordships have not had, of seeing the witnesses, and judging of their demeanour, and of founding his opinion in some measure upon the way in which that evidence was given; and it would not be right to interfere with a judgment so formed, except on ascertaining certain facts which would render it wholly irreconcilable with the probabilities of the case.

There is one other matter to which it is perhaps right to refer. It has been argued by the Plaintiffs' counsel that in any view of the case the "Hesketh" must be condemned here, for not having sooner stopped and reversed her

engines. That is a question which must depend upon the relative positions of the vessels at the time. If the evidence of the Defendants' witnesses is to be credited—and their Lordships think that it is—then these two vessels, the “Hesketh” and the “Royal Shepherd,” were passing, apparently safely, starboard side to starboard side, and there was no necessity whatever for altering the speed of the “Hesketh” until that occurred which we now know did occur namely, until the “Royal Shepherd” most unadvisably ported her helm, and opened her red light. On that occurring it is in evidence, and there seems to be no reason to doubt it, that the engines of the “Hesketh” were at once stopped and reversed. In other words as soon as the danger became apparent the rule which the “Hesketh” is charged with disobeying was acted upon by her captain; and no blame attaches to her on that account.

The result is that in their Lordships' opinion the Judgment of the learned Judge of the Court below is right; and they will therefore humbly advise Her Majesty to affirm it, and to dismiss this appeal with costs.