

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Williams and others v. Gutch and others, ship "Chancellor," from the High Court of Admiralty of England; delivered on the 13th March, 1861.*

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Present :

LORD KINGSDOWN.

SIR EDWARD RYAN.

THE MASTER OF THE ROLLS.

SIR JOHN TAYLOR COLERIDGE.

THIS is an appeal from the decision of the Court of Admiralty, finding the vessel, the "Chancellor," solely to blame for the collision which occurred, and condemning the owners in the amount of damage sustained.

Except as to the position of the vessels at the time of the collision, the facts, as they appear on the evidence, are not in dispute, although there is some contest as to the inferences to be drawn from them.

The collision took place about 9 o'clock in the evening of the 5th of September last in the middle of the Atlantic Ocean. The "Egyptian" was on the port tack, heading west-north-west. The wind was south, or if anything a little to the east of south. The "Egyptian," therefore, had the wind four points free. The "Chancellor" was heading east-south-east, was on the starboard tack, and was hauled as close to the wind as she could be.

It seems that the lights of each vessel were observed by the persons on board the other at about the same time. The interval which elapsed before the vessels struck seems to have been about five minutes, and each vessel was going at about six knots. They were therefore approaching each other

at about twelve knots per hour, which would make the distance of the vessels from each other about one mile when the lights were first perceived.

The evidence is quite clear as to what took place on board each vessel as soon as the lights of the opposing vessel were discovered. On board the "Egyptian" the master immediately ordered the helm to be put hard a-port, and this was continued until the collision took place. On board the "Chancellor" no material alteration took place in the direction until the collision was unavoidable. The master desired the helmsman to keep her full and by, but not more than was necessary to keep the vessel under proper command.

When the collision was imminent and unavoidable, then, and not till then, the helm of the "Chancellor" was put hard to starboard; but this was only to convert the shock into a slanting instead of a direct blow, and thus diminish the force of the collision. There is no question as to the spot where the vessels struck each other: the starboard bow of the "Chancellor" struck the port-bow of the "Egyptian." It is clear, therefore, that when the collision took place, the vessels must have been approaching at an angle more or less acute. Had they been meeting in opposite directions, the port-bows of both vessels, or the starboard bows of both, must have been struck. Had they been bearing down on each other at right angles, the stem of one would have struck the side of the other. The evidence differs as to the position of the heads of the vessel at the time of the collision. Fitzgerald, who says he was looking at the compass on board the "Egyptian" at the time of the collision, says positively that she headed north-west at the time she was struck.

The man at the wheel of the "Chancellor" (Morrison) says that the "Chancellor" headed east-north-east at the moment of the collision. If these accounts were both correct, there would be ten points between the heading of the vessels at that time, which would exceed a right angle, and is wholly irreconcilable with the fact that the port-bow of the one struck the starboard-bow of the other. There must be an error, therefore, on one side or the other in this respect. We think that the error is on the side of the evidence for the "Egyptian."

We are informed, that a vessel proceeding at the rate of six knots, and heading west-north-west, and on her helm being put and kept hard a-port, would in the course of five minutes pay-off much more than two points. The "Egyptian" was, in fact wearing, that is, was coming round, by the effect of her helm being kept hard a-port; and we are informed that it is impossible that Fitzgerald can be right (page 13) when he says that the vessel, which had had her helm kept hard a-port for five minutes, and was going at six knots an hour, should only have got about a point and a-half off her course, which is the evidence on behalf of the "Egyptian."

There is another additional circumstance strongly corroborative of the inference that the "Egyptian" must have gone far further round than two or three points when the collision took place. The master, Adey, says (page 17), "Soon after we were struck my mizen-boom jibbed over." Now as the vessel sank rapidly after the collision, and the crew began leaving her immediately, this circumstance must have been observed immediately after the collision. The cause of the mizen-boom jibbing over is, that the wind struck the sail on the opposite, or starboard side; and as the wind was then south, the head of the "Egyptian" must have been pointed something to the east of north before this could have occurred. We consider it therefore clear that the "Egyptian" must have gone many points round before the collision took place.

The question in this state of things is, which of the two vessels was to blame. This is not a case in which the Statute has any application, as the "Chancellor," being an American vessel, is not bound by our law. The rule of the Sea is that which must govern the present case. We apprehend the rule to be, that when two vessels are approaching each other nearly on the same course, and both have the wind free, each vessel is bound to port her helm and run to starboard of the other; but when one vessel is close-hauled, the running ship, that is, the ship which has the wind free, is bound to make way for the close-hauled ship. Here the "Egyptian" had the wind four points free; she was bound, therefore, to make way for the other. She was able to make her own election whether she would attempt to pass to windward or

to leeward of the opposite vessel. She might have starboarded her helm, and gone four points nearer to the wind. The "Chancellor" was unable to do this, for she was going as close to the wind as she could.

The facts already stated connected with the steerage of the vessels and the manner of the collision, and their situation at the time, convince us that the "Egyptian" was some little to windward of the "Chancellor" when the lights were first discovered. This is confirmed by the evidence of the witnesses on board the "Chancellor." All these witnesses assert that a white or bright light, not a red one, was first seen from two to two and a-half points on the starboard or weather bow; that it did not remain in sight, but was lost sight of, and that immediately after a red light was seen; as soon as it was seen they all fix its position as being two points upon the beam, that is, we are informed, nearly abreast of the "Chancellor." It was at this time, and not till then, that, seeing the "Egyptian" bearing down upon the "Chancellor," the master of the "Chancellor" gave the order "hard a-starboard," which was, as we are informed, and as appears from the evidence, the proper order, having regard to the then inevitable collision, in order to protect his ship as much as possible from the effect of the blow.

We think that the captain of the "Egyptian" acted inconsiderately by ordering the helm to be put hard a-port immediately on hearing that a light appeared a-head, without observing how the position of the light might vary, and without reflecting on the situation in which the opposite vessel must necessarily have been, had she been coming end-on against the "Egyptian."

Bearing in mind that the "Egyptian" was the free vessel, and that it was her duty to give way to the other, we think that a careful observation should have been made to ascertain which of the two vessels lay to windward of the other, or whether they were coming end-on against each other. We think that a little observation on board the "Egyptian" would have ascertained the fact of her being to windward of the "Chancellor," and that the two vessels were approaching on parallel lines and not meeting end-on. And we also think that a little

reflection would have shown the master of the "Egyptian" that by keeping to windward he could have rendered any collision with the opposing vessel impossible.

In any view of this case on the evidence their Lordships are of opinion that the "Chancellor" is not to blame for the collision, for the evidence is clear that she was unable to port her helm without lifting her sails, and that being so situated she did what it was her duty to do, viz., she kept on her course as close-hauled as she could until the collision was inevitable.

Their Lordships think, therefore, that the Appeal of the "Chancellor" ought to be allowed, and they will humbly report to Her Majesty that the Decree of the Court of Admiralty ought to be reversed, and that the "Egyptian" be ordered to pay the costs of the proceedings both here and in the Court below.

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