

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the General Steam Navigation Company v. Hedley and others (Ship "Velocity"), from the High Court of Admiralty; delivered 6th December, 1869.

Present :

LORD CHELMSFORD.
SIR JAMES W. COLVILLE.
SIR JOSEPH NAPIER.

THIS is an Appeal from a Decree of the High Court of Admiralty in a cause of damage instituted by the owners of a steam-vessel, the "Carbon," against the owners of the steam-vessel the "Velocity," for the damage done to the "Carbon" in a collision between the two vessels, for which collision the learned Judge held that the "Velocity" was alone to blame, and decreed accordingly.

In the course of the argument of the Appeal their Lordships were informed by the Counsel for the Appellants that the owners of the "Velocity" had brought an action-at-law against the owners of the "Carbon," and had obtained a verdict with damages. That upon an application to the Court of Exchequer for a new trial, the Chief Baron (who tried the cause) expressed his entire satisfaction with the verdict, that the Court would not grant even a rule *nisi* to set it aside, and afterwards refused to give the Defendants leave to appeal.

This verdict must have proceeded upon the ground of the "Carbon" having been solely in the wrong; because, if there had been any fault contributing to the collision on the part of the "Velocity," although there was even a greater degree of blame imputable to the "Carbon," the

owners of the "Velocity" would not have been entitled to succeed at law.

It is, perhaps, difficult to resist the influence arising from the successful issue of this proceeding-at-law by the Appellants, but their Lordships have endeavoured to confine their minds entirely to that which alone is properly before them, the evidence given in the Court of Admiralty, and the reasons stated by the learned Judge for the Decree which he pronounced.

The collision took place in the River Thames a little below Millwall Pier, at about 3.45 A.M., 5th September, 1868.

It was a fine moonlight morning, and the tide was about high water, and slack.

The "Velocity," a steam-ship of 179 tons, was going down the river on her way to Calais.

The "Carbon," a screw-steamer of 399 tons, was proceeding up the river to London with a cargo of coals.

The "Velocity" had been on the south side of the river until she arrived at Cuckold's Point, when she crossed over to the north shore, and just before the collision was rounding Millwall Pier and making her way along the north shore under a starboard helm.

The "Carbon" was going up the river in mid-channel, and, at about a quarter of a mile distance, saw the red or port light of the "Velocity" bearing a little on her starboard bow.

The helm of the "Carbon" was immediately ported which carried her towards the "Velocity." The captain of the "Velocity," seeing the danger of a collision, first starboarded the helm and afterwards ordered it to be put hard-a-starboard, so as to get his vessel ashore, and save the lives of those on board, and the "Carbon" ran into her starboard bow and cut her from the deck down to the keel.

It was admitted on both sides that this was not a case of two steam-vessels meeting end on, or nearly end on, so as to require each of them to put the helm to port in obedience to the 13th Article of the Regulations for preventing Collisions at Sea. But it was considered by the learned Judge of the Court of Admiralty that the 14th Article applied, and that the two vessels were "crossing so as to involve the risk of collision, and that it was

therefore the duty of the vessel which had the other on her starboard side to keep out of the way.

The learned Judge in delivering his Judgment said, "We" (that is, himself and the Elder Brethren of the Trinity House by whom he was assisted) "think that the evidence establishes that the 'Carbon' saw the mast-head and port light of the 'Velocity' alone. The vessels were therefore crossing under the rule to which I have referred" (the 14th), "and it was therefore the duty of the 'Carbon' to get out of the way of the 'Velocity.' The course which the 'Carbon' adopted was to port, and the Elder Brethren think that this was the only mode of getting out of the way in the circumstances." But the fact of the "Carbon" having seen the port light of the "Velocity" does not necessarily prove that the "Velocity" was crossing the river as the learned Judge and his Assessors seem to have thought. The relative position of the two vessels when they first came in sight of each other must not alone be regarded, but also the bend of the river in the part where the collision took place. A vessel rounding the curve of the north shore would necessarily, during some part of her course, have her head slightly inclined towards the south shore, so as to exhibit her port light to a vessel in mid-channel coming in a contrary direction; and, in fact, the "Velocity" was not crossing, or intending to cross, the river when she was seen by the "Carbon," but was pursuing the regular course along the north shore; keeping as near to that shore as was convenient under a starboard helm. The Appellants alleged that this was the well-known customary track for vessels going down the river, and to establish their case in this respect they called Captain James, the principal Harbour-master of the river, who said, "It is the custom that vessels going down, whatever be their tonnage or their cargo, and whether at flood or ebb tide, invariably keep on the north side, and vessels coming up invariably keep on the south side." The Quartermaster of the "Dreadnought" Hospital ship, which is moored not far from the place where the collision occurred, also stated that the regular course of steamers going down the river is to keep on the north side; and the captain of the "Velocity," who has been thirty-three years in command of

vessels belonging to the Steam Navigation Company, said that for twenty years he had always in going down the river gone as close as he could to the north shore, as his usual track and the shortest way.

That there has been a practice for vessels going down the river to prefer the north to the south shore is proved by the above evidence, but that there was any custom of this kind in the strict sense of the word, to which all vessels would be bound to conform, is certainly not the fact. On the contrary, from the year 1854 down to the year 1862 the rule laid down by Act of Parliament required vessels going down the river to keep towards the south shore. By the 297th Section of the Merchant Shipping Act of 1854, it was enacted that "every steam-ship when navigating any narrow channel shall, whenever it is safe and practicable, keep to that side of the fair way or mid-channel which lies on the starboard side of such steam-ship." Therefore, the captain of the "Velocity" in running down the river on the north shore, which he stated to have been his invariable practice for twenty years, was, for some of those years, acting in direct disobedience to the Act of Parliament. But, in 1862, by the Merchant Shipping Acts Amendment Act the 297th Section of the former Act was repealed, and vessels navigating the river were left at liberty to go on whichever side of it they pleased, taking care, of course, to observe the Regulations for preventing collisions. The "Velocity," at the time when she was seen by the "Carbon," was where, under the existing law, she had an undoubted right to be, and was pursuing her regular course along the north shore, when her red light presented itself to the "Carbon's" view. Now, if the persons in charge of the "Carbon" knew, as they ought to have known, the bend of the river in that part, and also knew that it was usual for vessels going down the river, to steer their course along the north shore, they had no more right to assume that the "Velocity" was in the act of crossing the river than that she was pursuing an ordinary course in her way down the river. The learned Judge of the Court of Admiralty held that, as the vessels were crossing, the "Carbon" ought to have kept out of the "Velocity's" way. And the Counsel for the

Respondents argued that, if this were the case, the "Velocity," by the 18th Article of the Regulations, ought to have kept her course,—which they interpreted to mean, that she should have followed the direction in which her head happened to be turned at the time when she was seen by the "Carbon." But such an interpretation of the Rule would lead to constant uncertainty and perplexity, as the course of a vessel would be continually varying whenever she had to turn out of the way to avoid any other vessel, or might be compelled to follow the turns and windings of a river.

If the 18th Article applies, the "Velocity" was bound to keep her course down the river on the north shore, and this course she kept till collision with the "Carbon" was imminent, when she put her helm hard a starboard to run herself on shore. Their Lordships are of opinion, however, that this was not a case in which either the 13th or the 14th Article of the Regulations was applicable. It was admitted that this was not a case of two ships under steam meeting end on, or nearly end on, under the 13th Article, and in their Lordships' judgment the "Velocity" and the "Carbon" were not "crossing" within the 14th Article. But putting the Regulations aside, they are at a loss to discover what possible blame can be imputed to the "Velocity." She had a perfect right to be where she was, and she was pursuing an usual course of navigation down the river, from which she never deviated until forced to do so by the peril of a collision into which she was brought by the sudden change of course of the "Carbon." On the other hand, the "Carbon" appears to their Lordships to be wholly to blame. She knew, or ought to have known, that a vessel going down the river had a right to run down on the north shore, and that in the position in which she was the appearance to her of the red light of a vessel on that side of the mid-channel was no indication that the vessel was in the act of crossing the river; and yet there being nothing else to justify the belief, she acts at once upon her hasty and erroneous conclusion and so occasions the collision. Even supposing the "Carbon" to have excusably mistaken the course of the "Velocity," how can she recover unless she show that the "Velocity" was in fault?

Their Lordships (as already observed) are unable to discover that any degree of blame can be attributed to the "Velocity" either by her having pursued a course which she was not at liberty to pursue, or having been handled in any way which the course down the north shore did not prescribe.

They will therefore recommend to Her Majesty to reverse the Decree appealed from, to dismiss the Appellants from the suit, and to condemn the Respondents in the costs in the Court below, and also in the costs of this Appeal.