

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the National Steam Ship Company v. Merry and another (the 'Pennsylvania'), from the High Court of Admiralty; delivered 20th June, 1870.*

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Present:—

THE MASTER OF THE ROLLS.

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

IN this case two questions arise: first, whether a collision was inevitable when the two vessels came in sight of one another, and, if it be shown that it was inevitable, then arises the second question, whose fault was it that they got into that position? Their Lordships are disposed to consider it in both points of view. First, assuming that the collision was inevitable, whose fault it was that they came into that position.

Their Lordships, after consulting with the gentlemen who assist them upon this occasion, are of opinion that if the collision was inevitable when the vessels first came in sight, it was the fault of the steamer for going at an improper rate of speed: the speed at which the steamer was going, as shown by the Appellants, was an improper rate of speed for the position in which she was placed: and that the collision was not occasioned by the absence of blowing the fog-horn of the barque. Assuming, which the evidence seems to establish, that the fog-horn would have been heard farther than the bell, their Lordships do not think it would have been heard at a sufficient distance to have enabled the steamer to avoid getting into that position. The steamer was going, the captain says, at the rate of about seven knots an

hour. Of course, he puts it in the most favourable manner for himself. He says, that no less a speed than that would have enabled him to keep the vessel under command; but this seems to have been very much doubted by other persons who have been examined on the part of the Appellants, and by the gentlemen who assist us; though five or six, or six and seven knots an hour is stated by other persons to be a proper rate of speed under such circumstances. Their Lordships do not mean to lay down what rate of speed would have been proper under these particular circumstances; in some cases four knots an hour, and in another three and a half knots an hour have been held to be an improper rate of speed; it always must have reference to the peculiar circumstances of the case. But their Lordships are of opinion that in a thick fog in the Atlantic Ocean, in the direct line to New York, about 200 miles to the east of Sandy Hook, where frequently there must be a great number of vessels congregated, seven knots an hour is too great a speed for a steamer to proceed at. It was argued that if their Lordships held that seven knots an hour was too great a speed at which to proceed in a thick fog in that position, it would paralyse all the efforts of mercantile transactions, and that neither passengers nor goods could be properly conveyed across the Atlantic with a due regard to business and trade. Their Lordships do not concur in that argument, and are of opinion that the lives of passengers and the safety of goods must be protected in the first place. Their Lordships are of opinion that, even if these fogs should last longer than they are said to do, still the steamers must abate their speed, and that if they do not they must take all the consequences of a collision.

Their Lordships are of opinion, therefore, that it was the speed at which the steamer was going, and not the absence of the fog-horn, which was the cause of their coming into a dangerous position.

Their Lordships desire that it may be understood that they think the barque was in the wrong for not sounding the fog-horn. They do not accept any excuse for it; but they are of opinion that this was not the cause of these vessels coming into the position which caused the collision. On the other point their Lordships are not satisfied that,

having come into that position, the collision was inevitable; and the nautical assessors, who have explained the matter to their Lordships, are of opinion that there was considerable confusion on the part of the steamer from the contradictory orders that were given. It is clear that somebody called out "starboard," and their Lordships have no doubt, upon the evidence, that it was called out by somebody on board the steamer; and, judging by the ordinary circumstances of such a case, the nautical gentlemen have very little doubt that it was called out by the look-out man; that it was he who called out "starboard;" and that he thought that if the steamer was starboarded she would go clear of the 'Mary A. Troop.' The consequence of this confusion was that the vessel was first ported, then the helm allowed to go free, and then ported again, by means of which she ran into the other vessel. Their Lordships are also of opinion, both from the evidence and from the opinions expressed by the gentlemen who assist them, that the barque was forging ahead very softly, and that, from the manner in which her sails were set and her helm tied, she was probably not going above a knot an hour; and the nautical gentlemen think that if the helm of the steamer had been starboarded at once she might have gone clear ahead of the barque. These gentlemen also state, in corroboration of that opinion, that, having regard to the fore and aft sails that were set on board the steamer, if her helm had been starboarded she would have answered the helm much more clearly, and turned up to the wind much more quickly, than she would if she had fallen off; and that the steamer would have gone clear of the barque if the helm had been starboarded instantly when she was first seen, and every attempt had been made for that purpose. Their Lordships also observe that it is a very strange and unusual thing when a vessel is sighted on the starboard bow, which was clearly the case on the present occasion, that thereupon the helm should be ported, which would, under ordinary circumstances, send the steamer right on to the vessel, instead of starboarding the helm, and sending her in the opposite direction; it is difficult to say whether, if she had turned up quickly, she might not have run up by the side of the other vessel instead of

crossing her bows, but the collision might then have been of a milder character.

Taking all these circumstances into consideration, and having regard to the fact, that there is the Judgment of the Court below, and that the Trinity Masters and the gentlemen who advise their Lordships are all of opinion that the steamer was solely and entirely in the wrong, their Lordships are of opinion that the Judgment of the Court below ought to be affirmed, and that the Appellants must pay the costs.