

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Owners, Master, and Crew of the schooner 'Victory' v. the Owners of the schooner 'Priscilla' (ship 'Priscilla'), from the High Court of Admiralty; delivered 30th November, 1870.

Present:—

SIR JAMES W. COLVILLE.

LORD JUSTICE JAMES.

LORD JUSTICE MELLISH.

THEIR Lordships, in the course of the argument, intimated that if the learned Judge of the Admiralty Court had found as a fact upon this conflicting evidence that the 'Priscilla' had not completed her manœuvre of tacking—or perhaps it would be more correct to say had not gathered way after tacking—they would not have interfered with or questioned that finding, which must have proceeded entirely upon the credit to be given to the witnesses on either side; and that they would also have thought that the conclusion which the learned Judge drew from such a state of facts was justified: namely, that the 'Victory' ought to have observed what the 'Priscilla' was about, and ought to have avoided this collision by tacking herself.

It unfortunately happens that though we might have inferred from the second paragraph of the printed Judgment that this was what the learned Judge intended to find, the last paragraph makes this somewhat doubtful. The learned Judge is made to say that the 'Victory' must have known that the 'Priscilla' had gone about, and was "standing towards her at that time." Finding those expressions in the Judgment, their Lordships therefore thought it lay upon them to examine closely the evidence given on either side as to the whole transaction, and to draw their own conclusions from that evi-

dence, because, if the vessel had really gathered way, and the 'Priscilla' had really gathered way and was standing towards the 'Victory,' then it seemed to their Lordships that the case would properly fall within the 12th Article, and that the 17th Article would not apply to such a case. They are by no means prepared to say that the learned Judge did mean to find that the vessel had gathered way. They are inclined to think, upon a view of the whole of the circumstances, that that expression which has been quoted, may have been inaccurately used, and that it did not really express what might have been in the learned Judge's mind.

In any case, after considering the evidence, they are disposed to give more credit to the case sworn to by the 'Priscilla' than to the case made on the part of the 'Victory,' which, it is to be observed, rests very much upon theory, whereas, if you reject the case made by the witnesses for the 'Priscilla,' you must impute wilful perjury to three or four witnesses who have sworn to the actual state of the rigging, the steerage, and the other manœuvres of the 'Priscilla;' their evidence being inconsistent with the notion that that vessel, though she might have almost completed the manœuvre of tacking, had really gathered way, so as to bring the two within the category of crossing vessels, under the 12th Article.

We have had the benefit of consulting our Nautical Assessors, and that is the view which they also take. They think that the vessel had not gathered way, and, that being the case, they concur with those who advised the learned Judge in the Court below; and as their Lordships concur with the learned Judge in thinking that, under the circumstances, the fault was the fault of the 'Victory,' they must humbly recommend Her Majesty to dismiss this Appeal with costs.

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