

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
William Malcomson and others v. The
General Steam Navigation Company (the
Ranger and Cologne) from the High Court
of Admiralty of England; delivered 5th
December 1872.*

Present :

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

This was a suit for collision between two steam vessels; the steamer Cologne, a vessel of 324 tons register and 120 horse-power, was one, and the other was the screw steamship Ranger, of 308 tons register and 40-horse power. Each of the vessels complains of the other. Each says that the other was in fault, and each states that the other ran against her. The Ranger says that the Cologne ran with her starboard paddle-box against her stem.

It appears that the Cologne was going down the river, and the Ranger was going up. The accident happened on the 5th of January 1871, between half-past 11 and 12 o'clock. It was a fine night and moonlight. The tide was running up about the last quarter flood at the rate of about two knots an hour. It seems that the waterway in that part of the river was about 900 feet, and that the collision took place about 150 feet from the north shore at a short distance from a barge called the dumb barge. The question to be considered is, whether both the vessels were in fault, and if not,

whether either, and which of them, was in fault.

The learned Judge of the Admiralty Court found that they were both in fault, and divided the damages. Each of the vessels was a suitor in the Admiralty Court, each complains of the decision, and each appeals to this Court. The Cologne, by adhering to the Appeal of the Ranger, is substantially appealing. The learned Judge says:—"The Cologne, was proceeding
" down the river Thames, and the Ranger, was
" proceeding up the river, and in my judgment
" there is no question of practice or usage as
" to the navigation of one side of the river or
" the other, which can govern or affect this ques-
" tion; nor is there any rule of the regulations
" for preventing collision applicable to this case.
" I am bound to say that the Elder Brethren of
" the Trinity House do not themselves agree
" with each other as to the vessel which was to
" blame in this case. The opinion, therefore, I
" am about to deliver is the opinion of one of
" the Elder Brethren and myself; and I think
" it fair to make that statement to counsel. I
" will read the language of the Elder Brother
" whose opinion I am inclined to assent to,
" and I will read the words we have agreed to
" use." The words are these:—"These vessels
" were rounding the point between Greenwich and
" Limehouse Reaches in opposite directions, the
" one under a starboard helm and the other under
" a port helm, and rapidly altering their respective
" bearings from each other. They seem to have
" been both navigating on the north shore, and at
" about the same distance from the shore. The
" vessel coming down, the Cologne, would see the
" other vessel's green light, and might be induced
" to conclude that she intended to pass on her
" starboard side, and the Cologne would conse-
" quently keep on under her starboard helm. As
" the vessels were approaching each other at the
" rate of about thirteen knots, and only three
" minutes had elapsed from their first sighting each
" other, there was no time for the Cologne to have

“ done anything to avoid a collision, after seeing
“ the Ranger’s light had changed from green to
“ red. The vessel coming up, the Ranger, would
“ see the other vessel’s red light, and might also
“ suppose that she intended to pass on her port
“ side, and would therefore keep under a port helm.
“ When the Cologne’s light changed from red to
“ green,” (it is not stated at what time that
change took place,) “ which it would naturally do,
“ there was no time or room for clearing each
“ other, even by the Ranger putting her helm
“ hard aport, which was done;” and then the
learned Judge says, “ In these circumstances it
“ seems most probable that both vessels were to
“ blame for the collision.”

Now, let us consider, was the Cologne to blame according to this finding? The learned Judge says, “ The vessel coming down, the Cologne,
“ would see the other vessel’s green light, and
“ might be induced to conclude that she intended
“ to pass on her starboard side, and the Cologne
“ would consequently keep on under her star-
“ board helm.” It appears to their Lordships that the Cologne was not guilty of any negligence in so acting upon that conclusion.

Then, was there any fault or negligence on the part of the Ranger? The learned Judge says,
“ The vessel coming up, the Ranger, would see
“ the other vessel’s red light, and might also
“ suppose that she intended to pass on her port
“ side, and would therefore keep under a port
“ helm.” Now, when the Ranger saw the
Cologne’s red light she saw it two points over her
starboard bow, and therefore the Cologne must
have been nearer to the north side at that time
than the Ranger. If the Cologne was nearer
to the north side than the Ranger at that time,
the Ranger, if she thought that the Cologne
would pass her on her port side, must have
supposed that the Cologne would cross her path.
Was she right in that supposition? It is stated
that there is a practice for vessels going down
to keep on the north side. If the Cologne had

gone much to the south she would have got where the tide against her was the strongest. There was no good reason therefore for the Ranger's supposing that the Cologne would cross her path and pass on her port side. On the other hand, the Cologne saw the Ranger's green light, and she might naturally suppose that, looking to the practice of navigating that part of the river by vessels going down, the Ranger would pass her upon her starboard side, giving green light to green light.

In the case of the *Velocity*, which has been referred to, it was held that vessels meeting under circumstances like these did not fall within the 14th rule of the regulations for preventing collisions. That rule is, "If two ships under steam are crossing so as to involve risk of collision, the ship which has the other on her own starboard side shall keep out of the way." If the two vessels were within that rule, the Ranger, seeing the red light of the Cologne on her starboard side, was the one to keep out of the way. In the case of the *Velocity* it was held that vessels under similar circumstances were not crossing vessels within the meaning of the 14th rule. But the very circumstances which prevent the vessels from being deemed crossing vessels within the meaning of the rule ought to have led the Ranger to suppose that the Cologne was not about to cross from her starboard side, and to pass her on her port side. Lord Chelmsford in delivering judgment in the case of the *Velocity*, 6 Moore's Privy Council Cases, New Series, p. 208, referring to the remarks of the Judge of the Admiralty Court in that case, said, "The learned Judge in delivering his judgment says,—'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 masthead and 'port light of the *Velocity* alone.'" The case of the Carbon there is like the present case of the Ranger. "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,” said Lord
 Chelmsford, “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 con-
 “ trary 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 it was
 “ convenient under a starboard helm.” The
 Velocity in that case was very much in the
 position of the Cologne in the present case.
 His Lordship proceeded, “The Appellant 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 ton-
 “ ‘nage 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.’” Then he referred to the
 statement of the quartermaster of the Dread-
 nought, who gave similar evidence and said,
 “ That there has been a practice for vessels

" going down the river to prefer the north to the
 " south side 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." In another part, at page 51,
 he says, " But, putting the regulations aside, their
 " Lordships 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 a usual course of naviga-
 " tion 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 coming
 " down the river had a right to run down on the
 " north shore; and in the position in which she
 " was, the appearances 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."

Now, the Ranger, seeing the red light of the
 Cologne on her starboard bow, ported her helm
 and endeavoured to pass the Cologne on her port
 side, between her and the north side of the river.
 Was she right in doing that? If, as in the case
 of the Velocity, she ought not to have supposed
 that the Cologne was crossing, she ought to have
 kept to the south of the Cologne, and then the
 accident would not have occurred. But instead
 of that she endeavoured to pass the Cologne on
 her port side, and brought herself into that
 position in which the danger of a collision became
 imminent. It appears to their Lordships that
 the Ranger was wrong in porting and endeavour-
 ing to pass on the larboard side of the Cologne.
 Their Lordships think that the Ranger was

going up the river to the north of the mid-channel where she would get the tide, but that when the vessels first sighted each other she was not so near to the north side of the river as the Cologne. It is clear that when the vessels first sighted, a collision was not inevitable. They were at least half a mile (some say three-quarters of a mile) distant from each other at that time; and according to the rate at which the two vessels were approaching each other, taking the velocity of each, it took about two minutes and a half, or three minutes, before the vessels could reach each other. There was, therefore, ample time, and there was ample room in the river, for each to have kept clear of the other. There was no danger of a collision if the vessels had adopted a proper course when they first saw each other. No doubt the danger became imminent at last, but that was in consequence of the vessels being in a wrong position; and it appears to their Lordships that the danger arose from the Ranger's adopting a course which she ought not to have adopted.

Then, again, did the Ranger act properly when the collision became imminent? Could she have done anything to avoid it? Was she right in porting her helm? At page 45 of the evidence the master is asked—"Q. Then what did she do?—A. Altered her helm." This is speaking of the Cologne. "Q. Which way?—A. To starboard, and I saw his green light, and I said to our pilot, 'Good God, he has got his helm to starboard.' Q. Which way was she going then, or trying to go then?—A. Trying to come to the northward of us when she starboarded. Q. You say she opened her green light; what became of her red?—A. Shut it in, and we lost sight of it. Q. Well, now, if she had kept on her course?—A. The collision would not have occurred. Q. If she had not starboarded?—A. If she had not starboarded. *The Court.* You ascribe the collision in fact to her starboarding? *The Witness.* Entirely. *By Mr. Milward.* What did you do with your engines?—A. Helm to be put hard-

“ a-port, and stopped and reversed the engines.
“ Q. When did you do that?—A. As soon as
“ we found the Cologne had starboarded.” Well,
now the pilot says, that in putting the helm hard to
port he did not mean that the vessel should act
as in the ordinary case of a helm being put hard
to port, because he reversed the engines, and when
he put the helm hard to port he meant it, by
reversing the engines, to have the effect of star-
boarding. But it did not have that effect,
because the way upon the vessel had not been
taken off by reversing the engines, and it was
proved that the Ranger altered her course two
or three points to starboard under the port helm,
If she had not altered her course under a port
helm, in all probability she would have gone clear
of the Cologne; so that the accident appears to
have been caused by the fault of the Ranger,
first in endeavouring to pass the Cologne on her
port side, and secondly in putting her helm hard-
a-port, when the vessels were almost in a state
of collision. The 13th rule was not then appli-
cable to the vessels. See the case of the Velocity
above referred to. It may be, as remarked by
the learned Judge, that when the Cologne’s light
changed from red to green, there was no time for
clearing each other. But it was by the fault of
the Ranger that the vessels were in that position.

Their Lordships, therefore, think that the
accident was not caused by the fault of both, but
solely from the fault of the Ranger.

But it has been said that the Cologne is not
entitled to recover against the Ranger, inas-
much as she must recover according to the
allegation in her petition. Now, in the petition
she says that “the Ranger was considerably
“ further over to the south side of the said river
“ than the Cologne.” The word “considerably”
is not necessarily to be proved to the full extent.
When the vessels first came in sight the Ranger
was further over to the south side of the
river than the Cologne; the master of the
Ranger proved that he saw the Cologne’s red

light two points to his starboard bow. He certainly did say the port bow in the first instance, but he corrected himself afterwards, and it is not necessary now to inquire whether his first statement was made by mistake or not. The fact is that he saw her over the starboard bow. Then the Ranger was further over to the south side of the river than the Cologne. The allegation proceeds: "The Cologne was kept under a starboard helm along the north shore, and the Ranger, with her green and masthead lights only open, appeared for some time to be intending to pass to the southward of and on the starboard side of the Cologne, as she could and ought to have done; but, instead of so passing the Cologne, the Ranger improperly ported her helm, and caused immediate danger of collision; and although the helm of the Cologne was thereupon put hard starboard, and her engines were ordered to be stopped and reversed, the Ranger with her stem struck the Cologne on her starboard paddle-box and side-house, and did her a great deal of damage." Their Lordships think that the case really comes within this allegation, that the Ranger was more to the south than the Cologne, and that the damage arose from her porting her helm and attempting to pass the Cologne on her port side.

Under these circumstances, their Lordships think that the decision ought to be reversed. They find that there was no fault on the part of the Cologne, and that the Ranger was wholly to blame; and they think it right to say that the sailing masters, of whose experience and assistance their Lordships have had the benefit, are both of that opinion.

Their Lordships will, therefore, humbly advise Her Majesty that the decision be reversed, and that the Ranger be condemned in all the damages done to the Cologne, with the costs of the Court below and the costs of this Appeal.

