

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Lindblom and others v. the Owners of the "Amelia" (ships "Amelia" and "Aimo"), from the High Court of Admiralty; delivered 20th May, 1873.*

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Present :

SIR JAMES W. COLVILLE.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

THIS was a case of collision between two sailing vessels, the "Amelia," an American vessel, and the "Aimo," a Russian, there being cross suits. The collision took place about twenty miles south of the Lizard, at between 10 and 11 at night, in October. The wind was south-west; the "Amelia" was heading N.W. by W., or perhaps a point or two more to the north; the "Aimo," S.S.E. The "Amelia" was on the port tack; the "Aimo" on the starboard tack, close hauled. Under these circumstances the 12th and 18th Articles of the Regulations applied: it was the duty of the "Amelia" to keep out of the way of the "Aimo," of the "Aimo" to keep her course, subject to the qualifications of the 19th Article.

It appeared that the "Amelia" had shortly before come into collision with another vessel, whereby she had become in some measure disabled. The "Amelia" kept her course, starboarding her helm when the collision became imminent. The "Aimo" continued on her starboard tack, slightly luffing, and struck the "Amelia" on her starboard side, between the mizen mast and the stem. The learned Judge held that the "Amelia," by keeping her course, was taking the best means in her power to "keep out of the way" of the "Aimo," and that the "Aimo" caused the collision by luffing, and was solely to blame.

Having regard to the disabled condition of the

"Amelia," which (as their Lordships are advised by their Nautical Assessors) would have had great difficulty in paying off so as to pass to leeward of the "Aimo," their Lordships are not prepared to differ from the finding of the learned Judge that want of ordinary care and skill is not proved against her.

The question remains whether want of ordinary care and skill is proved against the "Aimo." She could not know that the "Amelia" was disabled, and had reason to expect that the "Amelia" would keep out of her way; she was, according to uncontradicted evidence, close hauled to the wind; the extent to which she luffed the learned Judge treats as doubtful, not appearing to consider it proved that she luffed more than half a point. It is clear that she did not luff so much as to lose her headway, for one of the witnesses for the "Amelia" says that immediately before the collision her sails were full: this being so, their Lordships are of opinion that she did not deviate from her course, but that she substantially kept it, as she was required to do by the 18th Rule, and their view is in accordance with that expressed in the "Marmion." (Maritime Law Cases, vol. i, p. 412.)

The learned Judge, however, further finds that having regard to "special circumstances," such as are contemplated by Article 19, it was the duty of the "Aimo" not to have kept her course, strictly speaking, but to have somewhat changed it by "paying off a little." Considering, however, that the "Aimo" could not be aware that the "Amelia" was in a disabled condition, their Lordships are unable to find that any such special circumstances were brought to her knowledge as to fix her with negligence in not adopting this latter manœuvre, and are, therefore, on the whole of opinion that no want of ordinary care and skill is proved against her. Under these circumstances, they are of opinion that neither vessel has made out its case against the other, and they will humbly advise Her Majesty that the Decrees appealed against be reversed, and that both suits be dismissed.

Neither party should have his costs either here or in the Court below.