

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Maximinio Pola v. Thomas Swanoe (The
"Nor"), from the Vice-Admiralty Court of
Gibraltar; delivered March 20th, 1874.*

Present :

SIR JAMES W. COLVILE.

JUDGE OF THE HIGH COURT OF ADMIRALTY.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is an appeal from the Vice-Admiralty Court of Gibraltar. It was a case of collision between two screw steam-ships, a Spanish screw steam-ship, the "Asturias" of 272 tons, with engines of 110 horse power and a crew of 22 hands, and a Norwegian screw steam-ship of 760 tons and 130 horse power. The collision took place on the 31st of March, shortly after 2 o'clock in the morning, abreast of Marbella, on the coast of Spain, 14 miles distant. The course of the "Asturias," that is, the true course, at this time was north-east, and the course of the "Nor" was west by south half south. The speed that they were going at was about eight knots each. The nature of the damage which was inflicted was that the "Nor" struck with her stem and port bow the "Asturias" amidships on the starboard side, what would appear to be somewhat of a slanting blow. The distance is variously stated, but the "Asturias" says that she saw the red light of the "Nor" at a mile and a half distance, and the "Nor" says that she saw the white and the green light of the

"Asturias" at between three and four miles distance. The state of the weather appears to have been cloudy, but on the whole fine. The Judge of the Court below found that the "Asturias" was alone to blame. Now, these vessels were crossing vessels, and the rules applicable to them are: the 14th, "If two vessels 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 of the other;" the 16th,— "Every steamship when approaching another ship so as to involve risk of collision shall slacken her speed, or if necessary, stop and reverse;" and the 19th, which is always applied in these cases, which says, that "regard is to be had to special circumstances which may render it necessary not to obey the rule."

Now, there is no doubt at all, nor has it been disputed for a moment, that it was the duty of the "Asturias" in these circumstances to keep out of the way of the "Nor," and it was the duty of the "Nor" to keep her course. It has been much argued before their Lordships that the Judge miscarried in his sentence in the Court below, mistaking the application of the rule which I have read, enjoining the vessel which has the other on her starboard hand to keep out of the way, by putting upon it a limited and rigid construction, that keeping out of the way must mean in all cases porting. But their Lordships are by no means inclined to put that construction on the learned Judge's language. There is no doubt that he thought that in this particular case, and in these particular circumstances, porting was the right course, and he probably knew perfectly well that keeping out of the way might be by stopping, or by going ahead, or by starboarding, or by porting, or by going astern, as the circumstances of the case might require. The

conclusion at which he did arrive was, that the circumstances of this case did require, and that skilful seamanship did require, that the getting out of the way should be effected by the porting and not by the starboarding of the helm.

Now, what happened was this, the "Asturias" says that she observed a red light three points on her starboard bow at about half a mile distance, and that she did nothing for a short time; that then she saw the white light, which she says was a very obscure light, when she was distant from her about three quarters of a mile; that then she starboarded, and that then in about a minute and a half from that time she hard-a-starboarded, and that the collision took place in the way in which I have mentioned.

The version of the story which was given by the "Nor" is to this effect, that she saw the masthead light and the green light of the "Asturias" approaching her about two points on her port bow and at a distance of from three to four miles; that she kept her course unaltered expecting that the steamer, the "Asturias," would port her helm and show her red light, and that it was not until she saw the hull of the "Asturias" that she varied her course by porting, and that she went off under the influence of her port helm ten points. The "Asturias" says that she went off under the influence of her starboard helm four points.

Now, two questions have to be decided by their Lordships, as indeed they had to be decided by the Court below: one is, did the "Asturias" adopt the right manœuvre for getting out of the way by starboarding as she did in this case? and the other is, did the "Nor" cause or did she contribute to the collision by porting? In the Court below a great discussion took place upon the question whether the "Nor" did or did not carry proper lights; and after that question had

been sifted and examined closely by the Court below, it came to the conclusion that the "Nor" did carry proper lights, and that those lights ought to have been visible at the usual distance. Their Lordships see no reason whatever to differ from the conclusion at which the learned judge arrived on this point; and the consequences of it in the application of the law to this case are not unimportant, because their Lordships are of opinion that the "Asturias" ought to have seen the white light when she saw the "Nor's" red light, and, indeed, before she saw the "Nor's" red light. It is an admitted fact in the case that she did not see the white light at all until she was within three quarters of a mile. In the first instance she did not see it at all, and the inevitable consequence appears to their Lordships to be that the "Asturias" could not have had a good look-out.

The next question which their Lordships have to consider is, when the "Asturias" saw the red light what is the course which she ought to have pursued? Their Lordships, after conference with the nautical gentlemen who have given their assistance to the Court on this occasion, are of opinion that her duty was then to have slackened her speed and to have waited and ascertained the character of the vessel which was then approaching and the course which she was pursuing.

Another question upon which their Lordships have had the benefit of the advice of the nautical assessors is this: when the "Asturias" admits that she saw the white light of the "Nor," that is, when she was three quarters of a mile and four minutes distance from her, did she or did she not execute a right manœuvre in starboarding and afterwards hard starboarding, or was it her duty to have ported? The nautical gentlemen by whom the Court are assisted are most clearly of opinion that it was her duty at that time to

have ported, and that she did not exercise a proper discretion in starboarding her helm, and by that means endeavouring to get out of the way of the "Nor." Here I may mention that their Lordships are of opinion, under the same advice, that the "Asturias'" account of her starboarding cannot be correct; that if she had starboarded at the time she mentions she would have gone off more than four points, probably eight points, and, therefore, that her version of the time when she executed the manœuvre of starboarding cannot be relied upon.

The next question which arises is this: was the "Nor" to blame, and did she contribute, in the legal sense of contributing, to the collision by doing what unquestionably she did do, namely, hard-a-porting her helm so as to go off ten points? Now it is to be observed that the conduct of the "Asturias" had put the "Nor" into a great dilemma, and it would be in their Lordships' opinion a very harsh construction of the law to say that even if at this moment, of what may be called the agony of the collision, just before the collision, she had erred in porting, she would be liable for that mistake; and it is also to be observed that at the time when she ported, the "Nor" stopped and reversed simultaneously; but in fact their Lordships are of opinion that the "Nor" was well founded in thinking that she had a right to expect that even at that time the "Asturias" would port her helm, because in the opinion of their Lordships, assisted by that of the nautical gentlemen who attend upon this occasion, that would have been the proper manœuvre in the case.

Their Lordships have further to observe that the "Asturias" ought not to have kept on at full speed after the time when she admits she saw the white light, but ought to have stopped and reversed.

For these reasons, without going into any detail of the evidence, which would be quite unnecessary at the present time, their Lordships are of opinion that the decision of the Court below ought not to be disturbed but ought to be affirmed, namely, that the damage in this case was caused by the wrong navigation of the "Asturias," and that what was done by the "Nor" in no way caused or contributed to this collision.

Their Lordships will therefore humbly advise Her Majesty to affirm the sentence of the Court below with the usual costs.