

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of The
London and North-Western Railway Com-
pany, owners of the Earl Spencer, v. The
owners of the Merlin ("The Earl Spencer");
delivered Thursday, June 17th, 1875.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THE material circumstances of this case are as follows :

The "Merlin," a small coasting schooner of 65 tons, with four hands on board, was bound on a voyage from Carmarthen to Liverpool with a cargo of tin plate, but owing to a strong gale setting in from the S.S.W. she beat up for and entered Holyhead Harbour, and at the time of the collision, which was in the night or towards the morning of the 17th of October, there being a strong wind and also a drizzling rain, she was going about two and a half knots an hour. The "Earl Spencer" is a steamer, carrying passengers and cargo, plying between Greenore and Holyhead, and was coming into Holyhead at the same time, taking very much the same course as the "Merlin." According to her own showing the steamer entered the harbour of Holyhead at a speed of 11 knots an hour, and at about a cable's length or somewhat more she saw the "Merlin" in front of her. It appears that the captain came to the conclusion that the "Merlin" was anchored, although the "Merlin" showed no light ;

acting upon that view he put the helm of the "Earl Spencer" to the starboard, and the result was that in a short time he ran into the port quarter of the "Merlin," and the "Merlin" was subsequently sunk. The Court below has held that the "Earl Spencer" was alone to blame for this collision, owing to the excessive speed at which she entered the harbour. Their Lordships have no doubt that the finding of the Court is right so far as the "Earl Spencer" is held to be to blame. Their Lordships entirely agree that she entered the harbour with a reprehensible and they may add a reckless speed considering the time of the night, the state of the weather, and that a number of vessels were in the habit of anchoring very near to the path which she took.

It appears to their Lordships also that she is to blame for executing a wrong manœuvre. Seeing no light on board the "Merlin," and seeing the "Merlin" in the usual route of the steamers, which would not be the usual anchoring ground, though not far from it, it appears to their Lordships that the captain was not justified in assuming that the "Merlin" was at anchor, and that he took a wrong manœuvre in starboarding his helm, whereas if he had attended to the advice of the mate in time, which was to port the helm, the collision would have been avoided.

The question remains whether there was contributory negligence on the part of the "Merlin." The captain of the "Merlin" certainly says that he was at the helm, and that if he had looked round he probably could have seen the steamer some considerable distance off, and if so that he would have waved a light or adopted some mode of attracting her attention.

On the whole however their Lordships see no reason to dissent from the finding of the Court

below, that the "Merlin" was not guilty of contributory negligence such as would fix her with a portion of the blame of this collision. Their Lordships do not at all depart from the rule which they laid down in a recent case "The Excel" and the "Anglo Indian." They are far from saying that it is never the duty of a vessel ahead to look behind. There may undoubtedly be circumstances of an exceptional character which may throw upon the vessel ahead the duty of looking behind, and further of giving some signal, by the way of a light or otherwise, to a vessel behind approaching her under circumstances under which there is reason to suppose that the after vessel does not see the vessel in front, and when there is danger of a collision. But in this case, although no doubt the night was a dark, and to a certain extent a stormy one, it appears to their Lordships that the "Merlin" could have been seen at a sufficient distance by the steamer for the collision to have been avoided if the steamer had gone at a proper speed (which, according to their Lordships' view, would be somewhere about one half or possibly less than half of the speed at which she was going). That being so, the captain of the "Merlin" might reasonably have supposed that steamers coming in his wake would (as their *prima facie* duty at all events was) keep out of his way, and their Lordships are not able to say that he was guilty of negligence contributing to the accident, simply because a look-out behind was not kept, and no signal was given to the approaching vessel.

For these reasons their Lordships are of opinion that the judgment of the Court below is right, and they would humbly advise Her Majesty that it be affirmed, and that this Appeal be dismissed costs.

