

*Judgment of the Lords of the Judicial
Committee of the Privy Council on the
Appeals of Tully v. Richardson and others
(the "Norma") and Tully v. Thomas and
others (the "Norma"), from the Vice-
Admiralty Court of Quebec; delivered 30th
March, 1876.*

Present :

SIR JAMES W. COLVILLE.
SIR ROBERT J. PHILLIMORE.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

THIS is an Appeal from a Decree of the Judge of the Vice-Admiralty Court at Quebec in a suit for damages, the consequence of a collision between two vessels, the "James Seed," a sailing vessel, and the "Norma," steamship.

Before their Lordships approach the consideration of the merits of this case they desire to say a few words with respect to the pleadings and the mode of taking evidence in the Court below.

The "Preliminary Acts," the operation of which has been eminently conducive to the ascertainment of the truth in these cases, are in the same form as when first tried in the High Court of Admiralty. Since that time, sections VI, VIII, X, XI, which form a very important part of the present Preliminary Acts in the English Court of Admiralty, have been introduced, and their Lordships think that it would be expedient to introduce similar regulations into the practice of the Vice-Admiralty Courts; their Lordships must express a hope that in subsequent suits this defect will be remedied. The mode of taking the evidence before the

Registrar alone, and the use of written interrogatories, would, in their Lordships' opinion, be advantageously exchanged for the practice of the *vivâ voce* examination of witnesses at the hearing before the Judge who is to decide the case, in causes where it would be possible to obtain their attendance for that purpose without inconvenience or additional expense,—a practice which has been for a long time prevalent in the English Court of Admiralty, and attended with very beneficial results.

The Judge of the Court below pronounced the "Norma"—the steamship—to be alone to blame for the collision. From this Judgment the owners of the "Norma" have appealed to this Court.

The collision occurred in the River St. Lawrence between 10 and 11 o'clock of the night of the 11th August, 1874, five or six miles from a place called Bic.

The "James Seed," a three-masted schooner of 156 tons, with a crew of eight hands, and a pilot, was going down, and the "Norma," a steamship of 653 tons, with a crew of twenty hands and a pilot, was coming up the river; the two vessels were approaching each other, not exactly, but within about a point, on opposite courses. Both vessels had their proper regulation lights. The weather was fine and clear; it was a starlight night and there was a moderate breeze from the south-west, under the influence of which the schooner was approaching Bic—having previously taken in her foresail—at the rate of about four knots through the water. At a distance of about five miles from the Bicquette light, the pilot on board the schooner saw through his glass the masthead light and the red light of the steamer about two miles off and about a point on his starboard bow. At the same distance the "look-out" on board the steamer reported a bright light ahead on her port bow.

The schooner under the pilot's orders ported enough to bring the steamer's bright and red lights a little on her port bow; her helm was then steadied and she kept her course until within half a mile of the steamer, when the three lights of that vessel came in sight; the schooner's helm was then ported and hard-ported, and the steamer was hailed to port; she did not do so, and struck with her stem and starboard bow the schooner's port bow so severe a

blow that she sank directly, and five of her crew were unhappily drowned.

To return to the steamer, the bright light which had been reported a little on her port bow proved, as the vessels approached each other, to be a green light; the steamer continued her course at a speed of seven knots an hour for some minutes, when, at a distance of about half a mile, her pilot gave the order to starboard and the collision took place in the way described.

The contention of the Respondents (the Plaintiffs in the Court below) was that the collision was caused by the starboarding and the continuance of the speed of the steamer. The contention on the part of the Appellants (the Defendants in the Court below) was, that the collision was caused by the porting of the schooner.

The learned Judge was assisted by Nautical Assessors, to whom he submitted various questions; their answer to which was, in substance, that the steamer should have stopped and reversed full speed instead of starboarding, and that the schooner followed what they called the rule of the road in porting her helm, and therefore was not to blame. The learned Judge unfortunately adopted this latter premiss, and, as he supposed, supported it by reference to certain Articles of the Regulations for preventing Collisions at Sea. He cited Article 15, which is:—"If two ships, one of which is a sailing ship and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship;" and Article 16, which says that, "Every steam ship, when approaching another ship so as to involve risk of collision shall slacken her speed, or, if necessary, stop and reverse."

The learned Judge omitted to notice the 18th Article, which, so far as it concerns the present case, is—"Where by the above rules one of two ships is to keep out of the way, the other shall keep her course."

It is an entire mistake as to the existing law to suppose that it is the duty of a sailing vessel when meeting a steamer to port her helm; it is her duty to keep her course. And if the conclusion at which the learned Judge arrived could only be supported by adopting the grounds upon which he appears

mainly to have founded it, it would be the duty of their Lordships to recommend Her Majesty to reverse the sentence; but their Lordships are of opinion in this case that though the reasoning is partially incorrect, the conclusion is, on the whole, right.

Their Lordships, after conference with their Nautical Assessors, are of opinion, on the one hand, that the first porting of her helm by the schooner was, at the least, having regard to the distance and the degree, an innocent manœuvre; and, on the other hand, that it is not proved that the schooner's red light was seen on board the steamer. But their Lordships are clearly of opinion that the steamer is to blame for having approached too close to the schooner before she altered her helm; that she did wrong in continuing up to so late a period the position of danger and embarrassment which exists when the green light on one vessel is opposed to the red light on another.

The steamer came so close that she had not time to go off more than a point and a half under her starboard helm. The Nautical Assessors think that if she had starboarded a quarter of a mile off she would have cleared the schooner; and with regard to the second porting of the schooner almost in the moment of collision, they think that in the circumstances it was the best manœuvre she could have adopted.

Their Lordships will therefore humbly advise Her Majesty to affirm the decision of the Court below, and to dismiss the Appeal with costs.