

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of James Edwin Pim (owner of the "Eliza Keith") v. John McIntyre (owner of the "Langshaw"), from the Vice-Admiralty Court of the Province of Quebec; delivered May 9th, 1878.*

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Present:

SIR JAMES W. COLVILLE.

SIR ROBERT J. PHILLIMORE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is an appeal from a judgment given by the learned Judge of the Vice-Admiralty Court of Quebec in a case of collision. The collision took place in the River St. Lawrence, between two places called Kamouraska and the Pilgrims, at about 11.30 on the evening of the 15th of August 1876. The vessels that came into collision were the "Eliza Keith," a sailing vessel of 540 tons or thereabouts, and the steamer "Langshaw," of the burden of 1186 tons. The parts of the vessels which came into collision were the jibboom and bowsprit of the "Eliza Keith" with the mainmast of the "Langshaw."

There was a claim and a counter-claim, or an action and a cross-action, in this case. The narrative of the "Eliza Keith," so far as it is necessary to refer to it, will be found in the 5th paragraph of the libel. The "Eliza Keith" says: "At about quarter-past ten o'clock p.m. " on the evening of the 15th of August, when " between the Pilgrims and Kamouraska as " aforesaid, the look-out of the 'Eliza Keith' " reported two lights about a point on the

“ starboard bow. These lights were found to  
“ be the lights of two steamers, which were  
“ subsequently ascertained to be the tug  
“ steamer ‘Conqueror’ and the steamship  
“ ‘Langshaw,’ now proceeded against. When  
“ first seen, the steamers were at a distance  
“ of about three or four miles off, with a  
“ distance of about three-quarters of a mile  
“ between each steamer. The ‘Eliza Keith’  
“ was then steering a course of south-west  
“ half-west. The steamers came on until they  
“ were both a little on the port bow of the  
“ ‘Eliza Keith,’ apparently intending to pass  
“ the said barque on her port side. At about  
“ half-past ten p.m. the tug steamer passed  
“ the ‘Eliza Keith’ on the port side. The  
“ steamship ‘Langshaw’ followed the tug at  
“ about three-quarters of a mile, and was  
“ then observed to be nearing the ‘Eliza  
“ Keith’ very fast. The ‘Langshaw’ had  
“ crossed the bow of the ‘Eliza Keith’ and  
“ was about half a point on her port bow,  
“ and steering down the river, heading  
“ for the ‘Eliza Keith.’ The ‘Langshaw’  
“ then shewed her green light for a few  
“ moments, then hiding it again, and the people  
“ of the ‘Eliza Keith’ hailed her, but she  
“ still continued as if to cross the bow of  
“ the ‘Eliza Keith.’ The danger of a collision  
“ was then imminent, and the only means to  
“ avoid or lessen the said collision was to  
“ port the helm of the ‘Eliza Keith,’ which  
“ was done, but the ‘Langshaw’ was then  
“ too close to the bark, and the ‘Langshaw’  
“ struck the ‘Eliza Keith’s,’ jibboom and bow-  
“ sprit, carrying away the said jibboom, bow-  
“ sprit, and all the headgear, and causing  
“ great damage to the said barque,” and the  
“Eliza Keith” alleged that the collision was caused  
by the carelessness and bad navigation of the

steamer, and especially by her improper endeavour to cross the bow of the barque by starboarding her helm. On the other hand, the material statement on the part of the steamer was: "That at thirty-  
 " five minutes past eleven p.m., or thereabouts,  
 " the man on the look-out on the forecastle  
 " reported a ship a little on the starboard  
 " bow, which said ship proved afterwards to  
 " be the 'Eliza Keith,' showing no lights,  
 " the 'Langshaw' being then about four miles  
 " north-east of Grande Island light, Kamour-  
 " aska, in the River St. Lawrence, the tide  
 " running up with a fresh breeze from the  
 " north-east, the weather cloudy, though clear,  
 " the 'Langshaw' going about eight knots an  
 " hour. That all at once, when within a  
 " cable's length, the said vessel shewed a red  
 " light on the 'Langshaw's,' starboard beam,  
 " it being then too late to avoid the collision.  
 " The 'Eliza Keith' ran into the 'Langshaw'  
 " at the starboard main-rigging, carrying all  
 " away and cutting the said steamer down to  
 " below the water's edge," and the steamer alleged that this collision was caused by the mismanagement and carelessness of the "Eliza Keith," and in no degree by the bad navigation of the "Langshaw" or those on board of her.

The learned Judge of the Court below, assisted by nautical assessors, after a considerable amount of evidence had been taken, came to the clear conclusion that the steamer was to blame for this collision; that her defence that the sailing vessel carried no lights was an untrue defence, and that she had not a good look-out; and upon these two grounds the "Langshaw" was condemned. From this sentence there has been no appeal on the part of the steamer. The learned Judge proceeded to consider whether the sailing vessel was not also to blame, and after consultation

with the nautical assessors upon the main point put forth on behalf of the "Eliza Keith," he came to a conclusion that she also was to blame.

Now the "Eliza Keith" being a sailing vessel, it was her duty to keep her course, as it was the corresponding duty of the steamer to keep out of her way. The "Eliza Keith" admitted in her pleading and in her evidence that she had been compelled—as she said, by the necessities of the case—to port her helm, that is, that she had departed from the rule of navigation which ordered her to continue her course. She says that, admitting this to be so, she was justified in the circumstances, and the question before their Lordships has been, not whether the "Langshaw" was to blame, for the "Langshaw" has acquiesced in the decision of the Court below, but whether the "Eliza Keith" has made out her defence as to her admitted departure from the rule of navigation.

Their Lordships have to consider whether sufficient ground is shown for rescinding or varying in any respect the judgment of the Court below. It is a fact common to the case of both the vessels that when they first saw each other they were green light to green light. The "Eliza Keith" says that she expected that the "Langshaw" would pass her upon this tack, and without incurring any risk or danger; that after a certain time she saw the red light of the "Langshaw;" she then considered that she was about to cross her bows; that she saw the red light of the "Langshaw" upon her starboard bow. The learned Judge of the Court below put several questions of a very pertinent character to the nautical assessors by whom he was assisted, to which it is necessary to refer. They were of opinion that there was not a sufficient look-out on board the steamer, and that the "Eliza Keith" carried proper lights. The

third question put to them was in these words: " Was the porting of the helm of the 'Eliza Keith' necessary to avoid immediate danger, or would it have been prudent for her to have kept her course?" The answer was: "She should have kept her course, and the immediate danger did not require that she should port." They further stated that they thought the porting contributed to the collision.

It appears to their Lordships from listening to the argument, and the examination of the evidence, that there are two hypotheses, so to speak, upon which this defence of the "Eliza Keith" is to be considered. First, if she saw the red light a little on her port bow, as she says, at this time and in the circumstances mentioned, then she was not justified in porting her helm, because, upon that view of the case, both vessels would, in the opinion of the nautical assessors, if she had kept her course and obeyed the rule of navigation, have passed without any collision. Secondly, if she saw the green light of the steamer, and afterwards ported her helm, she was clearly wrong for porting into a green light, and the excuse that is offered that by so doing she might avoid or lessen the collision, is, in the opinion of the nautical assessors, by whom the Court is assisted, wholly insufficient. It appears to them, as it did to the learned Judge below, that the defence of the sailing vessel that she was driven to take this course by the uncertain conduct of the steamer, was not supported by the evidence of the witnesses or by the facts in the case, and their Lordships have arrived at the same conclusion.

Upon the whole their Lordships are clearly of opinion that the obligation of the sailing vessel to excuse her admitted departure from the rule of navigation which required her to keep her

course, has not been discharged; therefore, there being no appeal from that part of the judgment by which the steamer was condemned, their Lordships are of opinion that it will be their duty to advise Her Majesty to affirm the sentence of the Court below.

Their Lordships think it right to say that, in arriving at this conclusion, they have entirely rejected the evidence adduced on behalf of the steamer, as to whose misconduct throughout the whole of this transaction they entertain no doubt, and have relied altogether upon the evidence produced on the part of the barque.

Their Lordships will humbly advise Her Majesty to affirm the sentence of the Court below, and it must be with the usual costs of the appeal.

Their Lordships desire to observe that the learned Judge appears to have fallen into an error in his remarks upon the case of the "Lake St. Clair." He seems to have imagined that their Lordships applied the Admiralty rule as to the division of damage, inconsistently with the provisions of the Canadian Statute, 31 Vict. c. 58., to that case. That was not so. The fault of the "St. Clair" upon which the judgment proceeded was an error in the management of the sails, and in the general navigation of the vessel; and not the breach of any of the sailing rules mentioned in the 298th section of the Merchant Shipping Act, 1854, or in the corresponding section of the Canadian Statute.