

*Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal in re Holm v. Adams, and Cross Action (S.S. "Norden" and H.M.S. "Espoir"), consolidated Actions from the Vice-Admiralty Court of Hong Kong; delivered 21st July 1888.*

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Present :

LORD MACNAGHTEN.

SIR BARNES PEACOCK.

SIR JAMES HANNEN.

SIR RICHARD COUCH.

[*Delivered by Sir James Hannen.*]

The Danish steamship "Norden" was, on the 3rd November 1886, on a voyage down the Canton river. It is alleged, on her behalf, that at about 6 p.m. she was seven or eight miles above Tiger Island well over on her starboard side of the channel, going about  $9\frac{1}{2}$  knots an hour, steering S.S.E.  $\frac{3}{4}$  East by compass. At about 6.30 the masthead light of a steamer, which turned out to be the "Espoir," was sighted nearly right ahead about a quarter or half a point on the port bow about three miles distant. A few minutes later the red light of the "Espoir" came in sight about  $1\frac{1}{2}$  points on the port bow. On this red light being seen the course of the "Norden" was altered about  $1\frac{1}{2}$  points to starboard to give the "Espoir" a wider berth, and the "Norden" was shortly after steadied on her former course. When the vessels had approached to about 500 yards, the "Espoir" being broad on the "Norden's" bow,

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the "Espoir" suddenly starboarded her helm and bore down as if to cross the "Norden's" bows. A collision then being inevitable, the helm of the "Norden" was put hard-a-port to lessen the shock. The "Espoir" came on apparently without slackening speed, and struck the port bow of the "Norden." The collision took place about 400 yards S.E. of Bute Rock, to the N.E. of the fort on Tiger Island.

For the "Espoir," a gunboat in Her Majesty's service of 460 tons, it is alleged that she was steaming up the Canton river at the rate of  $7\frac{1}{2}$  to 8 knots an hour on a course N. by W.  $\frac{1}{2}$  W. by compass (N. by W.  $\frac{3}{4}$  W. true). When a little to the N.E. of Tiger Island, at about 6.20, a white light, and subsequently a green light, were seen about half a point on the starboard bow of the "Espoir" about four miles off. As the steamer, which proved to be the "Norden," continued to show her green light, the "Espoir" was kept steadily on her course. When the "Norden" bore about two points on the starboard bow of the "Espoir," and was apparently 500 yards off, the helm of the latter was starboarded to give the "Norden" a wider berth, when she suddenly shut in her green and showed her red.

A collision being then inevitable, the engines of the "Espoir" were immediately reversed full speed and her helm put hard-a-port. The "Norden" did not appear to slacken her speed, and the "Espoir" struck the "Norden" on her port bow. The collision took place about  $1\frac{1}{2}$  miles N. by W.  $\frac{1}{2}$  W. of the fort on Tiger Island.

The first question which arises upon these remarkably conflicting statements is as to the place of collision. Captain Adams, in command of the "Espoir," states that at 6 he was off the Tiger's Claw, the south-easternmost point of Tiger Island, and that he skirted along Tiger Island in order

to get a good departure, and that he passed close to the Fort. The navigating officer then showed him with a lantern a chart with their course marked on it, N. W. by W.  $\frac{1}{2}$  W., by compass. The navigating officer then went aft from the forecastle where the chart was examined, and while he was away Captain Adams saw a white light a long way off, a little on the starboard bow, about five miles off. A short time after he saw the green light under the white. He continued to watch the light to see if the approaching vessel altered her course; when about two miles off he gave directions to keep a good look-out for her red light, because he said, "If I see it I shall have to port;" when at half a mile he felt certain they would pass safely green to green. The "Espoir" was at the spot where the witnesses for the "Norden" place the collision at the time when Captain Adams first sighted the "Norden," and he estimates the time between that and the collision at 10 to 15 minutes.

He is confirmed in these statements by the Navigating Officer Mr. Clive, by the Gunner Barstow, and the Lance Sergeant Henderson. If this evidence is correct it makes it impossible that the collision could have been where it is placed by the witnesses for the "Norden," and if the "Espoir" proceeded on a course N. by W.  $\frac{1}{2}$  W. after the "Norden" was seen this would bring the "Espoir" over towards Towling Island, in the direction of the spot where the collision is fixed by the witnesses for the "Espoir." As against this very specific evidence, the evidence for the "Norden" is in their Lordships' opinion justly subject to the observations made on it by the Judge in the Court below, that the witnesses for the "Norden" had no landmark to go by like the witnesses for the "Espoir." Their only landmark was Tiger

Island, which they had not reached at the time of the collision, and the pilot, who was well acquainted with the river, said that they had not reached the Bute Rock at the time of the collision. The Bute Rock lies considerably to the north of the place of collision, stated by the master of the "Norden." Add to this that the course laid down by the master of the "Norden" as that taken down the river is admittedly incorrect and is an impossible one, having regard to the bearings of the land on her starboard side. Their Lordships are therefore of opinion that the evidence for the "Espoir" is more to be relied on than that for the "Norden," and that the place of collision more nearly corresponds with that given by the "Espoir" than that given by the "Norden." It results from this that the "Espoir" would, when off Tiger Island, as stated by her witnesses, have the white and green lights of the "Norden" on her starboard bow.

But it was contended on behalf of the "Norden" that the "Espoir" was in the wrong by being on the port side of the channel when she first sighted the "Norden," and that she thus infringed the 21st Regulation for preventing collisions at sea. It is to be observed, however, that the rule is not absolute, it is only to be followed when "safe and practicable," and we are advised by our assessors that at night, with shallow water on the starboard side of the channel, without other guide than that afforded by Tiger Island, it was prudent and proper navigation for the "Espoir" to make for that island to take a departure. Concurring, therefore, with the Judge in the Court below in the opinion that the vessels were approaching one another green to green, their Lordships consider that the "Norden" brought about the collision by im-

properly porting when in this position; but their Lordships think that the "Espoir" was also to blame for not having stopped earlier than she did. Captain Adams states that when the vessels were two miles apart he said, "Keep a good look-out for her red light, because if I see it I shall have to port." This shows that he was aware of the probability of a vessel coming down the river porting to come on to her starboard side of the river. He kept watching the lights of the "Norden," and thinking the vessels were on parallel courses, he naturally expected the lights of the approaching steamer to broaden, but when 500 yards off he observed that they did not broaden, and upon this he starboarded. We are advised by our assessors that the facts of the lights not broadening ought to have informed him that the other vessel was under a port helm. Thus, the starboarding of the helm of the "Espoir" while the "Norden" was porting tended to bring the vessels together; had the "Espoir" stopped instead of starboarding when the red light came in view, the manœuvre she afterwards unsuccessfully had recourse to of porting would, probably, have saved her from collision.

Their Lordships think it right to add that, in their judgment, the officer in command of a vessel, especially one of Her Majesty's ships, with a numerous crew, ought not to take upon himself alone the duty of looking out, as was done by Captain Adams in this case. A man should always be posted exclusively to discharge this function. The captain's attention may be distracted by other calls upon it, as is illustrated by the incident already referred to, of the navigating officer showing the captain, by the light of a lantern, the course marked on the chart.

On the whole case their Lordships will humbly

advise Her Majesty that the decree of the Court below be varied, and that both vessels be condemned. Each party to bear his own costs in this Court and the Court below. The damages to be assessed according to the Admiralty rule in the Admiralty Registry here.

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