

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of the
Owners of S.S. "Pleiades" and freight and
Edward Page, Master of the said steamship v.
Joseph Page, Master of the S.S. "Jane," the
Owners of the said steamship, and F. J. Lesser.
from the Vice-Admiralty Court of Gibraltar;
delivered 14th February 1891.*

Present :

LORD WATSON.

LORD MORRIS.

SIR RICHARD COUCH.

[*Delivered by Lord Watson.*]

This is an appeal by the owners and master of the steamship "Pleiades" from a judgment of the Vice-Admiralty Court of Gibraltar, in three consolidated suits, arising out of a collision between their vessel and the steamship "Jane." Two of these are cross actions of damage by the respective masters, and the third an action by the owner of the "Jane's" cargo against the "Pleiades" and freight. The learned Judge of the Vice-Admiralty Court found that the "Pleiades" alone was to blame for the disaster; and he has disposed of each action in accordance with that finding.

The collision occurred between 4.30 and 5 p.m. on the 3rd August 1889, in broad daylight and in calm fine weather, about a quarter of a mile to the southward of Europa Point Lighthouse. The vessels appear to have first sighted each other when they were from three to four

miles apart. The "Pleiades" was then entering the Mediterranean on an E. $\frac{1}{2}$ N. course, at a speed of 10 knots per hour. The "Jane" was making for the port of Gibraltar, on a crossing course N.W. by W., at the rate of $7\frac{1}{2}$ knots. Each vessel kept its course, without alteration of speed, until they came within 400 or 500 yards of each other. So far there is no material discrepancy between the accounts given by the witnesses on either side; but there is some conflict of evidence as to subsequent events. On reaching the point already indicated, the "Pleiades" ported her helm, which carried her half a point to starboard before actual collision, and signalled the manœuvre by two blasts of her whistle; whilst the "Jane" ported, with the effect (due apparently to her having no keel) of bringing her head five points to starboard at the time of collision. When she altered her helm, the "Pleiades" first stopped and shortly after reversed her engines; but there must have been considerable way upon her at the moment of collision, because her master states,—“It would take nine or ten minutes to stop way from full speed ahead.” When the "Jane" ported, she first stopped and then went full speed ahead. The collision took place in a very short time, apparently not more than from one to two minutes after the first change of helm, the stem of the "Pleiades" striking the port side of the "Jane," nearly at right angles, abaft her main rigging.

The witnesses differ as to the sequence of these events. Those of the "Pleiades" assert that her change of helm was not made until the "Jane" had ported, and that it was necessitated by the action of the "Jane." Those examined for the "Jane" state that she altered her course after, and in consequence of the "Pleiades" having intimated that she was star-

boarding. The learned Judge of the Court below, before whom all the principal witnesses were examined, gave credit to the version told by the witnesses from the "Jane," and their Lordships see no reason to differ from his conclusion.

The only case made by the Appellants in their pleadings and in their evidence was, that both ships ought to have maintained their original courses, with unaltered speed, in which case there would have been no risk of collision, and that the collision which ensued was entirely owing to the "Jane's" departure from her original course. In their preliminary act, they state that "the collision was caused through the steamship 'Jane' not keeping her course, Articles 16 and 22." The case presented on the other side was that the "Pleiades" occasioned the collision by failing to observe Article 16, and keep out of the way of the "Jane"; that the "Jane" ported because the starboarding of the "Pleiades", indicated that she had determined to disobey the rule inculcated by Article 16; and that the result of her disobedience was to render collision inevitable. It was not suggested by either party that, in the event of their vessel being found to have been in the wrong, there was contributory fault on the part of the other vessel, which would imply joint responsibility.

Their Lordships have no hesitation in holding that the decision of the Vice-Admiralty Court upon the issues submitted to it was fully justified by the evidence. They have, with the assistance of their assessors, formed a clear opinion (1) that, if both vessels had continued on their original courses, with unabated speed, to the point of intersection of these courses, there would have been imminent danger of collision; (2) that the attempt of the "Pleiades" to pursue her

original course was in plain violation of the 16th Article of the Regulations; and that, having regard to the proximity of Europa Point on the one hand and the abundance of sea room on the other, an endeavour to pass ahead of the "Jane" was an improper and unseamanlike manœuvre; and (3) that up to the time when she starboarded, the "Pleiades" could, by porting and directing her course to starboard, have complied with the Regulations, and passed astern of the "Jane" without involving risk of collision.

On the argument of this appeal, Counsel for the "Pleiades" maintained for the first time that, assuming her to have been culpable by reason of her failure to keep out of the way, the "Jane" was also in fault, and ought to be jointly condemned in damages, in consequence of her failure to comply with the 18th Article of the Regulations. If the argument were admissible at this stage of the proceedings, it would raise the very serious question whether the "Jane" was justified in steaming ahead instead of reversing, when it became apparent that a collision was unavoidable; and the onus of showing that her action was justifiable would undoubtedly rest upon the "Jane." Upon the merits of the argument, their Lordships purposely refrain from expressing any opinion, in the present condition of the evidence. They did not call upon the Respondents' Counsel for a reply, because they were satisfied, upon the Appellants' own showing, that they ought not to entertain the question. The point was not taken in the Court below, where no reference was made to the 18th Article either in the preliminary acts, the pleadings, the evidence, or in the argument. The evidence upon which the contention is now based was elicited from the witnesses in loose and general terms, not for the purpose of

ascertaining the precise state of the facts, but simply by way of narrative. The master of the "Jane" was asked on cross-examination why he ported his helm; but not a single question was put to any of the "Jane's" witnesses in regard to her going ahead instead of reversing. In these circumstances, their Lordships are not satisfied that they have before them—to use the language of Lord Herschell in the "Tasmania" (15 Ap. Ca., p. 225)—“all the facts bearing upon the new contention, as completely as would have been the case if the controversy had arisen at the trial; and next, that no satisfactory explanation could have been offered by those whose conduct is impugned if an opportunity of explanation had been afforded them when in the witness box.”

Their Lordships will therefore humbly advise Her Majesty to affirm the judgment appealed from. The Appellants must pay to the Respondents, who have appeared, their costs of this appeal.
