

*Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Thompson and others v. Williams and others (the "Aneurin"), Thompson and others v. Williams and others (the "John and Mary"), from the High Court of Admiralty; delivered 5th March, 1862.*

---

Present :

LORD KINGSDOWN.

THE MASTER OF THE ROLLS.

SIR JOHN TAYLOR COLERIDGE.

THIS is a cause instituted by the owners of the "John and Mary," against the owners of the "Aneurin," for the damage sustained by the "John and Mary" from a collision which took place soon after midnight in the German Ocean, on the 15th of November, 1860. Both vessels were bound to places in the same direction, one to Sunderland and the other to Newcastle: both were carrying their proper lights.

There is some contest as to the direction of the wind, but the variation is not great: the Master of the "John and Mary" says that it was blowing from south to south by east, the Master of the "Aneurin" says that the wind was south by west, it was blowing very freshly, and the "Aneurin" was heading north-west by north, having, therefore, the wind free, and going about seven and a half or eight knots through the water.

The "John and Mary" at the moment of the collision was hove-to, with her head lying to the east south-east.

The "Aneurin" came across her bows, the consequence of which was that the "Aneurin" carried away the main-stem and cutwater of the "John and

Mary," springing the bowsprit and jibboom, and doing other damage to the bows of that vessel; and on the other hand the "John and Mary" stove in the top side of the "Aneurin" port gangway and carried away the foremast and sprung the mainmast, and did other damage to the vessel.

The case made by the "John and Mary" is that she had hove-to on the starboard tack in order to lessen sail and to use the lead; that half-an-hour after they had hove-to, while all the hands but the master were aloft, and after the fore-topsail had been reefed, and while the hands were hauling out the second reef of the mainsail, the "Aneurin" appeared on the starboard side, that she was half a mile off, had the wind free, and might easily have avoided the "John and Mary," and that she ought to have done so: that the "John and Mary" had no steerage way upon her, was barely forging a-head, and was wholly unable to do anything to avert the collision.

The case made by Counsel on behalf of the "Aneurin," is that she was following the "John and Mary," and that consequently she could not see the regulation lights, which were a-head; that while so doing the "John and Mary" suddenly rounded to, and placed herself exactly in the track of the "Aneurin" just across her bows, and that the collision was thereby rendered inevitable. That though, from the peculiar position of the regulation lights a vessel following another cannot see the lights of the vessel which is a-head, the lights of the vessel astern would be visible from the stern of the vessel a-head, and that on board the "John and Mary" they ought to have seen the lights of the "Aneurin" following her, and that they would have done so had they kept a good look-out, and that they ought not to have hove-to exactly in her course.

If this be the correct view of the case, the only question would be, how long the "John and Mary" was hove-to previously to the collision, because she would only have been to blame if this were done just before the collision. If done some time previously, the green light of the "John and Mary" must have been seen on board the "Aneurin," if they had a good look-out, in sufficient time to have avoided the collision; and as the "Aneurin" had the wind free, she could in that case easily have gone astern

of the "John and Mary," which vessel it was her duty to avoid.

We think it established by the evidence that the "John and Mary" had gone round some time before the collision took place. The master in his evidence states that "it was half-an-hour good before I saw the red light that I had wore my ship round." Not only is the evidence of the crew on board the "John and Mary" distinct and unanimous on this subject, but there are circumstances connected with the case that convince us of the accuracy of this evidence. One of the principal of these is the fact that all the hands of the "John and Mary," with the exception of the master, were aloft taking in the reef of the maintopsail.

We are informed by the Nautical gentlemen who advise us, that it would not be possible to send hands up to perform that duty till after the vessel had rounded-to, and if done previously great risk would have been incurred of sweeping the men off the yard by the flapping of the sail.

Another circumstance induces us to doubt the accuracy of the suggestion that the "Aneurin" was following in the track of the "John and Mary," and this is that it is proved that only the red light of the "Aneurin" was seen from the "John and Mary;" but if the "Aneurin" had been following in the track of the other, both her lights would have been seen from the "John and Mary" both before and after rounding-to.

This suggestion, however, that the "John and Mary" had been suddenly hove-to in the course of the "Aneurin," which was following in the track of the former, is made solely by the Counsel, and is nowhere to be found in the evidence. The master and crew of the "Aneurin" describe the "John and Mary" as sailing through the water. The examination of the evidence, however, induces us to trust more to the accuracy of the statement made on this point on behalf of the "John and Mary."

It has been pressed upon us in argument, on behalf of the "Aneurin," that the amount of the damage done to that vessel shows the accuracy of the case made in the evidence given on her behalf, but it is the nature and extent of the damage done to both vessels that induces us to believe that the "John and Mary" was nearly

stationary, and that she was not passing rapidly through the water. The nature and effect of the collision is thus stated by the master of the "Aneurin":—"Before she," that is, the "Aneurin," "had fallen off more than three points, the vessel with the green light, which proved to be a brig, came into us; she came stem-on into us, striking us just at the after part of our fore-rigging; she cut us to the bend; our foremast came down at once, falling over to starboard; the mainmast was sprung, but we contrived to keep it up until the following morning, when it fell also" (page 3, line 1). We are advised, and have little doubt, that assuming this to be a correct account of the way in which the collision took place, the damage done to the "Aneurin" would have been far greater. If the fact had been that the "John and Mary" was sailing through the water and had run into the schooner, taking into account both the strength of wind, which was blowing very freshly at that time, and also the relative sizes of the two vessels, we believe that she would have cut through the schooner and sunk her at once. The "John and Mary" was a brig of 266 tons, the "Aneurin" was a schooner of 82 tons. The "John and Mary" was, therefore, more than three times the weight of the "Aneurin," and yet, according to the evidence on both sides, the "John and Mary" bounded back from the collision the moment they struck. Daniel Williams, the look-out man, says, "She bounded off directly and went some little distance astern, so much so that she was clear of our main rigging; she seemed to back off us, as it were, and then she went ahead again across our stern" (page 8, line 39); and a few lines lower down he says, "She was sailing very fast." This account of the manner in which the collision took place and the effect on both vessels is, we think, inconsistent with the notion that the "John and Mary" was, as he says, sailing fast, or, indeed, that she had any way on her, in which case such a recoil from a vessel so inferior in size and burthen would not have been possible, but it is exactly what might be expected to occur in the case of a vessel hove-to and slightly forging ahead. We think the only way of explaining the facts which occurred, and the nature of the damage sustained by both vessels, is, that the "John and Mary"

was nearly stationary on the water, and that the "Aneurin" cut rapidly across her bows, by means of which the bowsprit of the "John and Mary" swept across the deck of the "Aneurin," carrying away the foremast, springing the mainmast, and being itself sprung by the blow, which also broke the gammon, and carried away the gear attached to the bowsprit and jibboom.

From all these circumstances we have come to the conclusion that the collision was not occasioned by the sudden rounding-to of the "John and Mary." If this be correct, it is difficult to understand, in any view of the case, how the "Aneurin" can be freed from the blame of having occasioned this collision, or how the cause of it can be attributed to the "John and Mary." According to the statement of the master of the "Aneurin," the wind was south by west, the "Aneurin" was heading north-west by north; as the light she saw on board the "John and Mary" was the green light, she must have known that it was the starboard side that was before her, from whence it follows that she must have known that the "John and Mary" was either close hauled on the starboard tack, or that she was hove to. In either case it was the duty of the "Aneurin," who had the wind free, to give way to her. We are informed, also, by the Nautical gentlemen who assist us, that if she had starboarded her helm to go astern of the "John and Mary," instead of porting it and attempting to go ahead of her, the wind, whether south or south by west, would have assisted her, as she was heading north-west by west, more speedily in coming round to the wind than in falling off from it. It is true that when the vessels were close, and the collision inevitable, the hands on board the "John and Mary" called out to the "Aneurin" to port the helm, and in that state of things it was, no doubt, the best thing that could be done for the purpose of diminishing the force of the blow, which was then inevitable; but this is no answer to the question why the "John and Mary" was not seen before, and the collision wholly avoided by the "Aneurin" going astern and keeping wholly out of her way. That the "John and Mary" was not seen on board the "Aneurin" till very shortly before the collision is plain upon the evidence of the master and of the look-out man—the master says it was only about

two cables' length off. According to the evidence of the master of the "John and Mary," the "Aneurin" was seen by him about half a mile off; the witnesses, who were aloft, saw it at about the same distance as the crew of the "Aneurin." The calculation of distances, especially in the middle of a very dark night, can certainly not be implicitly relied upon; but affording all allowance to imperfection in this respect, it does, we think, appear that the "Aneurin" was seen on board the "John and Mary" some time before the "John and Mary" was seen on board the "Aneurin."

Even at this distance the Nautical gentlemen who assist us think that she might have gone astern, and that if the "John and Mary" had had any way upon her she would have passed ahead of the "Aneurin" in spite of the porting of her helm. We are also advised and think it probable that the position of the look-out man on board the "Aneurin" may explain why he did not sooner see the green light of the "John and Mary:" he was, the master says, on the lee side of the forecastle. We are informed that in that position it might well be that the sail of the schooner had prevented him from seeing the green light sooner. It is also quite consistent with his account of the matter, for the look-out man, David Williams, says in his evidence (p. 8, line 24), "When I had been on the look-out for about an hour all of a sudden a green light came into view; it burst all at once upon me, it did not seem to be more than about 200 or 300 yards distant from us, it was about 2 or 2½ points on our port bow as well as I could judge." The sudden bursting of the light upon him is only explainable in one of two ways: either by the sudden rounding-to of the "John and Mary," or by the circumstance that the sail or some other obstruction on board the "Aneurin" had prevented his seeing it earlier.

The observations already made show that their Lordships are of opinion that it was not the sudden rounding-to of the "John and Mary" that produced this sudden appearance of the green light. The only other explanation that seems possible is that suggested by the Nautical gentlemen, viz., that the look-out man being on the lee side, the sail of the schooner had for some time prevented him seeing the green light. Indeed, according to his evidence and that

of the master, that the "John and Mary" was sailing through the water and was not lying hove-to, it is obvious that the light must have been visible on board the "Aneurin" before it was reported by David Williams had there been a proper and sufficient look-out.

It is not without its relevancy in a case of this description that the witnesses examined on behalf of the "Aneurin" impute no blame to the "John and Mary." William Williams, the master, says in answer to the 9th interrogatory, p. 3, "I cannot say who were to blame for this collision, but I do not consider that we were, for we did all we could." Owen Williams, the mate, says in the same interrogatory, p. 7, "I cannot at all say whose fault this accident was; I cannot see that we were to blame, for we did all that could be done."

In answer to the same interrogatory David Williams, the look-out man, p. 9, says, "I am sure I cannot tell who was to blame for the accident, but I suppose the brig was, for she ran into us." William Owen, the only other person on board the "Aneurin," was not asked this question. We have not in this case the difficulty which sometimes occurs where the Court below has had the advantage of seeing and hearing the witnesses as they gave their evidence; here all the evidence is taken on interrogatories, and seems to us to support the case of the "John and Mary." We are confirmed in this view by observing that it was the view also taken of it in the first instance by the learned Judge in the Court of Admiralty. In the argument in the Court below, as before us, the case of the "Aneurin" was argued on the supposition that the evidence on behalf of the "John and Mary" to the effect that she was lying-to at the time of the collision was too strong to be overcome, and the arguments were founded on the supposition that she hove-to without looking around her, and without taking proper care that she did not put herself in the way of another vessel; but the learned Judge in his summing up, while considering the case so presented, relies on the circumstance of the hands being aloft for the purpose of double-reefing the mainsail, as supporting the case of the Appellant, and which, in the opinion of the Nautical gentlemen here, is conclusive that the vessel must have hove-to some time before. On what

grounds the Elder Brethren induced the learned Judge to alter his opinion does not appear; but, concurring as we do with the observations made in the Court below by the learned Judge of the Admiralty in support of the case of the Appellants, considering that these observations are supported by the evidence given on the behalf of the Appellants, observing also that the case presented to us in argument on the part of the Respondents is at variance with the evidence given on their behalf, and being further supported by the opinion of the Nautical gentlemen, we are opinion that the "Aneurin" was solely to blame for the collision, and that the Judgment below must be reversed, with the costs both in the Court below and here, and we shall humbly advise Her Majesty accordingly.

---