Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Owners of "The Velasquez" against Briggs and others, from the High Court of Admiralty of England; delivered 25th July, 1867.

Present:

SIR WILLIAM ERLE.
SIR JAMES W. COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.
SIR RICHARD TORIN KINDERSLEY.

THIS is an Appeal on the part of the owners of the Spanish steamer, the "Velasquez," against the sentence or decree of the High Court of Admiralty, which has pronounced that that vessel was in fault in running down the late barque, called the "Star of Ceylon," and has condemned the Appellants and their bail in the damages proceeded for, and costs of suit.

The conflict of evidence is far less than generally occurs in cases of collision. The undisputed facts of the case are: that about half-past seven on the evening of the 11th of October last, the steamer, being in charge of a licensed pilot, was proceeding up channel, steering north-east by north; whilst the barque was going down channel, heading south-west by south, and therefore on a course parallel to that of the steamer. The wind was east by south; each vessel was making about six knots an hour through the water; and the tide, which was against the steamer, was of course in favour of the barque. It is further admitted that at some time before the collision, the steamer starboarded her helm, or at least, executed a manœuvre which had the effect which starboarding a helm of the ordinary construction produces; and that the barque ported her helm.

The result was a collision in which the barque being struck on the port-bow by the stem of the steamer was sunk, her crew happily escaping on board of the steamer.

The case of the barque is thus stated : " The mast-head light of the steamer was first seen, at the distance of between three and four miles nearly a-head, but a little on the port bow of the barque ; her red or port light was subsequently made out in the same direction : she continued to approach the barque on her port bow, and in such a direction as to involve danger of a collision unless one of the vessels ported ; and as no alteration was made in her course when the two vessels were so near that it was dangerous for the barque to keep on her course, the helm of the latter was ported. Very shortly after this had been done, and the vessels would otherwise have passed clear of each other, the steam-ship was noticed to be making towards the barque, and as the only means of avoiding a collision, or lessening the effect thereof, the helm of the barque was put hard-aport ; but almost immediately afterwards the steamer having shut in her red and opened her green light, ran stem on into the barque," &c. And the contention of the Plaintiffs, the owners of the barque, was, that the collision was attributable solely to the carelessness, negligence, and want of skill of those on board and in charge of the said steam-ship, more especially in their having omitted, either from want of a good look-out or otherwise, to take within sufficient time the proper measures to keep clear of the barque.

The defence on the part of the steamer raised the following case. " The barque was first seen at the distance of about three quarters of a mile from, and being from two to three points on the starboard bow of, the steamer, and with no light then visible on board the latter. The steamer starboarded by order of the pilot, and her head went off to port, and she kept out of the way of the barque ; but the latter improperly deviated from her course, under a port-helm, and exhibited a red light to those on board the steamer, and caused danger of collision; whereupon, by order of the pilot, the steamer hard a-starboarded and stopped her engines ; but the barque nevertheless ran into, and with her port bow before the fore rigging struck the steamer on her

stem and starboard bow." And the contention of the Defendants was that the collision was caused by the negligent and improper navigation of the barque. Another and distinct ground of defence was, that if the collision was in any way occasioned by anybody on board the steamer, it was occasioned solely by the licensed pilot, whose orders in respect of her navigation were promptly and implicitly obeyed by her master and crew.

In the circumstances stated it was the duty of the steamer to keep out of the way of the sailing-vessel; and provided she did so effectually, she was at liberty to do it either by starboarding or by porting her helm. On the other hand, it was the duty of the barque to keep her course, and she could be excused for deviating from it only by showing that it was necessary to do so in order to avoid immediate danger.

The learned Judge of the High Court of Admiralty, after considering the evidence, with the aid of the Trinity Masters, came to the conclusion that no blame attached to the barque; that the whole blame attached to the steamer; that blame attached to the pilot; but that blame also attached to the crew, by reason of the want of a good look-out.

At the close of the argument for the Appellants their Lordships intimated their opinion that no ground had been made for disturbing this Judgment in so far as it found that as between the colliding vessels the steamer was solely in fault. The conclusions which they drew from the evidence were, that the vessels were meeting port side to port side; that the steamer took no steps to avoid the barque until the vessels were very near each other; and that in these circumstances the barque was justified in porting her helm when she did port it; whilst, on the other hand, the starboarding of the helm of the steamer when it took place was a dangerous and improper manœuvre, and the immediate cause of the collision.

Upon the question whether the Court below was justified in holding that blame attached to the crew as well as to the pilot, their Lordships having heard both sides, reserved their judgment; and it is that question alone which we have now to determine.

It has been established by a long course of decisions, both in the High Court of Admiralty and at this Board, "that to entitle the owners of a ship

which is under the charge of a licensed pilot to the benefit of the provision in the Act which exempts them from liability where the collision has been occasioned by the fault of the pilot, it lies upon them to prove that it was caused *solely* by his fault." To show to what extent this general burden lies upon the owners, it is sufficient to cite the case of the "Schwalbe" (14 Moore, 241). There the cause of collision was an improper starboarding of the helm; an act of navigation presumably attributable to an order from the pilot. Yet the owners were held liable because they had failed to prove expressly that the order to starboard was given by the pilot. Lord Chelmsford, in delivering the Judgment of this Committee said, "The owners therefore fail in the evidence necessary to transfer the responsibility from themselves; and without considering whether there was any negligent act or omission on the part of the crew of the 'Schwalbe,' their Lordships think it sufficient to say that the owners have not succeeded in establishing that the collision is to be attributed solely (if at all) to the fault of the pilot."

Again, the cases have clearly established that if, for any act or omission which contributed to the accident, the master or crew is to blame,—then, although the pilot is also to blame, the owners are not exempted from liability. One of the strongest cases of this kind is that of the "Christiana". (7 Moore, 160), for there every act of omission (and there were several of them) which contributed to the accident was an act for which the pilot was to blame; yet, inasmuch as for one of them, viz., the omission to strike and haul down certain yards and masts, the master was held to be also in fault, the owners were not exonerated from liability.

On the other hand, such cases as the "George" (4 Notes of Cases, 161) and the "Atlas" (5 Notes of Cases, 50) seem to show, that if it be proved on the part of the owners that the pilot was in fault, and there is no sufficient proof that the master or crew were also in fault in any particular which contributed, or may have contributed, to the accident, the owners will have relieved themselves of the burthen of proof which the law casts upon them.

If, however, the evidence shows that there were acts of negligence on the part of the master and

crew which may have contributed to the accident, as well as fault on the part of the pilot, the duty of showing that the former did not contribute in part to the accident seems to be involved in the obligation of the owners to prove that the *causa causans* of the collision, was exclusively the fault of the pilot. The "Iona," (4 Moore, N. S. 336) one of the most recent cases decided by this Committee, seems to go the full length of this proposition.

We have now to apply these principles to the present case. What are the facts deposed to by the pilot and crew of the "Velasquez" who alone can speak to what passed on board that vessel?

The pilot (page 20) says that he was on the fore-part of the bridge; that he first saw a sail on his starboard bow when the barque was about three-quarters of a mile off; that he saw no light; that he ordered the helm to be starboarded; that the "Velasquez" obeyed her helm; and that shortly after he had given this order he saw the red light of the barque open.

The look-out man (a Spaniard) says (page 28), that he first saw the barque on the starboard bow, and distant about a mile, more or less; that he too saw no light; and that he reported the sail to the mate (also a Spaniard). And the mate who was on the bridge with the pilot says (at page 25), that when the look-out man sang out in Spanish "a vessel on starboard" he looked towards the pilot, who was then looking to starboard with his glasses; that he (the witness) looking in the same direction, saw the barque about three-quarters of a-mile off; that, thereupon, the pilot gave the signal for going to port; and after that was done he (the witness) saw the red light of the barque, having previously seen no light.

Upon this evidence it is no doubt proved that the helm was starboarded by the order of the pilot given on his own observation of the barque, and not upon any communication to him of its position.

On the other hand, it is to be observed that this evidence, if strictly true and correct, would raise some inference of a negligent look-out. For nothing is seen of the barque until she is within a mile of the steamer, and nothing even then is seen of her lights, although there is evidence in the cause, believed by the Court below, that her lights were

burning well; and the pilot admits that on that particular night (page 24) a good light might have been seen three miles off.

The evidence, however, cannot be taken to be wholly true or correct. For all these witnesses concur in representing the barque as on the starboard bow of the steamer; whereas their Lordships have found, upon the other evidence in the cause, that the vessels were approaching each other port side to port side.

If the crew and the pilot have combined consciously to put forward a false case, all that can be said is that the owners have failed to show by trustworthy evidence that the fault was exclusively the fault of the pilot. But if it be assumed, as their Lordships would willingly assume, that the witnesses honestly mistook the position of the barque, the natural inference from that is, that if there had been a proper look-out, not only would the barque have been descried at a greater distance, but her true position would have been known.

That it is the duty of the crew, by means of a sufficient look-out, to give to the pilot the earliest possible information of an approaching vessel, and accurately to describe her position was the principle enforced in the case of the "Iona;" and in the present case it may reasonably be inferred that if the pilot had received earlier information of the barque, or had been told that she was on the port side of his own vessel, he would not have given the order to starboard at all, or would have given it at a time when on a starboard helm he could have gone clear of the barque.

Their Lordships are therefore unable to say that there is error in the finding of the very learned Judge of the Court of Admiralty, that blame attached to the crew as well as to the pilot of the "Velasquez;" and they will humbly recommend to Her Majesty that this Appeal be dismissed with costs.