Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the "Sierra Nevada," from the Vice-Admiralty Court of New South Wales; delivered 7th April, 1876.

Present:

SIR JAMES W. COLVILE.
SIR ROBERT J. PHILLIMORE.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.

THIS is an Appeal from the Vice-Admiralty Court of New South Wales in a case of collision.

The collision happened between 2 and 3 o'clock in the morning of the 11th July, 1874, a few miles to the southward of Bird Island, off the coast of New South Wales. The night was clear, with a dark horizon and a haze from the water; the wind was stated by the promovent in the Court below, the Respondent in this Court, to be west-south-west; and by the Defendants in the Court below, and the Appellants here, to be west-north-west, a difference of four points, which might have been material; but the learned Judge of the Court below says, "During the argument it was conceded by the Respondents' Counsel that for the purposes of the decision it might be assumed that the direction of the wind was, as the Promovent contended, and by that admission I was relieved from the necessity of determining the fact by the evidence."

Their Lordships must, therefore, consider it to have been proved that the wind was west-south-west.

The vessels which came into collision were the English brig "George H. Peake" and the American

barque "Sierra Nevada;" the brig was coming from the port of Newcastle in New South Wales to Melbourne, and the barque was on her voyage in ballast from Melbourne to Newcastle. The barque struck the brig on her starboard or weather side almost at right angles, and she immediately sank, but no lives were lost. The Judge of the Court below found the barque alone to blame for the collision, and from this decision her owners have instituted the present Appeal.

The contention on the part of the brig was that being close-hauled on the starboard tack, her look-out saw a large ship coming towards her with a great deal of canvas set, and no lights visible at a distance of a mile or three-quarters of a mile, about a point on her starboard or weather bow; that her helm was immediately starboarded, that the barque did not alter her course until she was close to the brig when she ported; and the collision is ascribed to this act on the part of the barque, to her having her lights improperly placed, and to the want of a good look-out.

The contention on the part of the barque was that she was on the port tack and close hauled, but this was on the hypothesis that the wind was west-north-west; but as has already been said the wind was west-south-west, which would put her on the port tack with the wind free. She says that her look-out saw the red light of the brig a-head about half a mile off; that her helm was immediately put hard-a-port, and that the collision was caused by the starboarding of the brig.

A great many witnesses were examined in the Court below; the Judge having minutely investigated their evidence in the Judgment which he delivered, expressed himself as follows :—

"The conclusion at which I have arrived from all this "evidence is that the vessels were about three-quarters of a "mile apart when they sighted each other, that the brig put "her helm a-starboard as soon as she saw the barque, and that "when they were about a quarter of a mile apart she had gone "off three or four points, and had fully exposed her green light "to the barque; that the barque about that time ported her "helm, and kept it so ported until the collision. I have already "stated that I do not think it necessary for the purposes of my "judgment to decide whether the barque was close-hauled or "not, although the evidence leads, I think, to the conclusion "that she could have gone four points further to the windward

"than the course which she was steering before she saw the "brig. Whatever her course was at that time she ported her "helm, and went free after the brig's green light must have "been exposed to her, and she kept that course till the time of "the collision. Under these circumstances on whom does the "blame of this collision rest? I have already said that I cannot "attribute blame to the barque for defective light or lights "negligently or improperly placed, but that is a different "question from whether the people on board the brig saw the "barque's lights or not. Those lights may have been good and "placed with ordinary care, and yet may not have been seen by "the brig. At all events, I am of opinion, on the evidence, "that the people on board the brig did not see the barque's "lights when they saw her approaching about three-quarters of "a mile off. As they were close-hauled I think they were not "only justified in at once starboarding their helm, but that it "was the only proper course for them to adopt under the "circumstances. Their own lights were good, and were burning "brightly, and the exposure of their green light, as the brig "answered her helm and ran free, would be a clear and timely "warning to the barque either to keep on her course or star-"board her helm, which from the state of the wind there was "every reason to think she could easily have done. The brig "not then, in my opinion, being at all to blame in starboarding "her helm when she saw the cloud of canvas without visible "lights approaching her, the question remains, was the barque "to blame in porting her helm when about a quarter of a mile "from the brig? I am clearly of opinion that she was. The "rule, no doubt, is that sailing-vessels meeting end on, or "nearly end on, are to pass on the port side of each other, and "a vessel on the port tack is to give way to a vessel close-"hauled meeting her on the opposite tack. These rules, how-"ever, only apply when ships are meeting so as to involve risk "of collision, and not to cases where, if their courses are "continued, collision will be avoided. When by the star-"boarding of her helm the brig went off three or four points, "and brought her green light into full view of the barque, it "was obviously the duty of the barque either to keep on her "course or starboard her helm. This she did not do, but on the "contrary, either three, four, or five minutes before the collision "ported her helm, and kept it ported till the blow was struck. "When the people on board the barque saw the green light "right ahead it was their duty at once to put the helm a-star-"board, because the appearance of that light showed that the "brig was running out of their way. By porting their helm "and keeping it to port they followed the brig, and so ran into "her."

The principal propositions contained in this passage are that the barque's lights were not defective or improperly placed; that they were not seen by those on board the brig, and yet, apparently, that no blame on this account attached to the brig; that the brig did right in starboarding as soon as she saw the barque; that the barque must have

seen the green light of the brig before she ported, and therefore did wrong and was alone to blame.

Their Lordships regret that after a careful investigation of all the evidence and of the admitted facts in the case they are unable to find their way to this result. They have endeavoured in vain to reconcile the finding of the learned Judge, that the lights, being properly placed, were, without any fault of those on board the brig, not seen by them. It may be that the learned Judge had some reason, not expressed, for forming this opinion; but in the state of obscurity and uncertainty in which this matter is left, their Lordships have determined to leave it out of their consideration in the opinion which they are about to express.

It appears to their Lordships that these two vessels were very nearly but not quite meeting vessels; that it was the duty of the starboard-tacked brig, when she saw the barque, whether with or without lights at the distance at which she states, to have kept her course, and have acted on the presumption that the other vessel (like herself) would obey the rule of navigation, and that the brig on her part was not justified in violating that rule.

On the other hand, their Lordships think that they ought not to interfere with the distinct finding of the learned Judge upon the evidence that the barque must have seen, before she ported, the green light of the brig; and in this case the manœuvre of porting was clearly indefensible.

In this view of the case, both vessels were to blame; and their Lordships come more readily to this conclusion because they incline strongly to the opinion that, owing to a bad look-out on both sides, both these vessels were allowed to approach each other much nearer than has been represented. Their Lordships will therefore humbly advise Her Majesty to reverse the sentence of the Court below declaring that the "Sierra Nevada" was alone to blame, and to pronounce that both vessels were to blame for the collision; each party to pay their own costs, both here and in the Court below.

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