

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Owners of the British Steamship "Midlothian" v. The Owners of the Spanish Brig "Dolores Vilascca," from the Supreme Court of Gibraltar (Admiralty Jurisdiction); delivered the 24th January 1908.*

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Present at the Hearing :

EARL OF HALSBURY.  
LORD MACNAGHTEN.  
LORD ATKINSON.  
LORD COLLINS.  
SIR ARTHUR WILSON.

*Nautical Assessors :*

ADMIRAL RODNEY M. LLOYD, C.B.  
CAPTAIN W. F. CABORNE, C.B., R.N.R.

[*Delivered by Lord Collins.*]

The first and principal collision in respect of which this action was brought took place at about 9 p.m. on the 22nd December 1905, in the Straits of Gibraltar, about 5 miles south of Europa Point, between the Spanish Brig "Dolores Vilascca" and the British Steamship "Midlothian," whereby the Brig was seriously damaged. The Steamer was proceeding westward on a homeward voyage from Alexandria to Leith. The Brig was sailing eastward on a voyage from Campos Santos to Gandia with a cargo of timber. According to the preliminary acts the night was described as "cloudy but clear horizon." and as "Bright

clear star night." The Master of the Steamer described it in evidence as "a clear night—  
"atmosphere was very clear—very dark night,  
"no moon." . . .

In the preliminary acts the wind is described as "E.S.E., a moderate breeze," and as "S.E. by E., force about 5."

The course and speed of the Brig when the Steamer was first seen is described as "about  
"N.E. by E., close hauled on the starboard tack,  
"speed about 3 knots," and the distance of the Steamer is said to have been "about 3 knots and  
"bearing about 4 points on the starboard bow."

The course of the Steamer is described as W.  $\frac{1}{4}$  N., speed about 8 knots, and the distance of the Brig as about 2 miles, and bearing about  $1\frac{1}{2}$  points on the port bow of the Steamer. So far there does not seem to be much conflict.

The accounts differ as to how the collision was actually brought about, but there is no doubt that the stem of the Steamer struck the Brig on the port bow. How this result could have been brought about, having regard to the position and courses of the vessels respectively, when first sighted, is very difficult to explain upon the theory of the Respondents.

The Captain of the Brig not only described in words the manœuvres of the Steamer as they appeared to him, but portrayed them in a diagram which he drew in the box. By this he makes the Steamer go to starboard, *i.e.*, port her helm for the purpose of passing across the bows of the Brig, and then, when she had accomplished this purpose, turn to port, *i.e.*, by starboarding so as to bring the Steamer right round the bow of the Brig, striking the latter with her stem upon the port bow. The

learned Counsel for the Respondents felt so strongly the improbability of any such manœuvre having been executed by a navigator in possession of his senses that he claimed to reject it altogether as a description of what happened. The diagram is, however, a sufficiently accurate presentment in the form of a picture of the manœuvre as described in words by the witnesses from the Brig, and in their Lordships' opinion the diagram and the description must stand or fall together, while they quite agree that the improbability is such that it is impossible to accept such an explanation of the collision. The fact that the blow was delivered on the port bow of the Brig might be explained in either of two ways, either that the Steamer had passed round from the starboard to the port side of the Brig and then doubled back so as to bring her stem into collision with the port bow, as shown in the picture, or that the impact was brought about in a simpler manner by the Brig sheering or yawing so as to bring her port bow in front of the advancing Steamer. There is no doubt that the Brig was beating up against the wind on the starboard tack in a rather heavy sea, and it is difficult to suppose that the conditions were so uniform that she could keep on a perfectly straight course without yawing even if there were no difficulty of current to contend with. But the evidence is that there was a strong S.E. current running at the time, and their Lordships are advised by their Assessors that, under such conditions, it would have been probable that the Brig might have gone up in the wind and yawed to starboard, presenting her port bow to the advancing Steamer. And this is what it is averred by those on board the Steamer that she in fact did.

But there is another circumstance not yet mentioned which, though the learned Chief Justice ignored it as having no possible bearing on the cause of the collision, their Lordships cannot but regard as the most important factor in the case, and the main cause of the accident. The learned Judge has found as a fact that the red and green lights on the Brig were so placed that to a vessel approaching it end on there would be in front of the Brig an area of obscuration of about 18 degrees in width, 10 on her starboard and 8 on her port side. This was caused by the position of the lights, which were placed close to the stern, and by the shape of the sides of the Brig, which curved rapidly outwards from the points where the lights were fixed so as to intercept their rays at the sides next the vessel to the extent stated, thus forming a cone of obscuration widening as the distance from the Brig was increased. The learned Judge nevertheless came to the conclusion that the Steamer alone was to blame, and that a bad look-out on board the Steamer was the sole cause of the collision. He says—

“They failed on board the Steamer to see the green light of the ‘Dolores Vilaseca,’ which was in view, had it been looked for, until they were nearly on top of it. The mate then endeavoured to clear the Brig by starboarding his helm and going to port, but he found the circle was too small within which to effect this manœuvre, and at the last moment, but too late to avoid what had become an inevitable collision, he went hard aport. It was no use then.”

Their Lordships are fully alive to the strength of the presumption in favour of a conclusion of fact arrived at by the Judge of first instance who has heard and seen the witnesses. The conclusion, however, of the learned Judge in this case, that the failure on the part of those on board the Steamer to see the green light of the Brig was due to their not keeping a good look-out,

was arrived at rather by way of inference from other conclusions come to by the learned Judge, than because independently of these he had conceived a distrust of the credibility of the witness who deposes to the fact that he had the green light in careful observation for several minutes until he lost it. In point of fact it is an inference from the train of reasoning by which he had satisfied himself that the condition of the "Vilaseca's" lights could not possibly have had anything to do with bringing about the collision. As already stated, their Lordships are quite unable to adopt that view, and it is a remarkable fact that the able Counsel for the Respondents could not themselves explain the collision otherwise than on the hypothesis that the "Midlothian" had to pass more or less obliquely across the whole area of obscuration. Their Lordships are satisfied that the learned Counsel had no other alternative, and, if this be so, it is quite clear that the loss of the green light may be accounted for without implying any negligence in the look-out on board the Steamer. So far as the learned Judge's view rests upon want of confidence in the credibility of the witnesses, it seems to come to no more than this, that he is not satisfied with the evidence that the light of the "Vilaseca" was reported at all; his ground for such distrust being that the look-out man, who was stated by the witness Ericson to have reported it, was not called, having left the ship at Leith, and that he regarded Ericson himself as an unsatisfactory witness. But the mate, Chisholm, who was the officer in charge of the Steamer, and against whose credit nothing is averred, deposes to having seen the green light about 2, or it might be 3, miles off, and observed it carefully till satisfied it was "a fixed steady green light," when he at once gave the

order to starboard so, as he says, to show his "green light and pass green to green." He continued to observe the light for about two minutes, when it "became obscured and then disappeared." After its disappearance his statement is that he ordered the helm to be eased and the Steamer to be brought gradually back to her original course, because he thought he had passed the sailing vessel and all was clear. The learned Judge holds that he was not justified in assuming this. "The light," he says, "might have gone out, other things might have happened, and it was wanting in care and judgment to act as he did." Their Lordships, however, are advised by their Assessors that the inference was one that a careful navigator might well draw, and to take steps to bring the Steamer gradually back to her course would under such circumstances not be inconsistent with prudent navigation. With the greatest possible respect, therefore, for the learned Judge who has brought so much care and acuteness to bear upon this case, their Lordships consider that in the circumstances they are not bound to adopt his conclusions of fact, and in their opinion the Respondents have failed to show that any negligence other than that for which they are themselves responsible was a factor in bringing about the first and principal collision.

There were two collisions in question in the Court below. The Defendants (the Appellants), in paragraph 13 of their Case, state that, for the reasons there given, they do not contest liability for the second collision, the damage caused by which was, they state, trifling. And the question of salvage, raised by the Appellants' counterclaim, has not been dealt with by their Lordships on the basis of their findings.

Their Lordships will humbly advise His Majesty that the Appeal should be allowed, that the Decree of the Supreme Court of Gibraltar should be set aside, and that instead thereof it should be declared that the first collision was occasioned by the fault or default of the Master and Crew of the "Dolores Vilaseca," and the second collision by the fault or default of the Master and Crew of the "Midlothian," and that the parties should be condemned in the respective damages and costs accordingly, and that the Case should be remitted to the Supreme Court in order that the damages payable in respect of the first and second collisions respectively, and the amount (if any) due to the Appellants on their counterclaim for salvage remuneration, may be ascertained in the usual way and for further procedure therein upon the above footing.

The Respondents must pay the Appellants' general costs of the Appeal.

Doubts having arisen as to whether the Appeal had been effectively prosecuted by the Appellants, the latter, on the 7th March 1907, presented a Petition for special leave to appeal against the Decree of the Supreme Court, which was opposed by the Respondents. No order was made on this Petition except that the Appellants were directed to pay the costs of it in any event, their Lordships intimating that they would deal with the matter on the hearing of the Appeal if the point should be taken by the Respondents. The point was not taken. The Respondents' costs of the Petition will be set off against the Appellants' costs of the Appeal.

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