

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Owners of the 'Hetton' and others, v. The Owners of the 'Uhlenhorst,' ship 'Uhlenhorst,' from the High Court of Admiralty of England; delivered 14th March, 1868.*

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Present :

LORD WESTBURY.

SIR JAMES WILLIAM COLVILLE.

SIR EDWARD VAUGHAN WILLIAMS.

SIR RICHARD TORIN KINDERSLEY.

IN this case the Court below has arrived at a conclusion, which, to use the words of the Judgment, is a very unusual one. It has declared itself unable to ascertain, upon the evidence in the case, whether both parties were to blame, or whether either, and which, was to blame for the collision. At the same time the Court was of opinion that the collision was not the result of inevitable accident.

It has been our duty, therefore, to examine the evidence with the most minute care and attention.

It appears to their Lordships that if the relative positions of the two vessels, at the time when they first sighted the lights of each other, be correctly ascertained and kept before the mind, it will not be difficult to follow their subsequent manœuvres, and to see distinctly the immediate proximate cause of the collision. The difficulties felt by the Court below may perhaps have arisen chiefly from an incorrect conclusion as to the relative positions of the vessels previously to the collision.

As to the position of the two vessels when they first made out the lights of each other, there is no contradiction in the evidence. Immediately before the lights were first seen, the head of the 'Uhlenhorst' was lying N.W. by N., and the course of the 'Hetton' was S. by E. The time was about 6.30 a.m. The weather was foggy; the wind—a moderate breeze—blowing from west by south.

The 'Hetton' says that she *first* saw the mast-head light of the 'Uhlenhorst,' and instantly after-

wards her green light, and that the 'Uhlenhorst' was then about two points on the port bow of the 'Hetton,' and distant about 300 yards.

The evidence of the 'Uhlenhorst' is, that she saw the white and red lights of the 'Hetton' at the same moment, and that the 'Hetton' was then between two and three points on the starboard bow of the 'Uhlenhorst.'

It is true that the 'Uhlenhorst' says she heard the whistle of the 'Hetton' before she saw her lights, and that in the meantime she ported her helm and threw her head nearly three points more to the northward, which is not consistent with the evidence of the 'Hetton,' but the difference is immaterial; because even if this was done, it is still stated by the witnesses of the 'Uhlenhorst' that when she made out the 'Hetton's' lights, they were then about two or three points on her own starboard bow.

It is clear, therefore, that the two vessels were crossing each other, and that if a line were drawn from the port bow of the 'Hetton' to the starboard bow of the 'Uhlenhorst,' such line would be the base of a triangle, the sides of which would represent the course of the two vessels respectively.

It is clear also that the two vessels were in most dangerous proximity to each other, and that each ought to have known that the other was crossing her own course.

The proximity of the vessels is further proved by the evidence as to the interval of time that elapsed between the time when the whistle of each ship was first heard and her lights first seen by the other and the time of collision. The captain of the 'Uhlenhorst' swears, in p. 37, that from his first hearing the 'Hetton's' whistle until the blow was struck, there was an interval of no more than between one and two minutes; but there must be here some mistake, for in another part of his evidence he states that it was about a minute and a half or perhaps two minutes after he heard the whistle before he saw the lights of the 'Hetton,' and therefore perhaps he must be taken to mean that there was an interval of one or two minutes between his seeing the lights of the 'Hetton' and the collision. The captain of the 'Hetton' deposes that between his first hearing the whistle of the

'Uhlenhorst' and the actual collision there were not more than three minutes, whilst the mate of the 'Hetton' swears that from the time when he first saw the green light of the 'Uhlenhorst' to the time of collision was about two minutes. The evidence of the 'Hetton' is, that on the near approach of the 'Uhlenhorst,' and when the ship herself was seen through the fog, she was hailed twice by the look-out from the fore-castle of the 'Hetton' and directed to port; and the actual position of the vessels at this time may be collected from a very important statement made in his evidence by the captain of the 'Uhlenhorst,' who says, "She was right under my bows when I saw the ship;" that is, when he saw the hull, as distinguished from the lights, of the 'Hetton.' From the whole of the evidence, and particularly from what followed, it seems to be clear that the 'Hetton' at this time was lying, not across the stem, but at a very short distance on the port bow of the 'Uhlenhorst.' What followed we will take first from the evidence of the 'Uhlenhorst;' and it explains pretty clearly the immediate mode in which the collision was occasioned. The captain of the 'Uhlenhorst,' on seeing the position of the 'Hetton,' immediately ordered the engines of the 'Uhlenhorst' to be reversed, and her helm to be starboarded, which was done, in order that when the vessel got sternway, the starboard helm might send her head to starboard, and have the same effect as porting when a vessel is going forward.

The captain of the 'Uhlenhorst' was asked, "Which of these orders did you give first, the helm to go hard a-starboard, or the engines to go full speed astern?" and the answer was, "I don't know; perhaps the same moment together."

Now it is clear that at the time these concurrent orders were given, the 'Uhlenhorst' had good forward way upon her. The captain of the 'Uhlenhorst' admits in his evidence (pp. 31, 32) that after the order for reversing the engines had been given, the forward way of his ship was not stopped, and that at the very time of the collision she was still going forward at the rate of perhaps between one and two knots. Several witnesses on the part of the 'Hetton' swear that the 'Uhlenhorst,' at the time she thus starboarded, was going fast

through the water, and that after she had starboarded she was coming down fast with her stem against the forecastle of the 'Hetton' on the port side.

There is an attempt on the part of the witnesses of the 'Uhlenhorst' to prove that this order to put her helm hard a-starboard was not acted upon, or that, at all events, the starboarding had no operation; but this cannot be accepted, for it is distinctly stated in the pleadings of the 'Uhlenhorst,' first, in the Preliminary Act, that her helm was put hard a-starboard in order that her head might still continue to go off to starboard; and again in the Answer of the 'Uhlenhorst,' it is stated that "in order that the head of the 'Uhlenhorst' might continue to go off to starboard whilst her engines were reversing astern, the helm of the 'Uhlenhorst' was put hard to starboard."

It is clear, therefore, that the helm of the 'Uhlenhorst' was put hard to starboard whilst she had considerable steerage way upon her, and before the reversing of the engines could take any effect. The natural result followed, namely, that her head payed off to port, and the 'Hetton' being at a very short distance on the port bow of the 'Uhlenhorst,' the latter vessel came down in a line with the port bow of the 'Hetton.' All this is deduced from the case and evidence of the 'Uhlenhorst' alone, without aid from the evidence of the 'Hetton,' which we will presently refer to, and the conclusion thus derived is strongly confirmed by the *evidentia rei* afforded by the nature and position of the blow that was given by the 'Uhlenhorst' to the 'Hetton.' The latter was struck on her port side by the stem of the 'Uhlenhorst,' between the 'Hetton's' fore and main masts, not quite at right angles, but in a line inclining a little from fore to aft, and the force of the blow was so great that the stem, after piercing the side of the 'Hetton,' cut ten feet through her deck right to the coamings of the hatchways. The nature of the blow is the most important and conclusive fact in the cause. It proves that the course of the 'Uhlenhorst,' at the time of the collision, was right across the course of the 'Hetton,' and unless this was due to the mistake made by the 'Uhlenhorst,' in the agitation and alarm of the moment, by putting her helm hard a-starboard before

she had lost her forward steerage-way, it must have been the result of the 'Uhlenhorst' not having duly ported her helm when she first saw the lights of the 'Hetton.'

The evidence on the part of the 'Hetton' is to this effect:—The master is asked, "Could the 'Uhlenhorst' have avoided you by porting her helm?" The answer is, "I am positive of it, Sir."

Q.—Did she appear to you to starboard?

A.—At the first of it, she came right down on us without altering her course, until just previous to the collision; she then apparently starboarded.

Again in cross-examination he says:—

Q.—You saw the ship under a starboard-helm?

A.—Only just previous to the collision.

Q.—I want to know how far off?

A.—About half a ship's length when I noticed her at the time.

And further on he says:—"She came straight down on us, and suddenly seemed to starboard her helm when she was close to us." And on re-examination he says, "There would have been no collision if the 'Uhlenhorst' had ported at the time when he (the witness) first saw her." This is confirmed by the man who had the look-out on the fore-castle of the 'Hetton,' and who hailed the 'Uhlenhorst.'

The mate of the 'Hetton' says, that when he first saw the 'Uhlenhorst' she was on the port bow, and appeared to be coming fast down on the 'Hetton,' and that seeing there was no alternative but a collision, he exclaimed to the captain of the 'Hetton,' "For God's sake, set her ahead, or she (that is, the 'Uhlenhorst') will kill the men in the fore-castle;" and that in his opinion, the 'Uhlenhorst' was then going at the rate of about seven knots an hour.

The seamen of the 'Hetton' who have been examined say, that when they first saw the 'Uhlenhorst,' up to the time of the collision, the 'Uhlenhorst' appeared to be going fast through the water, and that the 'Uhlenhorst' had plenty of time, if she had ported her helm, to have gone clear of the 'Hetton,' without any collision whatever.

With regard to the speed of the 'Uhlenhorst,' being in ballast, it is material to observe, that the

wind was in her favour, and that, notwithstanding the fog, she kept her fore and main trysails set down to the time of the collision. It is true her witnesses say that these sails were sheeted amidships, but, notwithstanding that, they must have accelerated the speed of the vessel. In fact, the character and force of the blow with which the 'Uhlenhorst' struck the 'Hetton' are proofs that she was then going onward at considerable speed.

Our attention has been anxiously directed to the inquiry whether any fault can be imputed to the 'Hetton,' and whether anything was omitted to be done by her which, if done, might have prevented the collision. It was pressed upon us by the Counsel for the 'Uhlenhorst,' that it was the duty of the 'Hetton,' when she first saw the 'Uhlenhorst,' to have backed her engines and gone astern, and that if she had done so, the collision would have been avoided. It is answered by the Counsel for the 'Hetton,' that if she had reversed and gone astern, and the 'Uhlenhorst' had ported her helm, which the 'Hetton' had a right to expect she would do, the going astern would have brought her directly in the line of the 'Uhlenhorst' under a port helm; and upon examination of the case and of the position of the vessels, we think it not improbable that this would have been the result. With respect to the acts of the 'Hetton,' it appears that an hour before the collision she took in her sails by reason of the fog (a prudent step which was not taken by the 'Uhlenhorst'), and that on sighting the 'Uhlenhorst' she put her helm aport, dead slowed her engines, and had hardly any way on her, until, when collision was inevitable, she set ahead to prevent the 'Uhlenhorst' striking her on the fore-castle, which might have killed some of her men. There seems to have been no want of vigilance or care. Upon the whole, we have arrived at the conclusion that the collision was due immediately to the mistaken order, given on board the 'Uhlenhorst,' to put her helm hard a-starboard before she had got any stern-way upon her, and while she had, in fact, considerable steerage-way; and that this order (being given when the head of the 'Uhlenhorst' was not more than fifty or sixty yards distant from the port-bow or stem of the 'Hetton') caused the collision which ensued. It is said that when the

'Hetton' observed the 'Uhlenhorst' paying off to port under the starboard-helm, she might have reversed her engines, and by backing avoided the collision; but this, we think, is satisfactorily answered by the circumstances of the case, and by the evidence of the engineer of the 'Hetton,' who swears distinctly that though the 'Hetton' went a little way forward under the order he got to set on his engines at full speed, with a view to prevent the blow from the stem of the 'Uhlenhorst' being received on the forecastle of the 'Hetton,' yet that he could not have gone the same distance astern in the same time by reversing his engines, because, of course, the vessel would not back astern until the reversing had overcome her forward-way.

Upon the whole of the evidence, we think there was mismanagement and want of proper care on board the 'Uhlenhorst,' and that her speed was greater than in a fog she ought to have maintained.

It is idle to suppose, when the nature and direction of the blow are considered, that it could have been caused (as the 'Uhlenhorst' contends), by the 'Hetton' in going ahead, impaling herself on the stem of the 'Uhlenhorst.' Such, however, is the contention of the 'Uhlenhorst;' and is her very inadmissible theory to account for the collision.

Upon the whole, therefore, we think that the case of the 'Uhlenhorst' entirely fails, and that the actual collision was caused by her mistake and neglect. We shall, therefore, humbly advise Her Majesty to give Judgment accordingly, to reverse the Judgment of the Court below, and to condemn the 'Uhlenhorst' in damages and costs.

