

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Baines and others v. Levy, ship 'Calcutta,' from the High Court of Admiralty, delivered November 30th, 1869.*

---

Present:

LORD CHELMSFORD.

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

THE only question to be determined upon this Appeal is whether the collision was the result of inevitable accident. The 'Calcutta' is *prima facie* to blame for the collision, because it was her duty to keep out of the way of the 'Emma;' and not having done so, there is *prima facie* proof of negligence on her part.

The *onus*, therefore, of showing that she was not to blame is thrown upon the 'Calcutta,' and she undertakes to prove that the collision is not imputable to her as blame, but that it was the result of inevitable accident. Inevitable accident is where the collision could not possibly have been prevented by proper care and seamanship under the particular circumstances of the case. The question, therefore, is whether everything was done which could and ought to have been done by the 'Calcutta' to avoid the collision.

It may probably be taken that the carrying away of the foretack of the 'Calcutta' may have contributed remotely to the accident by rendering the 'Calcutta' less manageable than she would otherwise have been. There is certainly no evidence whatever to show that the foretack was not in good condition, although the learned Judge has said that in his opinion there could not have been so much wind as was represented, and that that fact rendered it improbable that it would have carried away a good

foretack, implying therefore that the foretack was not good.

No question of this kind was raised upon the pleadings or in the course of the evidence, and therefore it was rather hard upon the Appellants to assume this as a fact, for which there was not the slightest proof, and to which their attention was not in any way called. If any evidence had been given of this assumed fact, the Appellants might have disproved it, but at all events they would have been afforded an opportunity of doing so.

But the question is whether, assuming the 'Calcutta' to be in some degree disabled, did she, in the state in which she was, do everything in her power to avoid the collision? It is said that all that was required of her was that she should take reasonable and not extraordinary care. There is great difficulty in defining clearly the meaning of these general words "reasonable" and "extraordinary;" but, in plain language, did the 'Calcutta' do all that she ought to have done under the circumstances?

In the opinion of the Trinity Masters who assisted the learned Judge in the Court of Admiralty, "the course adopted by those on board the 'Calcutta' was quite right in porting at the time when it is stated she did, but they thought that her spanker ought to have been brailed up and her afteryards squared, and this more especially having regard to the fact that her foresail was off, and to the immense length of the ship, which rendered it very difficult to get her off the wind; and they were further of opinion that if from the proximity of the two vessels these manœuvres were doubtful, it was clear that the 'Calcutta' ought to have put her helm down, and hove in stays."

A complaint was made by the counsel for the Appellants that it was hard upon them to have these questions determined by the Trinity Masters and the learned Judge, without having been suggested in the course of the trial. That it was never made a question whether, when the manœuvre of porting was resorted to, more might not have been done for the purpose of avoiding the collision. But in answer to this complaint, their Lordships feel that it is, after all, no additional fact which is introduced in the Judgment of the learned Judge,

but a mere deduction from and judgment formed upon the facts as they were proved and established before them.

Their Lordships also have the advantage of nautical advice and experience, and they are happy to say that in this case the opinion of the assessors very nearly, if not altogether, coincides with that which was given by the Trinity Masters in the Court below.

The Trinity Masters think that the proper course was for the 'Calcutta' to have ported. Upon that subject their Lordships' nautical assessors differ from the Trinity Masters in a slight degree, because they say that it is a most difficult manœuvre to wear a ship of the length and size of the 'Calcutta;' that she would have paid off very slowly, and that the better course would have been for her to have starboarded, which would have brought her head up to the wind, and of course have lessened her way, and probably altogether have prevented the collision.

It must be remembered that at this time the 'Emma' was almost motionless upon the water, being in the act of reefing; but our assessors think that the 'Calcutta' having ported her helm, although the better course would have been to have starboarded, agreeing in this respect with the Court of Admiralty that the spanker ought to have been brailed up and the afteryards squared, and other things done which would probably have rendered that manœuvre successful.

Then also the Trinity Masters say that they "are further of opinion, that if from the proximity of the two vessels these manœuvres were doubtful, it was clear that the 'Calcutta' ought to have starboarded, put her helm down, and hove in stays."

Therefore it being perfectly clear that the 'Calcutta' having ported her helm, did not do anything in addition to aid that operation, or not having starboarded, as our assessors think would have been the better course, the collision could not have been the result of inevitable accident, which is the defence the 'Calcutta' undertakes to establish against the proof of *prima facie* negligence on her part, by not keeping out of the way of the 'Emma' as she was bound to do. Their Lordships are of

opinion that the Judgment of the Court below is perfectly right.

They will, therefore, recommend to Her Majesty to affirm the Judgment of the Court below, and dismiss the Appeal, with costs.