

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of the
owners of the steamship "Rallus" v. the
owners of the steamship "Nuphar," from
the High Court of Admiralty of England;
delivered on Friday, 25th July 1873.*

PRESENT :

SIR J. W. COLVILLE.

SIR BARNES PEACOCK.

SIR M. E. SMITH.

This is an Appeal from a decision of the High Court of Admiralty in a suit for collision between the screw steamer "Rallus" and the screw steamer "Nuphar." Both parties were Plaintiffs, each seeking to recover against the other damages for the collision, and both are Appellants with regard to the judgment of the learned judge of the High Court of Admiralty.

The collision took place between five and six in the morning of the 20th December last. The steamer "Rallus" was of 685 registered tonnage and 120 horse power. She was proceeding from Antwerp to Liverpool with a general cargo and one passenger, steaming west by half north at the rate of nine knots through the water and eleven over the ground. The "Nuphar" was a steamer of 730 tons register and of 98 horse power. She was proceeding from Taganrog to Hull with a cargo of seed and wool, and was steaming east by south. The accident happened about 27 miles to the eastward of St. Katherine's point, and the question is whether both of the parties were to blame, or whether either and which of them was alone to blame.

The learned judge, upon the conflicting evidence which was given in the case, found that they were both to blame.

The evidence on the part of the "Rallus" was, that she saw the "Nuphar" ahead of her, and that she saw the bright light, and immediately afterwards a red light, and that she ported her helm. That was the right course for the steamer to pursue if the facts were as stated. On the other hand, the "Nuphar" states that she saw the green light of the "Rallus" on her starboard bow, and that she put her helm to starboard; and that would have been the proper course, provided the circumstances were such as her witnesses stated them to be; but the learned judge believed that the original position of the vessels was correctly described by the "Rallus," and that the "Nuphar" was to blame for starboarding her helm. He said "It is not very easy " to find one's way to the truth upon this point, but " applying the best consideration I am able, and " taking the advice of the Trinity Masters, I " have arrived at the opinion that the original " position of the vessel was correctly described " by the Plaintiffs in this case,"—that is by the " Rallus"—" that she did see the vessel a little on " her port bow, and consequently was justified " in porting her helm."

Probably if their Lordships were to speculate they might arrive at the conclusion that the vessels were much nearer together at the time when they first saw each other than the evidence has stated them to have been, and that neither kept a proper look out; but their Lordships must look at the case upon the evidence as it was given by both sides.

Now the evidence on both sides shows that the distance when the vessels first sighted each other was not less than a mile and a half. One says that it was more, but the lowest distance at

which the vessels were stated to have been was about a mile and a half. The learned judge has found as a fact that the "Rallus" saw the "Nuphar" on her port bow, and that that vessel was consequently justified in porting her helm. But the question is whether the "Rallus" was wrong in not slackening her speed, when she saw that the accident was about to happen. Their Lordships, looking at the whole of the evidence in the case, have arrived at the conclusion at which the learned judge of the Admiralty Court arrived, viz., that the "Rallus" was to blame for proceeding as she did at full speed under the circumstances. Their Lordships therefore find that both the vessels were to blame.

Several cases were cited: one was the "Jesmond" *v.* the "Earl of Elgin;" but, it appears to their Lordships that that case does not bear upon the present. It is reported, in the 4th Law Reports, Privy Council Cases, page 1. In that case it was found that the vessels had been brought port light to port light, which is very different from the present case; and it was held that, under those circumstances, the "Jesmond" was not bound, under Rule 16 of the Sailing Rules, to slacken her speed; the Judicial Committee stating that they did not feel at liberty to extend the application of the 16th Article beyond what seemed to them to be its proper construction. Their Lordships cannot too often repeat what was said in that case—that they would be extremely sorry, by any decision, to diminish the stringency of any rule tending to prevent the great destruction of life and property which are too common in our narrow seas. Another case which was cited was the "City of Antwerp," but their Lordships are of opinion that that case has no application to the present. The other case mentioned was the "Amazon" and the "Osprey." It was there

said "The 'Osprey' had been brought by the
 " inobservance of the rules of navigation and
 " the bad seamanship of the 'Amazon' into a
 " condition in which it was impossible to de-
 " termine with certainty whether the danger
 " was not greater to attempt to slacken or stop
 " her course, and to reverse the engines, than
 " to proceed at full speed to endeavour to cross
 " the 'Amazon,' and to pass in safety under her
 " bows. Now, if a vessel be brought into such
 " a position by bad seamanship and non-
 " compliance with the Admiralty Regulations
 " on the part of another vessel, as to place
 " those who are in command of her in a
 " situation of great doubt and difficulty as to the
 " course they are to pursue, we think, that such
 " a vessel cannot be said materially to contribute
 " to the loss within the above rule of law, even
 " if she shall appear to have taken the less
 " expedient course, and so, in some sense, to
 " have contributed to the collision which may have
 " taken place. But," their Lordships added, " we
 " do not think that this was the case with the
 " 'Osprey,' and with all the assistance which their
 " Lordships have derived from the evidence and
 " from the opinions of those who are better skilled
 " than themselves in dealing with questions of
 " this nature, we are quite satisfied that it would
 " not have been a proper course on the part of
 " the 'Osprey' to have attempted to stop or to
 " reverse her engines; that she did that which
 " the misconduct of the 'Amazon' had alone
 " left in her the power to attempt with any
 " chance of safety, that is, to endeavour to pass
 " before the 'Amazon.'"

Now that is quite opposite to the conclusion at
 which the learned judge arrived in the present
 case. He says, "Now before the collision, the
 " 'Rallus' became aware that the 'Nuphar' was
 " under a starboard helm, and the question is a

“ what time and distance she so became aware,
“ and, looking to the evidence, we”—speaking
of the nautical assessors and himself—“ we
“ have no doubt she became aware in suffi-
“ cient time to slacken her speed or to have
“ stopped altogether, so as to prevent the
“ collision. I agree with the evidence of the
“ witnesses from the ‘Nuphar,’ that if the
“ ‘Rallus’ had stopped, there would have been
“ no collision. It appears to me that the vessels
“ were approaching so as to involve a risk of
“ collision, that the ‘Rallus’ was within the
“ 16th Article, and that she did not slacken her
“ speed.” His Lordship found that both vessels
were to blame; “ the ‘Nuphar’ for starboarding
“ her helm in the first instance, and the ‘Rallus
“ for not stopping her speed at a time when, if
“ she had done so, the collision would not have
“ taken place.”

Looking to the whole of the evidence,
their Lordships are of opinion that the
learned judge came to a correct conclusion as
to the facts of the case, and as to the law
applicable to it.

Under these circumstances, they will humbly
recommend Her Majesty in Council to affirm the
decision of the High Court of Admiralty, each
party (both being Appellants) to pay his own
costs of the Appeal.

