

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
The Peninsular and Oriental Steam Navigation Company v. Hippolite Legal and
another (The "Hindostan"), from the High
Court of Admiralty of England; delivered
Tuesday, 27th April 1875.*

Present:

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR HENRY S. KEATING.

THE question in this case is as to a collision which took place off the east coast of Ceylon, at or about two in the morning of the 24th of June 1873, between a steamer called "The Hindostan" and a French barque called the "Alcinous." Whether that collision was occasioned by the fault of the "Hindostan" or by the fault of the "Alcinous," or whether there was any contribution on the part of the "Alcinous" to the damage which she received upon that occasion. The learned Judge in the Court below was of opinion that the fault was entirely that of the "Hindostan," and that there was no such contributory negligence on the part of the barque "Alcinous" as to relieve the "Hindostan" from any amount of liability. Their Lordships agree in opinion with the learned Judge.

The "Hindostan" was a large vessel of upwards of 3,000 tons burden and 600 horse steam-power. The barque was a sailing barque of 345 tons, and was upon the occasion in question proceeding from the Mauritius to Pondicherry. She had gone round the southern

point of Ceylon, and was making her northward course towards her destination. The steamer was proceeding in the opposite direction, bound for England, and was going at the rate of 10 miles an hour south along the eastern coast of Ceylon. About a little after two in the morning of the 24th of June these two vessels came into collision. Their Lordships do not perceive that in this case there is upon the evidence any very great discrepancy between the testimony given by the witnesses on the one side and upon the other upon any points of very great importance. The case on the part of the "Alcinous" is that she was proceeding up the coast of Ceylon towards Pondicherry, with her lights exhibited, and that at two in the morning the captain was called up by the report of a white light being seen. Accordingly he went on deck and saw this white light, which beyond all doubt was the white light which the "Hindostan" carried at her masthead in pursuance of the regulations. The captain seems to have been under the impression that the white light was a shore light. In that his evidence seems to differ somewhat from that of his officers; but their Lordships think it immaterial to consider exactly the evidence given upon that subject, because they have no doubt that the white light was the white light at the masthead of the "Hindostan." They also entertain no doubt that when that white light was seen, the master, whether he supposed it, as he states, to have been a shore light, or, as his officer suggests it, to have been possibly a light upon some vessel at anchor, at once ported his helm and brought the head of the "Alcinous" into a course N.N.E. on the port tack. Having taken that course they proceeded upon it until they saw the other lights of the steamer, and having seen those lights they held their course until she got so close

that being on the port tack and seeing the steamer approaching, and a collision inevitable, they put the helm hard-a-weather to prevent the shock being so great as it otherwise would have been, when the two vessels came in contact.

Now the case made on the part of the "Hindostan" is this, that the "Alcinous" deviated from her course or ported her helm so as to take that N.N.E. course after she was sighted by the "Hindostan," and not before. That seeing the "Hindostan" she shifted her course by porting her helm and getting across the track of the "Hindostan," and thereby causing the collision. If that were so, of course the "Hindostan" would not be wholly to blame. But the way in which this evidence strikes their Lordships is this, that according to the testimony of those on board the steamer it would appear that the sailing vessel, the barque, was sighted from the steamer when she was a mile off. It is true that at that time the steamer could not immediately distinguish the lights on board the barque, although she carried them according to the regulations; but their Lordships are of opinion, agreeing with that expressed by the learned Judge in the Court below, that they ought to have known that she was a vessel going to the north, steering a northerly course; that she was upon the port tack; and as they could not see the lights, that they were bound, under the circumstances, as she was heading northward, to have slackened speed, or to have stopped to ascertain the real state of things. They did not do so. The fifth officer who was in charge ordered the helm to be starboarded. That, in the course the barque was taking, was clearly wrong; and it is admitted by Mr. Butt that if he had known the course the barque was taking he ought not to have starboarded his helm. But their Lordships consider that in the state of

things that appeared to him at that time, even if he could not ascertain the precise position of the barque, yet he saw sufficient to induce him to stop until that precise position was accurately ascertained. He did not do so, but gave orders to starboard the helm, and that was done. He then sent a report to the captain. The captain came up, and upon coming on deck found that the distance had been diminished from the mile at which the vessel had previously been sighted to about 400 or 500 yards, and he instantly gave the order to stop and reverse the engines. The red light of the barque it is true was then in sight, and it may be said in favour of the fifth officer that he could not see the red light at the time that he ordered the helm to be starboarded; but their Lordships think he was wrong in assuming that the barque was going so directly north that starboarding the helm in the way he did would have avoided the collision. The captain instantly took that course which, had it been taken at an earlier period, would undoubtedly have avoided this collision; and their Lordships see no reason why the steamer did not, when she sighted the barque, take the course subsequently adopted, and so have prevented the accident.

That is the view which the learned Judge below seems to have taken of this case, and in that their Lordships agree with him. There has been a good deal of criticism upon that part of the judgment in the Court below which refers to the evidence of a witness called Flores. The learned Judge says:—"There is a witness to
" whom I wish to draw attention, a witness
" of the name of Flores, who was the look-
" out on the starboard bow, and he told us
" that he saw the 'Alcinous' about a mile off,
" and he heard the report of the gong which
" struck one, and which is agreed to mean an

“ object on the starboard bow ; and he says that
“ he saw the fore-top-gallant sail and the topsail of
“ the ‘ Alcinous ;’ and the Elder Brethren of the
“ Trinity House point out to me that he must
“ therefore have known that the ‘ Alcinous ’ was
“ heading to the north, and that the vessels
“ were nearly crossing ships.” Now Mr. Butt’s
criticism upon that is, that the fact of being
advised that the “ Alcinous ” was heading to the
north was only being advised of that which is the
case for the “ Hindostan ” in the present in-
stance ; but their Lordships are of opinion that
what was meant there was that the “ Alcinous ”
was heading to the northward, not that she was
steering due north. What the Elder Brethren
of the Trinity House meant to indicate was that
she was heading to the northward, and that is
rendered clear by what follows :—“ and that the
vessels were nearly crossing ships.” Therefore,
in that state of things, the course adopted by
the officer of the watch was clearly an im-
proper course, and that course the learned
Judge was of opinion produced the collision, in
which opinion their Lordships agree with him.

Now the only point that suggested any doubt
in their Lordships’ mind was as to how far the
“ Alcinous ” might have contributed to the
accident. She could only have contributed to
the accident by having ported, not at the time
that her witnesses state she did port, but having
ported after she was sighted by the “ Hindostan ; ”
and had she ported at that time, as is the case on
the part of the “ Hindostan,” she might have con-
tributed to the accident ; but, for the reasons
already given, their Lordships think it is clear
that her head was put N.N.E. when she first
saw the white light, whatever she may have
supposed that white light to have been, and
that holding on that course she did not deviate
from that course until the collision became

imminent, when her deviation was for the purpose of lessening the violence of the inevitable shock.

Under these circumstances their Lordships will humbly advise Her Majesty to affirm the judgment of the Court below, with costs.