

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of the General Iron Screw Collier Company (Limited) and others v. Moss and others, from the High Court of Admiralty of England (ships "ARAXES" and "BLACK PRINCE"); delivered 2nd August, 1861.

Present:

LORD KINGSDOWN.

SIR EDWARD RYAN.

SIR JOHN T. COLERIDGE.

IN this case a collision took place on the night of the 8th November, 1860, off Cape St. Vincent, between two steam-ships, the "Araxes" and the "Black Prince." Cross actions were brought by the owners of the one vessel against the owners of the other in the Court of Admiralty. The learned Judge and the Trinity Masters were of opinion that the "Black Prince" was solely to blame, and pronounced sentence accordingly in the two actions.

From these sentences the owners of the "Black Prince" have appealed to Her Majesty in Council.

The sum at stake in the dispute is said to be very large, not less than 25,000*l.*, and principles of general importance are represented to be involved in our decision. As to some material facts there is no doubt.

The vessels are both British ships. The "Araxes" is much the larger vessel of the two, being of 786 tons register, while the "Black Prince" is only of 440 tons. Both are screw steamers. At the time when the vessels met, the "Araxes" was proceeding on a voyage from Liverpool to Gibraltar, and was steaming south- $\frac{1}{4}$ -west, at the rate of about eight

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knots an hour. The "Black Prince" was proceeding on a voyage from Gibraltar to London: her course was north, and her speed between eight and nine knots an hour.

The vessels descried the white lights of each other at a distance of several miles. When the vessels had approached very near, the "Araxes" put her helm hard a-port, and the "Black Prince" put hers hard a-starboard, and the collision took place by the port bow of the "Araxes" coming in contact with the starboard side of the "Black Prince" just before the funnel, and at a distance of about thirty feet from the stern, the blow slanting forwards. The effect was that the "Araxes" sustained some damage, but the "Black Prince" was so seriously injured that in about twenty minutes she sunk, her crew being saved on board the "Araxes."

These facts appear to their Lordships to be either admitted on each side, or established by evidence beyond the reach of controversy.

The decision below proceeded on the ground that the 296th section of the Merchant Shipping Act was applicable to the circumstances of this case; that the "Araxes" obeyed the directions of the statute, and the "Black Prince" disobeyed them, and that the collision was the consequence of such disobedience.

The great question for consideration is, whether the evidence makes out the state of things to which the statute applies the rule; in other words, "whether the one vessel proceeding in one direction met the other proceeding in another direction, so that if both ships had continued in their respective courses, they would have passed so near to each other as to involve any risk of collision."

It was contended by the "Black Prince" that there was no such risk; that the courses of the two vessels, though nearly opposite, were so wide apart from each other that by continuing to hold them the ships would have passed in perfect safety starboard to starboard; that the statute, therefore, was out of the question, and that, as a matter of seamanship, if there had been any possible risk of collision, it would have been avoided with greater ease by each vessel slightly starboarding, and so avoiding the danger of crossing the other's bows. She insists, therefore,

that the "Araxes," if she altered her course at all, ought to have starboarded instead of porting, and that by improperly porting she was the sole cause of the accident.

In support of this view of the case, she alleges that the mast-head and green light of the "Araxes" were seen from the "Black Prince" at a long distance off, four or five miles, and that such lights bore about three points on the starboard bow of the "Black Prince;" that when the two vessels were from a mile and a-half to two miles apart, the "Black Prince's" helm was slightly starboarded, and the white and green lights of the "Araxes" were then about three and a-half or four points on the "Black Prince's" starboard bow.

The statement on the part of the "Araxes" is that when she first saw the light of the "Black Prince," the white light only was visible; that instead of bearing three points on the starboard bow it was only half a point on the starboard bow; that the white light only being visible, the second mate then in charge of the watch was uncertain whether it belonged to a steamer, or to a sailing vessel, or to a fishing boat; that he immediately ordered his helm to be ported in order to show his red light to the stranger; that the light was thereby brought about three points on his port bow, and his helm was then steadied.

Now these statements differ essentially in two important particulars—the bearing of the vessels when the lights were first seen, and the lights which were then visible. If the bearing of the vessels was such as is described by the "Black Prince," there would, in their Lordships' opinion, have been no danger of collision if each vessel had held her course; on the other hand, they think that there would have been such danger if the account given by the "Araxes" be the true one.

Again, in judging of the propriety or impropriety of the manœuvre adopted by the "Araxes," of porting when she first saw the lights of the "Black Prince," it is material to know what light or lights she saw at that time. If she saw, or ought to have seen, the two lights, the white and green lights of the "Black Prince," she would have known that the ship approaching was a steamer on her starboard side, and might have been able to judge of the

course which she was steering. But if she could see, as she asserts, only the white light, she could have no knowledge upon these points, nor any certainty as to the distance of the vessel, whatever it might be, to which the light belonged. A manœuvre which, in one state of knowledge, might be wrong, might, in another, not only be justifiable, but one which she was bound to adopt.

Assuming the evidence on the part of the "Araxes" to be true, what is the result?

Seeing on a dark night, when proceeding at a considerable speed, a light half a point on her starboard bow, belonging to a vessel which she cannot make out, she ports her helm for the purpose of showing her red light to the stranger.

Now if a good look-out was kept on board of the "Black Prince," the red light of the "Araxes" must have been seen very long before there could be any risk of collision, and it must have been known to the "Black Prince" that the vessel meeting her was a steamer, and intended to pass her in the mode prescribed by the Regulations, viz., port side to port side.

She had abundant time to accommodate her own movements to what she saw to be the course of the "Araxes;" instead of doing this she starboards her helm slightly when the vessels were a mile and a-half or two miles apart, and when she might, without the slightest danger or difficulty, have ported.

The real question in the case, therefore, is, on which side does the truth lie, with respect to the different stories told by the two vessels.

The Court below has believed the witnesses for the "Araxes," and believing them has held that there was sufficient risk of collision if both parties continued their courses to make room for the application of the rule laid down by the Merchant Shipping Act. In order to reverse the Judgment we must be satisfied that it is founded on some mistake either on the law or the facts of the case.

It is useless to repeat the observations which we made in the case of the "Julia," referred to in the argument at the Bar.

In the present case we think not only that there was evidence to support the finding, but that the preponderance is on that side.

The account given by the "Black Prince" is, to say the least, not very probable.

She alleges "that, when the two vessels were from a mile and a-half to two miles apart, the 'Black Prince's' helm was slightly starboarded, and her head was brought to north $\frac{1}{2}$ -west, the green and masthead-lights of the other vessel being still visible, and about three and a-half or four points on the 'Black Prince's' starboard bow; that the 'Araxes,' instead of keeping her course, suddenly, when very broad on the 'Black Prince's' starboard bow, opened her red light," and came stem on, full speed, into the "Black Prince."

If this account be true, the "Araxes" must have wantonly changed her course, at a time and in circumstances when there could be no possible danger of collision, as if for the very purpose of inflicting on the "Black Prince" and incurring herself the danger which their contact would occasion.

Again, the account given by the "Black Prince" in her pleadings, as to the mode in which the lights of the "Araxes" were first seen, is different at different times.

In her petition, after describing the condition of her own lights and watch, she says "that, just at the time and under the circumstances before set forth, the mast-head and green light of a steamer were seen by the hands on deck, and were immediately reported, by the look-out on the bridge, to the officer in charge of the watch." She represents, therefore, both to have been seen at the same time.

But in her protest, made immediately after the accident on the 9th of November, the account given is very different. The representation there made by Troutbeck, the officer in charge of the watch, is that he saw a light, and could not at first make it out, as the weather was hazy, and he saw it at intervals, and did not know whether it was a star or the light of a ship; it was broad-on the starboard bow of the "Black Prince." Charles Garnish was on the look-out on the bridge, and he called out "a light on the starboard bow;" this was after he, Troutbeck, had discovered the light, as the light was broad-on the starboard bow of the "Black Prince."

He says nothing whatever about a green light.

In the same protest Garnish says that about midnight he saw a light, and about half-past 12 or a quarter to 1 he saw two lights.

The account in the protest, therefore, is not only irreconcilable with the statement in the petition, but it strongly confirms the statement of the "Araxes," that when the lights were first discovered, only the mast-head light of each ship was visible, and that it could not be made out to what sort of vessel, if to any, the light belonged.

This statement is confirmed by the preliminary act of the "Black Prince," in which it is said that the white light only of the "Araxes" was first seen, and that the green light became visible shortly after the white light was first seen, and the red light opened only just before the collision.

Again, with respect to her own manœuvres, the "Black Prince" in her petition alleges that when the vessels were from a mile and a-half to two miles apart, the "Black Prince's" helm was slightly starboarded, and her head was brought to north $\frac{1}{2}$ -west.

But the protest says nothing of this starboarding; on the contrary, Troutbeck says that he did not apprehend any danger, as the "Black Prince" was steering north by compass at the time, and he did not deem it at all necessary to alter her course.

The preliminary act is still more distinct.

To the question, What measures were taken, and when, to avoid a collision? The answer is, 'None, till the 'Araxes' ported her helm, as there was no chance of a collision, immediately whereupon the helm of the 'Black Prince' was put hard to starboard.'

It is impossible not to feel that these discrepancies in the accounts given at different times by the "Black Prince" affect the credit due to her story, and confirm, to some extent, the statement of the "Araxes."

Again, we have no evidence from the mate, who was the officer in charge of the watch of the "Black Prince," and if the affidavit produced be sufficient, according to the practice of the Court of Admiralty, to prevent any presumption against that ship being drawn from his absence, still it cannot, of course, supply the want of his testimony.

It was said that if the "Araxes" had ported her helm, as she alleges she did, when she first saw the

light of the "Black Prince," she must have shown her red light to that vessel, but that no such light was seen on board the "Black Prince" till the "Araxes" had put her helm hard a-port, almost immediately before the collision.

But on examining the evidence given by the "Black Prince" it is clear that she had no proper look-out. Berry and Burgess, who should have been on the two bows, were neither of them at his post. One was sitting on the ladder near the main hatches, smoking his pipe when the light was first reported, and after going forward to see it, he returned and sat down on the ladder, and the other was standing astern of the long-boat, the stern of which was thirty feet abaft the foremast.

The circumstance that the crew of the "Araxes" do not speak to seeing the red light of the "Black Prince" when they first ported, may, perhaps be explained by the circumstance that the "Black Prince" had starboarded before her red light was visible.

We think, therefore, that the Court below was warranted in the conclusion at which it has arrived, both as to the law and the facts.

It was argued that as it is admitted that each vessel saw the light of the other on the starboard bow, however slightly, a collision would equally have been avoided if both vessels had starboarded, and that there would in such case have been less risk of their coming into contact.

This may be so, and we believe that many nautical men of great skill and experience are of opinion that the clause in the Act of Parliament upon this subject might be modified with advantage. But as long as it remains law it is essential that it should be universally observed. If one obeys, and another does not, the utmost confusion and danger will be introduced. A vessel who obeys the rule has a right to trust that the vessel which she meets, if a British vessel, will obey it too, and she acts accordingly.

There is one peculiarity in this case to which it is necessary that we should advert. It was strongly urged by the Counsel for the Appellant that it appeared by the short-hand writers' note of what took place during the hearing and the report of the summing up by the learned Judge to the Trinity Masters,

that the case of the "Black Prince" and the effect of the evidence had been entirely misunderstood by the Court below. It certainly does appear to their Lordships that some material mistakes as to particular facts were fallen into in the course of the proceedings; a circumstance which, judging from their experience in the Appellate Court, is of extreme rarity in the Court of Admiralty, but which from the infirmity of human nature must sometimes occur with the very ablest and most careful Judge. Something no doubt must be detracted on this ground from the authority of the decision.

It has induced their Lordships to examine the evidence with the greatest care, and in explaining their view of its effect to go more into detail than they should otherwise have thought necessary. They are satisfied on the whole that the substance of the case, and the points on which it depends, were properly understood and justly decided in the Court below.

Upon the whole, therefore, they must advise the affirmance of the sentence in both suits. Though they cannot but consider this case as one open to serious doubt, that circumstance would not be of itself a sufficient reason for departing from the rule that the costs should follow the result. But the Appellants may have been not unreasonably led, by the inaccuracies to which allusion has been made, to think that their case had not been properly understood below, and have therefore been justified in requiring that a further examination should take place before another Tribunal.

Upon these grounds their Lordships will advise that no costs should be given of the Appeal.
