

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of John Bacon v. John Dunkeld and another (The "Jane Bacon,") from the High Court of Admiralty; delivered 16th February 1872.

Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS is a case of collision in which the "Chloe" was the Plaintiff and the "Jane Bacon," the Defendant. The "Chloe" is a small steamer of 46 tons and about 50 feet in length, the "Jane Bacon" is a larger steamer of 470 tons and of a proportionate length. The two steamers came into collision about a mile and a half from St. Bees' Head. The "Jane Bacon" was on her way out of Whitehaven, the "Chloe" was on her voyage northward. The courses of the vessels are described accurately enough for the present purpose in the preliminary acts. The "Chloe" is said to have been going about north by west, and the "Jane Bacon" south-west half west. The speed of the "Chloe" appears to have been about five knots an hour, and of the other vessel about double that.

Under these circumstances it is quite clear, indeed, it was admitted, that Article 13 of the Regulation, which applies to ships under steam meeting end on or nearly end on, does not apply, but that Articles 14 and 18 do apply. Article 14 is in these terms:—"If two ships under steam
" are crossing so as to involve risk of collision,
" the ship which has the other on her own
" starboard side shall keep out of the way of
" the other." Article 18 says:—"Where by

“ the above rules one of two ships is to keep out
“ of the way, the other shall keep her course
“ subject to the qualifications contained in the
“ following Article,” which relates to cases of
immediate danger, and dangers of navigation.

The duty, therefore, of these two vessels was clear. It was the duty of the “Chloe” which had the “Jane Bacon” on her starboard side to keep out of the way of the “Jane Bacon,” and it was the duty of the “Jane Bacon” to keep her course.

Their Lordships are of opinion that it has been shown that there was negligence on the part of the “Jane Bacon.” The “Jane Bacon” did not keep her course, that is admitted; but she ported her helm. It is said that she only ported her helm when a collision became imminent, and therefore such porting would be justified by the excepted case of immediate danger. But that does not appear to be the case set up on the part of the captain of the “Jane Bacon,” who, not justifying the porting of his helm on the plea of immediate danger, justifies it entirely on the 13th Rule, which applies to two ships under steam meeting end on or nearly end on, and obviously does not apply in this case where the two vessels were not meeting end on but were crossing each other.

Their Lordships think that upon the whole of the evidence, which, no doubt, is very conflicting, it must be taken that the porting of the helm of the “Jane Bacon” and the altering of her course took place probably when she was distant from a quarter of a mile to half a mile from the “Chloe.” The master in his first examination states the distance to have been a quarter of a mile, and subsequently half a mile; and their Lordships think that that porting of the helm and changing the course of the “Chloe” is not referable to any sense of immediate danger, but to the mistake of the captain as to the rule which applied.

Under these circumstances their Lordships think that there was negligence on the part of

the "Jane Bacon" which contributed to the accident; indeed it would appear tolerably certain that if the "Jane Bacon" had not ported her helm, the collision would have been avoided.

The next question to which their Lordships attention has been directed is, whether or not there was contributory negligence on the part of the "Chloe"? Their Lordships do not think it necessary, any more than did the Court below, to determine whether or not there were lights on board the "Chloe;" but their Lordships agree with the Court below that there was an insufficient look-out. There was only one man at the wheel for some time before the collision. He appears to have been the only man on deck. According to his account, the "Jane Bacon" was seen by him at a considerable distance, a mile or a mile and a half. He says, when he saw her first he saw all three lights, indicating that she was coming almost in a straight line towards the "Chloe." He says, that for some considerable time he continued to see these three lights, the only inference from which, if it be true, would be that the "Jane Bacon" was porting her helm, and that she was taking a course to the northward with the intention of passing ahead of the "Chloe." If that account be true, considering that it was the duty of the "Chloe" to keep out of the way of the "Jane Bacon," the "Chloe" ought not, as she confessedly did, to have continued her course, but she ought to have taken some measures to keep out of the way. If she had stopped and reversed her engines, or if she had ported, or if, probably, she had starboarded before she did, she would have done this; as it was she continued her course and did nothing except starboard her helm at the very last moment.

Assuming therefore this account to be correct, their Lordships think that there was evidence of contributory negligence on the part of the "Chloe." But if it be not correct, (and their Lordships are by no means sure that it is,—in fact there are some portions of the preliminary acts

and the petition and evidence which would tend to show that it is not,) their Lordships think that still the "Chloe" cannot be acquitted of negligence, for assuming as we have that the "Jane Bacon" ported her helm at some considerable distance, say a quarter or half a mile, from the place of the collision, then either the "Chloe" saw that the "Jane Bacon" was taking this course or she did not. If she saw this, it was her duty to avoid the collision, which was imminent and inevitable if she continued in the course she was then taking. If she did not see the course which the "Jane Bacon" was taking, then there must have been an insufficient look-out on the part of the "Chloe." Under either of these sets of circumstances it appears to their Lordships that the "Chloe" cannot be acquitted of negligence which contributed to the accident.

Under these circumstances, their Lordships will humbly advise Her Majesty that the Judgment of the Court of Admiralty should be so far varied as to decree that both vessels under the circumstances were in fault.

Each party will pay their own costs of this Appeal.