

*Judgement of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Scicluna and another v. Stevenson (ship "Rhondla"), from the Vice-Admiralty Court of Malta; delivered, June 5th, 1883.*

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Present:

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

SIR JAMES HANNEN.

SIR RICHARD COUCH.

SIR ARTHUR HOBHOUSE.

THE first question to be considered in this case is whether or not the Strait of Messina is a narrow channel, which makes it the duty of a vessel passing along it to keep to its own starboard side. Their Lordships do not propose to define what is a narrow channel, or to lay down what particular width or length will constitute it. It is sufficient to say that they are of opinion that this is a narrow channel within the meaning of Article 21 of the Regulations for preventing Collisions at Sea allowed by Her Majesty in Council on the 18th March 1880, and that they concur in the opinion which the learned Judge in the Court below has expressed upon that point.

It has not been suggested that there were any circumstances which would excuse the departure from the rule if it be applicable. But the contention in the Court below was that there had not been an infringement. The whole case evidently proceeded upon a consciousness on the part of those on board the "Alsace-Lorraine," that, to establish that they were not to blame, they had to prove that she was keeping along the

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Calabrian coast; but their Lordships concur with the learned Judge of the Court in Malta, that this contention has not been established, and that the evidence is really overwhelming that the course of the "Alsace-Lorraine" was along the Sicilian shore, and therefore that she infringed the rule contained in Article 21, without which infringement on her part the accident could not have happened. It follows, therefore, that the onus is upon the "Alsace-Lorraine" to prove that those on board the "Rhondda" were wholly or partly to blame.

It was contended on behalf of the Appellants that if the "Rhondda" had kept a good look-out she ought to have seen the "Alsace-Lorraine" sooner than she did, and that if she had done so the accident might have been avoided; and they complain that the learned Judge in the Court below did not deal with this point; but it does not appear that it was ever insisted upon in the Court below. If the Appellants had intended to raise that point, questions should have been put, and an opportunity given at the trial to the opposite party to remove any doubt, if any doubt existed upon the subject. Their Lordships are of opinion that the fact that the "Alsace-Lorraine" was not seen by the "Rhondda" across the neck of land to the west of Faro may be dismissed from consideration, as it is probable that when the "Alsace-Lorraine" had passed over from Pezzo Point to Sicily and was close under the shore it would be impossible that its lights should be seen by the "Rhondda." It is, however, admitted that the "Rhondda" did not see the "Alsace-Lorraine" until she herself had rounded or was round—the phrases differ—the Faro Point; and the question is whether there was negligence on her part in this respect.

Questions have arisen as to the exact position

of the two vessels at the time when they first saw one another. Both the captain and the man at the helm of the "Rhondda" speak of the white light of the "Alsace-Lorraine" being mixed with the lights of Messina; and if a line be drawn from some point of that considerable tract which may be included in the general name of Messina, (there may be lights along a considerable extent of coast, and we do not know what particular lights they refer to,) that would bring the "Rhondda" to a point somewhat to the north-west of the position in which she is roughly indicated to be by the drawing upon the chart. That however, is so entirely out of any proportion that it affords but a very uncertain guide. There can be no doubt that the "Rhondda" was coming round under a port helm, otherwise she could not have got into the position in which the witnesses for the "Alsace-Lorraine" allege she was; and, assuming her to be on a line drawn from Messina past the coast and beyond Capo di Faro at half a mile outside the Faro light, as it is said she was, and putting the "Alsace-Lorraine" at the same distance, not exceeding half a mile, on the other side, it would make them a mile distant at the time when they first sighted one another. That distance would not be traversed in a straight line, and therefore it would give more than a mile to be travelled, but, extending it even to a mile and a half, it does not give a space which would take any very considerable time for these vessels to cover, having regard to the speed at which they were going, one of them at the rate of nine miles an hour and the other six. Now here is the positive statement of the captain of the "Rhondda," supported by the evidence of the helmsman and of the chief mate, that, as soon as the "Alsace-Lorraine" was seen emerging from the

Faro Point, the process of porting the helm of the "Rhondda" was ordered, and was carried out. The explanation given by Stevenson, the captain, is contained in these words: He says, "She appeared to be coming out from the land, as she was too close to the land of Sicily." Silly, the helmsman, is asked, "How was it you did not see the other steamer's lights before?" —(A.) Because, I suppose, she was steaming very close to the Sicily coast. We did not see her lights before we rounded the Faro Point." That is the evidence given by them, which was accepted by the learned Judge below. He found that as soon as the "Alsace-Lorraine" became visible to the "Rhondda" the order to port the helm was given, and that it was carried out; and their Lordships are not in a position to hold that he arrived at an incorrect conclusion.

Now if that was the order given, and if that order was so carried out, was it a wrong manœuvre? It was not suggested in the Court below that it was a wrong manœuvre. The case presented and maintained by Lelièvre was that the accident happened because the "Rhondda" did not continue to port her helm. That is his contention. He says that she was under a port helm; that she ought to have continued so; and that if she had been so, there would have been no accident.

Now, in answer to the questions which were put to the experts, and which form part of the record, they say, in the state of things which existed, or appeared to exist, when the "Rhondda" saw the "Alsace-Lorraine" coming out from the Faro Point and showing her red light, it was the duty of the "Rhondda" to keep out of the way; and that, of course, is obvious under the rule. They further say that there was time to do it. So, no doubt, there would have been unless some obstacle had

arisen. Further they say that she might have reversed in three minutes and in the distance of a mile. That will be dealt with presently. Then they say that at the time when she discovered, if it be true that she did discover, that she was not obeying her helm, it would have been impossible for the collision to be avoided by the "Rhondda" going round to her own port side; but that it was the duty of the "Rhondda," when a risk of collision arose, to slacken or stop and reverse. The contention on the part of the "Rhondda" is that this is precisely what she did; and their Lordships are of opinion that this is established.

The next question is whether or not the "Rhondda" failed by her own fault to keep out of the way of the "Alsace-Lorraine" under the 16th Article; and that, no doubt, was the substantial question as to the conduct of the "Rhondda" which was contested in the Court below. Lelièvre says: "As soon as the 'Rhondda' saw our manoeuvre she ought to have starboarded, that is, gone to the starboard and passed astern. If the 'Rhondda' had continued her way without deviation she would have avoided the 'Alsace-Lorraine,' but she made a movement to port, and that caused the collision." He goes so far as to say, that not merely was there a cessation to keep the course round, but that she actually went the other way, which might be the effect of the current, if in fact it was strong enough to push her in that direction. The evidence of Stevenson, Silly, Bray, and Hookey shows that the order to hard-a-port was given, and that no other order was given, but that, in fact, it did not take effect. Now, if that evidence is to be relied upon, —and the learned Judge had the opportunity of seeing these witnesses and hearing the manner in which they gave their evidence, and their Lord-

ships cannot say that he was not justified in believing their evidence,—that disposes of the case; because if once it is established that the order to port was given, and that if it had been carried out it would have taken the “Rhondda” clear of the “Alsace-Lorraine,” then, if the “Rhondda” was prevented from carrying out that manœuvre, it becomes merely an interesting speculation what the actual cause was. Undoubtedly it was strongly in evidence that there was such a stream at this place, whether it be called current or eddy, and that it was calculated to have an effect in the manner suggested on a vessel coming round into the neck of the channel. It is easy to conceive, when one looks at the conformation of the coast, that this current would be deflected by the Faro Point, and would be felt upon the starboard bow of a vessel precisely at the point where the “Rhondda” had arrived. There is the statement that this did take place. If it be the fact that it took place, which must depend, of course, upon the veracity of these witnesses, it remains only for the experts to reconcile their theory with the fact, and the fact cannot be displaced by their theory. Their Lordships are of opinion that there was abundant evidence in support of the conclusion the Court did arrive at, that there was a current or eddy which had the effect on the action of their vessel alleged by the witnesses on board the “Rhondda.”

But it is further contended that precautions ought to have been taken by the “Rhondda” to avoid this current, or whatever it is to be called, because it is found noted in the charts, and must be taken to be a thing that persons navigating this channel ought to have in their contemplation. But there is nothing to show that, under ordinary circumstances, there would be any risk in a vessel coming round there. The current and the eddy

are variable. Nobody can tell for certain that they will be felt at a particular place; and, above all, the "Rhondda" had no reason to anticipate that the operation of the current or eddy would have any bearing upon her duty with reference to the "Alsace-Lorraine," because she had a right to expect that the coast would be clear from steamers coming out in the direction in which the "Alsace-Lorraine" was.

Then, further, it is said that, at any rate, she violated her duty in not reversing her engines sooner. The vessels were about a mile apart from one another when first sighted. As they were meeting, she would not have so much as a mile to go to come to the point of collision. Her engines were reversed, which it appears would take from two to three minutes. It appears that they had already been completely reversed, so that 12 revolutions had been taken at full speed astern, and therefore that shows that for a very considerable portion of the time we are now dealing with the order had been given to reverse her engines, and that this order had been complied with, since her engines were actually going astern at the time of the collision. Then, if this be so, all the time that has to be accounted for is the short period between seeing the "Alsace-Lorraine" and the order being given that the engines should be reversed. The reason given for its not having been done sooner is, that it was not until the captain found that the vessel was not obeying her helm that he became aware of the necessity of taking this step of reversing the engines. Their Lordships are of opinion that if that was the fact, as they, with the learned Judge below, come to the conclusion that it was, then no blame can be imputed to the captain of the "Rhondda" for not having stopped and reversed sooner.

Upon this point, the case of *The Khedive* has

been referred to; but it will be found that it is not applicable to the present case. By that decision the wholesome rule was laid down that where one of these regulations has prescribed something to be done, the captain of a vessel who departs from it will not be justified merely by its being thought that a man of ordinary skill and nerve would do as he did; if he sees there is danger of collision, then it is his duty to obey the rule. In that case it was thought to be clear that the captain did see there was danger of collision, and therefore that he could not be excused for not having obeyed the rule. But Lord Blackburn points to the state of facts which, as had been found by the learned Judge below and their Lordships also found, existed in this case, for he says: "I think, farther, that where a sudden change of circumstances takes place which brings a regulation into operation, though the thing prescribed by the regulation is not done by the person in charge, yet the regulation can hardly be said to be infringed by him till he knows or ought to have known, and but for his negligence would have known, of the change of circumstances." (5 Appeal Cases, 894.) Lord Watson says, to the same effect:—"Had it been possible to hold upon the evidence that the period in question was so brief, and the 'Voorwart's' sudden change of course so startling, that the captain could not be fairly expected to suppose, and did not believe the fact, that a collision was imminent before he gave the order to stop and reverse, I should in that case have acquitted the 'Khedive' of fault, on the ground that the 16th Article could not reasonably be held to apply before the moment at which it was actually obeyed." That is the state of facts which their Lordships are of opinion existed here. The captain gave



the order to hard-a-port. If the ship had obeyed her helm she would have been taken clear, and no collision would have taken place. It was only when the captain discovered that his vessel was not obeying her helm that the risk of collision appeared to him, and it was only then that it became his duty to stop and reverse; and that is precisely what he says he did, and what the fact of the engines being already working in the opposite direction when the collision took place proves he had done at a period of two or three minutes before the collision took place.

With regard to the case of "The Earl of Elgin" [4 Privy Council Appeals], the marginal note very plainly shows that it is in no way an authority against the view that has been presented in this case: "Article 16 of the Admiralty Regulations for preventing collisions at sea only applies when there is a continuous approaching of two steamships. When two ships under steam 'are meeting end on or nearly end on, so as to involve risk of collision,' as provided for in Article 13, and one of them at a proper distance ports her helm sufficiently to put her on a course which will carry her clear of the other, and enable her to pass on the port side, she thereby determines the risk, and is not approaching another ship so as to involve risk of collision within the meaning of Article 16, and is not bound to slacken speed or stop." Applying that ruling to this case, when the "Rhondda's" helm was put hard-a-port, that manœuvre, if it had been successful, would have put her on such a course as would have determined the risk, and therefore the duty of slackening speed did not arise. It only arose when it was discovered that this manœuvre could not be carried out.

Adopting this view of the case, it becomes immaterial to consider the other measures of

the "Alsace-Lorraine" which were taken after her sighting of the "Rhondda;" because their Lordships are of opinion that it is established that the "Alsace-Lorraine," by proceeding along the wrong side of the channel and coming out suddenly from under the land on that side, occasioned the collision which afterwards happened, and that she has failed to establish that the "Rhondda," by anything she did, contributed to it, or could in any way have avoided it, but that she was prevented from doing that which would have avoided the collision by the action of the current or eddy upon her in the manner which has been described by the several witnesses.

Their Lordships are, therefore, of opinion that this Appeal should be dismissed, with costs; and they will humbly advise Her Majesty to that effect.