

THE NOR

Privy Council

Sir James Colvile, Sir R. Phillimore, Sir Barnes Peacock, Sir Montague Smith and Sir Robert Collier.

20 March 1874

Shipping — ships on collision courses — duty to give way.

Shipping — contributory negligence — "agony of the collision."

A collision occurred at night between the Nor and the Asturias. The masters and owners instituted cross causes claiming damages. The judge of the Vice-Admiralty Court found the Asturias alone to blame.

Held: (i) The Asturias, having the Nor on her starboard side, had the duty to keep out of her way and if necessary to slacken speed or stop and reverse.

(ii) The Nor, placed in a dilemma by the conduct of the Asturias, could not be blamed if, in the agony of the collision, she had erred in porting, her previous conduct being correct.

Appeal

This was an appeal from the decision of the Vice-Admiralty Court in cross actions for damages arising out of the collision.

Butt, Q.C., and Clarkson for the appellants.

Milward, Q.C. and Webster for the respondents.

Sir R. Phillimore: This is an appeal from the Vice-Admiralty Court of Gibraltar. It was a case of collision between two screw steam-ships, a Spanish screw steam-ship, the Asturias of 272 tons, with engines of 110 horse power and a crew of 22 hands, and a Norwegian screw-steam ship of 760 tons and 130 horse power. The collision took place on the 31st March, shortly after two o'clock in the morning, abreast of Marbella, on the coast of Spain, fourteen miles distant. The course of the Asturias, that is, the true course, at this time was north-east, and the course of the Nor was west by south half south. The speed that they were going at was about eight knots each.

The nature of the damage which was inflicted was that the Nor struck with her stem and port bow the Asturias amidships on the starboard side, what would appear to be somewhat of a slanting blow. The distance is variously stated, but the Asturias says that she saw the red light of the Nor at a mile and a half distance, and the Nor says that she saw the white and the green light of the Asturias at between three and four miles distance. The state of the weather appears to have been cloudy, but on the whole fine. The judge of the court below found that the Asturias was alone to blame.

Now, these vessels were crossing vessels, and the rules applicable to them are: the 14th, "If two vessels 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;" the 16th,—"Every steamship when approaching another ship so as to involve risk of collision shall slacken her speed, or if necessary, stop and reverse;" and the 19th, which is always applied in these cases, which says, that "regard is to be had to special circumstances which may render it necessary not to obey the rule." Now, there is no doubt at all, nor has it been disputed for a moment, that it was the duty of the Asturias in these circumstances to keep out of the way of the Nor, and it was the duty of the Nor to keep her course.

It has been much argued before their Lordships that the judge miscarried in his sentence in the court below, mistaking the application of the rule which I have read, enjoining the vessel which has the other on her starboard hand to keep out of the way, by putting upon it a limited and rigid construction, that keeping out of the way must mean in all cases porting. But their Lordships are by no means inclined to put that construction on the learned judge's language. There is no doubt that he thought that in this particular case, and in these particular circumstances, porting was the right course, and he probably knew perfectly well that keeping out of the way might be by stopping, or by going ahead, or by starboarding, or by porting, or by going astern, as the circumstances of the case might require. The conclusion at which he did arrive was, that the circumstances of this case did require, and that skilful seamanship did require, that the getting out of the way should be effected by the porting and not by the starboarding of the helm.

Now, what happened was this, the Asturias says that she observed a red light three points on her starboard bow at about half a mile distance, and that she did nothing for a short time; that then she saw the white light, which she says was a very obscure light, when she was distant from her about three quarters of a mile; that then she starboarded, and that then in about a minute and a half from that time she hard starboarded, and that the collision took place in the way which I have mentioned.

The version of the story which was given by the Nor is to this effect, that she saw the masthead light and the green light of the Asturias approaching her about two points on her port bow and at a distance of from three to four miles; that she kept her course unaltered expecting that the steamer, the Asturias, would port her helm and show her red light, and that it was not

until she saw the hull of the Asturias that she varied her course by porting, and that she went off under the influence of her port helm ten points. The Asturias says that she went off under the influence of her starboard helm four points.

Now, two questions have to be decided by their Lordships, as indeed they had to be decided by the court below—one is, did the Asturias adopt the right manoeuvre for getting out of the way by starboarding as she did in this case? and the other is, did the Nor cause or did she contribute to the collision by porting? In the court below a great discussion took place upon the question whether the Nor did or did not carry proper lights; and after that question had been sifted and examined closely by the court below, it came to the conclusion that the Nor did carry proper lights, and that those lights ought to have been visible at the usual distance. Their Lordships see no reason whatever to differ from the conclusion at which the learned judge arrived on this point; and the consequences of it in the application of the law to this case are not unimportant, because their Lordships are of opinion that the Asturias ought to have seen the white light when she saw the Nor's red light, and, indeed, before she saw the Nor's red light. It is an admitted fact in the case that she did not see the white light at all until she was within three quarters of a mile. In the first instance she did not see it at all, and the inevitable consequence appears to their Lordships to be that the Asturias could not have had a good look-out.

The next question which their Lordships have to consider is, when the Asturias saw the red light what is the course which she ought to have pursued? Their Lordships, after conference with the nautical gentlemen who have given their assistance to the court on this occasion, are of opinion that her duty was then to have slackened her speed and to have waited and ascertained the character of the vessel which was then approaching and the course which she was pursuing.

Another question upon which their Lordships have had the benefit of the advice of the nautical assessors is this—when the Asturias admits that she saw the white light of the Nor, that is, when she was three quarters of a mile and four minutes distance from her, did she or did she not execute a right manoeuvre in starboarding and afterwards hard starboarding, or was it her duty to have ported? The nautical gentlemen by whom the court are assisted are most clearly of opinion that it was her duty at that time to have ported, and that she did not exercise a proper discretion in starboarding her helm, and by that means endeavouring to get out of the way of the Nor. Here I may mention that their Lordships are of opinion, under the same advice, that the Asturias' account of her starboarding cannot be correct; that if she has starboarded at the time she mentioned she would have gone off more than four points, probably eight points, and, therefore, that her version of the time when she executed the manoeuvre of starboarding cannot be relied upon.

The next question which arises is this—was the Nor to blame, and did she contribute, in the legal sense of contributing, to the collision by doing what unquestionably she did do, namely, hard aporting her helm so as to go off ten points? Now it is to be observed that the conduct of the Asturias had put the Nor into a great dilemma, and it would be in their Lordships' opinion a very harsh construction of the law to say that even if at this moment, of what may be called the agony of the collision, just before the collision, she had erred in porting, she would be liable for that mistake; and it is also to be observed that at the time when she ported, the Nor stopped and reversed simultaneously; but in fact their Lordships are of opinion that the Nor was well founded in thinking that she had a right to expect that even at that time the Asturias would port her helm, because in the opinion of their Lordships, assisted by that of the nautical gentlemen who attend upon this occasion, that would have been the proper manoeuvre in the case. Their Lordships have further to observe that the Asturias ought not to have kept on at full speed after the time when she admits she saw the white light, but ought to have stopped and reversed.

For these reasons, without going into any detail of the evidence, which would be quite unnecessary at the present time, their Lordships are of opinion that the decision of the court below ought not to be disturbed but ought to be affirmed, namely, that the damage in this case was caused by the wrong navigation of the Asturias, and that what was done by the Nor in no way caused or contributed to this collision.

Their Lordships will therefore humbly advise Her Majesty to affirm the sentence of the court below with the usual costs.