ARUMUKHAM *et al. v.* THE BRITISH INDIA STEAM NAVIGATION COMPANY.

Re *ss. Chanda.*

Shipping—Sailing rules—Collision between steamer and sailing vessel—Fault of sailing vessel—Damages.

A schooner sailing in a direction of north-west by west sighted a white light on the port bow, which she mistook for the light of the Tuticorin lighthouse, and she made towards it. A few minutes afterward, noticing a red light, she concluded that a steamer was ahead, and put up a white light, porting her helm at the same time, which necessarily brought her across the course of the steamer.

The white light exhibited in the sailing vessel was observed in the steamer for a second or two and disappeared. The steamer held her course believing that the sailing vessel was pursuing a course parallel to hers, and that she would keep on in that course. In a few minutes the vessels collided and the schooner sank.

Held, that the schooner was materially in fault, and that if the steamer had left it to the last moment to take the proper measures for getting out of the way of the schooner, and had not acted with all the promptness which might have been expected under the circumstances, she too would have been in fault and liable to pay one-half of the damages caused.

But as the schooner did not carry the red and the green lights on her port and starboard sides, but held up a white light with as little prominence as possible, so that the steamer could not ascertain expeditiously what course the sailing vessel was taking, nor could get out of her course in due time, no fault could be attributed to the steamer upon which she can be made answerable for even half the damages sued for.

THIS action was raised before the Vice-Admiralty Court of the Island by the owners of a schooner called *Arumukham Sundaram* for the purpose of recovering compensation from the British India Steam Navigation Company, as owners of the ss. *Chanda*, for the loss of the schooner aforesaid, through being sunk after collision with the steamer, in consequence, it was alleged, of the negligence of the latter.

At the trial *Samuel Grenier* appeared for plaintiffs.

James van Langenberg (with him *R. Morgan*), for the defendants.

After evidence heard, the learned Judge, Sir JOHN BUDD PHEAR, reserved judgment.

On 15th October, 1878, he delivered judgment as follows :—

Notwithstanding the difficulty which was experienced at the trial on Saturday in effecting satisfactory translations of the evidence of the witnesses, I still think that the principal facts of the case are very clearly made out—much more so, indeed, than is usually the case in suits of this character. The foundation of

the suit itself—namely, the collision between the two vessels and the loss of the *Arumukham Sundaram*—is beyond all dispute, and both sides pretty well agree in their account of the material facts of the occurrence. According to Abbas, the chief witness for the plaintiffs, those on board the schooner, about an hour after changing watch at midnight, sighted a white light about two miles right ahead of them. At first they took it to be the light of the Tuticorin lighthouse, and under this impression for a time they made towards it. When first discovered it was seen on the port bow. Five or six minutes afterward a red light was seen, and the witness immediately concluded that there was a steamer ahead. Then, according to his account, the course of the steamer was slightly altered by porting the helm. The red light continued to be seen on the port side until the collision took place. As soon as (four or five minutes after seeing the red light) Abbas perceived that there would be a collision, he called out again. The steamer struck the schooner nearly stem on, just abaft the main rigging. This witness (as well as all the others) says that as soon as the red light of the steamer was seen, the schooner put up a white light on the forestay. He also says that he never saw the hull of the steamer until he had perceived the red light. According to Cunjee Ahamadu Pulle, the man who was at that time at the wheel of the schooner, it was a quarter of an hour after Abbas first called out that he saw any light at all. This was a white light on the schooner's port bow. About ten minutes afterward he saw a red light in addition to the white light on the port bow. The light remained the whole time on the port bow, only it kept coming closer and closer. Next he saw the hull of the steamer. This was about ten minutes after he first perceived the red light, and then, he said, he ported his helm with the effect of changing the course of the schooner about two points, bringing her into a course heading north-west. At that time the steamer was, by his reckoning, about 150 fathoms off, and the collision almost immediately afterwards took place.

Now, if this account be accepted, the course of the schooner may be thus summarized. She was first sailing in a direction of north-west by west, but on the appearance of the white light, it being mistaken for a fixed light on shore, she made for it, perhaps without noticing the compass, and on the natural assumption that no change was made in the actual course of the schooner. Nevertheless, as the light she aimed at was moving instead of being fixed, the course the steamer was steering naturally changed with it. The witnesses, however, may be quite honest when they say that the schooner did not change her course. When they saw

the red light they were certainly within the red quadrant of the steamer. Whether the red light was seen in fact on the port bow first or on the starboard bow first is comparatively immaterial under these circumstances, because by the witnesses' own account the schooner was at that time making as straight as she could for the steamer, and therefore the angle could not have been very great one way or the other which the direction of the schooner's course was making with that of the steamer. And then the schooner ported her helm, which necessarily, as indeed it was intended to do, brought her across the course of the steamer; and at this point it is important to bear in mind that by the account of plaintiffs' witnesses the white light was put up.

If we now turn to the evidence which Mr. Emery gives of the occurrence, we find him saying that he first saw the vessel under sail about two points on the starboard bow, apparently then about a mile from the steamer. But there was no light. He watched the schooner for two or three minutes from the middle of the starboard side of the bridge, and observed that it did not sensibly change its position. While he was so observing it, a white light was exhibited by the schooner, which after a second or two disappeared, and with it the schooner also. Mr. Emery tried to make out the schooner, notwithstanding that the light was gone, with the aid of binoculars, but could not detect it. He was not near enough to see her actual course, and he inferred that it must have been approximately parallel with that of the steamer. As a matter of fact, it has been seen that, if the schooner's own account of the matter be taken, she was then making straight for the steamer, and so Mr. Emery was not far wrong in the inference which he drew. He assumed that the vessel, whatever she was, and whatever her course might be, would keep on in the course which she then was upon; and this he had a right to do, because the schooner was bound by law, with a certain exception that I may possibly presently allude to, to keep the course she was on, and to leave it to the steamer to get out of her way. For this purpose Mr. Emery starboarded his helm, and this also undoubtedly he had a perfect right to do, provided he succeeded in that way in avoiding the schooner. But unluckily the assumption of Mr. Emery was falsified by two circumstances. The first was that the inference, that the schooner was pursuing a certain definite course not remote from parallelism with his own was ill-founded. She was pursuing a varying course—a course varying with his own position, but such in effect as rendered her relatively fixed for the few moments he was observing her, and therefore justifying his inference. The second circumstance is

that at the time Mr. Emery was drawing this inference and acting upon it, the schooner changed her course designedly by porting her helm and going across his bows. Just after this time the light re-appeared again, and then it was almost immediately under the steamer's bows. He ported his helm—the best thing probably he could do—but it was too late to avoid the collision that immediately ensued. The manœuvre probably had the effect, however, of putting the colliding point further aft than it would otherwise have been.

In the view which I have thus taken of the facts—a view in regard to which I have no hesitation at all upon the evidence before me—it is plain that the schooner was materially in fault in this matter, and that therefore it follows that at best she could only recover from the steamer one-half of the damage caused.

But I further think upon these facts that the steamer was not in fault. In the case of the *Velasquez*, which is reported in the *Law Reports, 1 Privy Council 494*, a question of this kind, almost precisely the same in its circumstances as the question arising in the present case, was considered and determined. The material parts of the judgment delivered by Sir James Colvile in that case are as follows :—

This is an appeal on the part of the owners of the Spanish steamer *Velasquez* against the sentence or decree of the High Court of Admiralty, which has pronounced that that vessel was in fault in running down the late barque called *The Star of Ceylon*, and has condemned the appellants and their bail in the damages proceeded for, and costs of suit.

The conflict of evidence is far less than generally occurs in cases of collision. The undisputed facts of the case are : that about half past seven on the evening of the 11th of October last, the steamer, being in charge of a licensed pilot, was proceeding up channel, steering north-east by north ; whilst this barque was going down channel, heading south-west by south, and therefore on a course parallel to that of the steamer. The wind was east by south ; each vessel was making about six knots an hour through the water ; and the tide, which was against the steamer, was of course in favour of the barque. It is further admitted that at some time before the collision the steamer starboarded her helm, or at least executed a manœuvre which had the effect which starboarding a helm of the ordinary construction produces ; and that the barque ported her helm. The result was a collision in which the barque, being struck on the port bow by the stem of the steamer, was sunk, her crew happily escaping on board of the steamer.

The case of the barque is thus stated : " The masthead light of the steamer was first seen at the distance of between three and four miles nearly ahead, but a little on the port bow of the barque her red or port light was subsequently made out in the same direction. She continued to approach the barque on her port bow, and in such a direction as to involve danger of a collision unless one of the vessels ported ; and as no alteration was made in her course when the two vessels were so near that it was dangerous for the barque to keep on her course, the helm of the latter was ported. Very shortly after this has been done, and the vessels would otherwise have passed clear of each

other, the steamship was noticed to be making towards the barque ; and as the only means of avoiding a collision, or lessening the effect thereof, the helm of the barque was put hard aport ; but almost immediately afterwards the steamer, having shut in her red and opened her green light, ran stem on into the barque," &c. And the contention of the plaintiffs, the owners of the barque, was that the collision was attributable solely to the carelessness, negligence, and want of skill of those on board and in charge of the steamship, more especially in their having omitted, either from want of a good look-out or otherwise, to take within sufficient time the proper measures to keep clear of the barque.

The defence on the part of the steamer raised the following case : " The barque was first seen at the distance of about three quarters of a mile from, and being from two to three points on the starboard bow of, the steamer, and with no light then visible on board the latter. The steamer starboarded by order of the pilot, and her head went off to port, and she kept out of the way of the barque ; but the latter improperly deviated from her course, under a port helm, and exhibited a red light to those on board the steamer, and caused danger of collision ; whereupon, by order of the pilot, the steamer hard a-starboarded and stopped her engines, but the barque, nevertheless, ran into, and with her port bow before the fore-rigging struck the steamer on her stem and starboard bow." And the contention of the defendants was that the collision was caused by the negligent and improper navigation of the barque. Another and distinct ground of defence is that, if the collision was in any way occasioned by any body on board the steamer, it was occasioned solely by the licensed pilot, whose orders in respect of her navigation were promptly and implicitly obeyed by her master and crew.

In the circumstance stated, it was the duty of the steamer to keep out of the way of the sailing vessel, and provided she did so effectually, she was at liberty to do it either by starboarding or by porting her helm. On the other hand, it was the duty of the barque to keep her course, and she could be excused for deviating from it only by showing that it was necessary to do so in order to avoid immediate danger.

At the close of the argument for the appellants their Lordships intimated their opinion that no ground had been made for disturbing this judgment, in so far as it found that as between the colliding vessels the steamer was solely in fault. The conclusions which they drew from the evidence were, that the vessels were meeting port side to port side ; that the steamer took no steps to avoid the barque until the vessels were very near each other ; and that in these circumstances the barque was justified in porting her helm when she did port it ; whilst, on the other hand, the starboarding of the helm of the steamer when it took place was a dangerous and improper manœuvre, and the immediate cause of the collision.

Their Lordships of the Privy Council founded this conclusion mainly upon the inference which they drew from the evidence that, if there had been a proper look-out, not only would the barque have been descried at a greater distance, but her true position would have been known. It was in short held in this case that the *Velasquez* was to blame, because, although she was at liberty to get out of the way of the barque *Star of Ceylon*, either by starboarding or porting her helm, it was her duty to take measures for this purpose in sufficient time to practically get out of the way, and not leave it until so late a moment that there was risk of immediate collision.

In the present instance, therefore, if I thought that the steamer had left it to the last moment to take the proper measures for getting out of the way of the schooner, and that it had not acted with all the promptness which might have been expected under the circumstances, then I ought to hold that she, too, was in fault; but it seems to me that there is no good ground why I should not accept Mr. Emery's account of the matter, and according to that, although he was on the watch and perceived the schooner in the first instance before any suggestion of a light proceeded from her, yet he had not been able to see her in time to take more effective measures than he did take. Had the schooner exhibited to him the lights which she was bound to carry, he would have seen at the first glance precisely what course she was pursuing, and he would probably have seen that she was coming down upon him stem on. At any rate, he would not have been obliged to wait for two or three minutes before he could ascertain what probably her real course and relative position was. Now, on this evidence, taken in connection with that of the plaintiffs' witnesses, I think I cannot avoid the conclusion that the schooner had not got her red or green lights shown. Mr. Emery says he did not see them at any time, and that he never saw any trace after the collision of their having previously been where they ought to have been. There were no broken lamps; in fact, there was nothing to indicate that these lights had existed, and although Abbas and the other witnesses called on the part of the plaintiffs say that the lights were burning before and up to the time of the collision, they all agree in saying that the moment they discovered the white light was not the shore light, but a steamer's light, they put up a white light on the forestay. Why did they do that, if they had the other lights properly burning? It was a distinct breach of the law for them to do so. The rule which obliges sailing vessels to carry the red and the green lights on their port and starboard sides respectively forbids them to carry any other light. I cannot say that I have the slightest doubt that there were no lights exhibited on the part of the schooner until the moment when she discovered that the steamer was approaching her, and that then the schooner's people held up as prominently as they could the white light taken from the cabin. If this be so, it was not the fault of Mr. Emery, but distinctly that of the schooner, that he was obliged to waste two or three minutes in watching the sailing vessel, and in endeavouring to form an opinion as to her course before he could take any steps to get out of her way. And how important those two or three or four minutes were can be seen at once when it is considered that at

the rates of speed spoken to by the witnesses the two vessels must have been approaching each other at the relative velocity of at least some twelve miles an hour, which would need only five minutes to cover the whole space that Mr. Emery reckoned intervened between the steamer and the schooner when he first perceived the latter. The hypothesis by which Mr. Emery explained the temporary disappearance of both the schooner and her light was, that although the sky was clear there was considerable haze in places on the surface of the water. And this is supported by the schooner's own case that it was some time after the mast-head light of the steamer was first seen that her side lights came into view.

The conclusion, then, which I have arrived at on the whole of the case is that, while the schooner was materially in fault in the matter of this collison, there is no substantial fault attributable to the steamer upon which the latter can be made answerable for even half the damages sued for. The judgment of the Court must therefore be that the action be dismissed with costs.

Judgment accordingly.