Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Hunter v. *The Cork Steamship Company, and O. S. L. The Queen in Her Office of Admiralty* v. *Pike and others, from the High Court of Admiralty; Ships "Amazon" and "Osprey;" delivered on the* 5*th July*, 1867.

Present:

SIR JAMES W. COLVILE.
SIR EDWARD VAUGHAN WILLIAMS.
LORD CHIEF BARON.
SIR RICHARD TORIN KINDERSLEY.

WE have considered the evidence in this case with great attention, as well as the judgment pronounced by Dr. Lushington in the Court below, and the opinions expressed by the experienced Trinity Masters who attended on that occasion. We have likewise had the benefit of the opinion of the nautical gentlemen who have assisted their Lordships to-day, and we do not think it necessary to call upon the counsel for the Respondents to support the judgment now under appeal.

The first question that arises in this case is whether a fair and substantial compliance with the Admiralty regulations required that when these two vessels first sighted each other both of them should have ported their helms?

There is always some degree of uncertainty in determining the precise direction, the exact point of the compass towards which vessels are moving. There is also some difficulty in ascertaining with precision what, supposing each vessel should keep its course, would be the distance within which they would pass each other, if, indeed, they should not come actually into collision; but it is clear, upon the whole of the evidence now before us, that at the time these two vessels first came within sight of each other the proba-

bility of their coming into collision, or, at all events, of passing very near to each other, if each vessel should keep on its course, was such as to require that both should strictly and promptly conform to the Admiralty regulations. The officer who had charge of the helm in the "Amazon," and who has been examined as a witness, when the question was put to him why he did not port his helm, and why he did starboard his helm, gave an answer quite apart from any reference at all to the Admiralty regulations, or the danger of a collision. He says he thought there was some danger of his going ashore looking to the light which he saw before him, and it is quite clear that his attention was not directed to the position of these vessels, or to the risk that existed of their coming into collision, if each should keep on its course. We find also, upon the evidence for the Appellant, it was thought by one of the witnesses that if the "Osprey" had kept on her course, and had not ported her helm, although the "Amazon" starboarded her helm, still the vessels would have passed at some eight ships' lengths from each other. The probability is that if both vessels had kept on their course, if they had not actually come into collision, they would have passed at a very inconsiderable distance from each other.

Under these circumstances—and even if it were a case of doubt, which we do not think it was—it clearly became the duty of those in charge of both the vessels to port their helms, and so strictly to comply with the Admiralty regulations. This course was taken by the "Osprey." Her helm was ported, and when it was seen from that vessel that, notwithstanding her having ported her helm, the "Amazon," the larger vessel, was still approaching, so that the danger of a collision increased, she then again ported her helm, and even to nearly the last moment put her helm hard a-port, but still could not escape the collision. On the other hand, and upon what grounds we are entirely unable even to conjecture, the "Amazon" seems to have starboarded her helm, and to have persevered in that course until within a mile, or somewhere about a mile, of the other vessel, the "Osprey."

Under these circumstances, and if the case rested

there, we are clearly of opinion that the judgment ought to be affirmed, and that the evil which befel these vessels—and a great calamity it was—arose entirely from the neglect or the inobservance of these regulations and the neglect of their duty by those who were in charge of the "Amazon."

But then it is suggested, and indeed, it has been very powerfully and ably argued on the part of the "Amazon," that still the "Osprey" was in fault, and sufficiently in fault to come within the rule of law that prevails in the Court of Admiralty, that where the vessel which may not have been originally in fault materially contributes to the collision which has taken place, either the loss must be divided, or no judgment can be pronounced against the other vessel. It is contended in this case that the "Osprey" has brought herself within the operation of this rule of law, by reason of not having slackened speed, or reversed her engines when the collision was about to take place, and became apparently inevitable.

The answer is plain and obvious. The "Osprey" had been brought, by the inobservance of the rules of navigation and the bad seamanship of the "Amazon," into a condition in which it was impossible to determine with certainty whether the danger was not greater to attempt to slacken or stop her course and to reverse the engines, than to proceed at full speed, and endeavour to cross the "Amazon" and to pass in safety under her bows. Now, if a vessel be brought into such a position by bad seamanship and non-compliance with the Admiralty regulations, on the part of another vessel, as to place those who are in command of her in a situation of great doubt and difficulty as to the course they are to pursue, we think that such a vessel cannot be said materially to contribute to the loss within the above rule of law, even if she shall appear to have taken the less expedient course, and so, in some sense, to have contributed to the collision which may have taken place. But we do not think that this was the case with the "Osprey;" and, with all the assistance which their Lordships have derived from the evidence, and from the opinions of those who are better skilled than themselves in dealing with questions of this nature, we are quite satisfied that it would not have been a proper course on

the part of the "Osprey" to have attempted to stop or to reverse her engines; that she did that which the misconduct of the "Amazon" had alone left in her the power to attempt with any chance of safety, that is to endeavour to pass before the "Amazon" by keeping on her course at full speed; and it is evident that this was the better choice, for she nearly succeeded in clearing the "Amazon," having passed her by all but a fourth, or less than a fourth, of the ship's length. This circumstance again proves the misconduct of those who were in charge of the "Amazon;" for it is perfectly clear, that if, when the vessels were a little more than a mile apart, the "Amazon" had ported her helm but a minute or half a minute earlier, this great calamity would have been avoided.

Under all the circumstances, we think the fault was originally in the "Amazon," and that there was no fault on the part of the "Osprey" in not having stopped or reversed her engines, and that she was justified in keeping on her course as affording the only chance of averting the danger occasioned by the misconduct of the "Amazon," of an immediate collision.

Under these circumstances, we shall advise Her Majesty to affirm the judgment of the Court below, and to dismiss the appeal with costs.