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The Britannia

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Decided On : Apr-23-1894

Appeal No. : 153 U.S. 130

Appellant : The Britannia

Judgement :

The Britannia - 153 U.S. 130 (1894)
U.S. Supreme Court The Britannia, 153 U.S. 130 (1894)

The Britannia

Nos. 340, 341, and 342

Argued April 3-4, 1894

Decided April 23, 1894

153 U.S. 130

APPEALS FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

In entering the port of New York, the steamship *Britannia* came so close to Governor's Island as to graze the bottom. This made it necessary for her pilot to direct the engines to be put at full speed till she cleared the ground. After that, the speed of the vessel was slowed, and her wheel was put hard-a-port to round into East River. About the time of touching bottom, the *Britannia* sighted the steamship *Beaconsfield* on her starboard bow, and blew a single whistle. The *Beaconsfield,* going out from the port, had also seen the *Britannia* when it came around Governor's Island, and about the time it was disengaging itself from the ground, blew a single blast of her whistle, put her helm to port a little, and went on at a slow speed. The whistle of the *Britannia* was heard upon the *Beaconsfield,* but that of the *Beaconsfield* was not heard on the *Britannia.* After clearing the bottom and reducing her speed, the *Britannia* did not respond promptly to her helm, owing to the fact that the condition of the wind and tide was such as to form a flood eddy on the north side of the channel between the Battery and Governor's Island, and an ebb tide on the south side of the channel. These tides operate to turn the head of a vessel attempting to enter the East River near Castle William to the westward as it crosses the ebb until it enters the flood eddy. Such tidal action, and its effect upon vessels, were known to the pilot of the *Beaconsfield,* and should have been known to the pilot of the *Britannia.* It retarded the efforts of the *Britannia* to pass astern of the *Beaconsfield.* The *Beaconsfield* thereupon blew another single whistle, and, hearing no answer, put her wheel hard-a-port, stopped her engines and reversed full speed. Her engines were kept in this condition until her headway was stopped. Then she lay still in the water until struck by the *Britannia* and sunk.

HELD

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(1) [All concurring,] That the *Britannia* was in fault in running, at a place where she was liable to meet outward going vessels, across the ebb tide in such a way that the current prevented her from answering her helm with promptness, and that such fault was enough to render her liable in whole or in part for the loss

occasioned by the collision.

(2) [BROWN and JACKSON, JJ., dissenting,] That the *Beaconsfield* was also in fault (a) in disregarding Rule 23 of the Rules for preventing Collisions on the Water, Rev.Stat. 4233, directing that when, by Rule 19, one of two vessels shall keep out of the way, the other shall keep her course, subject to the qualifications of Rule 24, and (b) in remaining motionless for a minute and a half, in full view of the tardy motions of the *Britannia* in getting astern.

The statement in Finding 31 that

"the conduct of those in charge of the *Beaconsfield* . . . does not warrant the inference that there was, on their part, negligence contributory to produce the collision,"

is not a finding of fact, within the meaning of the rule, but is a conclusion of law upon the previous facts.

The Act of August 19, 1890, c. 802, 26 Stat. 320, not having been proclaimed by the President, as required by sec. 3 thereof, it is not yet operative, and this Court is not bound by the construction put by English courts on Art. 21, providing that "where by any of these rules, one of two vessels is to keep out of the way, the other shall keep her course and speed."

In the District Court of the United States for the Southern District of New York, George Cleugh, of Newcastle, England, filed his libel and complaint, as owner of the steamship *Beaconsfield,* against the steamship *Britannia,* alleging that, on the 19th day of November, 1886, the *Beaconsfield,* while proceeding to sea loaded with a full cargo of grain, between Governor's Island and the Battery, was run into by the *Britannia,* bound in from sea, and so badly damaged that she sank shortly afterwards in shoal water, to which she had been towed by tug boats, and suffered damage, with loss of freight, to the amount of $48,000. The libel further alleged that the *Britannia* was running at too high a rate of speed for the place the vessels were in, without proper lookout or sufficient attention to her navigation, and without regard to the rules of navigation, and that the *Beaconsfield* was

wholly without fault. An amended libel was subsequently filed containing a more detailed statement of the position and movements of the vessels at the time of the collision.

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To this original and amended libel the owners of the *Britannia* filed an answer traversing those allegations which attributed fault to the *Britannia,* alleging that the *Beaconsfield* had been carelessly and negligently managed in several particulars, which caused the collision, and praying that the libel be dismissed.

Subsequently, J. L. Cotton, master, and George Cleugh, owner, of the *Beaconsfield,* filed another and joint libel against the *Britannia* to recover for loss of cargo, containing substantially the same allegations as those made in the libel previously field by Cleugh. This libel was likewise amended so as to make a more particular and detailed statement of the facts as claimed by the libelants.

To this libel an answer was duly filed by the owners of the *Britannia* denying fault on her part and alleging careless and improper management of the *Beaconsfield,* which was the real cause of the collision. They also gave security and procured the discharge of their vessel. Thereafter the owners of the *Britannia* filed a petition against the *Beaconsfield,* again charging the fault of the collision upon her, alleging damages suffered by the *Britannia,* and praying process against the *Beaconsfield,* to the end that such damages might be assessed in the same suit.

This petition was met by an answer on the part of George Cleugh, the owner of the *Beaconsfield,* traversing the allegations of the petition.

At a subsequent term, the owners of the *Britannia* filed in the same court a libel and complaint, subsequently amended, against the *Beaconsfield* containing a detailed statement of the transaction and praying process against and condemnation of the *Beaconsfield.* To this libel, as amended, exceptions were filed on behalf of the owner of the *Beaconsfield* on the ground of insufficiency and indefiniteness in certain particulars. Some of these exceptions were sustained,

which led to a further amendment of said libel. An answer to the amended libel was then filed by the owner of the *Beaconsfield.*

These three cases were so proceeded in that, on the 9th day of July, 1889, final decrees were entered, adjudging that both

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the *Britannia* and the *Beaconsfield* were in fault, and apportioning the damages between them in such a way that there was found due from the *Britannia* to the *Beaconsfield* the sum of $14,978.90, and that there was due by the *Britannia* to J. L. Cotton and George Cleugh, as bailees of the cargo of wheat laden on the *Beaconsfield,* the sum of $25, 124.63, being a moiety of the whole loss to cargo, the other moiety of said loss being adjudged against the *Beaconsfield.* 34 F. 546.

From these decrees of the district court appeals were taken by the owners of both vessels to the circuit court. That court held that the *Britannia* was alone in fault, and accordingly dismissed the libel of the *Britannia* and awarded to Cleugh's executor for the damages to the *Beaconsfield* $38,808.05, with costs, and to Cotton, for damages to the cargo, $52,925.46, with costs. 42 F. 67.

From all three decrees the owners of the *Britannia* have appealed to this Court.

MR. JUSTICE SHIRAS, after stating the facts in the foregoing language, delivered the opinion of the Court.

As both the district court and the circuit court, though for somewhat different reasons, found the *Britannia* to be in fault, and as we agree with them in that conclusion, it is not necessary for us to go at length into that part of the controversy. It is sufficient to say that it appears that the *Britannia* came so close to Governor's Island that she grazed the bottom and rendered it necessary for her pilot to direct her engines to be put at full speed till she cleared the ground. After that, the speed of the vessel was slowed and her wheel was put

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hard-a-port to round into East river. As found by the circuit court, at about the time of touching the bottom, she sighted the *Beaconsfield* on her starboard bow, and at that time she blew a single whistle to the *Beaconsfield,* thus signifying an intention to pass under the stern of the *Beaconsfield.* After clearing the bottom and reducing her speed, the *Britannia* did not respond promptly to her helm, owing to the fact, as found in the fourth finding, that

"the condition of the wind and tide was such as to form a flood eddy on the north side of the channel between the Battery and Governor's Island, and an ebb tide on the south side of the channel. These tides operate to turn the head of a vessel attempting to enter the East river near Castle William, on Governor's Island, to the westward, as she crosses the ebb until she enters the flood eddy. Thereupon her head is turned to the eastward. Such tidal action was within the knowledge of the pilot of the *Beaconsfield,* and should have been within the knowledge of the pilot of the *Britannia.* "

Having placed herself in this predicament, the *Britannia's* efforts to pass astern of the *Beaconsfield* were retarded, and her fault was in that particular -- that is, in running at a place where she was liable to meet outwardgoing vessels, across the ebb tide in such a way that the current prevented her from answering her helm with promptness. While this fault was not, as we shall hereafter show, the sole cause of the accident, it contributed to it, and upon the findings we agree with both the lower courts in thinking the fault was enough to render the *Britannia* liable, in whole or in part, for the loss occasioned by the collision. In exoneration of the *Britannia,* her advocate cites the case of *The Rhondda,* 8 App.Cas. 549, 555. That was a case somewhat similar in its facts to the present one. The *Rhondda* was coming around a point in the Straits of Messina, meeting another steamer, the *Alsace-Lorraine.* They came into collision, and the *Alsace-Lorraine* was sunk. Her owners libeled the *Rhondda,* but the Privy Council sustained the navigation of *Rhondda.* She had the other vessel on her starboard bow, and therefore it was her duty to keep out of the way of the *Alsace-Lorraine.* This she attempted to do by going to

the starboard and passing under the stern of the other vessel. There was a current which checked the swing of the *Rhondda* to the starboard, and her captain, as soon as he saw that his vessel was not swinging off to starboard under his port helm as he had expected, stopped and reversed his engines. The court held that as it appeared that the *Rhondda* had ported her helm, and that such action would have carried her clear of the other steamer if she had not been prevented by the current, the *Rhondda* was free from blame. The maneuvers, therefore, of the *Britannia* and the *Rhondda* were alike. They were both meeting another steamer on their starboard bow. They both, in compliance with the rule of navigation applicable to such a case, endeavored to pass under the stern of the other vessel by porting the helm, and they both, when it was seen that the vessel was not swinging as rapidly to the starboard as was expected, stopped and reversed engines. The reason why, if the *Rhondda* was justly exonerated, the *Britannia* is not entitled to a like judgment is found in the different circumstances in which the vessels were placed.

As we have seen, the *Britannia* was entering one of the most crowded harbors in the world, and was liable to meet other vessels outward bound at any moment. It was also obvious from her course in running close to Governor's Island that any vessel she would meet as she entered the strait after she cleared the island would probably be on her starboard bow. Knowing, as she was bound to know, that in the condition of the tide at the time, there was a conflict between the current and the eddy which would be apt to thwart or retard her movement to the starboard, it was her duty to have rounded the island at the very lowest rate of speed which would have enabled her to answer to her helm. This she failed to do, and, although her subsequent movements were skillful and in accordance with the rules, she must be held answerable for her original fault in rounding the island so closely that it was found necessary to put her engines for a time at full speed in order to clear her from the ground. This temporary enhancement of speed, and the failure to anticipate and guard against

the consequences of a well known current, rendered her subsequent efforts to avoid the collision unavailing.

On the other hand, in the case of *The Rhondda,* Sir James Hannen, in the course of his opinion, said:

"Undoubtedly it was strongly in evidence that there was such a stream at this place, whether it be called current or eddy, as was calculated to have an effect in the manner suggested on a vessel coming round into the neck of the channel, . . . and would be felt upon the starboard bow of a vessel precisely at the point where the *Rhondda* had arrived."

But he proceeded to say:

"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."

This brings us to a consideration of the conduct of the *Beaconsfield,* and here the courts below parted company, the district court having held that the *Beaconsfield's* management was faulty, while that circuit court found her free from blame. Of course this Court must accept the facts as found for us by the circuit court, but we do not observe any substantial difference in the facts as understood by the respective courts. Their diversity in opinion arose from a difference in their application of the rules of navigation to the admitted or established facts.

What were those facts? The *Beaconsfield* described the *Britannia* when the latter vessel came around Governor's Island, and about the time she was disengaging herself from the ground. The *Beaconsfield* thereupon blew a single blast of her whistle, which meant that she expected the *Britannia* to pass under her stern. It is found that this whistle of the *Beaconsfield* was neither heard nor seen on the *Britannia,* but the latter's whistle, given while getting clear of the bottom, was heard on the *Beaconsfield,* and taken to be an answer to her own whistle. It is thus evident that the pilots of both vessels agreed in the view that the

proper thing to avoid collision was for the *Britannia* to swing to starboard, and pass behind the *Beaconsfield.* It is next found that the *Beaconsfield,*

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when she blew her first whistle, put her helm to port a little, and went on at a slow speed. Her observation of the *Britannia* did not show that the latter was swinging to starboard, but even was disclosing a little more of her starboard side to the *Beaconsfield.* Thereupon the latter blew another single whistle, which still signified her expectation that the *Britannia* would pass astern, and, hearing no answer, put her wheel hard-a-port, and stopped her engines, and reversed full speed. Her engines were kept reversed until her headway was stopped. Then her engines were stopped, and at the time of the collision, she was nearly, if not quite, dead in the water. After her headway was thus stopped, the *Beaconsfield* took no further action, and lay still in the water until struck. The time from such stopping of her headway until the collision, during which she lay still, was about a minute and a half. It is further found that, if the *Beaconsfield* had not stopped and backed, it is probable that the *Britannia* would have passed a short distance astern of her, and indeed, under the finding as to her rate of speed before she stopped, this is quite evident.

Was this behavior of the *Beaconsfield* in stopping her headway and remaining still, without further effort, for a minute and a half, proper, or at least, excusable, as held by the circuit court? Or was it improper, and did it put her in contributory fault, as held by the district court?

In answering this question, we must have regard to the well known rules of navigation. Those chiefly applicable to the present controversy are rules nineteen, twenty-one, twenty-three, and twenty-four. Rev.Stat. 4233.

The nineteenth rule is as follows:

"If two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her starboard side shall keep out of the way of the other."

We do not understand this rule to signify, as the circuit judge seems to have thought, that the *Britannia* was at all hazards and in some way or other to avoid the *Beaconsfield.* Such a rendering of the rule would dispense with all inquiry beyond the single one which vessel had the other on her starboard side. The plain meaning of

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the rule was, as applied to the situation under consideration, that the *Britannia,* which had the *Beaconsfield* on her starboard side, should yield the path to the latter, and pass behind her. This reading of the rule was recognized and complied with in the first instance by the pilots of both vessels in signaling each other that the *Britannia* would go astern.

Rule 21 provides that "every steam vessel, when approaching another vessel so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse." This rule was likewise obeyed by both ships in that, so long as they were advancing after having seen and signaled each other, they went at a slow rate of speed. Later in the history of the incident, they both stopped and reversed. In so doing, the *Britannia* was clearly obeying the letter and spirit of the rule. Whether the *Beaconsfield* was justified in stopping and reversing we shall presently consider.

The twenty-third rule directs that "when by rule nineteen, one of two vessels shall keep out of the way, the other shall keep her course, subject to the qualifications of rule twenty-four." This rule throws light on the meaning of the nineteenth rule, and confirms the view that the latter rule means that the vessel having the other on her starboard shall yield the way or path to the other, and it further provides that the latter vessel not only may, but must, keep on her course, except as qualified by the twenty-fourth rule. That rule is as follows:

"In construing and obeying these rules, due regard must be had to all dangers of navigation and to any special circumstances which may exist in any particular case rendering a departure from them necessary in order to avoid immediate

danger."

As we have seen, the *Britannia* fulfilled the duty imposed on her by signaling that she would keep out of the way and pass to the stern of the *Beaconsfield,* by slackening her speed, and finally by stopping and reversing. Her only fault was in overlooking or disregarding the effect of the wind and tide, so that, when she endeavored to swing to the starboard, she was unable to do so with reasonable quickness.

But did not the *Beaconsfield* manifestly depart from and

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disobey rule twenty-three in not keeping her course, and thus avoiding collision? Her excuse, in application of rule twenty-four, is that the *Britannia,* after having signaled that she was going astern, did not appear to be doing so, and that this erratic behavior justified the *Beaconsfield* in stopping and reversing. But, as already stated, the pilot of the *Beaconsfield* was well aware of the existence of the counter-current against which the *Britannia* had to contend in changing her course to the starboard, and if we are obliged to impute fault to the *Britannia* in not having foreseen and provided against that current, so we must likewise blame the *Beaconsfield* for overlooking the effect of such current in delaying the movement of the *Britannia* to the starboard. The course of the *Britannia* was precisely what might have been anticipated after her first and only fault, and did not, in our judgment, warrant the *Beaconsfield* in disregarding the injunctions of the twenty-third rule, which, if obeyed, would have prevented the collision.

We think there was likewise fault in the action of the *Beaconsfield* in remaining motionless for a minute and half, in full view of the tardy motion of the *Britannia* in getting astern. This is sought to be excused by the fact that her pilot feared certain rocks, or a rocky bottom, which were not far from the place where his vessel was. The actual existence of such rocks or rocky bottom was somewhat in dispute, but accepting, as we do, the statement of the circuit court on the subject, we cannot sustain the conduct of the *Beaconsfield.* That statement is that

"a careful collocation of the testimony of those on both steamers and elsewhere, assisted by elaborate plotting on the chart, indicates that the probabilities are that the *Britannia* would have passed astern of the *Beaconsfield* if the latter had kept her headway, even though she straightened out sufficiently to clear the reef her pilot spoke of, but by a very small margin only."

Stress is laid in the argument for the *Beaconsfield* on the eleventh finding, that

"at the time the *Beaconsfield* reversed, she had approached so near the New York shore that, in view of her draft of water and the condition of the bottom in that locality, there was some risk of her running aground

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should she continue her way much longer under her port helm."

But the exigency, as shown by the other findings, did not require that she should continue her way "much longer." Had she advanced one hundred and fifty feet, the collision would not have taken place.

This alleged danger of running aground on the New York shore, if she continued her course, was not set up in the thrice-amended pleadings, and seems, as well as the suggestion that there were rocks, not shown on the charts, on the course the *Beaconsfield* was going, to have been an afterthought, by way of excuse, of the pilot of the *Beaconsfield.*

But allowing the finding to stand, it does not establish as a fact in the case that there was any real danger to the *Beaconsfield* in keeping on her course for the very short distance that would have avoided the collision. Nor was it necessary, as the findings show, that in going on, the *Beaconsfield* should have approached any closer to the New York shore. There was plenty of time and room for her to have changed her course sufficiently to have avoided a nearer approach to the north shore.

As for the other excuse, advanced by the pilot of the *Beaconsfield,* that there were rocks ahead, as already stated, it was disposed of by the learned judge of

the circuit court, who, when asked to affirmatively find that there was no reef of rocks about 1,500 feet from the Battery flag, or in that neighborhood, as testified to by the pilot of the *Beaconsfield,* refused on the stated ground that it was "immaterial, as by findings already made the collision happened well inside of such point."

The thirteenth finding, that

"shortly after the *Beaconsfield* began reversing, the *Britannia* commenced to swing to starboard, a motion which was perceived on the *Beaconsfield,* "

is important, and strengthens the case against her. Seeing the *Britannia* at last, however tardily, taking the direction which the rule and the exchanged signals required, it was misconduct in the *Beaconsfield* to continue reversing, and to finally remain motionless.

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It cannot be reasonably held that the thirty-first finding was a finding of fact, obligatory upon this Court. It is in these words:

"The conduct of those in charge of the *Beaconsfield,* as specifically set forth in the foregoing finding, does not warrant the inference that there was, on their part, negligence contributory to produce the collision."

Of course, if this *were* a finding of fact within the meaning of the rule, it would be conclusive of the case, and all the other findings would become mere surplusage. But it is evident that the learned judge did not intend it to be so regarded. It was plainly meant as an additional conclusion in law. He speaks of it as "an *inference* from the foregoing finding." Nor can we assent to the proposition that it is competent for the judge, who is to find the fact for this Court, to shut us off from a consideration of the legal effect of the other facts found, by a conclusive finding that, in his opinion, a particular inference is or is not warranted by the facts so found.

Regarding, therefore, this finding as merely expressive of the learned judge's view of the legal conclusion that arose upon the facts as found, and giving reasonable effect to his findings of fact, we are unable to concur in his conclusion.

The disregard by the *Beaconsfield* of the *Britannia's* signal, her failure to obey the rule and keep her course, and her supine negligence in remaining motionless for so long a period while she saw the *Britannia* approaching her clearly put her in fault.

It is argued that the words "shall keep her course" do not mean that she shall maintain her speed, and English cases are cited to the effect that the rule does not imply that the vessel shall *maintain the same speed.* If this is all that is meant in the cases cited, and we so read them, we have no reason to disagree with them, and they do not in the slightest degree impugn our reasoning. But if the contention is, and if those cases must be understood as holding, that a vessel whose duty it is to keep her course complies with that duty by reversing her engines and ceasing to move at all, we are unable to concur in such a view. It is inconsistent with both the words and

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the sense of the rule. A vessel which voluntarily becomes motionless cannot properly be said to keep her course. The word "course," both from its etymology and the primary meaning given to it by lexicographers, signifies a running or moving forward, a continuous progression or advance.

The collocation of the rule, and its direct references to rules 17, 19, 20, and 22, plainly point to the meaning that, while the other vessel must keep out of the way, the preferred vessel shall not interfere with or thwart the movements of such other vessel by bringing a new element into the calculation, which would be done if, instead of pursuing her course, she stopped her headway. It is not meant that some exigency or obvious danger might not justify her in checking her speed and even in stopping altogether. But such a case is provided for in the twenty-fourth rule. As we have seen, no such exigency is found to have existed in the present

case.

We are relieved from any force there may be in the suggestion that we ought to follow the construction supposed to have been put upon this rule by the English courts, in order that there should be no difference between the courts of the two countries in construing the same rule, by the Act of August 19, 1890, 26 Stat. 327, which declares that the rule shall be read as follows: "Where by any of these rule one of two vessels is to keep out of the way, the other shall keep her course and speed." It however appears that this act awaits the proclamation of the President to become operative.

The case of *The Northfield and The Hunter,* 4 Ben. 112, 116, is applicable to the present question in regard to the management of the *Beaconsfield.* There, the *Northfield,* a Staten Island ferryboat, had left her slip to go west of Governor's Island, and was swinging round from south to southwest. The *Hunter* was coming down the North River and heading south to go down west of Governor's Island. The vessels were therefore in similar positions in respect to each other as the vessels in the present case. The District Court for the Southern District of New York held, per Blatchford, J., as follows:

"Under the circumstances, the *Northfield* had the *Hunter* on her own starboard side, and it was the duty of

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the *Northfield,* under the rule, to 'keep out of the way' of the *Hunter.* It was equally the duty of the *Hunter* 'to keep her course.' The *Northfield* ported her helm to a sufficient extent to enable her to pass safely under the stern of the *Hunter.* When, however, the *Hunter* was about three hundred yards distant from the *Northfield,* instead of keeping her course, she stopped her engines. It is quite clear that if the *Hunter* had not stopped at all, but had kept her course, the *Northfield* would have passed safely under the stern of the *Hunter.* The stopping by *Hunter* was the cause of the collision."

Disposing of the excuse set up by the *Hunter* for her stopping, that her navigator assumed that the *Northfield* was intending to pass ahead of the *Hunter,* rather than astern of her, the learned judge said: "In so assuming, they took the risk of being wrong in the assumption." This case was affirmed in the circuit court, and also in this Court, in which this language was used:

"The officers of the tug perfectly understood that under the rule it was their duty to keep the tug on its course. The officers of each vessel had the right to assume that the other vessel would do its duty, and to make their course and keep their speed on that assumption."

Hutchinson v. Northfield, 24 L.C.P.Co.Rep. 680, 681. In the case of *The Elizabeth Jones,* 112 U. S. 522 , it was said:

"Conceding it to have been the duty of the *Willis,* under article 12, to keep out of the way of the *Jones,* it was equally the duty of the latter not to baffle or to prevent the efforts of the *Willis* to that end. Her departure from the requirement of article 18 that she should keep her course cannot be justified under article 19, because there were no special circumstances in such departure necessary in order to avoid immediate danger."

In *Belden v. Chase,* 150 U. S. 699 , it was said:

"It is a settled rule in this Court that when a vessel has committed a positive breach of statute, she must show not only that probably her fault did not contribute to the disaster, but that it could not have done so. Obedience to the rule is not a fault, even if a different course would have prevented the collision. . . . Masters are bound to obey the rules and entitled to rely on the assumption that they will be obeyed, and

should not be encouraged to treat the exceptions as subjects of solicitude, rather than the rules."

In *Crockett v. Newton,* 18 How. 583, it was said by Mr. Justice Curtis:

"It must be remembered that the general rule is for a sailing vessel meeting a steamer to keep her course while the steamer take the necessary measures to avoid a collision, and though this rule should not be observed when the circumstances are such that it is apparent its observance must occasion a collision, while a departure from it will prevent one, yet it must be a strong case which puts the sailing vessel in the wrong for obeying the rule. But the duty of the steamer to port her helm and go to the starboard implies a correlative obligation of the ship to keep her course."

The Scotia, 14 Wall. 170, 81 U. S. 181 .

"It is the duty of a steamer to keep out of the way of a sailing vessel when they are approaching in such directions as to involve a risk of collision. The correlative obligation rests upon the sailing vessel to keep her course, and the steamer may be managed upon the assumption that she will do so."

The Free State, 91 U. S. 200 .

It is true that some of the cases just cited were cases wherein the vessel whose duty it was to keep her course was a sailing vessel, yet the principle involved is the same in the case of two steamships crossing, where it is the duty of the one who has the other on her starboard bow to keep out of the way of the other, and of the latter to keep on her course.

The conclusion reached is the same as that arrived at in the district court, and accordingly we reverse the three decrees and remand the causes to the circuit court with directions to enter decrees in accordance with this opinion, that both vessels were in fault, and the damages should be divided.

Reversed.

MR. JUSTICE BROWN, with whom was MR. JUSTICE JACKSON, dissenting.

I cannot agree with the Court in holding the *Beaconsfield* to have been in fault for this collision. Her conduct, so far

from being reckless or in violation of the rules of good seamanship, appears to me to have been characterized by an excess of prudence, which, even if it were an error, was not a fault for which I would willingly condemn her. This Court has had frequent occasion to hold steamers liable for too great speed. This is the first in which we have condemned one for too little. Indeed, cases in which steamers have been held liable for not maintaining their speed are extremely rare both in this country and in England, and if any such exist, I think they will be confined to those wherein tugs descending a river with tows have been held in fault for stopping and allowing their tows to spread out in the path of ascending vessels. It seems to me that the conclusion that the *Beaconsfield* was in fault for stopping and reversing can only be reached by ignoring the most vital findings of fact with respect to her conduct and proceeding upon the theory that, because the collision would not have happened if she had kept her speed, it was necessarily a fault that she had not done so.

The findings, so far as they bear upon the questions at issue, are as follows:

"Fifth. . . . When about midway between Diamond reef and the New York piers, she saw the *Britannia* as the latter came clear of Castle William, and blew a single whistle to her. The *Beaconsfield* was then heading about W. N.W. or W. By N. The full speed of the *Beaconsfield* was between nine and ten knots, with fifty-six revolutions. At this time, her engines were moving under an 'easy ahead,' with thirty revolutions, which would make her speed through the water about five knots. The retardation due to the action of the wind and to that of the flood eddy (described in the fourth finding) greatly reduced her speed over the ground as she came within the influence of the eddy, to considerably less than four knots."

"Eighth. . . . While getting clear of the bottom, and with her engines at full speed, she [the *Britannia*] blew a single whistle to the *Beaconsfield.* The whistle of the *Beaconsfield* referred to in the fifth finding was neither heard nor seen on the *Britannia,* but the latter's whistle, given while getting

clear of the bottom, was heard on the *Beaconsfield,* and taken to be an answer to her own signal. At the time the *Britannia* thus signaled, the distance between the steamers was not quite half a mile."

"Ninth. After clearing the bottom, the *Britannia* ported and hard-a-ported her helm, but her bow while in the ebb tide near Governor's Island did not swing to starboard, but, on the contrary, did for a brief space take a slight but perceptible swing to be westward."

"Tenth. When the *Beaconsfield* blew her first whistle, her wheel was put to port a little and kept steady a-port, and under her slow engine she drew ahead, her head inclining a little toward the New York docks. A careful watch was kept on the movements of the *Britannia,* and it was observed not only that she did not swing to starboard, but also that she was showing a little more of her starboard side to the *Beaconsfield;* thereupon those upon the *Beaconsfield,* while still about four lengths from the *Britannia,* blew another single whistle, and, hearing no answer, put their wheel hard-a-port, and stopped, and reversed full speed. Her engines were kept reversed until her headway was stopped. Then her engines were stopped, and at the time of the collision she was nearly, if not quite, dead in the water."

"Eleventh. At the time the *Beaconsfield* reversed, she had approached so near the New York shore that, in view of her draft of water and the condition of the bottom in that locality, there was some risk of her running aground should she continue her headway much longer under her port helm. At that time, the *Britannia,* not yet swinging to the eastward, was heading so as to cross the bows of the *Beaconsfield,* had advanced over a considerable part of the distance which separated them when she blew her first whistle, and was manifestly coming into the northern part of the channel."

"Twelfth. This second whistle from the *Beaconsfield* was not heard on the *Britannia.* The latter also blew a second single whistle, and thereafter a third,

neither of which was seen or heard on the *Beaconsfield.* "

"Thirteenth. Shortly after the *Beaconsfield* began reversing,

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the *Britannia* commenced to swing to starboard, a motion which was perceived on the *Beaconsfield.* "

"Fourteenth. The captain of the *Britannia* had noticed that she did not swing as promptly as he had expected after clearing the bottom, and after she did begin to swing, he saw that she needed to come more to starboard, and that the ships for some reason did not get clear of each other, and, differing from the pilot as to the chance of clearing the *Beaconsfield* if he kept on, he gave the order to reverse his engines; thereafter he let go his port anchor when about one hundred feet from the *Beaconsfield.* "

"Twenty-fourth. At the time these steamers sighted each other and signaled, they were crossing so as to involve risk of collision within the meaning of the nineteenth rule, and the *Britannia* had the *Beaconsfield* on her starboard side."

"Twenty-fifth. At the time when the *Beaconsfield* stopped and reversed, the vessels were approaching each other so as to involve risk of collision. A prudent navigator viewing the situation at that moment from the deck of the *Beaconsfield* would have reached the conclusion that if neither the course of the *Britannia* were altered nor her headway checked, collision was imminent and inevitable unless avoided by some change in the movements of the *Beaconsfield.* "

"Twenty-sixth. The *Britannia's* movements, visible to the *Beaconsfield,* were not in accordance with the single whistle she had blown, but were such as to create a natural, reasonable, and strong apprehension of collision in those in charge of the *Beaconsfield,* and they were thereby justified in taking the statutory precaution to avoid risk of collision, which is prescribed by the twenty-first rule for a vessel approaching another vessel so as involve risk of collision."

Although the collision occurred in November, 1886, after the revised international regulations, adopted by Act of Congress of March 3, 1885. c. 354, 23 Stat. 438, took effect, the case was treated by court and counsel as covered by the rules prescribed in Rev.Stat. 4233, which do not, however, differ materially from the revised regulations.

In connection with the above findings, the following rules are pertinent:

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"Rule nineteen. If two vessels under steam are crossing so as to involve risk of collision, the vessel which has the other on her own starboard side shall keep out of the way of the other."

"Rule twenty-one. Every steam vessel, when approaching another vessel, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse."

"Rule twenty-three. Where, by rules seventeen, nineteen, twenty, and twenty-two, one of two vessels shall keep out of the way, the other shall keep her course, subject to the qualifications of rule twenty-four."

"Rule twenty-four. In construing and obeying these rules, due regard must be had to all dangers on navigation, and to any special circumstances which may exist in any particular case, rendering a departure from them necessary in order to avoid immediate danger."

Two questions are naturally raised by the above findings: (1) whether the obligation imposed upon the privileged vessel by rule 23, to "keep her course," also obliges her to maintain her speed; (2) granting that it does, whether this requirement applied to the *Beaconsfield* under the peculiar circumstances of this case.

(1) The *first* proposition depends upon what is meant by keeping the course of a vessel. The word "course," as used in this connection, is defined by the

lexicographers as follows: by Webster, as "progress from point to point without change of direction; any part of a progress from one place to another, which is in a straight line or in one direction." By Worcester, as "the track or line of motion; direction in which motion takes place." And by the Imperial Dictionary, as "the direction of motion; the line in which a body moves; as what *course* shall the pilot steer; the *course* of a projectile through the air.

Now unless we are to give to the word "course" a meaning quite different from that given by the grammarians, we must hold that the steamer discharged her obligation to "keep her course" by keeping steadily in the direction in which she had been previously going. But we are not without authority upon this point. In the case of *The Beryl,* which was a collision in the North sea between the steamship *Abeona* and the

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steamship *Beryl,* the two vessels were approaching each other at right angles, the *Beryl* being upon the starboard side of the *Abeona.* The *Abeona* admitted that the *Beryl* kept her course, but claimed that she kept it too long, directly the contrary of the claim made by the *Britannia* in this case. The *Beryl* eased her engines from a quarter to half a mile distant from the *Abeona.* It was held by the admiralty court, 9 P.D. 4, that although the obligation to keep her course was applicable, yet the *Beryl* was bound not to disregard the obligation of the other article to stop and reverse if necessary to avoid a collision, and that both articles were applicable to the case. The admiralty court held that the *Beryl* did act in time in stopping her engines, but on appeal to the Court of Appeals, the case was reversed, 9 P.D. 137, 140, 141, 142, 144, and the *Beryl* held to be in fault *not for failing to maintain her speed,* but for failing to stop and reverse her engines in due time. In delivering the opinion of the court, Brett, M.R., observed:

"It was suggested to us today that 'keeping her course' meant keeping her course at the same pace at which she was going before she was called upon to obey this rule. But keeping her course means that she is to keep on the same direction as before; it has nothing to do with the question of speed. . . . The *Abeona* was

bound to get out of the way of the *Beryl;* the moment that rule applied to the *Abeona,* article 22 applied to the *Beryl,* namely, to keep her course. . . . The *Abeona* did everything that was wrong, and then the question arises, did the *Beryl* break any of the rules? She kept her course, and, when she saw that the *Abeona* was not doing her duty, she whistled. . . . Seeing the *Abeona* was still keeping on, she whistled again and slackened her speed. The first question upon that is this: were the circumstances such then that there was risk of collision? The vessels were at a distance of from a quarter to half a mile. At that time, the officer of the *Beryl* slackened his speed."

Bowen, Lord Justice, observed:

"It has been suggested that the expression 'keep her course,' used in art. 22, refers to the speed of the vessel as well as to the direction of her

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head, but this is an untenable argument. In article 18, we find the words 'stop and reverse if necessary,' which obviously are intended to point out that the vessel, when it is necessary, is to do more than simply slacken her speed. It may, however, be a matter of consideration whether 'if necessary' is to be construed as meaning if it is actually necessary, or only if the captain should reasonably think that a necessity has arisen; but even if we were to take the latter as the construction most favorable to the master of the *Beryl,* the answer of our assessors to the question put to them, which the master of the rolls has already referred to, puts him clearly in the wrong and obliges us to hold that the *Beryl* was also to blame for this collision."

Fry, Lord Justice, was of the same opinion, and thought that the *Beryl* should have stopped and reversed earlier than she did.

This case is not only inconsistent with the opinion of the Court in the case under consideration, but is absolutely the reverse of it.

In view of the fact that these rules are international, and have been pronounced by this Court to be a branch of the international law, *The Scotia,* 14 Wall. 170, it is of the utmost importance that the same construction should be placed upon them by all courts upon which they are obligatory, and the fact that the courts of the country in which they were first adopted has given them a certain construction is a cogent argument in favor of a similar construction elsewhere. There is a peculiar propriety in its application in this case in view of the fact that the *Beaconsfield* was a British vessel, and its officers presumably acquainted with the law of their flag. The only case to the contrary to which our attention has been called is that of *The Northfield and The Hunter,* 4 Ben. 112, in which, however, no such general rule of construction was laid down. But under the peculiar circumstances of that case, to which I shall advert hereafter, as distinguishing it from the case under consideration, it was held that the privileged vessel was in fault for stopping and reversing.

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(2) But whatever be the interpretation of this rule, it seems to me clear that under the circumstances of the particular case, the *Beaconsfield* was guilty of no fault in stopping and reversing. It will not for a moment be claimed that a steamer is bound to keep up her speed if her master can see that by so doing she must inevitably be brought into collision with the other vessel. He is not, by a persistent adherence to any rule, at liberty to thrust himself directly in the path of an approaching vessel. There is certainly a point in every case beyond which he is not bound to proceed. The obligation to avoid a collision, if it be possible to do so, must be read into and made a part of all steering and sailing rules, and is specially provided for in rule 24, that

"in construing and obeying these rules, due regard must be had to all dangers of navigation, and to any special circumstances which may exist in any particular case rendering a departure from them necessary in order to avoid immediate danger."

There is no rule of more general observance than that which requires sailing vessels to keep their course when approaching a steamer, and yet, in *The Sunnyside,* 91 U. S. 208 , a sailing vessel was condemned for persistently adhering to the rule and running down a steam tug which lay motionless upon the water, although the latter was conceded to be in fault for not getting out of her way. "Negligence more manifest," said Mr. Justice Clifford,

"culpable, or indefensible in view of the circumstances is seldom exhibited in controversies of this character, and the only excuse offered for it is that the eighteenth sailing rule provides that where one of two ships is required to keep out of the way, the other shall keep her course, entirely overlooking the fact that the mandate of that rule is declared by the rule itself to be subject to the qualification"

of rule 24. *See also* 59 U. S. *Newton),* 18 How. 581; *Wilson v. Canada Shipping,* 2 App.Cas. 389.

So rule 23, which requires the privileged steamer to keep her course, must, like all others, be read in connection with rule 21, that every steam vessel when approaching another vessel so as to involve risk of collision shall slacken her speed, or, if necessary, stop and reverse.

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This case then reduces itself to the question whether, at the time the order was given upon the *Beaconsfield* to stop and reverse, the master had a right, in the exercise of a reasonable judgment, to suppose that if he persisted in his speed, a collision was probable -- in other words, had he reason to believe there was *danger* of collision? The sequence of events after the steamers came in sight of each other, as appears from the findings, was as follows:

When about midway between Diamond reef and the New York piers, she (the *Beaconsfield*) saw the *Britannia* as the latter came clear of Castle William, and blew a single whistle to her. Owing probably to a strong wind then blowing from the west (about 22 miles an hour), this whistle of the *Beaconsfield* was not heard

upon the *Britannia.* The latter, however, while getting clear of the bottom, and her engines at full speed, blew a single whistle to the *Beaconsfield,* which was heard and taken to be an answer to her own signal. At this time, the vessels were not quite half a mile apart. Although, after clearing the bottom, the *Britannia* ported and hard-a-ported her helm, her bow, while in the ebb tide near Governor's Island, did not swing to starboard, but, on the contrary, for a brief space took a slight but perceptible swing to the westward, to port. It was seen upon the *Beaconsfield* not only that the *Britannia* did not swing to starboard, but that she was showing a little more of her starboard side to the *Beaconsfield,* whereupon the *Beaconsfield,* while still about four lengths from the *Britannia,* blew another single whistle and, hearing no answer, put her wheel hard-a-port and stopped and reversed at full speed until her headway was stopped, when her engines were stopped, and she remained motionless in the water.

Was she in fault for so doing? There were three circumstances calculated to excite the apprehension of her master: (1) The *Britannia,* instead of swinging to starboard, appeared to be swinging to port. That this also alarmed those on the *Britannia* is evident from the fourteenth finding, that after she began to swing, her master saw that she needed to come more to starboard; that the ships did not, for some reason,

get clear of each other, and, differing in opinion from the pilot, he gave the order to reverse the engines. (2) She did not at once answer the *Beaconsfield* whistle, a circumstance tending to show either that she did not hear it or disregarded it. In view of the fact that the steamers were not more than ten or twelve hundred feet apart, this silence was certainly alarming. (3) At this time, too, the *Beaconsfield* had approached so near the New York shore that in view of her draft of water and the condition of the bottom, there was some risk of her running aground should she continue her headway much longer under her port helm. In this condition of things, we are confronted by the twenty-fifth and twenty-sixth findings, that at the time the *Beaconsfield* stopped and reversed, the vessels were approaching so as to involve risk of collision; that a prudent navigator, viewing the situation from the

deck of the *Beaconsfield,* would have reached the conclusion that, if the course of the *Britannia* were not altered nor her headway checked, a collision was imminent and inevitable unless avoided by some change on the part of the *Beaconsfield,* and (finding 26) that the *Britannia's* movements visible to the *Beaconsfield* were not in accordance with the single whistle she had blown and were such as created a natural, reasonable, and strong apprehension of collision in those in charge of the *Beaconsfield.* Under these circumstances, I agree with the opinion of the court below that the *Beaconsfield* was justified in taking the statutory precautions to avoid risk of collision prescribed by the twenty-first rule, as to stopping and reversing.

The case of *The Northfield and The Hunter,* 4 Ben. 112, decided by Judge Blatchford, whose experience as an admiralty judge undoubtedly entitles his opinions to most respectful consideration, is clearly distinguishable from this. In that case, the *Northfield* was going at a speed or from nine to ten knots an hour, while the *Hunter,* the privileged vessel, with a schooner in tow, was not going more than two knots an hour. The master of the *Hunter,* who was fearful that the schooner would get adrift if any extra strain should come upon his lines, stopped his vessel. But the court expressly finds that such stopping did not occur *in articulo periculi,* but took

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place at a distance from the *Northfield* which would have enabled the latter easily to have avoided her.

The only excuse for holding the *Beaconsfield* in fault is that her pilot was bound to know the existence of the eddy which gave the *Britannia's* bow a swing to port before she answered her wheel to swing to starboard. Considering, however, the proximity of the two vessels at this time and the failure of the *Britannia* to promptly respond to the *Beaconsfield's* whistle, I do not think the pilot of the latter was bound to know the precise moment when the *Britannia* would begin to answer her helm, and swing her bow to starboard. The vessels were in such proximity that seconds became of the utmost importance, and the failure of the

Britannia to do exactly what she ought to have done meant inevitable disaster.

The case of *The Rhondda,* 8 App.Cas. 549, so far from being an authority in favor of the position assumed by the Court in this case, is, as I read it, directly the contrary. *The Rhondda,* having the *Alsace-Lorraine* on her starboard side, was rounding Faro point at the entrance of the Straits of Messina, when she observed the Alsace-Lorraine at a distance of half a mile and about a point on her starboard bow. The Rhondda at once put her helm hard a-port, but failed to answer her wheel in consequence of the strong current at the entrance of the straits -- the ancient Charybdis. She then blew her whistle, and *stopped and reversed her engines* at full speed, and was held to have performed her full duty. The *Alsace-Lorraine did not ease or stop her engines,* but put her helm hard-a-port, and was struck by the *Rhondda* nearly amidships, and was held to have been in fault. I think the case tends to show that the *Beaconsfield* was right in her maneuver.

I would apply to this case the observations of this Court in the case of *The Favorita,* 18 Wall. 598, 85 U. S. 603 , in while a collision occurred under somewhat similar circumstances:

"It is said if the *Manhasset* had advanced instead of stopping, she would have cleared the steamship. This may or may not be true, but, if true, she is not in fault for this error of judgment. It was a question whether to advance or stop and back, and the emergency was so great that there was no time to

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deliberate upon the choice of modes of escape. In such a moment of sudden danger, caused by the misconduct of the *Favorita,* the law will not hold the pilot of the *Manhasset,* acting in good faith, guilty of a fault if it should turn out after the event that he chose the wrong means to avoid the collision, unless his seamanship was clearly unskillful. And this we do not find to be the case. On the contrary, if there were error at all, it was such a mistake of judgment as would likely be committed by anyone in similar peril."

See 1 Ben. 30; 8 Blatchford 539.

I agree with the Court that the thirty-first finding is a finding of law and not of fact, but I think it was such a legal conclusion as was justified by the other findings.

For these reasons, I am of opinion that the decree of the circuit court should be affirmed.

MR. JUSTICE JACKSON concurred in this opinion.

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