

Forum

doi:10.1017/S0373463308004852

Manoeuvring in the Agony of the Moment

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Professor Kemp¹ has revisited the circumstances in which the *Princess Alice* crossed ahead of, and was run down by, the oncoming *Bywell Castle* in 1878. This note focuses on the seamanship of the manoeuvre made by the *Bywell Castle* in the agony of the moment before collision. This manoeuvre was judged to be wrong at the time. The note concludes by considering how this manoeuvre would be judged today in the light of the seamanship required by Rule 17 of Colregs 1972 and draws attention to proposals made by Captain Phillip Colomb to the Thames Traffic Committee in 1879.

KEY WORDS

1. Collision avoidance.
2. Close quarters.
3. Manoeuvring.
4. The *Bywell Castle*.

1. THE OPINION OF THE ELDER BRETHERN AND THE NAUTICAL ASSESSORS. In the Admiralty Court², the paddle-steamer *Princess Alice* professed to have hugged the south shore to her port side in going upstream against the tide. However, the Court accepted evidence that she had gone towards the north shore beyond midstream in rounding Tripcock Point and meeting the steamer *Bywell Castle* in Galleons Reach. The Court held: “It appears to us that when the *Princess Alice* was on a parallel course with the *Bywell Castle*, red light to red light, if their respective courses had been continued, they would have passed at a safe distance from each other; but that when a very short distance, variously stated at 100 to 400 yards, intervened between the two vessels, the master of the *Princess Alice* ordered the helm to be put [hard-a-port]³, by which he brought his vessel under the bows of the *Bywell Castle*, and this fearful collision ensued. It remains to be considered whether the *Bywell Castle* in any way contributed to it. She appears to have been navigated with due care and skill till within a very short time of the collision. But the evidence certainly establishes that having seen the green light of the *Princess Alice* she hard [a-starboarded] into it. There is no doubt that this is not only obviously a wrong manoeuvre, but the worst that she could have executed. The only defence offered for it is that it was executed so very short a time before the collision. There have been several cases decided in this Court, in which it has been held that a wrong manoeuvre taken at the last moment had really no effect

upon the collision on account of the proximity of the two vessels, and I have consulted anxiously with the Elder Brethren whether the wrong action of the *Bywell Castle* can be placed in this category. They are of the opinion that if the obviously wrong order of hard [a-starboarding] had not been given and obeyed, though the *Princess Alice* might have received some injury, she would not have sunk, and the lives of her crew and passengers would probably have been saved. I am bound, therefore, to pronounce both vessels to blame for this collision.”

This pronouncement was overruled in the Court of Appeal. In his speech, which has entered the jurisprudence of tort and *delict* and is still quoted today as the Rule in the *Bywell Castle*, James L.J. said: “Then there comes the very last thing that occurred on the part of the *Bywell Castle*, which is that she, in the very agony, just at the time when the two ships were close together, hard [a-starboarded]. The judge and both the Trinity Masters were of opinion that that was a wrong manoeuvre. I understand our assessors to agree with that conclusion, but they advise us that it could not in their opinion, have had the slightest appreciable effect upon the collision. That view, if adopted by us, and I think it should be adopted, would be sufficient to dispose of the case upon the issue of contributory negligence. But I desire to add my opinion that a ship has no right, by its own misconduct, to put another ship into a situation of extreme peril, and then charge that other ship with misconduct. My opinion is that if, in that moment of extreme peril and difficulty, such other ship happens to do something wrong, so as to be a contributory to the mischief, that would not render her liable for the damage, in as much as perfect presence of mind, accurate judgement, and promptitude under all circumstances are not to be expected. You have no right to expect men to do something more than ordinary men. I am therefore of the opinion that the finding of the Court below, that the *Bywell Castle* was, for the purposes of the suit, to be considered to blame, must be overruled, and that the *Princess Alice* was alone to blame.”

It remained the case, however, that the two elder brethren of Trinity House and the nautical assessors of the Court of Appeal condemned the action of the *Bywell Castle*, in [starboarding] to a green light, as not only obviously a wrong manoeuvre but the very worst that she could have executed.

2. THE SEAMANSHIP REQUIRED BY RULE 17 OF COLREGS 1972. The fine-crossing of courses created by the *Princess Alice* when she opened her green light to the red light of the *Bywell Castle*, put the *Bywell Castle* in a situation where her only hope of escape, if any, was to alter course to port sufficiently to clear the stern of the *Princess Alice* while at the same time stopping her engines to run off her speed. The rule at the time was that, as the stand-on vessel in a crossing situation, she was required to keep her course (but not her speed), and this requirement to keep her course was expressly subject to qualification by the rule that due regard be had to any particular circumstances which might exist in any particular case; but otherwise she was given no guidance by the rules as to what to do if the other vessel did not keep out of her way. It is instructive to consider what guidance she would be offered

by the modern rules and, in particular, Rule 17 of COLREGS 1972 which provides:

Action by Stand-on Vessel

- (a) (i) Where one of two vessels is to keep out of the way the other shall keep her course and speed.
- (ii) The latter vessel may however take action to avoid collision by her manoeuvre alone, as soon as it becomes apparent to her that the vessel required to keep out of the way is not taking appropriate action in compliance with these Rules.
- (b) When, from any cause, the vessel required to keep her course and speed finds herself so close that collision cannot be avoided by the action of the give-way vessel alone, she shall take such action as will best aid to avoid collision.
- (c) A power-driven vessel which takes action in a crossing situation in accordance with sub-paragraph (a) (ii) of this Rule to avoid collision with another power-driven vessel shall, if the circumstances of the case admit, not alter course to port for a vessel on her own port side.
- (d) This Rule does not relieve the give-way vessel of her obligation to keep out of the way.

The words of this rule would appear to put the *Bywell Castle* in an even more impossible position today; the freedom of action given to her by paragraph (a) (ii) to avoid collision by her action alone is taken away from her by paragraph (c) which inhibits her from altering course to port. The only action left open to her is to alter to starboard – the very action for which she was condemned by the elder brethren and nautical assessors in 1878. The ineffectiveness of an escape to starboard for a stand-on vessel in a close-quarters situation is demonstrated by Lee and Parker (2007)⁴. It is clear from diagrams on page 149 of their book that an alteration to starboard presents one's own length broadside to the bows of the oncoming ship and that this combines with the fall off in speed caused by the use of the rudder in altering course to make the passage across the path of the delinquent ship a long and lonely business.

The last safe moment for altering course to starboard for a stand-on vessel occurs very early in an encounter and once a ship embarks upon it she can never reduce her speed. Rules 17 (a) (ii) and (c) authorise this manoeuvre of the last safe moment⁵. At close quarters, the opportunity for escape by altering course to port remains long after the last safe moment for altering course to starboard has passed. Unfortunately (or, perhaps, fortunately), there is nothing in the rules to authorise such an alteration to port. A ship finding herself today in the position of the *Bywell Castle* would have to appeal to seamanship rather than law in making her escape from disaster.

3. CAPTAIN COLOMB'S EVIDENCE TO THE THAMES TRAFFIC COMMITTEE OF 1878–79. The law's reluctance to encourage an escape to port in the agony of the moment for a stand-on ship is obviously based on a terror that the delinquent ship will alter to starboard at the same moment. However, this is a danger the outcome of which may not be so terrible as feared. The danger was addressed by Captain Phillip Colomb RN in his evidence⁶ to the committee which had been set up after the loss of the *Princess Alice*. In

response to the committee's questions, Colomb's answers ranged to and fro over many aspects of the rules of the road at sea so it is necessary to summarise in order to give a coherent account of his views on close situations, by which he meant when ships on a collision course were four or, possibly, five or six lengths apart.

First, Colomb thought it unlikely that each ship would alter at the same time and, once one ship had altered, the other would see that it was unnecessary for her to do so. Secondly, the reduction in speed caused by the use of the rudder would augment the effect of the alteration in course if the other ship did not alter, and would reduce the impact if she did. Thirdly, the reduction in speed could be further augmented by slowing or stopping the engines. Fourthly, in turning towards each other the ships would present finer targets than if one was brought broadside to the bows of the other by their turning in opposite directions. Fifthly, and most importantly, the differences in handling characteristics and timing of the ships when swinging towards each other, would mean that one would come ahead of the other first thereby allowing the slower swinging vessel to cancel her turn and the ships to pass each other on parallel or diverging courses. The guiding principle, throughout the changing circumstances, would be that each ship must not attempt by her own action to cross ahead of the other.

Particular attention would have to be paid to the lights of the other ship throughout the manoeuvre. Colomb proposed certain maxims to the committee. When a ship failed to give way as required by the rules, the manoeuvre of the stand-on ship would be initiated by the maxim: "A green light close to the port bow is a signal of immediate danger; the helm should at once be put [hard-a-port] and the way of the ship stopped by every possible means." If the delinquent ship altered course to starboard at the same time, the first of them to see a change in the colour of the lights of the other would cancel her swing according to the maxim: "Never [starboard] to a green light, and never [port] to a red one."

Colomb presented diagrams to the committee showing the curved⁷ paths of ships which cogently suggested that ships swinging towards each other simultaneously would do so at different rates and were unlikely to place each other ahead at the same instant.

4. CONCLUSIONS. The case of the *Bywell Castle* has entered the jurisprudence of tort and *delict* to exculpate a ship which has executed a wrong manoeuvre in the agony of the moment caused by a danger created by another ship. Yet, the rules of seamanship have never addressed the difficulty in which the actions of the *Princess Alice* placed the *Bywell Castle*. Rules 17 (a) (ii) and (c) provide a doubtful means of avoiding a close quarters situation but not a means of escaping from it. Suggestions made to the Thames Traffic Committee that either ship is, and ought to be, free in a close quarters encounter to pass under the stern of the other have been ignored because of an exaggerated fear that simultaneous actions would occur and result in collision anyway. While the law leaves ships free to get out of a close quarters as best they can, this can only be achieved by one passing under the stern of the other and if both attempt to do so there must be some mutually known rule of seamanship which gives precedence to the ship which has succeeded in being the first of the two to bring the other directly ahead.

REFERENCES

- ¹ Kemp (2008) “The COLREGS and the *Princess Alice*”, *The Journal of Navigation*, **61**, 271–281.
- ² The *Bywell Castle*, *The Law Reports* (1878–79) 4 P. D. 219.
- ³ In accordance with modern convention, the words in square brackets have been changed to express helm orders with reference to the direction in which the ship’s head is required to go.
- ⁴ Lee and Parker (2007) “*Managing Collision Avoidance at Sea*”, The Nautical Institute, 1st Edition 2007.
- ⁵ The phrase “The Manoeuvre of the Last Safe Moment” was coined by Captain Walter Helmers in a paper of that title translated from the German by Allison (c. 1963) in *The Journal of the Honourable Company of Master Mariners* and was probably influential in the introduction of Rules 17 (a) (ii) and (c) to COLREGS.
- ⁶ Report of the Committee appointed by the Board of Trade to inquire into the Navigation of the River Thames, *Parliamentary Paper* [C. – 2338] 1879, pages 195–210 and 224–235.
- ⁷ Empirically, Colomb’s views were well founded being based on an examination of a thousand cases and on manoeuvres with the *Thunderer* which he later confirmed with several hundred experiments involving other ships. In relation to the Traffic Committee’s recommendation of the rule that ships should keep to the starboard side of the river’s mid-channel, Colomb was in favour but he thought this rule should be qualified by the words: “It must be clear that no ship, being on the wrong side, ought to try to cross the bows of another to reach the right side. The object must be, not to send ships to their proper side when they draw near each other, but to place each on her proper side before they see each other.” *ibid* p 472 para 8.