Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Owners of the "Marie de Brabant" v. Papayanni and others (ship "Amalia"), from the High Court of Admiralty of England; reported 27th July, 1863.

Present:

LORD CHELMSFORD.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.

THIS Appeal from an Order or Decree of the learned Judge of the High Court of Admiralty involves a question of very great importance and of some difficulty. The case arose under the following circumstances. On the 15th May, 1863, the Belgian steam-ship "Marie de Brabant" and her cargo were sunk and lost, and some persons on board of her were drowned by a collision, with the British steam-ship "Amalia," which took place in the Mediterranean Sea out of British territorial jurisdiction. The owners, master, and crew of the "Marie de Brabant," and the owners of the cargo, and the persons drowned, were all subjects of the Kingdom of Belgium. On the 29th May, 1863, a suit was instituted in the High Court of Admiralty by the owners of the ship "Marie de Brabant" and her freight against the "Amalia" and her freight to recover damages to the amount of 40,000*l.* for the loss occasioned by the collision. And on the 1st of June, 1863, a similar suit was instituted by the owners of portions of the cargo of the "Marie de Brabant" to recover damages to the amount of 20,000*l.* The owners of the "Amalia" thereupon instituted a suit in the High Court of Admiralty for the purpose of obtaining a declaration that they

were entitled to a limitation of their liability under "The Merchant Shipping Act Amendment Act, 1862," and presented a petition praying the Judge to declare that their aggregate liability (if any) to damages (excluding damages for the loss of life) should not exceed the sum of 8*l.* per ton of the "Amalia's" gross tonnage, which would amount to 14,600*l.* The owners of the "Marie de Brabant" opposed the admission of the petition on the grounds, first, that the owners of the "Amalia" were not entitled to any limitation of their liability; and, secondly, that if they were, they could not claim it without first admitting their liability to answer for the collision. The learned Judge decided that it was not requisite for the owners of the "Amalia," preferring their claim in the Court of Admiralty to limited liability, to begin by acknowledging that their vessel was to blame, and that they were entitled to the limitation of liability which they claimed as against the owners of the "Marie de Brabant" and her cargo under the 54th section of "The Merchant Shipping Act Amendment Act, 1862." Upon the hearing before their Lordships the Queen's Advocate stated that he would not insist upon his objection that the owners of the "Amalia" were bound to admit their liability before their Petition could be received, and confined himself to the question whether the 54th Section of the Act applied to the case of a collision between a British and a foreign ship occurring beyond the limits of British jurisdiction in a suit instituted by the foreign owners against the British ship. For the proper determination of this question it will be necessary to refer to corresponding provisions of the Merchant Shipping Act, and also to examine the previous decisions upon the subject. The 504th Section of "The Merchant Shipping Act, 1854," which corresponds to the 54th Section of "The Merchant Shipping Act Amendment Act, 1862," limits the liability of the owner of any sea-going ship occasioning loss or damage without his fault or privity, to the value of the ship and freight. This section clearly applies solely to British ships. The decisions upon the former Act, which it may be necessary to notice, are Cope *v.* Doherty, General Iron Screw Company *v.* Schurmann, and the case of the "Wild Ranger." Cope *v.* Doherty was

a case of collision between two American ships on the high seas, where it was properly held that there could be no limitation of liability under the 504th Section of "The Merchant Shipping Act, 1854." It seems extraordinary that any question should ever have been raised upon a case of this description. The next case of the General Iron Screw Collier Company *v.* Schurmann decided that where a British ship damaged a foreign ship by a collision within three miles from the shore of the United Kingdom (*i.e.*, within British jurisdiction), the provisions of "The Merchant Shipping Act, 1854," limiting the liability of the owner of the British ship, were applicable. The case of the "Wild Ranger" was a case of collision upon the high seas between a British and a foreign vessel, in which the foreign vessel was at fault, and it was held that the foreigner was not entitled to any limitation of his liability. It thus appears (as was said in the argument) that prior to "The Merchant Shipping Amendment Act" all the questions which could arise in cases of collisions between foreign and British ships, in which the British ship was in fault, had been decided, except the case now in question; but against the right of the British owner in such a case to a limitation of his liability, very strong observations had been made by Vice-Chancellor Wood in Cope *v.* Doherty, which his Honour repeated in the General Iron Screw Collier Company *v.* Schurmann. In this state of the decisions "The Merchant Shipping Act Amendment Act, 1862," passed, and instead of the words "no owner of any sea-going ship," in the 504th Section of the original Act, introduced the words in the 54th Section upon which all the difficulty has arisen, viz., "the owners of any ship, whether British or foreign." It was contended on the part of the Appellants that as the Legislature had no power to restrict the common natural rights of foreigners, except as to matters occurring within the limits of British territory, therefore, although the word "foreign" could not be rejected from the Act, yet the words "within British jurisdiction," or some equivalent words, must be implied for the purpose of restricting its meaning. It would be difficult, however, to supply restrictive words to this section in the partial manner proposed, because the intention of the Legislature, as far as it can be

collected from the language employed, seems to be to place British and foreign ships on the same footing. And besides, this qualification of the word "foreign" (as was pointed out during the argument) would make the 57th section (so far as the words "otherwise relating to collisions" extend), a mere repetition of the 54th, and would thereby render it wholly unnecessary. Assuming, then, the word "foreign" to be taken without the restriction contended for, in what way can it be said that the provisions of the 54th section of the Act interfere with what are called the natural rights of foreigners? In the 54th section there is no reference to the Court of Admiralty, or to any other Court, but a mere enactment that the owners of a ship occasioning damage or loss shall not be answerable in damages beyond a certain amount. The Appellants say that the moment a collision occurs, there is a lien upon the vessel which is in fault, and supposing the vessel injured to be a foreign one, that the foreigner immediately acquires this lien to the extent of his damage, and cannot be deprived of it by the municipal law of this country. But suppose the foreigner, instead of proceeding *in rem* against the vessel, chooses to bring an action for damages in a court of law against the owners of the vessel occasioning the injury, the argument arising out of the acquired lien would be at once swept away, and the rights and liabilities of the parties be determined by the law which the Court would be bound to administer. And it may be asked what breach of international law or interference with the natural rights of foreigners is produced by the Legislature saying that all suitors having recourse to our Courts to obtain damages for an injury from a person not himself actually in fault, but being responsible for the acts of his servant, shall recover only to the value of the thing by which the loss or damage was occasioned, estimated in a particular manner?

It is to be observed that, under this view of the 54th section, the foreigner will be entitled to the benefit of the Act, as well as the British owner of a ship occasioning damage, and he will therefore not be exposed to a more extensive liability than the British subject.

There may be still some little difficulty remaining

upon this construction of the 54th section of the Amendment Act, arising out of the words of the 57th and 58th sections of that Act. If the words in the 57th section, "all provisions of this Act relating to such regulations, or otherwise relating to collisions;" and in the 58th section, "or any provisions of this Act relating to collisions," extend to the provisions of the 54th section as to limitation of liability in damages for a collision, then those provisions would apply to foreign ships only when they were within British jurisdiction, or when beyond the limits of British jurisdiction, where, for the purpose of establishing reciprocity, an Order in Council has been made directing that the provisions of the Act shall apply to the ships of the foreign country. But, looking to the heading which immediately precedes these sections, describing the sections which follow as containing "arrangements concerning lights, sailing rules, salvage, and measurement of tonnage in the case of foreign ships" (none of which subjects apply to the limitation of liability), and considering the language of the 57th and 58th sections, the words "relating to collisions" would seem more naturally to refer to regulations respecting collisions themselves than to provisions which are applicable only after collisions have occurred, and are but a consequence of them.

Their Lordships are of opinion that the Order or Decree of the learned Judge of the High Court of Admiralty is right, and they will humbly recommend to Her Majesty that it be affirmed, and that the Appeal be dismissed, but having regard to the great difficulty and importance of the question, their Lordships will recommend that it be dismissed without costs.