

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Great Ship Company v. Sharples and another (ship "Great Eastern"), from the High Court of Admiralty; delivered 23rd July, 1864.

Present :

LORD KINGSDOWN.

LORD JUSTICE KNIGHT BRUCE.

THE MASTER OF THE ROLLS.

THE collision in this case took place in the Atlantic ocean, on the 18th September last, about 200 miles west of Cape Clear. The "Jane," a vessel of 775 tons, was close hauled on the port tack, heading north-west, and making about 7 knots per hour. The "Great Eastern" is a steam-ship of unusual size, of 13,344 tons burden; she was heading east by south half south, going at full speed, under both steam and sail, and making about 13 knots per hour. The wind was west-south-west. The collision took place by the starboard bow of the "Great Eastern" striking the port bow of the "Jane." Two men on board the "Jane" were killed by the collision or falling of the spars; the rest of the crew escaped on board the "Great Eastern." The blow was angular, that is, at the moment they were both going nearly in the same direction. The "Jane" was not sunk by the first collision, but she was, by it and the subsequent grinding down and rolling of the "Great Eastern" reduced to a wreck and abandoned. The case comes within the new Regulations issued in January 1863. By those Regulations it was the duty of the "Great Eastern" to slacken her speed, to stop and reverse

her engines, and if the weather was foggy to go at a moderate speed. It was also the duty of the "Great Eastern" to keep out of the way of the "Jane," and by Article 18, where by the above rules one of two ships is to keep out of the way, the other shall keep her course subject to this qualification, that these rules need not be followed in any special circumstances which may render a departure from them necessary in order to avoid immediate danger.

In this state of circumstances the duty of the "Jane" was to keep her course without alteration, unless the collision was so imminent when the "Great Eastern" was first discovered as to render a departure from the above rules necessary for the purpose of avoiding danger. Both vessels were carrying their proper lights. This is disputed on behalf of the "Great Eastern," who contends that if the "Jane" had carried her proper lights they would have been observed on board the steamer, which they were not; but, as the evidence on behalf of the "Great Eastern" states, only a bright light was seen, as if a lantern had been shown over the side of the vessel. In answer to this on behalf of the "Jane" it is replied that there could not have been a good look-out on board the "Great Eastern," or that the red light of the "Jane" would have been observed. The evidence is distinct on behalf of the "Jane" that the lights were properly fixed and duly trimmed, and if they were not seen on board the "Great Eastern" it appears to their Lordships that this could only have arisen from the circumstance either that the look-out was not sufficient or that the state of the weather prevented their being observed. Their Lordships first proceed to consider the evidence relative to the "Jane," for the purpose of ascertaining whether she adopted the course which, having regard to the position of the vessels and the new rules, it was her duty to take.

It is established by the evidence that the white light of the "Great Eastern" at the foremast head was the light first seen. Andrew Mathie, one of the look-out men on board the "Jane," states that he first saw the white light, and that he did not see the green light till they were about 20 or 30 yards off (page 15, lines 13—15).

William Phillips, the mate of the "Jane," saw

first a mast-head light, a bright light (page 2, lines 39, 20), and he did not see the green light until after he had given the order to port the helm (page 3, line 35).

Verso, the man at the helm, saw one light and afterwards saw the green light (page 12, lines 16—20).

Law, the other look-out man, saw only one light, did not distinguish the colour, but thinks that it was about 2 or 3 miles off. Their Lordships consider it to be clear that the mast-head light of the steamer was the light so seen. The distance it was off when first seen is variously stated. Phillips thinks it was about a mile and a-half (page 2, line 43), but he corrects this in his answer to the next question, and says from 2 to 2½ miles. Law thinks it was about 2 or 3 miles. The other witnesses give no statement on this subject. Their Lordships consider that the distance at which the mast-head light of a steamer is off when first observed, unless quite close, must be mere conjecture. Except the brightness of the light, the only indication is the angle above the horizon at which the light is seen, and a more distant light might present the same angle as a nearer light if the elevation of the distant light were greater; and if the more distant light were in fact brighter than the nearer one it might present the same appearance of distance. The only other criterion of distance is the time which elapsed before the collision took place; this is also necessarily vague from the imperfection of the recollection of men under such circumstances, when anxiety of mind and the rapidity of events crowded into a short space of time have a natural tendency on recollection to make the time seem longer than it really was. On this point, however, there is much agreement in the evidence of the witnesses on board the "Jane." John Law says, "It was about a quarter of an hour from the time we first saw the light till she struck" (page 14, line 16.)

Andrew Matthie says, "Somewhere about 10 minutes to the best of my idea, between 10 minutes and a quarter of an hour" (page 16, line 10). "It would be about 9 minutes or so from the time when I reported the white light until I saw the green light" (page 16, line 24).

This estimate of time agrees well with the evidence given in behalf of the "Great Eastern,"

which puts the time which elapsed between the first observation of the "Jane" and the collision at about 5 minutes, it being obvious that the mast-head light of the steamer would have been discerned on board the "Jane" a considerable time before, from the deck or paddle-boxes of the steamer, the light on the bows or the deck of the "Jane" could be observed.

Phillips does not appear to have been asked the time which elapsed between the first observation of the light on board the Great Eastern and the collision taking place. As, however, the vessels were approaching each other at the rate of a mile in every three minutes, the nine or ten minutes spoken of by the two witnesses Law and Matthie would agree with the evidence which puts the vessels at from two to three miles off when the "Great Eastern" was first seen on board the "Jane." To arrive at a satisfactory conclusion as to the answer to be given to the next question is very important. Did the "Jane" on first observing the "Great Eastern" port her helm, or did she not do so till after the green light of the "Great Eastern" was observed, when it is admitted on both sides that it was proper to do so in order to save the lives of all on board?

If the "Jane" on the first observation of the mast-head light of the "Great Eastern" was ten minutes off, and from two to three miles distant, and if she then ported her helm, she was in the wrong, and acted contrary to the 18th Article of the new Regulations, which has been already mentioned.

The evidence of Phillips, the mate, who had charge of the vessel, on first examining it, seems to be confused and contradictory on this point. In page 2, line 43, he says, "When I first saw it I should say it was about a mile and a half; when I shifted the helm it would be about a mile and a quarter."

In page 3, line 32, he is asked—

Q. At the time you gave that order, could you see the other ship, or could you only see the light.—A. I could not see her green light then.

Q. Did you see the green light before you gave the order or not?—A. I never saw the green light till after I had given the order.

Again, line 36—

Q. You say that after you had given the order to put the helm hard-a-port, you saw the green light of the other vessel; is that so?—A. Yes.

In cross-examination, page 7, line 42, he says:—
 “We ported our helm for the safety of our lives.”

In re-examination he says expressly that he ordered the helm to be put hard-a-port after he had seen the green light.

Q. Now I want you to clear one thing which you answered in several ways unfortunately. You have told me that you first saw the bright light?—A. I did.

Q. And that you watched it for some time?—A. Yes.

Q. Now tell me—just take time to consider about it—did you order your helm hard-a-port before or after you saw the green light?—A. After I had seen the green light.

Q. How long was it after you had seen the green light that you ordered your helm hard-a-port?—A. About a minute, or perhaps not so much.

On examination of his evidence it does not appear that he was asked whether he gave two orders to port the helm or only one. If he gave two orders to port the helm, one when he first saw the mast-head light of the “Great Eastern,” and afterwards gave a second order to put the helm hard-a-port after he had seen the green light of the “Great Eastern,” this would make his evidence on cross-examination and on re-examination consistent with his evidence in chief, which has already been referred to; and this appears to be the true solution of the apparent contradiction in his evidence. The clue to this solution is furnished by the evidence of Verso the helmsman, whose evidence is quite positive and distinct on this subject:—

Q. Was she sailing close-hauled? A. Yes; closed-hauled, laying north-west.

Q. Do you remember shortly before the accident happened, getting an order from the officer of the watch?—A. Yes.

Q. What was that order?—A. To port the helm.

Q. Did you obey that order?—A. Yes.

Q. Did you get any order from the officer?—A. Yes; hard-a-port a few minutes afterwards.

Q. Did you obey the order?—Yes; and the mate assisted me in putting the helm hard-a-port.

This explains that the evidence of Phillips respecting the order given by him after seeing the green light applies to the second order he gave to put the helm hard-a-port, and which was subsequent to the former order he had given to the same effect, and it also explains other parts of his evidence which relate to the stamping for the Captain

and assisting Verso to put the helm hard-a-port (page 3, line 31). It does not appear in his evidence that he anywhere says that he kept on his course until the green light of the "Great Eastern" was visible. In the preliminary Act, filed in pursuance of the orders of November 1859, the 12th Article of the statement on behalf of the owners of the "Jane" is in these words:—"Upon the bright light being observed, and before the green light was seen, the helm of the 'Jane' was put hard-a-port." This statement was made 24th of October, 1863, within six weeks after the collision had taken place, and while the facts were fresh in the memory of the witnesses. It agrees with the evidence of Verso, and also with the evidence of Phillips, when so examined as to make it consistent with itself.

The conclusion to which their Lordships have come is, that the evidence given on behalf of the "Jane" is not inconsistent with the statement made on her behalf in the preliminary Acts, and that the case is taken out of the rules laid down in the Report of the "Inflexible" and "Vortigern" referred to in the argument.

If the view which their Lordships have taken of the evidence on behalf of the "Jane" be correct, it establishes the fact that the course of the "Jane" was in violation of the 18th Article of the new Regulations, and this violation, in the opinion of the nautical gentlemen by whom they are assisted, has materially contributed to the collision which took place. These gentlemen are of opinion that if the "Jane" had been kept on her course hauling her a little closer to the wind and thereby diminishing her speed, instead of falling of and thereby increasing her speed and accelerating the rate of approximation to the "Great Eastern," the collision would have been avoided.

Their Lordships, therefore, have come to the conclusion that the "Jane" was to blame in this case.

Their Lordships, however, concur with the Court below in considering that the "Great Eastern" was to blame also. Without expressing any opinion on the point whether the look-out on the "Great Eastern" was or was not sufficient, their Lordships consider it to be proved that the lights of the "Jane" were properly fixed and brightly burning.

In truth this seems scarcely to have been capable of being contested on the evidence adduced. If the "Great Eastern" had a proper and sufficient look-out, the port light ought to have been seen, unless the state of the weather rendered it impossible to do so. What the light was which was first observed by the "Great Eastern," assuming the evidence given on behalf of the "Great Eastern" to be completely accurate, it is difficult to explain. Their Lordships cannot admit the suggestion offered to them in argument, that it was the cabin light of the "Jane" seen from the "Great Eastern" impending over her just before the collision, and that it was first seen at the time when Phillips heard a bell on board the "Great Eastern," and when the two vessels were within hailing distance, and when Phillips was desired to port his helm, and answered that it had been hard-a-port a long time ago.

The evidence is distinct that the light was seen five minutes before the collision occurred. The evidence on both sides evinces that the way of the steamer was much diminished at the time of the collision, and that she was then going very slowly through the water. This is also confirmed by the evidence of the character of the collision. After they had struck, the "Jane" swung round under the starboard sponsons of the steamer, and, to use the expression of the Mate of the "Jane" (page 13, line 33), "then she rolled and smashed our ship up; the 'Great Eastern' sponsons rolled into us." If the "Great Eastern" had not greatly diminished her speed, their Lordships are assured by the nautical gentleman that she would have gone right over the barque and away from her; and they are also assured, as indeed is sufficiently obvious, that if the first intimation of the proximity of the vessels had been at that time when the occurrence of the collision was obviously unavoidable, it would have been impossible to have diminished the speed of a vessel of the size and momentum of the "Great Eastern" in the time which elapsed before they actually struck.

Their Lordships, however, are of opinion that the collision was in a great measure attributable to the state of the weather and the rate at which the "Great Eastern" was proceeding, which was not, in the opinion of their Lordships, justifiable in the

circumstances. The rate at which she was proceeding is stated in the Preliminary Act as twelve knots per hour; the evidence states that by the log it was fifteen knots, and after allowing two knots for the current produced by the paddle-wheels, the rate cannot properly be put at less than thirteen knots an hour, when the paddle-engines and the screw-engines were working full power, and every sail was set that could be set to accelerate her pace. At the same time the state of the weather was this: in the Preliminary Act, on behalf of the "Jane," it is stated to have been thick with showers of rain, and on behalf of the "Great Eastern," dark and raining. The witnesses on both sides state that it was a dark night, hazy weather, and that a drizzling rain was falling.

Their Lordships do not mean to lay down any rule beyond that expressed in the Regulations themselves as to the occasion when a steam-vessel is bound to moderate her speed, or as to the rate which in the circumstances described in the evidence she ought not to exceed; but their Lordships are of opinion that it is the duty of the steamer to proceed only at such a rate of speed as will enable her, after discovering a vessel meeting her, to stop and reverse her engines in sufficient time to prevent any collision from taking place. Here the evidence shows that from the moment the "Jane" was reported on board the "Great Eastern" everything was done to avert the collision, but without success. If the "Jane" had been wholly in the right, and by pursuing her course properly had been in the spot where the collision took place, the rate of speed at which the "Great Eastern" was advancing would have rendered their contact inevitable. Their Lordships are of opinion that it was the duty of the "Great Eastern" to proceed at no greater speed than, having regard to the state of the weather, made it possible for them to avert the collision. Their Lordships, therefore, are of opinion that both vessels were to blame, and that the collision is attributable to both. That the "Jane" by not holding on her course when she first saw the masthead light of the "Great Eastern" got into a position which brought her directly against the "Great Eastern," and that the rate of speed at which the "Great Eastern" was advancing made it impos-

sible for her, when she first observed the "Jane,"
to avoid the catastrophe which occurred.

Their Lordships will humbly advise Her Majesty
that the Judgment of the Court below be altered
accordingly.

