

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the United Steam Tug Company v. Klingender (the "Lady of the Lake" and "Emperor"), from the High Court of Admiralty; delivered March 8, 1865.*

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Present:

LORD CHELMSFORD.

LORD JUSTICE KNIGHT BRUCE.

LORD JUSTICE TURNER.

THESE are Appeals from two Decrees of the Judge of the Court of Admiralty in cross actions of damage between the owners of the steam-tug the "Emperor" and the owner of the barque the "Lady of the Lake," by which in the action by the "Emperor" the learned Judge pronounced against the damage proceeded for and dismissed the Defendant from the suit, and in the action by the owner of the "Lady of the Lake" he pronounced for the damage proceeded for, and referred it to the Registrar, assisted by merchants, to report the amount.

The ground upon which the Decrees proceeded is, that the "Emperor" was solely to blame for the collision which occasioned the damage to the two vessels.

The same evidence was used in both causes, and the following facts were established.

At half-past 1 in the morning of the 12th November, 1863, the tug steamer the "Emperor," belonging to the port of Liverpool, was proceeding down the River Mersey, which runs nearly north and south, with the view of anchoring off New Brighton. The morning was dark and squally, the wind blowing strong from N.W. or N.N.W., with rain. The "Lady of the Lake," a sailing

vessel, also belonging to Liverpool, was going up the Mersey. The two vessels first came in sight of one another, at the distance of only a quarter of a mile, upon each other's starboard bow. The "Emperor" immediately ported her helm, and the "Lady of the Lake" kept her course, in consequence of which a collision took place between the two vessels, the bow of the "Lady of the Lake" coming in contact with the port paddle-box of the "Emperor." The "Emperor" being a steamer, and the "Lady of the Lake" a sailing-vessel, by the regulations in force for preventing collisions at sea, the "Emperor" was bound to keep out of the way of the "Lady of the Lake." This is admitted on the part of the "Emperor," and also that being on the starboard side of the "Lady of the Lake," she did wrong in porting her helm, unless she was misled as to her position by reason of a breach on the part of the "Lady of the Lake" of the rules concerning lights which have been issued in pursuance of the provisions of "The Merchant Shipping Act Amendment Act, 1862."

Now, it is clearly established that the "Lady of the Lake" had not obeyed these rules; for, although she had a green light on her starboard side and a red light on her port side, yet the lights were not fitted as the rules require—"with inboard screens projecting at least three feet forward from the light so as to prevent these lights from being seen across the bow." Instead of this, it appeared from the report of the Surveyors for the Board of Trade that "the lamps of the 'Lady of the Lake' were placed in the mizen rigging and were fitted with screens projecting only one foot before the lamp instead of three feet, and from their position they could not be seen right ahead as they were obscured by the main rigging, and from the shortness of the screens the red light could be seen from the starboard bow and the green light from the port bow." There was therefore an inexcusable infraction of the regulations in question by the "Lady of the Lake."

It is said on the part of the "Emperor" that the effect produced by the placing and improper screening of the lights was that, in the relative positions of the vessels when they met, the green light of the "Lady of the Lake" was hid by the rigging and the red light alone was visible; that, in consequence, the

"Emperor," supposing that the port side of the "Lady of the Lake" was turned towards her, could do nothing else with prudence but port her helm. Supposing this state of facts to have existed, the question arises whether the collision was attributable wholly or in part to the disregard of the regulations as to lights? It is not advisable to allow these important regulations to be satisfied by equivalents or by anything less than a close and literal adherence to what they prescribe. But still, by the 29th section of "The Merchant Shipping Act Amendment Act, 1862," in a case of collision, the vessel by which the regulations have been infringed is to be deemed to be in fault only when it appears to the Court before which the case is tried that such collision was occasioned by the non-observance of the regulations.

Upon the hearing of the cause, the learned Judge of the Court of Admiralty, assisted by two of the Elder Brethren of the Trinity House, said, "I am advised by the gentlemen with whose assistance I am favoured that the steamer was wholly to blame for the collision. She was going at an improper rate, considering the state of the weather and the condition of the tide; and with respect to the lights on board the other vessel the state of those lights did not in their opinion contribute to the collision at all." With respect to the blame imputed to the "Emperor" their Lordships are advised by the nautical gentlemen by whom they have been assisted that the rate at which the "Emperor" was going was improper at the time of the collision and in the state of the weather when the collision occurred. By Article 16 of the Regulations for preventing collisions "every steam-ship when approaching another ship so as to involve risk of collision shall slacken her speed, or, if necessary, stop and reverse." On such a morning as the one in question when two vessels were meeting each other at a quarter of a mile distance and only half a point on each other's bow, there must have been considerable risk of collision, and yet it is not pretended that the "Emperor" slackened her speed, much less that she stopped or reversed, and probably the rate at which she was going would have rendered the latter manœuvres unavailing.

On the subject of the lights there is much more difficulty. The report of the Surveyors for the

Board of Trade shows that the effect of the shortness of the screens with which the lights of the "Lady of the Lake" were fitted was exactly that which is described to have been produced, viz., that her red light was visible to the "Emperor" when on her starboard bow. This would furnish a satisfactory explanation of the course taken by the "Emperor" in porting her helm, for which it is otherwise hard to account. But, whatever might be the inclination of their Lordships' opinion upon this point, they would feel great difficulty in overruling the Judgment of the Court of Admiralty. They have often observed, and never more strongly than in the case of the "Julia," that "in order to reverse they must not merely entertain doubts whether the decision below is right, but be convinced that it is wrong." In this case the nautical assessors of the Judge of the Court of Admiralty have given no reasons for their opinion that the state of the lights did not contribute to the collision; but the fact of such an opinion being expressed by persons of nautical skill and experience must, in itself, render an opposite conclusion in some degree doubtful. But a further ground of doubt exists in the difficulty of understanding, from the position in which the "Emperor" was placed, and the speed at which she was going, how her case can be true. If at a quarter of a mile distance she was only half a point off the starboard bow of the "Lady of the Lake" she must at her rate of speed, by porting her helm as she did, have gone clear, and if she was two points or more on the starboard bow, as appears in part of the evidence, she must have seen the "Lady of the Lake's" green light. It is not at all improbable that from the strong wind which the "Emperor" was meeting a good deal of spray would be breaking over the fore-castle and interfering with the look-out of the men stationed there, and the want of a good look-out might account for the course taken by the "Emperor," instead of attributing it to a mistake produced by the state of the lights of the "Lady of the Lake."

Their Lordships do not assume that all or any of these circumstances actually occurred, but the suggestion of them shows that it is impossible to entertain so strong a conviction that the Judgment appealed from was wrong as, in accordance with the

principle which they have so frequently laid down, to warrant them in reversing it. They will therefore recommend to Her Majesty to affirm the Decrees, and to dismiss the Appeals in both cases with costs.

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