

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeals of the
London, Chatham, and Dover Railway v. M'Gil-
very and others, the 'Fanny Buck' and 'Sam-
phire,' from the High Court of Admiralty, delivered
November 1st, 1866.*

Present :

LORD WESTBURY.

SIR JAMES W. COLVILE.

SIR EDWARD VAUGHAN WILLIAMS.

WE have considered this case, which is certainly one of great importance, because it is most necessary that steamers, which go at a great rate of speed, and have always within themselves the power of regulating their course so as to prevent collision, should be placed under the rule of observing great diligence and care in their nightly voyages.

Their Lordships entirely agree with the Court below that the issue in this case is simply whether the 'Fanny Buck' had lights properly burning at the time when the collision occurred. It is not the issue which has been attempted to be substituted by the Counsel for the Appellant, viz. whether there was a want of reasonable diligence on the part of the 'Samphire.' That may be the consequence of finding the fact that the 'Fanny Buck' had proper lights burning at the time of the collision. By "proper lights" we mean such lights as, with reasonable care on the part of the 'Samphire,' must have been seen by the 'Samphire' in time to prevent a collision.

The evidence upon that issue is entirely one way. There is positive testimony, by persons whose characters are above suspicion, that the lamps on board the 'Fanny Buck' had been properly trimmed, and were properly burning at the time of the collision.

That is attempted to be met, on the part of the Appellant, first by a species of argumentative allegation, viz. that the lamps were so constructed that they could not have answered the purpose for which they were required. But we find that this assertion is contradicted by the evidence. The maker of the lamps, a French manufacturer, states that the lamp was of a similar construction with a great number of others which he has supplied to ships for many years with great success; and his evidence proves that this lamp, if properly trimmed, would answer every purpose of a ship's lamp, in conformity with the regulations.

An attempt was then made on the part of the Appellant to meet this testimony by the examination of two English surveyors; but their evidence fails entirely to show that the lamp was so constructed as to be incapable of answering its purpose. The objection which they take to it is simply with respect to the shade of the green glass, their opinion being that if the green were darker, the light would be seen at a greater distance; but no one of them ventures to say that the lamp was so constructed as that, with proper care paid to the trimming and the burning of it, it would not cast a light which would be quite capable of being seen so as to prevent a collision; and one of them distinctly says, in answer to the final question which was put to him by the learned Judge in the Court below, that the lamp was sufficient to throw a light to a considerable distance.

Now these two vessels at the time of the collision were in this relative position:—the 'Fanny Buck' was close hauled, beating against the wind, with the tide, such as it was, against her, and running at the rate of between five and six knots an hour. The steamer's course was nearly at a right angle to the line of the course of the 'Fanny Buck,' and the Samphire was running at the very considerable rate of twelve knots or upwards of twelve knots an hour.

It was quite wrong for the steamer to go at that rate, unless she was perfectly certain that in the night time she would be able to see the lights of approaching vessels,—provided, of course, those lights were proper and sufficient.

We must remark here a very material omission

on the part of the 'Samphire.' The evidence on the part of the 'Samphire' is, that there was a look-out man ahead; that the Master was on the bridge; that with him there was another man, Malpas, and also a call-boy to communicate his orders to the engine-room. The look-out man (Northover) states that he was sometimes on the larboard bow, sometimes on the starboard bow. He says that he saw the sails of the 'Fanny Buck' first, and afterwards her lights. There is a good deal of discrepancy between the evidence of the Master on the one side, and the evidence of Northover on the other, as to the distance of the vessels; but the material omission on the part of the 'Samphire' is this, that the other look-out man (Malpas) is not called at all. No evidence is attempted to be given by Malpas in favour of the 'Samphire.'

The evidence of the engineer of the 'Samphire' is distinct and conclusive against her, because he admits that immediately after the collision, he ran upon deck, and then saw the green light of the 'Fanny Buck,' which, he says, was burning dim; but dim as it was, in his opinion it was a light which might have been seen three quarters of a mile off. The other evidence on the part of the 'Samphire' is full of inconsistencies. If you believe the evidence of the Master, there was no green light, and he asserts that the light which he saw was a bright light moving over the side of the vessel. The evidence of Northover is distinct that he saw the green light; the evidence of the engineer is that he saw a green light; the evidence of a passenger on board the 'Samphire' is that he saw a green light at the time of the collision.

An attempt has also been made to show that there was no sufficient testimony with regard to the trimming of the lamps, and that the lamp was one which required regular trimming.

Now the mate of the 'Fanny Buck' is most distinct upon that point; and there is nothing which can with any propriety be thrown into the opposite scale, because the testimony given by the individual Miller only discredits the persons who bring forward a witness so utterly unworthy of belief.

Upon the whole, therefore, we are decidedly of opinion, and our opinion is confirmed by that

of the professional gentlemen who are here, that the conclusion of the Court below was right; that the issue, as put by the learned Judge of the Court below in his judgment, was the true one; and that the evidence upon that issue is conclusive and satisfactory.

Their Lordships will therefore humbly report to Her Majesty that the Judgment and Decree of the High Court of Admiralty ought to be affirmed and this Appeal dismissed with costs.