

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Owners of the Screw Steam-ship "Lion" v. the Owners of the Ship "York Town," from the High Court of Admiralty (ship "Lion"); delivered 15th July, 1869.

Present:

MASTER OF THE ROLLS.
SIR WILLIAM ERLE.
SIR JAMES W. COLVILLE.
SIR JOSEPH NAPIER.

IN this case the "Lion," a screw steamer, proceeding from London to Hull, ran into the "York Town," in broad daylight, at 11 A.M., on the 8th of December, 1867, at Blackwall Reach.

The "York Town" was being towed by two steam-tugs down the river, when the "Lion," without any excuse of following, ran into her stern and did her considerable damage.

The question is, are the owners liable for this damage. In order to determine this it is necessary to decide, first, whether the "Lion" was under the charge of a duly licensed pilot at that time; and secondly, whether it was compulsory on the "Lion" to take a duly licensed pilot.

If these questions are answered in the affirmative, then the owners are exonerated. If in the negative, they are liable.

But if the first question be answered in the affirmative, and the second question in the negative, then it becomes necessary to ascertain whether a decision made as to the meaning and effect of the Statute of 6

Geo. IV, cap. 125, sec. 55, is applicable to cases which come within the scope of the 388th section of the Merchant Shipping Act, the 17th and 18th Vict., cap. 104.

As to the first question : West, the pilot, had two licenses, one a waterman's license, which would be of no avail, and the second a regular license from the Trinity House authorizing him to act as pilot for home trade passenger ships within the limits in which the collision occurred ; the consequence is, that he was a duly licensed pilot having charge of the vessel at that time. As to the second question, whether it was compulsory on the "Lion" to take a pilot, the answer depends on whether this was a passenger ship at the time of the collision ; and this their Lordships are of opinion depends upon whether there were any passengers on board the "Lion" at the time of the collision.

The facts are these : they cannot be more correctly set forth than in the Judgment of the learned Judge in the Court below :—

"Having been seven days in London, the captain wrote to his wife and to his father-in-law to come to London and go with him to Hull ; he did not write to the owners, or tell their agents in London, or anybody that he was going to take these persons with him ; they paid nothing for their living on board the ship, but they paid for their fare, in the circumstances about to be mentioned, 7s. 6d. each, which he swore positively was the proper second-class fare, though Malcolm, the agent for the owners of the "Lion," as positively swore afterwards that it was the first-class fare. For this money no receipt was produced, though the captain swore that he had paid it, and Malcolm that he received it. The captain admitted that he had said nothing to either of these persons, previously to their coming on board, as to their payment of fare ; that, he said, he arranged during the passage, but after the collision had happened ; the father-in-law swore that the first time he ever spoke about his paying was when in Hull, and the ship alongside the quay. The captain admitted, on cross-examination and in answer to the Court, that he was aware that he was bound to pay light dues, unless he went in ballast without passengers on board ; that he ought to have told the lighthouse authorities that he had passengers on board, and that he had not done so. He said that he paid the fares to his owners on his arrival in Hull ; but Mr. Malcolm said that 'the settlement,' as he called it, was made about the middle of January, and after the correspondence with the Trinity House, or the Board of Trade, to which reference was made, and, therefore, to be presumed, after he knew that the pilot had reported that there were no passengers on board. The captain also swore, and in this was confirmed by Malcolm, that his instructions were, never to take persons on board without payment as passengers, except with special permission."

In this state of things, were the captain's wife and her father passengers?

They were on board on the invitation of the captain without the privity of the owners, who had not contracted any obligation to have them carried in the vessel, and no duty was imposed on the owners in relation to these two persons.

The meaning of particular words in an Act of Parliament (to use the words of Abbot, C.J., 1 B. and C., 136), "is to be found not so much in a strict etymological propriety of language, nor even in its popular use, as in the subject or occasion on which they are used." It is in this sense that the meaning of the word "passengers" is to be here considered, and, so considered, their Lordships are of opinion that the captain's wife and her father were not passengers within the meaning of the clause, as to the employment of pilots, in the 17 and 18 Vict., c. 104, and the exoneration of owners of ships.

If the ship was not carrying passengers she was exempted from the compulsory pilotage by the 379th Section of the Merchant Shipping Act. It becomes necessary, therefore, to decide what the position of the owners is when the vessel was in the charge of a duly licensed pilot whom it was not incumbent on them to employ. The pilot must therefore be considered as having been voluntarily selected by the owners, who are responsible for his default whilst acting as pilot in charge of their ship, unless they can bring their case within the exoneration clause, section 388, which enacts that:—

"No owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship within any district where the employment of such pilot is compulsory by law."

In the opinion of their Lordships this case is governed by the decision of *The "Stettin"* (Brow. and Lush., p. 199), the authority of which is recognized by Kelly, C. B., in the case of *the General Steam Navigation Company v. British Colonial Steam Navigation Company*, 37 L. J. (Exchequer), p. 206, the ground of which decision is explained by Byles, J., in delivering the Judgment of the Exchequer Chamber, 38 L. J. (Exchequer), p. 99.

The learned Judge expounds the 388th Section as requiring, "that the pilot should be compulsorily employed within the district where the injury occurred," in order to exempt the owners from responsibility for his default. "This" (he says) "obviates all the mischief which might be apprehended from captains of ships unnecessarily and improperly employing pilots to escape the responsibility of navigation, and preserves the sole responsibility of the pilot in the whole district for which he was employed."

He adds that their decision "does not conflict with the case of the 'Stettin,' where the pilot was taken on board, where and when by law there was no necessity to take him." This explanation will be found to be strictly applicable to the present case.

In answer to this, it is strongly objected on the other side that the case of *Lucey v. Ingram* (6 M. and W., 302), is directly at variance with the case of the "Stettin," and that as it was not cited in the case of the "Stettin," the authority of that case is consequently thereby weakened.

Their Lordships are of opinion that there are two answers to this. In the first place it is to be observed that as the case of *Lucey v. Ingram* had been under the notice and consideration of Dr. Lushington in several cases before he decided the case of the "Stettin," it must be taken to have been present to his mind at that time; but, secondly (and which is more material, as it explains why Dr. Lushington did not think it necessary to refer to that case), upon a close examination, it does not appear to have any conclusive bearing upon the case of the "Stettin," and if so, it has not upon the present case.

The case of *Lucey v. Ingram* was decided upon the 6 Geo. IV, c. 125, secs. 55 and 72, and though it was contended in argument that the sections are equivalent, or nearly so, to the 17 and 18 Vict., cap. 104, sec. 388, it does not so appear upon a minute examination. The 72nd section of 6 Geo. IV made it incumbent on the pilot to act, if he were required so to do by the master or owner of any ship wanting a pilot, and the former section, sec. 55, exonerates the owners from responsibility, "for any damage which should happen by reason of the

neglect, default, or incapacity of any licensed pilot acting in the charge of such ship under or in pursuance of any of the provisions of this Act."

This was held to include two cases, first the case where the pilot was bound to act when required, and secondly, the case where the owners were bound to employ a pilot; and Baron Parke, in delivering the judgment, refers to its comprehensive terms as an "extended exemption," and he suggests the probable policy from which this extended exemption arose (see p. 316).

That this decision is to be considered as properly to be referred to the special and extended exoneration enacted by the 6 Geo. IV, c. 125, is manifest as well from the judgment delivered by Baron Parke as from the observations of Dr. Lushington in the case of the "Agricola" (2 W. Rob., p. 20), and the case of the "Eden" (2 W. Rob., 446), and per Kelly, C.B. (37 L.J., Exchequer, p. 205).

It was cited in argument in the case of the "Annapolis" (Lush. Rep., pp. 301 and 304), where Dr. Lushington refers to the ordinary principle of exemption as explained by him in the case of the "Maria," 1 W. Rob. 106, and in the "Annapolis," and he states this principle to be in strict accordance with that of the 17 and 18 Vict., cap. 104, sec. 388 (see pp. 311, 312).

The distinction between the sections in the two Statutes when compared is obvious:—

"6 Geo. IV., sec. 55. It is further enacted that no owner or master of any ship or vessel shall be answerable for any loss or damage which shall happen to any person or persons whomsoever from or by reason or means of any neglect, default, incompetency, or incapacity of any licensed pilot acting in the charge of any such ship or vessel under or in pursuance of any of the provisions of this Act, where and so long as such pilot shall be duly qualified to have the charge of such ship or vessel, or where and so long as no duly qualified pilot shall have offered to take charge thereof."

"The Statute 17 and 18 Vict., sec. 388, enacts that no owner or master of any ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified pilot acting in charge of such ship within any district where the employment of such pilot is compul-

sory by law." It is plain, therefore, that the first clause gives immunity to the owner whenever the vessel is in the charge of any licensed pilot, where he is qualified to have charge of the vessel, or where no duly qualified pilot has been appointed to take charge thereof; while the second clause, sec. 388, of the Merchants' Shipping Act only applies to the case where the employment of the pilot is compulsory by law.

Accordingly, contrasting the extended exoneration in 6 Geo. IV, cap. 125, sec. 55, with the more limited exoneration in 17 and 18 Vict., cap. 104, sec. 388, and the policy suggested by Parke, B., as the ground of the former with that suggested by Byles, J., with reference to the latter, their Lordships are of opinion that the true interpretation of the enactment by which the present case is governed depends on this, whether the employment of the pilot was compulsory, and that it cannot be affected by anything decided in *Lucey v. Ingram*, and that the authority or soundness of the decision in the case of the "Stettin" is not in any way prejudiced by the omission to notice the case of *Lucey v. Ingram*.

The 17 and 18 Vict., cap. 104, sec. 388, has been acted on in the case of the "Stettin," and has also been clearly expounded in the Judgment of the Exchequer Chamber in the case of the *General Steam Navigation Company v. British Colonial Steam Navigation Company*, and according to the principle of these decisions the owners are not exonerated from responsibility for the default of the pilot whom they have selected and placed in charge of their ship when by law there was no obligation imposed on them to take such pilot and put him in charge.

Having come to the conclusion that there were no passengers on board the "Lion" at the time of the collision, their Lordships are of opinion that the master was not under any compulsion to take a pilot; and, secondly, that having taken a pilot, even assuming that the pilot was bound to act, this does not in such circumstances exonerate the owner from responsibility for the errors committed by the pilot in a case where they were not compellable to take a pilot and put him in charge of the vessel.

In the observations their Lordships have made, they have acted on the assumption that West was a

duly licensed pilot, and that he had charge of the vessel; but it would be improper to part with this case without calling attention to the fact that West himself swears that he took charge of the ship as a waterman, and not as a pilot (page 21). He was not engaged by the captain, but was sent by Charles Roots, another pilot; whether sent by the owners or not does not appear.

Their Lordships therefore concur with the learned Judge of the Court of Admiralty in opinion that the presence of the captain's wife and her father in the "Lion," in the circumstances of the case as detailed in the evidence, did not constitute them passengers; that no act done after the collision could convert them into the character of the passengers if they did not previously fill that character; and also that the "Lion" had not on board of her at the time of the collision a pilot employed by them under compulsion of law; and that the owners of the "Lion" are liable to pay to the owners of the "York Town" the damage done to her by the inexcusable collision of the "Lion;" and their Lordships will therefore humbly advise Her Majesty that the decision of the learned Judge of the Court of Admiralty be affirmed, with costs.

