

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of the Tyne Steam Shipping Company (Limited) v. Alexander Smith (ships "C. M. Palmer" and "Larnax") from the High Court of Admiralty of England; delivered 20th May, 1873.*

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Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE SMITH.

SIR ROBERT P. COLLIER.

THIS was a case of a very disastrous collision between a steamer and a sailing-vessel, whereby three lives were lost. Cross suits were instituted in the Admiralty Court. The barque "Larnax," of 380 tons, was at anchor in the lower part of Gravesend Reach on the night of the 19th of February in this year. The screw-steamer "C. M. Palmer," of 628 tons, left London that evening for Newcastle-upon-Tyne with a cargo of merchandize and a number of passengers. On reaching Gravesend her pilot left her; the night being so unusually dark that her captain thought it unsafe to proceed on her voyage, he determined to come to anchor in Gravesend Reach; and, after passing several vessels at no more speed than was necessary to keep steerage way, was in the act of turning towards the southern shore, with a view to anchoring in what he deemed a vacant place, when he struck the "Larnax" on the starboard side with the stem of his vessel, whereupon she sank in a few minutes.

The principal controversy in the case was whether or not the "Larnax" carried a riding light which could have been seen by an approaching vessel in sufficient time before the collision to enable such

vessel to get out of her way; the contention on the part of the "Larnax" being that she had had a bright light from the time of its becoming dusk, with the exception of two or three minutes, when it had been taken down for the purpose of being trimmed, and that this was half-an-hour before the collision: that on the part of the "Palmer" being that the "Larnax" had no visible light until one was affixed to her rigging almost immediately before the collision, when the collision had become inevitable. The result of the evidence on the part of the "Palmer" is, in their Lordships' view, this:—That the "Larnax" herself was seen for the first time at a very short distance, and that when so seen no light was visible in her, and that almost immediately after a light was seen going up into her rigging. That the captain of the steamer upon a vessel a-head being reported gave the order to "stop," and almost immediately after the order "to reverse;" that, although the orders were obeyed, and the engines made many reverse motions, the way of the steamer could not be altogether stopped in time, and the "Larnax" was cut down by her sharp stem.

The learned Judge has given no opinion on the question of light or no light on board the "Larnax," but has decided (as their Lordships understand) that, assuming the evidence on this subject on the part of the steamer to be true, nevertheless that she was solely to blame, because her captain, in addition to the precautions of stopping and reversing, did not take the further precaution of immediately dropping his anchor on a vessel ahead being reported.

Their Lordships have to observe that this point was not raised during the course of the case, no suggestion being made on the part of the "Larnax," either by evidence or cross-examination, or by the speeches of Counsel, that such a proceeding would have been proper on the part of the steamer. The suggestion appears to have been made for the first time by the Elder Brethren of the Trinity House, when both cases had been concluded, when the steamer had no opportunity of adducing evidence of facts, or the evidence of experts, or of offering any explanation, or of being heard by Counsel on the subject. To dispose of a case on such a ground appears to their Lordships unsatisfactory, and not unattended with hardship. Their Lordships are

advised by their Nautical Assessors that for the steamer to have dropped her anchor under the circumstances, though it might possibly have averted the collision, was a proceeding of a very doubtful and speculative character, not unattended with risk. Their Lordships are of opinion that on the assumption that the "Larnax" had no light when first seen, and that the captain of the steamer lost no time on her being seen in giving orders to stop and reverse, he is not proved to have been negligent, because it did not at the instant occur to him to let go his anchor.

Their Lordships have further to observe that, even assuming the negligence imputed by the Judgment to the captain of the steamer, the barque would in their judgment have been guilty of contributory negligence in not showing a light. It is true that the duty of vessels in motion to keep out of the way of vessels at anchor has been strongly insisted on in many cases, but these cases assume that the vessel at anchor could be seen; if the "Larnax" could not be seen until closely approached, through her own fault in not exhibiting a light in a night unusually dark, it is difficult to acquit her of negligence, if she is run down by a vessel unaware of her position.

For these reasons their Lordships are of opinion that, assuming the truth of the case on the part of the "Palmer" on the subject of the light, the judgment of the Court below is incorrect. If, on the other hand, the case of the "Larnax" be true, it would undoubtedly be correct: the determination of this question is therefore necessary.

Their Lordships are aware of the disadvantages under which they labour in determining matters of fact without an opportunity of seeing and hearing the witnesses, and regret that they have not the assistance of the finding of the learned Judge of the Admiralty Court on this question, which, in their Lordships' view, is a vital one in the cause; but they feel called upon to decide it according to the best of their ability in the somewhat unusual character of a Court of first instance.

Their Lordships, not without some hesitation, have come to the conclusion that the case of the "Palmer" is the true one. She acted with proper caution in determining to anchor in so dark a night instead of to proceed. She was on the look-out, and

(in their Lordships' judgment) keeping a proper look-out for a safe anchoring-ground ; and it appears almost incredible that she should have selected for her anchoring-place almost the spot where the "Larnax" was lying, if the light of the "Larnax" had been visible. Her evidence that the "Larnax" carried no light is not merely of a negative character. It is positive that just before the collision the light of the "Larnax" was carried or hoisted up. The evidence of the captain is, that in rounding towards the Kentish shore in order to anchor, a vessel was reported by the second mate from the top-gallant fore-castle in these words, "Vessel nearly a-head with no light;" that he (the captain) saw her at the same time ; that he asked the mate, "Can you make out how she is going?" whereupon the mate reported, "There is a riding light just being hoisted up." The captain says that at the same time he saw a "gleam of light" in what he took to be the barque's fore-deck, which dipped once above the rail and appeared to him to be hoisted or carried up above the rail, and a voice sang out, "Steamer ahoy, where are you coming to?" That, on first seeing the ship, he ordered the engines to stop, and almost immediately after to be reversed, in which statement he is confirmed by the engineer. The same account substantially of what happened, and of the words spoken, is given by the first and second mates, and by two able seamen. Unless the inquiries of the captain and the replies to them are a sheer invention, it is proved that a light was being carried or hoisted up into the rigging of the "Larnax" almost immediately before the collision.

But it is almost impossible to suppose the conversation reported a sheer invention, inasmuch as evidence was given by a passenger on board the steamer—a witness apparently unimpeachable—that he heard this very conversation, though he was not in a position to see the light.

On board the "Larnax" two persons only were on deck ; an able seaman and a boy of 14. They depose that, although the light had been taken down to be trimmed about half-an-hour before the collision, from that time until the collision it was attached to the fore-rigging, burning brightly ; and they are confirmed as to the time when it was taken down by a man named M'Gregor, who was, however, below

at the time of the collision. The evidence of the boy is, indeed, a good deal impeached, he having admitted on cross-examination that the light had been taken down "just before the collision," although he afterwards explained "just" to mean about half-an-hour; and it being further proved that he said that the "light was taken down to be cleaned, and was in the act of being put up when the steamer came on to them." Evidence was also given of the Captain having said, "If it had not been for the boy, it (the accident) never would have occurred." The evidence of the witnesses on board the ship was confirmed by that of a pilot on board the "Europa," a vessel lying at anchor about a quarter of a mile higher up the river than the "Larnax," and which had been passed by the "Palmer." The pilot says that he had watched the light of the "Larnax" from 10 minutes before 9 to the time of the collision, and that it was burning all the time. This is undoubtedly cogent evidence; it is subject, however, to the observation that, if the pilot had been watching the light as closely as he represents, he must have noticed its absence for at least two or three minutes when it was admittedly taken down to be cleaned. Evidence is also given of a pilot on board another vessel called the "Hjalmar," anchored about a cable's length from the "Larnax," of his having seen the "Larnax's" light a quarter of an hour before the collision; but inasmuch as he then went below and did not return on deck till after the collision, his evidence is of little value.

On the whole, their Lordships have come to the conclusion that the evidence preponderates on the side of the "Palmer." They adopt the conclusion that the light of the "Larnax" was taken down to be trimmed, that it probably remained down for a longer time than is admitted by the seaman and boy who had charge of it, and that the time of its being taken down has been shifted by them from almost immediately before the collision to half-an-hour before it. It is unnecessary to say that it was the bounden duty of a ship lying at anchor where the "Larnax" was, on so dark a night, to keep a light always visible, and that no such excuse as that of taking down the lamp to be trimmed can be admitted. They are of opinion that the "Palmer," seeing no light, had reason to suppose that the

ground in which she was about to anchor was unoccupied, and that the collision was caused solely by the negligence of the "Larnax." Under these circumstances they will humbly advise Her Majesty that the Decrees appealed from be reversed, and the "Larnax" condemned in the whole of the damages, together with the costs, both in this Court and in the Court below.