

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Bibby v. Boissevain (the "Egyptian"), from the High Court of Admiralty of England; delivered 13th April, 1863.*

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Present :

SIR EDWARD RYAN.

THE MASTER OF THE ROLLS.

SIR JOHN TAYLOR COLERIDGE.

THE collision in this case took place in the Bay of Gibraltar on the 31st December, 1861, between the "Egyptian," a large screw-steamer, and the "Jonge Walrave," a small schooner of about 120 tons burthen. It occurred in the evening after the night had set in, by the "Egyptian" striking the "Jonge Walrave," which was lying at anchor. The proximate cause of the collision was the breaking of the cable of the steamer as she was taking steps for the purpose of mooring for the night. In the High Court of Admiralty the Plaintiffs, the owners of the schooner, gave no evidence; they rested on the fact that their vessel was at anchor; that its position was well known to those on board the "Egyptian;" and that the burthen of proof lay on the "Egyptian" to show that the collision was the consequence of an inevitable accident. Accordingly the Appellants have undertaken this burthen, and insist that the evidence establishes that the collision was caused by an inevitable accident, viz., the breaking of the cable; and that when this accident occurred, although all proper steps were taken by the steamer at the earliest possible moment to prevent the collision, the utmost that could be done was to diminish the force of the blow, but not to avoid it altogether. If this were proved, there arose a question of law, viz., whether the owners of the "Egyptian" were liable for the consequences which unavoidably ensued from their cable having parted;

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which might involve, first, a question of fact whether the chain were defective; and secondly, if it were, whether, under the circumstances, the owners were liable for the consequences of such defect.

The facts established by the evidence appear to be, that the "Egyptian" arrived in Gibraltar Bay on the morning of the 31st December, 1861. She anchored in her usual mooring-place with her port anchor, and began to discharge cargo. At this time the schooner was lying at anchor about 100 fathoms off on the starboard quarter. The steamer had intended to discharge a part of her cargo, and proceed on her voyage that night; but at 5 o'clock in the afternoon the weather became squally and very wet, so as to render it necessary to stop the further discharge, and to moor for the night. The evidence is distinct that the Master of the steamer ceased to discharge cargo at 5 o'clock, and ordered the hatches to be secured. Some considerable time, however, must have elapsed before those on board the steamer began to take the steps necessary for mooring for the night.

The exact measure of that time is not ascertained, but it appears that almost two hours must have elapsed. It was daylight at 5 o'clock; the evening gun was fired at half-past 5, at that time therefore it was still light, and it was dark night when the collision took place.

On behalf of the Appellants it is stated to have been about 6 P.M.; on behalf of the Respondents it is put at half-past 7 o'clock; the only evidence on the subject puts it at 7 o'clock: and taking all these matters into consideration, their Lordships think that the collision cannot be treated as having taken place before 7 o'clock P.M. Two hours, therefore, must have elapsed after the "Egyptian" had ceased to discharge her cargo before the collision took place. This interval is not satisfactorily accounted for, and it appears to their Lordships the delay in taking the necessary steps for the safe mooring of the vessel must have been the cause of the collision. Both John Griffith Thomas, the second mate, and the extract from the log-book, concur in saying that the schooner was not perceived till they were close alongside; and the second mate adds, "If we had seen her before certainly we might have avoided her." In this state of the evidence the

Trinity Masters were of opinion that though the proper measures were taken by the "Egyptian" they were not taken in proper time so as to render them effectual, and in this opinion the nautical gentlemen who advise their Lordships concur. Their Lordships think that the Defendants, when they presented their Appeal, laboured under a misconception of the meaning of the Trinity Masters as to the point in respect of which the "Egyptian" was to blame. It is the case of the Appellants that the exact position of the schooner was known to them, and that exactly the same result would have occurred had the steps taken for mooring been adopted before dark night came on; but the evidence does not lead to this conclusion, nor do the opinions of the nautical gentlemen support it. Though the position of the schooner was known generally, yet the exact distance she was from the steamer was a matter of imperfect estimate; and if those on board the steamer, when they were veering out the port cable, had known how extremely close the schooner was to them, though but a few minutes before the cable broke, prudence and nautical judgment would, as we are informed, have dictated a cessation in veering out the port cable, and have induced them either sooner to let go the starboard anchor or to adopt other measures to prevent a closer approximation to the schooner.

The Appellants rest their case on this, that the moment the port cable parted the only measures that could be adopted to avoid a collision were adopted; that these were, the letting go of the starboard anchor, and the reversal of the engines. But even if this be correct, the error on the part of those who had the management of the steamer was in ever allowing her to get into that position, and one which, as their Lordships understand, she would not have got into had the schooner been previously seen, or had the precise distance she was from the steamer at that time been accurately known. Assuming the exact distance of the schooner from the steamer, and her position, to have been known to those on board the steamer before the cable parted, though it was but a few minutes previously (and on this assumption the case brought forward by the Appellants' reasoning rests), their Lordships are of opinion that the steamer was to blame, and that she ought

not to have continued to approach the schooner any nearer by the continued veering out of the port cable. Omitting, therefore, to consider the point of law, and assuming that the "Egyptian" is not answerable for the imperfection of the link in her cable, on which point they express no opinion, their Lordships think that she was to blame for having placed herself at single anchor, in a position where, if the slightest accident arose to interrupt or embarrass the manœuvre which the Master was engaged in conducting, it was all but impossible to avoid a collision with the schooner. If the "Egyptian" had sooner proceeded to take the measures necessary for the mooring for the night, and if they had been adopted before it became dark, their Lordships are of opinion that the steamer would never have got into the position in which she was, when, on the parting of her cable, the collision became inevitable, or that if she had it could only then have been in consequence of some culpable want of care or skill in her manœuvres. Those who navigated her thought fit to abstain from taking these steps till after it had become dark night. Whether there was any sufficient reason for such delay, arising out of her own convenience, it is not material to inquire; for no such reason could be sufficient justification as regards the "Jonge Walrave," if such delay was the cause of the steamer being intentionally placed in a position where, on the happening of an accident on board of her, the collision with the "Jonge Walrave" became inevitable. Their Lordships therefore concur in opinion with the Court below, and shall humbly advise Her Majesty that the Judgment of the High Court of Admiralty be affirmed, with costs.

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