

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Forster v. Brewer and others (the "City of Carlisle"), from the High Court of Admiralty of England ; delivered 23rd July, 1864.*

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Present :

LORD KINGSDOWN.

SIR EDWARD RYAN.

MASTER OF THE ROLLS.

IN this case, at about a quarter before two o'clock on the morning of the 30th of June, 1862, the brig "Thomas Snook," the property of the Appellant, was run into and sunk by the barque the "City of Carlisle," the property of the Respondents.

The evidence in the cause establishes that the Admiralty regulation lights of the brig were burning brightly. The question on the appeal is, whether the lights were fixed in a place which complied with the regulation ; or, to use the words of the learned Judge of the Admiralty Court, whether they were "so fixed as to be fairly visible." The gentlemen who assisted the Judge of the Admiralty Court were of opinion that they were not so fixed, and in consequence the Court determined that the owners of the brig could not recover, but as they were also of opinion that the "City of Carlisle" was grossly negligent and much to blame, no costs were given to the Respondents.

The learned Judge of the Admiralty Court, in his Judgment in the Court below, stated his understanding of the regulation to be : "not that there is any positive order that the lights shall be fixed on the actual sides of the ship itself, but that the green light shall be exhibited on the right hand, and the red light on the left hand, so as to be visible." He also stated that the substance of the regulation is,

“ that the lights shall be fairly visible as described : there is no order that the lights shall be fixed in any peculiar manner or in any particular part of the ship.” “ And the whole question is, whether taking the description of the manner in which these lights in the present case were fixed, they were so fixed as to be fairly visible.”

With these observations their Lordships concur entirely. They have in consequence carefully examined the evidence for the purpose of arriving at the means of giving a correct answer to the question so put. There is no dispute about the place where the lights were fixed.

There was on the deck of the brig, just behind the foremast and nearly touching it, a galley, the length of which was about 6 or 7 feet ; it was about 6 feet high, and about 7 feet broad. The lights were placed on the top of this galley about 6 inches from the outer edge of it, and about 3 feet behind the foremast.

At the time when the collision took place, the brig was close hauled on the starboard tack heading south-south-west, and proceeding at the rate of  $5\frac{1}{2}$  knots an hour, with the wind in the west blowing a fresh breeze.

The “ City of Carlisle ” was close hauled on the port tack heading about north-north-west, and making about  $5\frac{1}{2}$  knots an hour. The vessels were therefore approaching at the rate of 11 knots an hour. The “ City of Carlisle ” struck the brig just before the fore-rigging on the port side, cutting right into her, when she filled rapidly, and went down with the master, steward, and one of the crew ; the mate and eight of the crew having just time to save their lives by getting on board the barque, who thereupon returned to London for repairs, and afterwards proceeded on her voyage to Bombay.

There is no question but that it was the duty of the “ City of Carlisle,” who was on the port tack, to give way, and if therefore the lights of the brig were properly placed so as to be fairly visible, the collision must be attributed solely to the negligence of the barque. The objections made by the Respondents to the place where the lights were placed on board the brig, resolve themselves principally into this—that they were placed *in-board*, and not on

the outside of the vessel, and that by reason thereof they were not, as the Respondents contend, fairly visible. The breadth of the brig at this spot is not very accurately ascertained; it was not measured. Morecombe, the carpenter, supposes it to have been about 26 feet; of the other witnesses, Richard Swift, the mate, supposes it to have been 18 or 20 feet, Matson supposes it to have been from 18 to 21 feet. Their Lordships are informed by the nautical gentlemen who assist them, that having regard to the size of the brig, which was 249 tons, it is probable the breadth of the brig at this spot where the lights are fixed did not exceed 20 feet. If this be so the distance from each light to the side of the vessel was about 7 feet. The lights were properly secured, so that only one light could be seen at the same time unless by a vessel exactly a-head. The foresail was set and was just in front of these lights. The dimensions of the foresail are given by Isemonger, who made it; it was 17 feet 4 inches deep, 34 feet across the head, and 34 feet across the foot, and 19 feet 4 inches depth of leach. The foot of the foresail was about  $11\frac{1}{2}$  feet or 12 feet above the deck; from the clew of the foresail to the deck was about 9 feet or  $9\frac{1}{2}$  feet. The brig had two foresails, but their Lordships consider it to be proved that the foresail, the dimensions of which are given by Isemonger, was the foresail set at the time of collision. It was made to be used in going in and out of the Channel, and Isemonger saw it bent on the day before the vessel went out of dock on her last voyage. If this be correct it establishes that this sail could not have interfered materially with the lights, which were only 6 feet above the deck, while the foot of the sail was from  $11\frac{1}{2}$  to 12 feet above the deck, and therefore from  $5\frac{1}{2}$  to 6 feet above the lights. The only material additional circumstance to be noticed is, that the brig was lying over on the port side about three strakes from an even keel, and the height of the bulwarks above the deck were from 3 feet to 4 feet. In this state of circumstances, the nautical gentlemen who assist their Lordships are of opinion that the position in which the lights were placed was a fit and proper place for them, having regard to the size of the vessel. They are also of opinion, having regard to the fact that the vessel was lying over considerably on the port

side, that if the lights had been fixed in the usual place, that is, on the top of the bulwarks, the red light on the port side would have been obscured by the spray and would have been less fairly visible than on the top of the galley; and that if a proper look-out had been kept on board the barque, the red light would have been seen in sufficient time to avoid a collision.

Their Lordships concur in the opinion expressed by the learned Judge of the Admiralty Court, that there was gross negligence on the part of the "City of Carlisle." The persons on board that vessel were engaged in furling the foretop gallant sail, there was but one man on the look-out, and little attention seems to have been paid to anything except what the men aloft were engaged in. The brig seems to have been seen and reported simultaneously from aloft and by the man on the look-out, but not in sufficient time to avoid the collision.

Their Lordships, after reading the evidence and considering the matter with the nautical gentlemen who assist them, have come to the conclusion that the lights were not improperly placed, having regard to the size of the brig, that they were placed in a position in which they were fairly visible, and in fair compliance with the regulation. Their Lordships are of opinion that if a proper look-out had been kept on board the "City of Carlisle" the collision would have been avoided, and that that vessel was the sole cause of the collision.

Their Lordships will therefore humbly advise Her Majesty that the decision of the Court of Admiralty be reversed, and that the Respondents be condemned in damages and costs.

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