

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Reüt, the 'Princess Alice' and 'Alice,' v. The Aberdeen, Newcastle, and Hull Steamship Company, Limited, from the High Court of Admiralty; delivered 30th November, 1868.*

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Present :

LORD CHELMSFORD.

SIR JAMES WILLIAM COLVILLE.

LORD JUSTICE PAGE WOOD.

LORD JUSTICE SELWYN.

IN the course of the argument on this case one of their Lordships has already cited the decision in the case of the 'Julia,' which laid down in very clear and precise terms the course that this Board thinks it right to take with reference to appeals from the judgment of the Court below upon matters which are entirely matters of fact. If this Board finds that in the Court below there was clear and distinct evidence upon the one side, and possibly evidence which the Appellant might think to be as clear and distinct on the other side, nevertheless, if the Judge in the Court below in his discretion, having the opportunity of seeing the witnesses and observing their demeanour, has come, on the balance of testimony, to a clear and decisive conclusion, those who undertake to reverse that conclusion, on the ground that the Judge has erred in giving credence to the one class of witnesses rather than to the other, undertake, as expressed in the case of the 'Julia,' an almost impossible task. This Board has no opportunity of seeing the witnesses, of considering in what respect credence should be given to one class rather than the other from the mode in which their evidence has been given; and it would have to perform a duty of a most painful character if it

were not merely to reverse the decision of the Judge below with reference to the finding that he has come to adverse to the Appellant, but had, in such a state of circumstances, to do that which would be a necessary corollary from such a step, viz. to give a deliberate judgment in favour of the Respondent, without the same means of ascertaining the real truth as was possessed by the Judge of the Court below. Now, it is of course not wise at any time to lay down rules of such extreme accuracy of definition as would induce a Court of Appeal to hold itself bound upon any future occasion to a fixed and determined line which cannot be overpassed on the one side or the other. We have had to consider that question on a different subject matter in the course of this very day, with reference to the course taken by this Board as to the augmenting or diminution of the amount which may be awarded in salvage cases. A useful line has been drawn by the decided case with reference to our proceedings in such a case as that, viz. that it requires a case of extreme and overwhelming pressure to induce us to vary from the decision of the Court below as to the amount of damage with reference to salvage. Still such a case may occur; and we sitting here have this very morning decided that such a case has been laid before us. It is just possible to suppose that some such case might be produced with reference to this question of evidence, and it might be possible to show that the Judge had so plainly, manifestly, and clearly erred upon the face of the documents before us that we ought to reverse his judgment. But it is not shown on the face of the evidence before us, either from the character of the deposition of the witness whose veracity it is sought to impugn, or from that which you find recorded on his evidence, that his testimony is so utterly inconsistent in itself, so contrary to all human probability, that a Judge must have been guilty of error who could give credit to a witness of such a character.

But, on the contrary, what we are asked to do is this,—we are asked to reverse the judgment of the Court below in a case in which the principle established by the decision in the 'Julia' is most singularly applicable, because the learned judge, finding a conflict of testimony, as unfortunately

in most of these cases of collision there must always be, has relied very strongly on the evidence of a pilot, a witness of the name of William Young, and has thus characterized that witness's evidence. He says he has had the assistance of the Elder Brethren of the Trinity House, and he gives it as the joint opinion of those gentlemen and of himself, "that William Young, the witness from the tug 'Mary Usher,' whose evidence has been very much discussed, proves that the 'Princess Alice' was running up on the north side of the channel. It has been very properly admitted that this witness gave his evidence in a manner which entitled him to the credence of the Court; and he proves, in my opinion, beyond all controversy, that the 'Mary Usher' came up on the north of the mid-channel, with the 'Princess Alice' between her and the north shore, as far as the Middle Scarp Sand, and that there the tug passed ahead, and was proceeding onwards up the river." He says also, "that he looked back, and saw the collision, and that the 'Princess Alice,' at the time of the collision, was still to the north of the mid-channel." He gave strong evidence also to this effect: that the 'Mary Usher' having passed the 'Alice,' he observed that she altered her course, and came across towards the north shore. He said that his belief was that those on board the 'Alice' had not seen the 'Princess Alice,' and that their attention was occupied with the dredgers and hoppers which were on the south shore. Therefore the learned Judge tells us that this is a witness who is not only unconnected with the case, but a witness who has given his evidence in a manner peculiarly entitling him to credence in the opinion of the learned Judge and his assessors; and, indeed, he says (and we have no reason to suppose that it is in any way an error) that he was *admitted* so to have given his evidence. If that be so, we entirely concur in the observation of the learned Judge, that the evidence of that witness may properly be applied to turning the balance of the conflicting evidence, such as it may be, upon the rest of the case. He has been worthily adopted as a witness of credit, whose evidence ought materially to assist the Judge in coming to the conclusion which he came to, founding it in a great measure undoubted upon that person's

evidence. Have we then been shown anything in his evidence which, to our minds, makes it clearly erroneous that such weight should have been given to the evidence of that particular witness? Does not his evidence, if believed, prove the case? Clearly and manifestly it does, because his evidence is to this effect, that he himself was somewhere about mid-channel, or slightly on the north side of the river, being in a tug called the 'Mary Usher' which was so situated, because it had been looking out for a job at the time when the 'Princess Alice' was coming up; he had found that the 'Princess Alice' was in the hands of a certificated pilot, and did not want his assistance as a pilot; and he says that he then went for some time alongside, as it were, of the 'Princess Alice,' but finding that she went slower than he was desirous of doing, or, rather, than the tug was desirous of doing, for he does not appear to have been in command of the tug, the tug went ahead; but at the same time, he says, up to the time of his going ahead, the 'Princess Alice' was on the north side of him, and clearly on the north side of the mid-channel, and in her proper position. Now, is he not confirmed in that? It is curious enough that Reed (that, I think, is the man's name),—speaking of a vessel which he does not name, but which clearly is, and was stated by the Queen's Advocate to be the very 'Mary Usher' in which Young was,—says that the tug which then passed him was on the north or proper side of the river, and was proceeding in her proper course. The Captain of the 'Alice,' himself, also described the 'Mary Usher' as coming up about the same time; therefore it is plain that she was on the right side of the river, and that the 'Princess Alice' was to the north of her, and, if we may use such an expression, more in her right place than the other. Well, that being so, it is said, how came he to be so near as to be capable of giving the exact account which he does of this collision? Of course, it is a remark fit and proper to be made on all occasions with reference to observations made by strangers, that you must have some sort of explanation as to what it is that causes them to take notice of a matter which by itself would be uninteresting to them, such as the position of the other vessel. But this man gives you abundant reason



for having taken this notice, because he had advanced but a very little way, and the Captain says that the 'Mary Usher' passed him when they were close to the dredgers; therefore the 'Alice' was near the dredgers, in the immediate vicinity of which the accident happened at the time she was passed by the 'Mary Usher,' and the 'Mary Usher' cannot have got very far before the collision took place; and this witness gives a very suitable and proper reason for seeing so much of it as he did, for he says, "When I felt that a collision was likely to take place, from noticing these vessels, I immediately had the tug I was in first stopped and then backed, in order that I might be of use in saving life, in the event of any such collision occurring." What could be more natural, and what could be a more proper and reasonable account to give of his making the observation he did? Then by that operation he was brought so near, that there can no longer be any doubt of his having had abundant facilities for seeing what took place. He then gives a reason for what afterwards did take place, which meets the observation of the Queen's Advocate as to the improbability of this man's evidence. He explains the cause of the 'Alice' passing out of her course, and throwing her head across the river towards the north, and so going on her wrong side at the time of the collision. His remark is this, "I think she did not see the 'Princess Alice' steamer." Now it is a curious thing that the Captain of the 'Alice,' in giving his evidence at page 81, as to what he saw after the 'Mary Usher' had passed, and on being asked when it was that he first saw the 'Princess Alice,' gives this account towards the bottom of the page at about line 50. He says, "I saw some lights;" and then Mr. Butt asks, "What did you take those lights to be? A. A steamer's lights.—Q. Any particular sort of steamer? A. The steamer attending on the hoppers at the dredgers.—Q. Did you see any hoppers? A. Yes, there were two hoppers.—Q. Where were the two hoppers? A. Alongside of the dredger." Therefore, he really indirectly corroborates this observation of Mr. Young, in itself not an unnatural one to make. Nobody would have run across the river if they had seen a steamer; of course nobody wished to

occasion a collision or a disaster of this description ; but he says, "I do not think he saw her ;" and what turns out to be the case is this, the Captain is giving his own account of it :—On first seeing the 'Princess Alice,' he did not take her to be a vessel coming up the river with which he was likely to come into collision ; but, judging by his eye, he thought it was a tug in attendance on the hoppers, and not, therefore, in the position of the 'Princess Alice,' which was navigating and coming up the river. We mention these things, as showing that so far from any ground having been laid to lead their Lordships to conclude that the Judge has erred in trusting to Mr. Young, because, on the face of his evidence, it is inconsistent and improbable, and, therefore, not such evidence as on the very face of it ought to be trusted to, it appears that all the collateral circumstances, as far as we have other evidence in the case, tend rather to assist and corroborate the view taken by the learned Judge as to Mr. Young's evidence. And I may say, in conclusion, that the map which was proved by Hopper, and which has been laid before us, showing the position of the vessels immediately after the accident, tends exactly to the same conclusion ; because, as has been observed by one of their Lordships, it is difficult to see how such a state and position of the vessels could have been brought about upon any such theory as that presented to our minds by the Appellants, whereas it is entirely consistent with that presented by the Respondents.

But in the opinion of their Lordships the principal point upon which we should rest our decision is this, that following the doctrine laid down in the case of the 'Julia,' we should be most unwilling to come to a conclusion different from that of the Judge of the Court below merely upon a balance of testimony ; and on its being affirmed by the Appellant that the testimony ought not to have been credited by the Judge of the Court below. He had an opportunity of testing, in the most ample manner, the conduct and demeanour of the witnesses ; and we should require evidence that would be overpowering in its effect on our judgment with reference to the incredibility of the statements made by any witness, and the general testimony to which credit has been so given, before

we could venture to come to a conclusion not only in favour of an Appellant in a case of this kind, but of course a conclusion adverse to a Respondent : thus inflicting on the Respondent a loss occasioned by the Board coming to a conclusion different from that which was come to on evidence, as to the value of which we have not the same facilities and means of forming a Judgment as were possessed by the learned Judge who decided in the first instance.

It is therefore our opinion that we must advise Her Majesty, in this case, to affirm the Judgment of the High Court of Admiralty, and to dismiss the Appeal of the 'Alice' with costs.

