Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Wood and others v. *Smith and others (The "City of Cambridge,") from the High Court of Admiralty of England; delivered March 20th*, 1874.

Present:

SIR JAMES W. COLVILE.
SIR BARNES PEACOCK.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS is a suit brought by the owners of the ship "Birmah" against the owners of the steamship the "City of Cambridge," to recover the damages occasioned by a collision between the two ships. The collision was of a disastrous character, for the effect of it was that the Birmah with a valuable cargo was sunk.

The questions in the appeal relate to the construction of certain pilotage clauses in the Mersey Docks Consolidation Act, 1858, and to the relative duties of the crew and pilot who were on board the "City of Cambridge."

The facts are, that the "Birmah," a homeward bound vessel, had anchored in the Mersey off Egremont. She was lying there at anchor at the time of the collision, and no blame is attributable to her. The "City of Cambridge" left the Morpeth Dock, on a voyage to Calcutta, at or about 11 o'clock on the night of the 26th February in charge of a licensed pilot of Liverpool. She was fully equipped and prepared for sea. It appears that the pilot had been hired whilst the vessel was in the dock to take

her out to sea, and he came on board and took charge of her before she left the dock. It had been arranged between the master and the pilot that the ship should not cross the bar on that night, but should go into the Mersey and be anchored there ready to cross the bar on the morning tide, and it is in evidence that the state of the weather was such that she could not have crossed the bar on the following morning's tide, unless she had been taken out of dock and placed in the Mersey so far on her way. The "City of Cambridge" having been taken out of the dock, was brought up opposite Woodside Ferry and was there anchored by a single anchor, the port anchor. The vessel was swung first to the flood, and then to the ebb tide, but had not been brought to her proper state, end on to the ebb tide, when the pilot left the deck to go to the chart house to lie down. Shortly afterwards the vessel took a heavy sheer, the effect of which was to throw her across the tide, and the strain upon her anchor broke the chain, and the vessel went adrift. There was a strong wind at this time, and a heavy tide running down, and the wind and tide were opposed. The ship's anchors and chains were of usual size and strength. The mate and a proper number of the crew were on deck. As soon as the cable parted, the mate went to the chart-house, which was under the bridge, to tell the pilot, who had left directions that he should be called in case anything went amiss. The pilot came at once upon deck and finding the state of the ship, and that she was drifting broadside down the river, or nearly broadside, he thought the right course was to put her under steam and endeavour to bring her end on to the tide. He was not successful in that manœuvre, and he afterwards dropped the starboard anchor. That anchor did not hold.

It appears to have nipped the ground only, and the pilot in that state of things allowed the vessel to drift down the river. He had her so far under command, that he used the steam power and the helm to avoid the various vessels which he passed in his downward course, but ultimately the vessel drifted between the "North Star" and the "Birmah." He was able to avoid the "North Star," but the vessel whilst so drifting was driven against the "Birmah" with such violence that the "Birmah" was sunk.

It was not disputed upon the argument that the collision was due to the negligence of some persons on board the "City of Cambridge." There are two questions to be considered in the case: first, whether the employment of the pilot before and at the time of the collision was compulsory by law, and, secondly, assuming it to be so, whether the collision was attributable exclusively to the want of care or skill of the pilot.

Now it is admitted that the pilotage would be compulsory in this case, and that the owners would be entitled to the exemption from liability provided in the 388th section of the Merchant Shipping Act, if the circumstances were such as to bring the case within the 139th section of the Mersey Docks Consolidation Act, 1858. That section is ill drawn, and the construction of it is by no means free from difficulty. But it is the legislation under which the pilotage in the great river Mersey has been conducted for many years, and the construction put upon the clause has been, that when the circumstances bring a vessel within it, and the employment of a pilot is under its provisions, such employment is compulsory. The clause is this,—"In case the master of any vessel, being "outward bound, and not being a coasting "vessel in ballast, or under the burden of

" 100 tons, for which provision is otherwise " made, shall proceed to sea, and shall refuse " to take on board or to employ a pilot, he " shall pay to the pilot, who shall first offer " himself to pilot the same, the full pilotage " rate that would have been payable for such " vessel if the pilot had actually piloted the same " into or out, as the case may be, of the said " port of Liverpool, together with all expenses " incurred in recovering the same."

The question is, whether this vessel was proceeding to sea so that the employment of the pilot was compulsory before and at the time of the collision. When the ship left the dock, the object of the master was to prosecute his voyage by getting to sea as soon as he could. It is true it had been arranged between the pilot and himself that the vessel should anchor in the Mersey for the night, but that was done to further the object of getting out to sea by going so far on the way as would enable her to cross the bar on the next morning's tide, which the vessel could not have done if she had remained in dock, or at least she could not have crossed it so early. Their Lordships think that under these circumstances the ship was proceeding to sea within the meaning of the Act at the time she left the dock, and that the anchoring was not a discontinuance of her progress to the sea, but an act proper and reasonable to be done in the course of it.

It was argued that the employment of the pilot fell under the 138th section which relates, it was said, only to the voluntary engagement of pilots. That clause is, " If the master of any vessel shall " require the attendance of a pilot on board any " vessel during her riding at anchor, or being at " Hoylake, or in the River Mersey, the pilot " so employed shall be paid for every day or " portion of a day he shall so attend the sum of

" 5s. and no more." This part of the clause no doubt relates only to the voluntary employment of a pilot; but the latter part of it relates not only to such voluntary employment, but to the extra remuneration to be given to a pilot when he is compulsorily employed under the 139th section. The proviso is this, "Provided that " the pilot who shall have the charge of any " vessel shall be paid for every day of his " attendance whilst in the river, but no such " charge shall be made for the day on which " such vessel being outward bound shall leave " the River Mersey to commence her voyage, " or being inward bound, shall enter the River " Mersey." Now the pilot in the present case was not hired under the first part of this clause. His attendance was not required for the sole purpose of remaining on board during the time the vessel was riding at anchor. He was engaged to take the vessel to sea. The proviso in the section may be applicable to his remuneration, because, although he was hired to take the vessel to sea, if, in the course of taking her to sea, any delay took place by which she remained a day in the river, he would be entitled to the extra payment which is provided by that section. So far from such a payment being necessarily an incident of a voluntary employment only, it is obvious that the clause assumes that the pilot may be compulsorily employed; that the rate fixed for taking the vessel out to sea, which is fixed according to a scale having relation to the size of the vessel, may be insufficient to remunerate him; and provides when he is delayed for an extra remuneration. It by no means follows that the pilotage was not compulsory under the 139th section, because the pilot might be entitled to extra remuneration under section 138.

It was said that the 139th clause would not have been infringed if the employment of the pilot had been delayed until the vessel left her anchorage on the following morning. But if the employment be compulsory upon the vessel proceeding to sea, and a fixed remuneration to the pilot be also obligatory on the master, he surely must be entitled to have the services of the pilot at the commencement of, and throughout the vessel's progress to sea, so as to get the full benefit of the compulsory payment.

The view taken by their Lordships of this Act does not in the least conflict with the decisions in the Attorney-General v. Scaith, 13th Price, p. 302, and Rodrigues v. Melhuish, 10th Exchequer, p. 117. Those were both cases of vessels remaining at anchor, intending to remain at anchor, and not instances of vessels proceeding to sea. In the case of Rodrigues v. Melhuish, this passage occurs in the judgment of the Lord Chief Baron Pollock. He says, "It was " contended by one of the learned counsel on the " part of the owners, that if a pilot were taken " on board a vessel previous to her leaving the " dock, whilst she was in the act of quitting it " with the intention of going to sea, no step " being necessary except the different operations " requisite for her to go on, the vessel in such " case would be said to be proceeding to sea. " If this vessel had had all her cargo on board, " and the master had been ready to get on board, " and she had had everything ready to com- " mence her voyage forthwith, and had left her " berth with that intention, it might no doubt " have been said that she was proceeding to sea " from the time she first left her berth." The case supposed by the Lord Chief Baron is very like the actual case here. Their Lordships think that the "City of Cambridge" was proceeding to sea from the time she first left her berth, and

that there was no break in the continuity of her progress to sea after she so left it and before the collision.

The next question is whether, assuming the employment of the pilot to have been compulsory, the collision is solely attributable to the default of the pilot. Now the remote cause of the disaster was the vessel parting from her anchor by the breaking of the chain cable, and the proximate cause was allowing the vessel to drift down the river so as to come into collision with the "Birmah." The breaking of the cable was caused by the vessel having sheered when being swung to the tide and bringing too great a strain upon the cable. This was found in the Court below to be mainly due to the improperly short length of cable which had been let out, 60 fathoms only. Allowing the vessel to drift in a crowded river like the Mersey was also found by the Court below to have been an improper and unskilful mode of managing the vessel which brought about the collision. It was also the opinion of the judge of the Admiralty Court that this drifting of the ship was not a necessary consequence of the first parting with the anchor, inasmuch as there was sufficient steam-power at hand to have allowed of her being navigated into a safe anchorage.

Their Lordships see no reason to disagree with any of the above conclusions of fact, and they concur in the opinion of the Court below that the pilot is alone to blame for the mismanagement of the ship in the instances just referred to. Indeed, it was not disputed that the length of the cable proper to be let out, and the manœuvring of the ship after she parted with her anchor were matters entirely within his province.

It was contended, however, that the master and crew were to blame or partly to blame in

three respects. It was said the quartermaster ought not to have allowed the vessel to sheer when at anchor. It has been already stated that the pilot left the deck before she had fully swung to the tide. Upon this point the Court below found as follows :—"The Elder Brethren think "also that the pilot was to blame for leaving "the deck when he did ; that he ought not to "have gone away into the chart room when she "was three quarters swung to the ebb tide; he "ought to have waited till she was fully swung, "and himself superintended that manœuvre, "and seen that her helm was properly put. He "left her helm amidships. No blame attaches "to the City of Cambridge with respect to the "men that were left on deck; there seem to "have been sufficient men and they were "properly placed. It is to be observed, that "when the vessel swung, the wind and tide were "opposed, and no blame at all attaches, in the "opinion of the Elder Brethren, with which I "agree, to Boyle, the quartermaster, in the "manœuvre which he effected. He executed "the right manœuvre in counteracting the sheer "the vessel had taken, and there was no delay "in executing it,"—what he did was to starboard the helm,—"nor is there any reason to suppose "that the pilot, if he had been on deck instead "of in the chart room, would have directed "anything to be done different from what was "done in his absence." Their Lordships concur in that finding.

Another ground of blame is that a good look-out was not kept by the crew when the vessel was drifting, and particularly that they did not report the Birmah. It is unquestionable that, as a rule, it is the duty of the crew of the ship to keep a look-out, and to assist in that way the pilot in charge. But in the present case the Court below have found that there was no want

of look-out, and their Lordships agree with this finding. The master was on the bridge with the pilot, and the Birmah was seen and reported by him to the pilot, and both had her in view for a considerable time before the collision.

The only remaining imputation on the crew is, that as soon as the chain of the port anchor broke, the starboard anchor ought to have been at once let go. This may have been a right manœuvre, or it may be, that as the vessel was athwart the tide, it was better to use the steam at command, so as to get her head to the tide, as the pilot afterwards attempted to do. She was to some extent athwart the tide when she originally sheered and the cable snapped, and no doubt at the moment when the cable snapped her head flew still further to the west. She was therefore to a great degree broadside to the tide at the time when it is suggested that the anchor ought to have been dropped. But, however that may be, it was a manœuvre that was properly within the province of the pilot to judge of and direct. If he had not been at hand, it would have been the duty of the officers of the ship at once to have acted, and dropped the anchor, if it had been a proper measure; but in this case the pilot was at hand. It is true that he had gone to the chart-house to lie down, but he had given directions to be called if anything went amiss. In point of fact he felt the jerk caused by the snapping of the cable, and came to the chart-house door as soon as the mate, who instantly ran to him, reached it, and very shortly afterwards he was on deck. Now, although it would have been the duty of the officers of the ship to act at once if there had been immediate necessity for so doing, as, for instance, to prevent a collision which was imminent, their Lordships think it cannot be said that the emergency was so pressing, or the measures to be adopted so plain, that they were not justified in resorting to the

pilot in charge of the ship when he was so near at hand. The dangers of a divided command are great, and must be taken into account in dealing with questions of this kind.

The relative duties of the crew and pilot were discussed in two cases, which are to be found in the 7th Moore. The first is the Christiana, page 171. In that case Mr. Baron Parke, in giving the judgment of the Committee says, "The duties of the master and the pilot are in " many respects clearly defined. Although the " pilot has charge of the ship, the owners are " most clearly responsible to third persons for " the sufficiencies of the ship and her equip- " ments, the competency of the master and crew, " and their obedience to the orders of the pilot " in everything that concerns his duty, and under " ordinary circumstances we think that his com- " mands are to be implicitly obeyed. To him be- " longs the whole conduct of the navigation of " the ship, to the safety of which it is important " that the chief direction should be vested in " one only." Then there being a question about the neglect to set the stay sail and jib under the circumstances in which the ship was placed, the learned judge says :—" The pilot has unquestion- " ably the sole direction of the vessel in those " respects where his local knowledge is pre- " sumably required. The direction, the course, " the manœuvres of the vessel when sailing " belong to him ; and the Trinity Masters there- " fore rightly decided that the neglect to set " the stay sail and jib, after the Christiana " was driven from her anchorage, was the fault " of the pilot alone. It was also his sole duty " to select the proper anchorage place and mode " of anchoring and preparing for anchoring, as " was held to be clear in the case of the Gipsy " King (2nd W. Rob., page 537)." And in the case of the Lochlibo, 7 Moore 430, Lord Kings-

down, in giving the judgment of the Committee in that case, it being a question whether the vessel ought to have sailed through the Downs, says :—"It was contended at the bar that in "this case the impropriety of sailing through "the Downs was so manifest that the Captain "ought to have refused, in spite of the pilot's "opinion, to permit the ship to proceed, but "we cannot assent to this. It would be very "dangerous to hold that there can be any "divided authority in the ship with reference "to the same subject; and whether the ship "was to anchor or to proceed was a matter which "we think belonged exclusively to the pilot to "decide."

Their Lordships, therefore, have come to the conclusion that as regards this point of blame, none is properly imputable to the crew. Being of this opinion, it becomes unnecessary to consider the further point urged by the Respondent's Counsel, namely, that this default, if established, was too remote from the immediate cause of the collision to render the Respondents liable for the consequences of it. But it is to be observed that in the interval between the time when the vessel parted from her anchor and the collision she was under the control of the pilot, who might, if he had employed the engine power at his command, have given her a new and independent course which would have avoided the collision.

In the result their Lordships will humbly advise Her Majesty that the judgment of the Court below ought to be affirmed, and this Appeal dismissed, with costs.