

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Owners of the "Henry Morton" v. Cory and another, the "Henry Morton" and "Harefield," from the High Court of Admiralty; delivered 12th December, 1874.

Present :

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

THIS is a case of collision between two screw steamers which took place in the river Tyne at about 4.15 on the 21st of January last, a little above what is known as Whitehill Point on the northern bank of the river. The weather was clear and fine; the wind westerly; and the tide about two-thirds flood, and running pretty strongly. The "Henry Morton" had come from a place called Jarrow, higher up the river. As she approached the entrance of the Northumberland Dock, which is on the northern bank of the river, she had to give way to a third steamer, the "Elemore," also outward bound, which came out of that dock; and afterwards continued her course down the river in the wake of that vessel somewhat to the north of mid-channel. Shortly before the collision the "Elemore" stopped her engines in order to avoid a brig running up the river in tow of a tug.

About the same time the "Harefield" came out of the Tyne Dock, which is on the southern bank, crossed the river at full speed in a transverse direction intending to straighten her course for her passage down the river; and in so doing came in

contact first with the "Henry Morton," and afterwards with the "Elemore."

So far the facts are undisputed. Upon the other parts of the case the evidence is very conflicting.

The case of the "Harefield" is, that she was hauling out of the Tyne Dock, and was in the act of straightening down the river, her engines going a-head, and her helm being hard a-port, when the "Henry Morton" came down the river at a rapid speed, and with her stem struck the "Harefield" a violent blow on her port side, nearly amidships; and that having got clear she came on again, striking the "Harefield" a second blow on the port side further aft; and by means of this second blow forced the "Harefield" into collision with the "Elemore."

The case of the "Henry Morton" is, that shortly before the collision she was about or nearly off the entrance of the Tyne Dock, and nearly in mid-stream; that, having previously stopped in order to allow the "Elemore" to come out of the Northumberland Dock, she was following that vessel at the rate of about 2 knots an hour, when the "Elemore," having to stop on account of a sailing vessel in her way, she also stopped her engines. That in these circumstances, the "Harefield," having come out of the Tyne Dock, was seen coming athwart the river towards the "Henry Morton," causing danger of collision; that the "Henry Morton" thereupon reversed her engines and took other means to avoid the collision or break its force; but that the "Harefield" with her port side, between the bridge and the fore-rigging, came into collision with the starboard side of the stem of the "Henry Morton," passed on and struck the "Elemore" on her stern, and coming astern again came into collision with the "Henry Morton." And the chief fault which the pleading of the "Henry Morton" imputes to those on board the "Harefield" is, that they improperly neglected so to navigate her as to enable her to keep to the south of mid-channel.

The learned Judge of the Admiralty Court came to the conclusion that "the 'Harefield' was not to blame for coming out of dock at the time when she did come out; that it was the duty of the 'Henry Morton,' not only by the law of the river, but also by the common rules of navigation, having he d

assisting her for this purpose, to stop to let the 'Harefield' come out, in the same manner as the 'Henry Morton' had stopped just before to allow the 'Elemore' to come out of the Northumberland Dock; that the collision was due to the want of a proper and careful look-out, and to the 'Harefield' not having been seen until it was too late on the part of the 'Henry Morton' to avoid the collision; and that the 'Henry Morton' was alone to blame for that collision."

Their Lordships, in dealing with the appeal from this decision, propose to consider first, how far the evidence justifies the finding that the "Henry Morton" was at all to blame for this collision.

In order to arrive at a just conclusion upon this point it is necessary to determine with more or less precision two questions which were much debated at the Bar, viz., what was the position of the "Henry Morton" when the "Harefield" was coming out of dock? and, at what speed she was then proceeding down the river?

The witnesses for the "Harefield" place the "Henry Morton" considerably above the entrance of the Tyne Dock at the time when their own vessel came out of the dock. Some, as *e.g.* John Wood, the second mate, p. 22, and William Bird, p. 37, place her as high up the river as the Northumberland Dock. In this their Lordships consider there is some exaggeration. It is admitted that the "Elemore" was then below the entrance of the Tyne Dock. It is sworn on the part of the "Henry Morton" that she had stopped in order to allow the "Elemore" to come out of the Northumberland Dock; and the fact that she had so stopped seems to have been found by the Judge of the Admiralty Court. The witnesses on her side also depose that she afterwards followed the "Elemore" at a distance of about three ships' length; she would naturally keep as near the "Elemore" as she could with safety; and the distance between them can hardly have exceeded that at which the pilot of the "Elemore" puts it, viz., six ships' length. On the other hand, it is to be observed that in their Preliminary Act the owners of the "Henry Morton" have stated that "the 'Harefield' was first seen coming out of the Tyne Dock broad on the starboard bow of the 'Henry Morton,' which was a little above

the Tyne Dock entrance, and about or near mid-channel." And upon the whole evidence on this point their Lordships have come to the conclusion that, when the "Harefield" came out of dock, or was seen by the pilot of the "Henry Morton" as about to come out of dock, the latter vessel was still above the entrance of the Tyne Dock.

As to the speed at which the "Henry Morton" was going down the river when the "Harefield" was first seen, their Lordships see no reason to doubt that it was that stated in the Preliminary Act, viz., about two knots an hour. It is part of her case that when the "Elemore" stopped in order to avoid the steam tug and the brig "Isabel" in tow of her, the "Henry Morton" did the same. The time at which this manœuvre was executed is material. Her captain's evidence as to the different orders given to the engineer is confused, and almost inexplicable. That, however, of Robert Brown, the pilot in charge of the "Henry Morton," makes it clear that it was not until after he had seen the masts of the "Harefield" coming through the piers that this second stoppage of the "Henry Morton's" engines took place; and that between that and the previous stoppage, in order to let the "Elemore" out of the Northumberland Dock, they had gone slowly a-head. The engines were not reversed and put full speed astern until the collision was imminent. And upon the whole evidence their Lordships have come to the conclusion that the "Henry Morton," after passing the Northumberland Docks, and when the "Harefield" came through the piers, was going at the rate of two knots an hour; that she afterwards stopped her engines, and immediately before the collision reversed them; but that up to and at the time of the collision she continued to have some way upon her.

Another question which was debated at the Bar was whether the collision between the "Elemore" and the "Harefield" took place before or after the second collision between the latter vessel and the "Henry Morton." There is a direct conflict of evidence on this point; but their Lordships are of opinion that the account given by those on board the "Harefield," confirmed as it is by those on board the "Elemore," and other independent testimony, is more credible than that of the witnesses for

the "Henry Morton;" and that the "Henry Morton" and the "Harefield" were in collision twice before the latter struck the "Elemore." They are also disposed to think that, before striking the second blow, the "Henry Morton" must have begun to go a-head again, probably in the hope of getting clear, and so proceeding to sea. And this is consistent with what one of the witnesses has sworn as to the cry from the "Henry Morton" to the "Harefield" to put out the cork fender.

The bye-laws which govern the navigation of the river Tyne have been invoked by both parties. The particular clauses insisted upon are the 3rd, which requires all vessels proceeding to sea to keep to the south, and those coming from seaward to the north of mid-channel; the 19th and 20th, which throw upon vessels requiring to pass over a part of the channel which is not within the half reserved for their navigation, and upon vessels crossing the river, or turning, the responsibility of doing so safely, with reference to the passing traffic; and the 21st, which contains the following passage, viz., "but no vessel overtaking any other vessel will be justified in passing such vessel at any of the points, or other dangerous parts of the river, or at the dock entrances."

Upon the facts as proved above, their Lordships are of opinion that the judgment under appeal, in so far as it finds that the "Henry Morton" was guilty of culpable negligence, is correct. Looking to the position of the "Henry Morton" when her pilot first saw the "Harefield," they think that the collision might have been avoided if the "Henry Morton" had either ported so as to pass astern of the "Harefield" to the southern, which it is to be observed was the proper, side of the river; or had stopped and reversed her engines. Their Lordships think that either measure was within the power of those on board that vessel, and that it was their duty to adopt one of them. Instead of doing this they appear to have assumed that the "Harefield" would not come so far across the river, and to have paid no attention to her movements until the collision was imminent. In this their Lordships think they were not justified, whether the "Harefield" was or was not to blame for coming so far across the river, a point to be considered presently.

The evidence of the different pilots examined in the cause satisfies their Lordships that the practice of so crossing the river, whether right or wrong, is so frequent, that the contingency of the "Harefield" doing so was one which those on board the "Henry Morton" ought to have contemplated, and therefore that they were not justified in neglecting to take the means in their power of avoiding its probable consequences. It is further to be observed that her master himself, at p. 111, and her chief mate, at p. 128, admit that the collision might have been avoided if the course of the "Harefield" had been observed in time. Their Lordships think it right to say that they have come to the conclusion that the "Henry Morton" was in fault, independently of the 21st clause of the bye-laws, which they are disposed to think applies only to a vessel overtaking and passing another actually upon the same course with itself.

Their Lordships have now to consider whether there was not also contributory negligence on the part of the "Harefield."

It is admitted that the proper course for an outward bound steamer leaving the Tyne Dock is to straighten her course as soon as possible, so as to proceed down the river on the southern side of mid-channel. There is a strong body of evidence corroborated by proof of what the "Anne Webster" did to show that this may be done without running, like the "Harefield," across the mid-channel.

The judgment under appeal assumes that it was the duty of the "Harefield" to get to the south side as soon as possible, but finds that she was delayed in doing so by accidental circumstances, of which one was the presence of the raft of which much was said in the argument. This raft, notwithstanding what was urged to the contrary by Mr. Bruce, their Lordships must take upon the evidence to have ultimately gone up the river. It is not likely that it should have been towed against the tide down the river. Their Lordships, however, conceive it to be possible that, in order to allow the "Harefield" to pass it, it may in the first instance have been towed towards the eastern pier of the basin into the slack-water there. If this be so it would not very materially affect the subsequent movements of the "Harefield," which is pretty well

proved to have come out from between the piers with her head N.E. by E. Had the raft really altered the course of the "Harefield" it would, their Lordships apprehend, have been a grave question whether she ought not to have waited until that obstacle was out of the way. But on the whole their Lordships are disposed to think that the raft had little or nothing to do with what subsequently happened.

Then it is said she came out with her head in the right direction, but the action of the tide on her starboard bow gave her a fling, which canted her more to the northward, and impeded the action of her port helm. There does not, however, seem to have been anything exceptional in the strength of the tide on that day.

Either she intended, or she did not intend, to go as far across the river as she went. In either case the bye-laws seem to cast upon her the responsibility of crossing the river, or of going out of her prescribed ground without danger to the passing traffic. If she did this intentionally (and the fact that all three steamers are found on the northern instead of the southern side of mid-channel begets a suspicion that vessels may intentionally violate the 17th clause in this part of the river in order to escape the strength of tide) she was doubly bound to caution. If she were forced into that position by the tide, she ought to have contemplated that contingency. But in either case it seems to their Lordships that those in charge of her ought to have watched their opportunity for crossing the river at full speed, and to have observed carefully what passing traffic was likely to come in her way. Had they done this they would have seen that the "Elemore" was but a little below, and the "Henry Morton" but a little above the opening of the dock; and they ought further to have contemplated the contingency, which actually happened, of the downward course of these vessels being arrested by vessels ascending the river, as they ought to ascend it, on the northern side. Upon the evidence, those on board the "Harefield" seem to have paid very little attention to the movements of the other two vessels. And their Lordships cannot acquit them of having recklessly crossed the river at the risk of collision with one or both. Nor are they satisfied that if the "Harefield" had

carefully observed the movements of the two other steamers, and seen that they had been stopped by the brig, she might not have extricated herself from the position in which she had placed herself without further danger by reversing her engines. Upon the whole, therefore, their Lordships cannot acquit the "Harefield" of blame, and they have come to the conclusion that it will be their duty to advise Her Majesty to reverse both the judgments under appeal, and in each suit to pronounce both vessels to blame, and to direct that each party shall bear their own costs, both in the Court of Admiralty and on this appeal.