

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeals of
Adamson v. The Owners of the Screw
Steamship "Germania" (the "Germania"
and the "Boadicea," cross appeals), from
the High Court of Admiralty of England;
delivered June 17th, 1875.*

Present :

SIR JAMES W. COLVILLE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

SIR HENRY S. KEATING.

THESE cross suits arise out of a collision in the River Humber between two steam vessels, the "Boadicea" and the "Germania." The collision took place between 1 and 2 o'clock in the morning of the 16th of January last. The night was clear, with some moonlight; the tide was about two hours ebb. It appears that the "Boadicea" was going up the river towards Hull, and the "Germania" was coming down. The speed of the "Boadicea" was about five knots over the ground; that of the "Germania" was less,—it is stated to have been about three knots. There is no dispute that just before the collision the "Boadicea" was under a port helm, and when the collision became imminent she ported hard so as to avoid the danger that was then close upon her. The "Germania" was coming down under a starboard helm, and she continued under that helm until just before the collision. Perceiving that the "Boadicea" was under a port helm, she also ported, either to avoid or to lessen the force of the blow, but at a time when it was too late to be of any

effect. The vessels came into collision, and considerable damage was done to both.

The collision took place in a part of the river off the Killingholme Lighthouse, and on the Yorkshire side, near a large sandbank called the Foulholme Sand. It seems there are some spits of sand before the main part of the Foulholme Sand is reached in going up the river, and that according to the course of navigation there is a bend in the course at the northern end of these spits; and that the vessels, when they first sighted each other, were not approaching end on, but were approaching each other on either side of this bend in the direction in which each was going on its course, one up the river and the other down.

The Judge of the Court of Admiralty has found that the "Boadicea" was in fault in this collision. Their Lordships are disposed to agree in that finding. The learned Judge, in coming to a conclusion upon the courses of the vessels, finds this:—"The Court believes " that the 'Germania' and the 'Boadicea' were, " when they first saw each other, as the " 'Germania' herself states, vessels approaching " green light to green light, or starboard to " starboard, and, after conferring with the " Elder Brethren, has no hesitation in saying " that if these vessels had continued their " courses, no collision would have happened, and " that the collision did happen because the " 'Boadicea' altered her course,"—which, of course, means improperly altered her course,— " ported her helm, and ran into the 'Germania.'" Their Lordships, having availed themselves of the assistance of the Nautical Assessors, have also come to the conclusion that the collision happened in consequence of the "Boadicea" having improperly and too strongly ported her helm, and so run across the bows of the other vessel.

That she did port is clear upon her own evidence. Her witnesses all state that this was so, and that she ported so much that her head was pointed to the Yorkshire coast, and that if she had continued long under that helm, she would have run on the sand on that side of the river.

Now the excuse which the "Boadicea" makes for the manœuvre which she took, or rather for continuing on the course which she did, is that the lights of the other vessel, the "Germania," were obscured, and that she was in consequence misled. Assuming for a moment that her story is correct, still their Lordships are of opinion that there was a want of look-out on board the "Boadicea," because there were sufficient indications of the presence of the "Germania" in the river and of the course she was taking to have instructed those on board the "Boadicea" what her course was, or at the least that she was a vessel coming down the river. They admit that they saw the white light of the "Germania" three miles ahead—that is an undisputed fact in the case. They also admit that they saw the green light about a mile ahead of their ship, and this, with the white light which they had already seen, would indicate that there was a vessel coming down the river. They say they saw that starboard light on their own port bow; even if that were so, their Lordships are advised, and their own opinion agrees with the advice they have received, that they ought to have known or ascertained the other vessel's course, and ought not to have continued on a port helm across her bows. But it is to be observed that in the preliminary act and in the petition it is stated that the "Boadicea" saw the green light, not at the distance of a mile, but at the distance of three miles, and saw it first upon their starboard bow.

The witnesses on the part of the "Boadicea," the pilot and the chief officers, tell a story to explain what they did, which their Lordships think is not credible, agreeing in that respect with the learned Judge of the Court below. Of course they felt the difficulty, having admitted they had seen the white light three miles off, of accounting for not having again observed it until the ship was close upon them. They do account for it by saying that seeing no other lights, and losing, as they say, the masthead light, they thought the ship, which they admit they knew was a ship approaching them, had turned round, and was going back towards Hull. Such an explanation is entirely unsatisfactory, and one cannot believe that that was the state of the men's minds. Their putting forward this story, and the other circumstances of the case, satisfy their Lordships that there was a bad look-out on the part of the "Boadicea;" and that that bad look-out led to the wrong course which the pilot took. They therefore feel no difficulty in coming to the conclusion that the "Boadicea" was in fault.

Both vessels were in charge of licensed pilots, and if the fault had been simply in the course into which the vessel was put by the pilot, the owners of the "Boadicea" would be exonerated from liability; but their Lordships are of opinion, that the pilot was not alone in fault. They are of opinion, for the reasons they have already stated, that there was a bad look-out kept on the part of the officers of the "Boadicea," and that no proper report was made to the pilot to assist him in the navigation of the ship. He had not, therefore, the assistance which the crew were bound to render, and that being so the carelessness of the crew contributed to the accident, and the owners are not relieved from responsibility in consequence of the vessel being under his charge.

The next question is whether there was contributory negligence on the part of the "Germania." The blame imputed to her is that her lights were obscured, and also that she did not keep a good look-out. A great deal of evidence was gone into upon the issue whether the lights were obstructed or not. These facts are undisputed; that as many as seven large threshing machines, besides a boiler and three engines, were put upon the fore deck of the "Germania," and that they were put on board just before the vessel sailed, so that there was not time for the crew to fasten or lash them to the vessel, and when the ship started from her moorings to go down the river all these large machines were loose upon her deck, and the crew, or a great part of the crew, were engaged in fastening them before the vessel got out to sea. So serious was the consequence of this demand on the time and attention of the crew that the pilot suggested to the master the propriety of stopping the vessel until these machines were properly fastened. It seems, however, that after consultation it was thought that they might go on.

Their Lordships are extremely reluctant to interfere with the finding of the learned Judge of the Court of Admiralty upon a question of fact, but they are less so in this case, because they think that the learned Judge did not give sufficient consideration to one portion of the evidence. Whether the lights were obstructed or not depends upon a question of measurement. We have distinctly proved here the size of the deck, and the space between the lamps, and we have then to ascertain first in what mode these engines were stowed, and next what were their dimensions. If there had been no evidence given of the measurement of the machines, those who have to decide the case must rely solely

upon those who saw them on board, and who give evidence for one side or the other, either that they did or did not obstruct the lights. But when evidence of measurement is given, it cannot properly be said that it is not proof which requires to be considered. If the learned Judge had put the evidence aside, because he thought that the measurements had been given in so unsatisfactory a way as to be wholly inconclusive, he would have been perfectly justified in so doing. But it does not appear that he went into it at all. The learned Judge says,—“I am of
“ opinion that without going into that portion of
“ the evidence which is confined to measurements
“ and calculations, and is contradictory of the
“ averments on the other side, that the positive
“ evidence in this case is quite sufficient to
“ satisfy the Court that the true legal conclusion
“ at which it ought to arrive is that the lights
“ of the “Germania” were not obstructed by
“ these machines that she had on board, but
“ were visible.” Now no doubt there is positive evidence of considerable strength upon which the learned Judge might very properly have relied in the absence of measurements, and if he was right in disregarding them, and if their Lordships were not disposed to give weight to them, they would not only have felt reluctant to interfere with, but would have adhered to the judgment below. But after the investigation that has been made before their Lordships, they have come to the conclusion upon the evidence of the measurements, and upon weighing that evidence with the testimony of the witnesses who saw the machines on board the ship, and who observed the lights, that there was an obstruction of those lights.

Upon the question of measurement, it will be necessary to refer shortly to the figures, and their Lordships have, in the main, taken them from the evidence of the witnesses who

were called by the "Germania." They have also before them a plan which was proved by Mr. Carr, the surveyor for the "Boadicea." That plan is drawn to a scale; to all appearance it is accurately made so far as the dimensions of the ship are concerned. Whatever is placed upon it relating to the machines is put there hypothetically, and cannot of course be taken as proved. But with regard to the ship, the important measurements are these: the space between the rails, that is the space between the inner side of the upper part of the rails on the main deck, is 24 feet 4 inches; that is the space which it is said was filled by these machines, and filled fully up to the rails. The distance between the lights, that is from the centre of the wick of one lamp to the centre of the other is 21 feet 10 inches; the question therefore is whether the machines were higher and wider than those lights; if they were both higher and wider they must necessarily have obstructed them. It should have been stated that the lights are seven feet four inches above the deck, that is, the centre of the wick is seven feet four inches above the main deck. Now with regard to the height there is really no difficulty; it is admitted that the machines were eight or nine feet high;—high enough therefore to obstruct the lights if they were placed on the deck in such a way that their width would exceed 21 feet 10 inches. To ascertain whether the machines were stowed so as to obstruct the lights as far as width is concerned it is necessary to arrive at the width of one of the machines and the length of another. Two machines only need be considered, one the machine nearest to the deck house, which was stowed fore and aft, and another which was stowed athwart the ship and which is said to have come close up to the other machine. The

machine which was fore and aft the ship was one of Clayton and Shuttleworth's, and as to that we have a pretty accurate measurement. The other machines were made by different manufacturers, by whom is not known, and there is no evidence from those who manufactured them as to their dimensions, but it appears that they were measured by the stevedore and apparently by the captain. There is some doubt whether the captain did or did not measure them, but it is clear from the evidence of the stevedore, Grainger, that he measured them, and if he did his duty it is extremely probable that he would. They were very large machines, filling up this fore deck and requiring great care in the manner in which they should be stowed, and therefore it is extremely probable that the stevedore would measure them before he determined upon the mode in which he would stow them on the deck. The measurements, so far as they are material, appear to be these: the width of the machine which was fore and aft the ship, that is Clayton and Shuttleworth's machine, is seven feet five inches, and after an investigation of the evidence this was agreed between the learned counsel on both sides to be the result. Then it is necessary to inquire the length of the machine which was athwart the vessel. It is a matter of figures that any length beyond 14 feet 5 inches, added to the 7 feet 5 inches, would obscure to some extent these lights, which were only 21 feet 10 inches apart. The question therefore is, having got the width of the one, what is the length of the other? The captain, who says he measured, though he afterwards seems to resile from that statement, states the length of that machine to be 16 feet. Grainger, the stevedore, says that it was 15 feet 6 or 15 feet 9. He measured all five machines. Probably some were 15 feet 6, and some 15 feet 9;

but taking the lowest figure 15 feet 6, and adding it to 7 feet 5, we have 22 feet 11 inches, which is more than the space between the outside of these lamps; 21 feet 10 being the measurement between the centres of the lamps; 22 feet 10 being the space between the outsides. Taking therefore the evidence of the "Germania" herself, her lights would be totally obscured to anyone standing in front of the vessel, and at a point at which both lights, if not so obscured, ought to have been seen. It is obvious, therefore, that if these measurements are correct, as their Lordships find they are, the lights were obstructed, at least to the above extent, if not to more, and therefore were not visible in the manner required by the sailing rules.

Their Lordships having come to this conclusion, it is unnecessary to consider in detail the conflicting testimony of the witnesses as to the visibility of the lights. It is enough to say that there is a good deal to impeach the accuracy of the observations made by those who were called on the part of the "Germania" in this respect.

The fact being found, the question arises whether the obstruction of the lights contributed to the accident or might have contributed to it. Their Lordships are very much disposed to think that the obscuration of these lights did contribute to the collision which occurred. There was, as they have stated, a bad look-out on board the "Boadicea," but it is not a case where there was none. It is extremely probable that if these lights could have been seen in their full brightness, the attention of those who were keeping even a careless look-out would have been called to them. However, their Lordships think it is unnecessary to rest the case upon the ground that the lights being obscured in this way did in fact contribute to the accident, because since the last Merchant Shipping Act, and the construction

put upon it by the recent decision of this Board in the "Fanny M. Carvill," it is quite sufficient to make the "Germania" in fault that the partial obscurity of her lights might have contributed to the accident. The statute relieves the parties and the Court from a minute inquiry into the evidence to ascertain whether the collision was in fact caused by the breach of the Regulations, it being sufficient if by any possibility it could have contributed to it. What was stated in the judgment referred to is,—“Their Lordships are of opinion
“ that the second construction which is not
“ absolutely inconsistent with the phraseology
“ of the enactment, and is by far the more
“ reasonable of the two, ought to be adopted.
“ It gives effect to the statute by excluding
“ proof that an infringement which might
“ have contributed to a collision did not in
“ fact do so, and by throwing on the party
“ guilty of the infringement the burthen of
“ showing that it could not possibly have done
“ so.” That burthen being upon the “Germania” in this case, their Lordships are satisfied that she has not sustained it; she has not shown that by no possibility could the obstruction of these lights have interfered with the accident, and therefore, whether the evidence is sufficient to establish that it did in fact contribute to it or not, their Lordships think that by force of the statute they are bound to declare the “Germania” also in fault.

In the result, therefore, they will humbly advise Her Majesty to reverse the judgment of the Court below, and to declare that both these vessels are in fault for the collision. The consequence will be that there will be no costs either in the Court below or in this Appeal.