

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Prowse and others v. the European and American Steam Shipping Company (ship "Peerless"), from the High Court of Admiralty of England; delivered on the 18th July, 1860.*

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Present:

LORD CHELMSFORD.

LORD KINGSDOWN.

SIR EDWARD RYAN.

THE question in this case may conveniently be considered under the three following heads:—first, was the collision occasioned by negligence on board the "Peerless," while she was in charge of a licensed pilot? secondly, did any omission of the master or crew of the "Peerless" contribute to the collision? and, thirdly, if the pilot was wholly to blame, are the owners of the "Peerless," either upon general principles of law or by any Act of the Local Legislature, exonerated from liability.

Very little question has been raised, and very little doubt entertained, upon the first point.

It appears that the "Jason," at the time of the collision, was lying at anchor in a safe and proper berth in Cowcolly Roads, in the Hooghly river. The "Peerless," in charge of a licensed pilot, Le Patourel, got under weigh without using the steam-tug which had been engaged to assist her, and, in consequence, drifted down on the "Jason," when she was necessarily helpless, except within very narrow limits, and occasioned the injury. A clear *primâ facie* case of negligence, therefore, is established, which no explanatory circumstances on the part of the "Peerless" have removed.

The second question as to whether there was any blame to be imputed to the master or crew of the "Peerless," may be as shortly disposed of. The negligence which is imputed is the jamming of the chain cable, which, it is said, the master ought to have taken care to keep clear, for the purpose of letting go. It appears to have been the opinion of the Judge of the Court of Admiralty that there was no want of foresight or precaution on the part of the master in that particular, and that it must be attributed to what he calls a pure accident; and in that opinion their Lordships entirely concur.

There being then negligence on board the "Peerless," and that negligence being imputable solely to the pilot, the only remaining question is whether, upon any principle of law, or by reason of a local Act of the Legislative Council in India, followed by the rules and regulations of the Local Government of Bengal, the owners are exempt from liability.

Now, upon that point the rules and regulations are stated in the 6th and 7th articles of the allegation on behalf of the owners of the "Peerless," and by the 8th article it is alleged "that in and by virtue of the aforesaid Act and Regulations, and by the general law in that case made and provided, the aforesaid parties, the owners of the said ship 'Peerless,' are exempt from all responsibility for the damages alleged to have been occasioned by their said vessel, while in charge of the said J. P. B. Le Patourel, the pilot, as before set forth, and whom they had been compelled to take on board in obedience to the aforesaid Regulations, and all of whose orders were promptly and effectually obeyed as aforesaid."

This is met by the 4th article of the responsive allegation on behalf of the owners of the "Jason," who say "that in contradiction to what is pleaded in the 8th article of the said allegation, the party proponent alleges and propounds that the owners of the said ship 'Peerless' are not, under and by virtue of the therein-recited Acts and Regulations, nor by the general law in that case made and provided, exempt from all responsibility for the damages occasioned by their said vessel while in charge of the said J. P. B. Le Patourel, the pilot. And the party proponent expressly denies that all

the orders of the said pilot were promptly or effectually obeyed.”

The Appellants offered parol evidence of the Rules and Regulations, but the learned Judge of the Court of Admiralty was of opinion that the proof was insufficient, and therefore the defence of the Appellants entirely failing, he pronounced against them.

If the question now were to depend on the evidence given of those Rules and Regulations, their Lordships would entirely concur in the judgment of the Judge of the Court of Admiralty, but they are of opinion that there was no necessity to give any proof of those Rules and Regulations having been made, because they are sufficiently admitted in the proceedings between the parties.

It is to be observed, that in this case there is not a mere allegation of the fact, and the passing it by without any denial ; but, the allegation having been made, it is answered by assuming the truth of the allegation, and by drawing a conclusion from it. Their Lordships therefore think, under these circumstances, that this amounts clearly to an admission of the Rules and Regulations. But the admission of the Rules and Regulations will not carry the matter to the extent contended for by Dr. Deane : viz., that upon the pleadings not merely the Rules and Regulations were admitted, but that the conclusions drawn from them by the Appellants were also admitted by the responsive allegation.

It is quite clear that the conclusion which the Appellants draw from the Regulations is not a conclusion of fact, but that it raises a question upon the effect of the Act and the Rules and Regulations. This is a question of judicial construction, and not an admission of fact which can be made by either of the parties to the proceeding.

This being so, we have to consider what is the effect of the Act, and of the Rules and Regulations, in the form in which they appear on the face of the proceedings ?

Now the Act is an Act for the regulation of port and port-dues ; and, by the 3rd section, “ the Local Government of any part of the territories ” (that is, of the East India Company) are empowered, with the sanction of the Governor-General of India in Council, to declare any port within that part of the

said territories to be subject to the Act; and any navigable river and channels leading to that port to be subject to the Act. And, by the 4th section, every declaration by which any port, navigable river, or channel, is to be made subject to the Act, is to define the limit of such port, navigable river, or channel; and, when the declaration in that form is made, then, by the 3rd section, all the provisions of the Act, except such as are hereinafter made specially applicable to certain ports by order of the Local Government, are to have effect in that port, or navigable river, or channel.

There are four sections in this Act which in the margin are called special Rules, and which under the 3rd section require to be specially extended, by the declaration or order to be made before they are applicable to the port, or to the navigable river, or channel, which is declared to be subject to the Act. Amongst these is the 12th section, upon which the whole question turns. Now the 12th section provides that in every port subject to this Act, to which the provisions of this section shall be specially extended by any order of the Local Government, it shall be unlawful to move any vessel of the burthen of 200 tons or upwards without having a pilot on board, under a penalty of 200 rupees for every such offence.

It was contended on the part of the Appellants that this 12th section would apply not merely to the port strictly so called, but also to navigable rivers or channels which are declared to be subject to the Act; but it is remarkable, that in the four sections which contain the special Rules to which I have adverted, in the 12th and 28th, "port" and port alone is mentioned, whereas, in the 37th and 40th sections the words are "in every port, river, or channel, subject to the Act," apparently, therefore, showing that where the Legislature intended that the Rules should be confined to the "port," it is so expressed, and when it intended the Rules to be further extended there are additional words introduced. This certainly fortifies the construction which their Lordships are disposed to adopt.

If it were necessary to advert to evidence which is not upon the proceedings before their Lordships, it would strengthen very considerably the conclusion

at which they have arrived, because they learn that there has been an order made defining the limits of the port of Calcutta, and also the extent of the navigable river and channels which were to be subject to the Act, and especially providing that sections 12, 28, 37, and 40 of the Act were to be extended to the port of Calcutta.

It is quite clear, therefore, that the limits of the port of Calcutta being defined, and the limits of the navigable rivers or channels being also defined, when a provision is made that these sections are to apply to the port of Calcutta, it must mean the port of Calcutta strictly so called, that is, as defined by the Rules and Regulations.

But, without relying upon what is not properly in evidence, it is sufficient to refer to the terms of the Order of the Lieutenant-Governor of Bengal as set out upon the proceedings by which it is merely declared that the navigable rivers and channels leading to the port of Calcutta are subject to Act No. XXII of 1855. That being so, it is quite clear that the 12th section not being specially extended to the navigable river or channel it is excepted by the express terms of the 3rd section; and that the place where the collision occurred, not being a place which was subject to the operation of the 12th section, the owners of the "Peerless" were not bound to take a pilot on board, and, of course, there is an end of all questions arising upon the Act of the Local Legislature.

The third question being thus determined upon the Act and the Rules and Regulations, it is unnecessary to consider the general principles on which the right of exemption was also founded, because if the parties were not compelled to take a pilot the whole foundation of this part of the argument fails, and there is no ground whatever for saying that the owners are exempt from the ordinary liability which attaches upon them for the negligence of their servants.

Under these circumstances their Lordships feel no difficulty in saying that they will humbly recommend to Her Majesty to affirm the decree of the Judge of the Court below, with costs.

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