

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Harrison and another v. Dryden and others (The "Fire Queen,") and Harrison and another v. Dryden and others (The "Drydens"), from the High Court of Admiralty; delivered 15th February 1872.*

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Present:

SIR JAMES W. COLVILLE.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THIS case arises out of a collision between the screw steamer the "Fire Queen," and a barque called the "Drydens," in Queenstown Harbour; and the question is, which of the two vessels is to blame for the collision?

The "Fire Queen" was a steamer leaving Queenstown Harbour, on her voyage; and the "Drydens" was a merchant barque coming to take up her anchorage in Queenstown Harbour. There is no doubt that the learned Judge below has put his judgment very much on the finding that the place of the collision was where the barque was lying after the collision had taken place; and he has found as a fact that in his opinion the place where she was sunk was a short distance only from the place of the collision.

In the view their Lordships take of this case it is not necessary to say whether the learned Judge was well founded in coming to that conclusion or not. There may be some doubt, if the measurements taken are accurate, whether the learned Judge was well founded in that opinion, upon the fact; but their Lordships have had an opportunity of looking at the evidence, and of

hearing a very full and able argument upon it, and, assisted by their nautical assessors, they have come to the conclusion that, however that fact may be, there are circumstances in this case upon which a judgment may be founded, and properly founded, that blame in this case attaches to the steamer, and not to the barque.

Unquestionably it was the duty of the steamer to keep out of the way of the barque, and it was the duty on the part of the barque to keep on her course, if she had a course, so as not to mislead the steamer. It cannot be an absolute duty under all circumstances for a sailing vessel to keep her course; she must of course be influenced by circumstances; but this is her general duty, that if she has a course, she must take care not to alter it so as to mislead the steamer.

The circumstances of this case are short, so far as it is necessary to state them, to lead up to the time when the collision took place. The steamer was leaving the harbour, and it appears that she had gone half speed up to the Spit Point, but after she rounded the Spit Point it is clear from the evidence on her own side that she went at full speed. You have, therefore, a steamer leaving Queenstown Harbour in a passage which is not a very wide one, and going at full speed. No blame is imputable to her for going at full speed if there was nothing in the way, and no circumstance had occurred which made it dangerous to continue that speed. Undoubtedly she was going at that speed, and she does not appear to have slackened it at all until she came so near to the barque that a collision was imminent.

The barque was going up the harbour, and it is clear that, wherever she was at the time she sighted the steamer, and when the collision took place, she was going at all events to the anchorage ground to take up her anchor; and it also appears upon the evidence that she had, at the time she sighted the steamer, begun to slacken her sails, and to take up some of them with a view to come to anchor.

She was undoubtedly going to anchorage ground at the time of the collision. Their Lordships, after looking at the evidence, have come to the conclusion that she was, when struck, in water to the west of the fairway. The evidence of the captain and of the pilot, and indeed of all the witnesses who were called on the part of the barque, places her to the west of the line marking the fairway at the time of the collision. There may be considerable doubt whether she was not to the south of the Cunard buoy. Mr. Butt, in his opening, pointed out the evidence which led, no doubt, to the supposition that she was to the south of the Cunard buoy at the time of the collision. However that may be, she was clearly to the west of the Cunard buoy; it may have been to the south-west, but she was in such a position as to be to the west of the fairway line as marked in the chart.

It is extremely difficult upon this conflicting evidence to say how far she may have been to the west, but their Lordships have come to the conclusion that she was at some considerable distance to the west of the fairway. It appears that after she was struck she went on in a north-westerly direction for some time before she came to an anchor and sank; that she very soon dropt her anchor after the collision; and that where she did sink was unquestionably a very considerable distance from the fairway. Therefore, their Lordships come to the conclusion that, at the time of the collision, the barque was to the west of the fairway, and either in ground appropriated for anchorage, or ground where ships did sometimes come to anchor, and at all events out of the fairway which steamers usually keep and observe.

But it is said that it is more material in ascertaining which vessel was to blame, to consider where the two ships were at the time they sighted each other and began their respective manœuvres. Probably that is so. If the evidence on the part of the steamer is entirely relied on,

the steamer was undoubtedly in the fairway at the time, and probably that may be the conclusion and the right conclusion to be drawn from the evidence; but the evidence tends to show that the barque was not in the fairway, but had gone beyond that line which is marked as the fairway, and was proceeding to take up her anchorage near the Spike Island. It may be that that is not perfectly clear upon the evidence, but what is plain is this: that she was then proceeding in a direction which I think is described as N.N.E., which would take her towards Spike Island; and though the course was altered afterwards it was to take her more westerly, though still very much in the same direction as she was going before.

The barque, therefore, was either on the edge of the fairway or in the western waters beyond it, according to their Lordships view of the evidence, at the time that she sighted the other ship.

Well, the steamer certainly ported her helm, and the effect of that was to take her in a direction which either led her to the edge of the fairway or beyond it. It is admitted by the master that the collision took place, as he says, at the edge of the fairway and within the fairway; but as has been already stated, the fair result of the evidence is that it took place further to the west. Then she ported her helm. It is said that that was a right manœuvre, and that if it had not been counteracted by the barque having starboarded her helm, this collision would not have taken place; and that if the barque had kept a good look-out she would not have starboarded her helm, but would have taken a corresponding manœuvre and ported her helm. But their Lordships think the position of the barque, and what she was doing at the time, did not make it necessary for her to adopt that manœuvre. She was going to take up her anchorage. She was in the way to it; she was preparing for it, and she kept on what, if she had a course at

all, was her only course, but giving it a more westerly direction. It seems very doubtful whether she was in a position, having regard to the wind, in which she could have ported; and she cannot be blamed for taking a course nearer to ground, where she had no reason to expect the steamer would follow her. Their Lordships cannot say on this evidence that any blame is to be attributed to the barque.

Then with regard to the steamer; the evidence is that there was some hesitation on the part of those who were in command of the steamer as to what they should do when they first saw the barque. They say that hesitation was caused because they could not ascertain what the barque was about, where she was going, and what she was about to do. Certainly those on board the steamer, at all events the pilot, must have known the anchorage ground, and might well have known that this barque was going to take up her anchorage. But if that matter was left in doubt, their Lordships think that those on board the steamer should have hesitated before they took so decided a step as porting their helm, and continuing on that course at full speed; they consider that they should have slackened their speed, and satisfied themselves as to the manœuvre that the barque was about to adopt, and the course she was going to pursue. Having slackened their speed and made up their minds, they might then have either put their helm to starboard, or continued it to port, as would under the circumstances have been right so as to avoid collision.

Their Lordships cannot come to any other conclusion upon the whole than this: that if the steamer upon the doubt that was felt on board her had acted by slackening speed, and waiting to see what really was the course the barque was taking, or what she was about to do, this collision might have been avoided, and that there was a want of ordinary care in not doing so.

This finding leads their Lordships, of course, to the conclusion that the steamer was to blame for this collision, and, therefore, that the Judgment of the Court below is right.

It was pointed out by the learned Counsel for the Appellants, that the collision might have taken place below the ground which is properly anchorage ground, and that the waters beyond the most outward of the fairway buoys are open waters, and cannot be said to be divided into fairway and anchorage as the waters above are divided. Their Lordships think that that is scarcely made out by the evidence. The Harbour Master certainly does not adopt that view, and, probably, the fact is this:—that where the buoys are placed the fairway is more clearly defined, and that there is the most common ground for anchorage. But the case appears to be that there is, below the buoys, ground which is, more or less, to use the Harbour Master's expression, used for anchorage; and their Lordships consider that those on board the steamer knowing what the waters were, and how they were used, ought to have paused when they saw a vessel in those waters, to have slackened their speed, and to have adopted a manœuvre which would not have driven them, as their course did, down on the barque so as to strike her almost at full force and sink her.

Upon these grounds their Lordships are of opinion that it is their duty to advise Her Majesty that this appeal must be dismissed, and with costs.

The petition for the production of further evidence will also be dismissed, with costs.