

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of the
General Steam Navigation Company v. the
Owners of the steamship or vessel "Kjoben-
havn," from the High Court of Admiralty of
England; delivered 17th February 1874.*

Present :

SIR JAMES W. COLVILLE.
SIR BARNES PEACOCK.
SIR MONTAGU E. SMITH.
SIR ROBERT P. COLLIER.

THE general facts of this case are stated by the learned Judge of the Court of Admiralty in the two first paragraphs of the judgment, against which the Appeal is brought, as clearly as it is possible for me to state them. He says :—" This is a case of collision between " a screw steamship called the 'Mermaid' and " a screw steamship called the 'Kjobenhavn.' It " took place between nine and ten o'clock on " the night of Friday the 28th of March. The " place of collision was about half a mile " from the Ovens buoy off Coal House point, " on the north side of the river Thames, " and in Gravesend Reach. The tide was about " half flood, running at a speed of between " three and four knots. The 'Mermaid' was " a vessel of 577 tons register, and 90 horse- " power, with a crew of 23 hands. She was " on a voyage from Shields to London, with " a cargo of coals, and was proceeding up the " river Thames and rounding Coal House point. " The 'Kjobenhavn' was a larger vessel of " 700 tons register and 100 nominal horse-

“ power, with a crew of 20 hands; and at the
“ time of this collision she was lying at anchor
“ with 25 fathoms of chain heading to the tide,
“ at the place which has been marked by the
“ witness on the map here, which is close to
“ the Ovens buoy and off a bank called Ovens
“ Flat.”

There is but one action, namely, the action brought by the “Mermaid” to recover damages from the “Kjobenhavn,” and there being no cross action, it follows that the first and possibly the only material question in the cause is whether the “Mermaid” has established a case of negligence, contributing to this collision, against the “Kjobenhavn,” because if she has failed to do so, it is immaterial whether the collision was due to inevitable accident or to the fault of the “Mermaid.” On the other hand, if she has established such a case of negligence against the “Kjobenhavn” then the question arises whether there was not also contributory negligence on the part of the “Mermaid,” in which case, both vessels being in fault, the rule of the Court of Admiralty would apply and the damage would be divisible between them. There is also this peculiarity in the case, that the vessel complaining, the Plaintiff's vessel, was the only vessel in motion, the “Kjobenhavn” being admitted to be at anchor; and in all such cases it is incumbent on the vessel which has the power of motion and the means of manœuvring to show some sufficient reason why it should have come in contact with a vessel lying at anchor and incapable of motion.

The negligence attributed to the “Kjobenhavn” is that she was anchored in an improper place, and that she failed to carry a riding light, pursuant to the seventh article of the sailing rules. Those are the facts in respect of which negli-

gence is imputed to her; but even if those facts are established it will be a further question whether that negligence contributed to the accident.

Now, upon the evidence their Lordships think it has been correctly found in the Court below that the "Kjobenhavn" was anchored in a place in which a vessel of that size ought not, in ordinary circumstances, to have anchored. We have upon that point the evidence of the harbour-master, who is very strong in his general conclusion that the place of anchorage was an improper place for a vessel of that size, although he admits in another part of his evidence that small craft did occasionally anchor on that northern shore, and near the place where the "Kjobenhavn" was anchored. The greater part of his examination was indeed directed to show that the proper place of anchorage for vessels in the Gravesend Reach which have the power of anchoring in the proper place and intend to remain there for any time is on the southern shore, above the point marked B. on the chart; but that evidence has no bearing upon the present case, since it was impossible for the "Kjobenhavn" in her disabled state to get so far into the reach. This witness, however, persistently contended that the place where she did anchor in point of fact was *prima facie* an improper place of anchorage, and it is to be remarked that his evidence on that point is in some degree confirmed by that of Mr. Claxton, the pilot of the "Kjobenhavn," who, at page 42, line 39, is asked: "It is not a proper place to anchor in if you can help it, is it?" and answers "No." Their Lordships then will assume that the Judge of the Court of Admiralty has correctly found that the Danish steamer was anchored in that which was *prima facie* an improper place.

Again it is admitted that the "Kjobenhavn" did not carry the proper riding light; but the amended pleading, which is in the nature of a plea in confession and avoidance, states upon that point: "The 'Kjobenhavn' had not been long at anchor, the bright white or masthead light was when she came to anchor carried on the outer jib stay about thirty-six feet above the hull, and remained there till the collision. It exhibited a clear light to all vessels coming up the river. Just before the 'Kjobenhavn' had come to anchor as aforesaid she had been in collision without any fault on her part with a brig riding at anchor. In this collision her riding light had been destroyed. At the time she came to anchor as aforesaid, and up to the time of the collision, she had not any proper riding light and could not exhibit one."

Now that pleading seems distinctly to put forward as an excuse for not having the proper light, that she had been without any fault of her own in collision with the brig, and therefore it became a material question in the cause whether her collision with the brig was due to her default, or whether it was, as her pilot put it, the result of inevitable accident.

Their Lordships have considered the evidence upon that point, and they have also had the benefit of consulting their nautical assessors upon it. They are not disposed to differ from the conclusion of the learned Judge of the Court below, who says not only that it has not been proved that she was in fault, but that the contrary is established. It seems to them upon the evidence that the "Kjobenhavn" was coming up necessarily more or less under a port helm, and that she was coming only at half speed. There is also evidence that there was a considerable fog about that place, either fog or smoke proceeding

from the cement factories, and that by reason of that the brig and its riding light must have been more or less obscured. Again, it appears clear to them upon the evidence that the brig was anchored in an improper place, in a place in which she should not have anchored without excuse. The fog seems to have been her excuse for dropping her anchor there, but still she was in a place in which a steamer coming up the river would not reasonably expect to find a vessel at anchor.

Taking into consideration these circumstances, the moderate speed at which the vessel was proceeding, that she was proceeding under a port helm, and that owing to the fog she could not see the brig earlier than she did, their Lordships are of opinion that the "Kjobenhavn" cannot be said to have been in fault in respect of that collision. It was indeed argued by Mr. Clarkson that she ought not to have ported her helm under the circumstances, but as she was going up under a port helm their Lordships think that no fault is reasonably to be attributed to her in respect of that manœuvre.

Their conclusion is that the collision between the "Kjobenhavn" and the brig must be taken for the purposes of this suit to have been the result of inevitable accident. It then appears that the effect of the collision was such that the "Kjobenhavn" was compelled to drop her anchor, and that she could not, in the state in which she was, have dropped it in any other place than that where she did anchor. It is clear that she could not by any means have got to the anchorage on the south side of the river. It further appears that the effect of this collision was to knock out one of her side lights, to scatter the parafine about the deck, to cause considerable damage on the bridge, and to bring across the bridge so as to interfere with her steerage

power a considerable portion of the rigging. It is also a material circumstance with reference to the lights that the locker in which the riding light was kept was stove in, and consequently that no proper riding light was forthcoming or capable of being put up.

These circumstances appear to their Lordships sufficient to account both for the place of anchorage and for the absence of the ordinary riding light, and to relieve the "Kjobenhavn" from any imputation of negligence upon those two points. The question however remains, whether she was justified in keeping up her bright mast light and omitting to lower it to that height above the deck, namely, a height not exceeding 20 feet, at which, according to Article 7, a riding light ought to be carried. Upon that point their Lordships have in the course of the argument felt considerable doubt. It has been said that not having the proper riding light she ought to have taken away the masthead light altogether, and to have put up some globular light, which it is supposed might have been found in the engine room, or the particular globular light which, after the collision which is the subject of this action, was really put up, viz., a lantern ordinarily in use in the forecastle. But considering the state of the vessel, and the short interval of time which elapsed between the two collisions, their Lordships are not satisfied that there was time in which that lantern, supposing it would have answered any effectual purpose, or in any degree have affected the collision, could have been put up. They therefore think that negligence cannot be imputed to the "Kjobenhavn" by reason of her omission to exhibit that forecastle light before the second collision.

It is then said that at least she might have lowered the masthead light? but even if her

failure to do this be taken to have been an act of negligence, which their Lordships, considering all the circumstances of the case, are not satisfied it was, the question would remain, whether that negligence can be said to have caused or contributed to the collision? That question necessarily opens the enquiry into the conduct of the other vessel. Now the "Mermaid" was coming up the river and had gone round the Ovens buoy at a distance of one ship's length from the buoy, at a very high speed, at a speed which has been almost admitted in the reply to have been improper. It cannot be taken upon the evidence to have been less than eight or nine knots through the water, and therefore eleven or twelve miles over the ground. Again the conclusion which their Lordships draw from the evidence is that the look-out kept on board the "Mermaid" was very imperfect. There was nothing in the position of the two vessels to prevent the "Mermaid," if she had kept a proper look-out, not merely for the buoy, but for the vessels ahead of her, from seeing that bright masthead light at a considerably greater distance than that at which the witnesses agree she first saw it, namely, half a mile. They cannot then acquit the "Mermaid," coming at this rate of speed upon a vessel with a bright masthead light visible above the fog about her, of culpable negligence in respect to this collision.

But the point immediately to be considered is whether the "Kjobenhavn," by reason of her carrying that bright masthead light, was guilty of negligence contributory to the accident. The case of the "Mermaid" is, that seeing this masthead light at a distance of half a mile and half a point on her starboard side, she came to the conclusion that the vessel that carried that light must be under weigh and coming down the river. She admits that she did not

see any side light. Her master and others on board of her say they supposed that the smoke coming from the factories, or the mist, had obscured those lights; but they admit that they saw no side light. In those circumstances the master chose to assume that the two vessels were meeting end on, and that he was acting in obedience to the sailing rules by porting her helm. It seems to their Lordships that he was not justified in that conclusion, and that he cannot be said to have been deceived into executing that manœuvre by merely seeing the bright masthead light. The "Mermaid" had this light a little on her starboard bow, and she saw no side lights; and in these circumstances their Lordships are of opinion (and in that opinion they are confirmed by their assessors) that her proper manœuvre, even if those on board of her believed that the other vessel was moving down the river, was to starboard her helm and to go towards the south shore so as to pass in the mid channel outside the "Kjobenhavn." Not seeing the side lights of the other vessel, she had no reasonable grounds for supposing that that vessel would port her helm so as to cross her course and come into collision with her. Their Lordships are also informed that, according to the ordinary course of navigation, a steamer coming down the river would keep along the north shore until she came to Ovens buoy, and then, but not until then, would stand across the reach. Therefore it cannot be said that either by reason of a strict adherence to the sailing rules, according to which she would not be justified in coming to the conclusion that the two vessels were meeting end on unless she saw the side lights, or by reason of any general or established course of navigation in that part of the river, the "Mermaid" was right in porting her helm. And

since it is clear that had she starboarded she would have gone clear of the "Kjobenhavn," it follows that the exhibition of the masthead light was not an act of negligence which contributed to the collision.

For these reasons their Lordships are of opinion that the Court below was right in holding that the "Mermaid" had failed to establish a case of negligence contributing to the accident against the "Kjobenhavn," and that if it were necessary to pronounce any opinion on that point, the "Mermaid" was solely to blame for the collision. Their Lordships will therefore humbly advise Her Majesty to affirm the judgment of the Court below, and to dismiss this Appeal, with costs.

