

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of William Jones, Master of the steamer "Castleton," v. Emmanuele Scicluna, from Her Majesty's Court of Appeal for the Island of Malta and its Dependencies ; delivered November 14th, 1882.

Present :

LORD FITZGERALD.
SIR BARNES PEACOCK.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

IN this case their Lordships have carefully considered the arguments which have been addressed to them, and they have also had the advantage of examining with care the evidence which was produced, and the decisions of the Primary Court, and of the Court of Appeal, at Malta. It is an action brought against the master of the vessel the "Castleton" for injury sustained by the cargo of the ship, as it is alleged, in consequence of the irregular and faulty navigation of the vessel by the master when coming out of the port of Valetta.

Their Lordships do not propose to deal with the two first points which were made in reference to the master leaving the port at an improper hour in the evening, and discharging the pilot too early. The Court below have disposed of those two points, and their Lordships do not propose to consider them. But they will deal with the third point—the irregular and negligent navigation of the ship, which, it is alleged, upon the part of the Plaintiff, the holder of the bills of lading, led to the calamity.

R 4225. 100.—11/82. Wt. 2701. E. & S.

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Now it is observable that this is not an action on a policy of insurance, in reference to which the question might arise whether the loss was by perils of the sea. Their Lordships take it to be settled law that in an action upon a contract of conveyance, though the loss may be immediately caused by a peril of the sea, as it was in the case before us, still, if the ship has been brought into that peril by the previous negligence of the master, the master is liable, for then his negligence is the real cause. Their Lordships propose, therefore, to consider whether this calamity occurred in consequence of the negligent navigation of the ship by the master.

The vessel started somewhere about seven o'clock in the evening. The night was dark and stormy. It was just a night on which one would expect squalls; and it was one in which at least ordinary care, if not more than ordinary care, was necessary, on the part of the master, to take the vessel out in safety. Their Lordships observe that the surveyors appointed by the Court of Commerce, and the Court of Commerce itself, and Her Majesty's Court of Appeal afterwards, all concur in the one conclusion, that the calamity was occasioned by the negligent conduct of the master in having placed his ship in such a dangerous position that if the squall which is represented to have immediately caused the misfortune did take place she could not escape from its consequences. The rule of this Committee is, that where two Courts below have concurred in a finding of pure fact, the finding shall not be disturbed except under some special circumstance. In addition to that, their Lordships have carefully considered the whole of the evidence given in the Court below, and they see no reason to differ from the conclusion of fact at which those tribunals arrived.

The case may be shortly described thus:—The

"Castleton" left the Marsa in charge of a pilot. She discharged her pilot between Fort St. Angelo and the point on the opposite side, the vessel then being in deep water closer to the Valetta shore, near mid-channel. Afterwards, the captain, proceeding outwards, sees or fancies he sees (it is to be assumed, from the evidence, that he did see) the lights of a ship, and he came to the erroneous conclusion that the ship whose lights he perceived was about to enter the harbour. This was entirely an error; she was not in the course of navigation then to enter the harbour. She was then, according to the evidence of the pilot of the "Solway," who observed her when he was at Fort St. Elmo, two miles or two and a half miles off, and signalling for a pilot. But under this delusion, that she was about to enter the harbour, the master altered his course. If she was about to enter the harbour, and going end on towards the "Castleton," it would be quite right that he should port his helm, but he had no right so to port, and so to navigate the ship, as to take her into a dangerous position. The pilot having left the ship himself in deep water closer to the Valetta shore than the opposite shore, in a very short time afterwards the captain had so navigated his vessel under this idea that he was avoiding the danger of the ship coming in, that we find her in the bay under Ricasoli fort and so close in that there were but two feet of water underneath her keel. She was drawing 21 feet some inches aft, and the whole depth of the water that she had at that place would have been about four fathoms. Further, it appears that the captain did not perceive the dangerous position into which he had brought his vessel until he heard the warning voice of the mate, who was engaged on the fore-castle superintending that important duty of having the anchors lashed and secured, important

at all times, but on such a night as that very important indeed. He first gave the warning that there were breakers ahead a point on the port bow. By his careless navigation the captain already had his ship in a position from which it was almost impossible that she could be extricated; and it strikes their Lordships, upon the evidence, that there was but one way in which he could have got out of his danger, if he could have got out of it, which is exceedingly doubtful, namely, by stopping and reversing his engines. In place of that, the order was to starboard the helm, and full speed ahead. The ship did not answer her helm, and went on the rocks. Upon the consideration of the case, their Lordships are of opinion that the calamity was brought about by the negligent navigation of the captain.

Their Lordships, therefore, think it their duty humbly to advise Her Majesty to affirm the judgment of the Court of Appeal, and to dismiss the Appeal with costs.