Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the "Mary" Tug Company, Limited v. *The British India Steam Navigation Company, Limited, from the Court of the Recorder of Rangoon; delivered 20th March* 1897.

Present:

LORD WATSON.
LORD DAVEY.
SIR RICHARD COUCH.
SIR FRANCIS JEUNE.

[*Delivered by Sir Francis Jeune.*]

This is an appeal from the Court of the Recorder of Rangoon, sitting as a Colonial Court of Admiralty, in an action between the "Mary" Tug Company Limited as owners of the tug "Mary," and the British India Steam Navigation Company Limited as owners of the S.S. "Meanatchy." The Appellants claimed, and the Respondents counterclaimed, in respect of a collision which took place between the "Mary" and the "Meanatchy" at the entrance of the Rangoon River on the night of the 8th February 1895.

The "Mary" was lying at anchor heading to the flood tide which was running with a force which is differently estimated by the witnesses, but which was certainly considerable. A pilot brig the "Samson" was lying also at anchor in a position which the learned Recorder considered was ahead of the tug, and at a distance of between 400 to 500 yards from her. The

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"Meanatchy" was coming up the Rangoon River, and sighted first the pilot brig a little on her port bow, and, shortly after, the "Mary" at a distance which her captain puts at about four miles. At about one mile, according to the evidence of her captain and the third officer who was on watch (though the evidence of the helmsman and the man at the look out indicates that this distance was much less) the "Meanatchy" starboarded, her purpose being to pass between the "Mary" and the pilot brig, and round up under the stern of the latter, in order to take a pilot. While the "Meanatchy" was at some distance, the pilot brig hove short, and the learned Recorder has found that she dragged to a position more nearly abreast of the "Mary," the object of her doing so no doubt being to keep nearer to the boat in which the pilot would be dropped. The anchor lights of the pilot brig were not changed. The "Meanatchy" under her starboard helm, with her starboard bow about 20 feet from her stem, struck the stem of the "Mary," doing, and receiving, damage. The case put forward on behalf of the "Meanatchy" was that her course was misled by a belief that the pilot brig was stationary.

It was also urged on behalf of the "Meanatchy" that the "Mary" was anchored in an improper place having regard to the position of the pilot brig, that there was no proper look out on board the "Mary," and that the captain of the "Mary" committed an error in the management of his vessel, namely in heaving short, instead of at once slacking out the chain of his anchor before the collision.

The learned Recorder asked six questions of his assessors:—

(1.) Were the pilot brig and the "Mary" moored in proper position?

(2.) Was the captain of the "Meanatchy" justified in navigating his vessel as he did?

(3.) Was the pilot brig properly navigated?

(4.) If not, did such improper navigation tend to cause the collision?

(5.) If a proper look-out had been kept on the "Mary" could a collision have been avoided?

(6.) Did the captain of the "Mary" act properly in giving the order to heave short, or ought he to have ordered the chain to be slacked?

The replies given by the assessors to these questions were as follows:—

(1.) The "Mary" was anchored in a dangerous position.

(2.) Yes. If the brig had remained stationary the captain of the "Meanatchy" would have been able safely to round under her stern without going near the tug. Moreover the captain of the "Meanatchy" was misled by the fact that the commander of the pilot brig kept his anchor light up when the ship was under way.

(3.) No.

(4.) Yes.

(5.) If there had been a proper look out the collision might have been avoided, or its effects mitigated. In our opinion, the master of the tug was not justified in leaving her without a properly qualified person in charge.

(6.) He ought to have paid out chain as the "Meanatchy" was so close to him.

On this advice, the learned Recorder gave judgment for the Respondents on the claim and counterclaim.

Their Lordships will first consider the conduct of the "Meanatchy." It is beyond question that the "Mary" was at anchor, and exhibiting

a proper light, that the "Meanatchy" sighted the riding light of the "Mary" a considerable time, and at a considerable distance, before the collision, and that by starboarding her helm in the endeavour to pass between her and the pilot brig she came into collision with her. When a vessel under way comes into collision with a vessel at anchor exhibiting a proper light, it is obvious that she has a heavy burden cast on her to justify her conduct. In this case the burden is the more serious because their Lordships are advised by their assessors that, with a tide such as was running up, and, to some extent, across, the Rangoon River, to endeavour to pass between two vessels in the position of the pilot brig and the "Mary" was a proceeding not without risk even in the daytime, still more at night, and that it would have been safer seamanship to have gone round under the sterns both of the "Mary" and of the pilot brig. The justification put forward on behalf of the "Meanatchy" is that she was misled by the movement of the pilot brig, and her omission to change her riding light for the lights of a vessel under way. Their Lordships do not desire to express any opinion of the conduct of this vessel, but assuming that she drifted substantially in the way alleged on behalf of the "Meanatchy" their Lordships are of opinion that the "Meanatchy" cannot successfully plead that she was misled by the movement of the light of the pilot brig in order to excuse her collision with the "Mary."

Their Lordships think that those on the "Meanatchy" should have noticed both the actual movement of the light of the pilot brig, and also that movement in relation to the light of the "Mary." But they are also advised, and entertain no doubt, that the observation on board of the "Meanatchy" should have been

directed to the "Mary" as well as to the pilot brig, and that, had such observation been effective, the course of the "Meanatchy" could, without difficulty have been so directed as to avoid collision with the "Mary." Their Lordships are of opinion that it was the want of sufficient look-out on board the "Meanatchy" especially as regards the "Mary," and possibly also a miscalculation of distance owing to the force and set of the tide, which brought about the collision, and for these errors the "Meanatchy" cannot be excused.

The case against the "Mary" turns mainly upon the omission to slack away chain as soon as there was risk of collision. There are, however, other charges with which it will be convenient to deal first. It is alleged that the "Mary' was brought to anchor in an improper position. But this their Lordships think cannot be sustained. There is no rule prescribing any special place of anchorage for vessels in that part of the Rangoon River, and their Lordships are advised that neither as regards the circumstance that the ship near which the "Mary" lay was a pilot vessel, nor as regards the berth taken up by the "Mary" in relation to that vessel, is any fault to be found. On the latter point, the evidence of the Assistant Port Officer appears to their Lordships to be conclusive. It is also urged that there was a want of look-out on board the "Mary." In so far as this charge takes the form of an allegation that there was no one on the look-out, or that there was no properly qualified person in charge, the case does not appear to their Lordships to be made out. Their Lordships think that it would not be proper to hold that the captain was necessarily to blame for leaving his own vessel at anchor, and going on board the pilot brig, and they see no reason to doubt that the

engineer left in charge was competent to perform the duties of an anchor watch, and was attending to them.

The facts as to the action of the "Mary" appear to be that shortly before the collision, and, in consequence, as their Lordships think, of the approach of the "Meanatchy," the captain of the "Mary," who was then in a boat alongside, or astern, of his vessel, ordered her to be hove short on her cable with the intention, which was accomplished, of making her drift astern. The "Mary" by this process first moved forward about 30 feet and then dragged astern, so that, possibly, she was not quite so far astern at the collision as she would have been had anchor chain been paid out at once.

Their Lordships entertain no doubt that in the case of a vessel at anchor, there is an obligation to keep a competent person on watch, and that it is his duty not only to see that the anchor light or lights are properly exhibited, but also to do everything in his power to avert or to minimize a collision. Many such things may no doubt be done; and it is necessary also to be prepared to summon aid for any needful purpose. The case of *The Clara* decided in the Supreme Court of the United States (12 Otto p. 200) on which reliance was placed by the learned Counsel for the Respondents does not appear to their Lordships to go beyond a recognition of this general principle. It would appear that the Supreme Court, in appeals from the Circuit Courts, has a jurisdiction limited to a determination of questions of law raised on the record, or by bill of exceptions. The Circuit Court found, as facts, that the Plaintiff's ship the "Julia Newell," with which the "Clara" came into collision, was improperly lying at anchor, without a watch on deck, that a storm was increasing, and set in about the time the

"Clara" came to anchor, and was a very severe snow storm, that if the "Julia Newell" had had a sufficient watch on deck the accident might have been prevented, and that the "Clara" was well manned and had proper lights and a proper look out; and the Circuit Court held that the failure to keep a watch on the deck of the "Julia Newell" was the cause of the collision. It cannot be ascertained from the report, nor was it material to be stated, as only questions of law could be considered, what particular course might have been adopted on board the "Julia Newell" to have prevented the collision. The Supreme Court held that the "Julia Newell" was alone to blame; but this decision affords no aid in the present enquiry, because it proceeds on the assumption of such negligence, and its results, as, in the present case, constitute the very issues in controversy.

Not only, however, is the general obligation as to an anchor watch insufficient to dispose of the questions raised in this case, but, even if it be conceded that the person in charge was guilty of an error of judgment, other considerations arise. It has to be considered whether, had the course, which is suggested as the best, been taken, the result as to the collision would have been materially affected; and their Lordships are advised that there is no reason to suppose that had the chain been slacked away at the earliest moment at which such action would have been proper, the collision would have been averted, or its results mitigated. But even were this more doubtful than their Lordships think it is, another point of importance remains. A competent sailor, as their Lordships are advised, would have been justified till a very late moment in assuming that the "Meanatchy" would, as she easily could, have abstained from an attempt to cross his bows; and so long as there was a reasonable

possibility that the "Meanatchy" would go under his stern, he would not have aided, but on the contrary, might have hampered such a manœuvre by causing his own vessel to drift astern. Being thus placed, entirely by the erroneous conduct of the "Meanatchy," in a position of difficulty in which an instant step was imperative, he became entitled, as this and other tribunals have often held, to claim a favourable consideration for the action which he decided to take, even if it should afterwards appear that such action was not the best possible.

It was suggested, by the counsel for the Respondents, that the order by the captain of the "Mary" to heave short was given without reference to the approach of the "Meanatchy," before any risk of collision, and merely in order to bring his vessel nearer to the boat in which he was lying. As above stated, in their Lordships' opinion, this was not so in fact, but, if it were, it is all the more probable that the "Mary" had at the time of the collision drifted astern as far as if her chain had been paid out just before it; and, indeed, if the vessel was already drifting it would have become of little or no use to pay out chain.

For these reasons, their Lordships are of opinion that the "Meanatchy" must be held alone to blame for the collision.

Their Lordships will humbly advise Her Majesty that the decision of the Court of the Recorder should be reversed, and judgment entered for the Appellants on the claim and counterclaim, and the case remitted in order that the damages due to the Appellants may be ascertained. The Respondents must pay the Appellants the costs of this Appeal, and the costs of the claim and counterclaim in the Court below.