

(No. 66.)

Ketch "UNION" and S.S. "SHERBURN."

Report of Court.

The Merchant Shipping Acts, 1854 to 1876.

IN the matter of the formal investigation held at the County Court, Sunderland, on the 21st May 1878, before H. C. ROTHERY, Esquire, Wreck Commissioner, assisted by Rear Admiral POWELL, R.N., and Captain NICOLAS, as Assessors, into the circumstances attending the loss of the Ketch "UNION," of Wells, through collision with the British Steam Ship "SHERBURN," of Sunderland, near the Mouse Light Ship, on the 1st instant, whereby one life was lost.

The Court, having carefully enquired into the circumstances of the above-mentioned shipping casualty, finds, for the reasons stated in the annexed Judgment, that the collision was due to the wrongful acts and defaults of Richard Benson, the master of the said steam ship "Sherburn," in navigating his vessel down the West Swin, on a very dark night, at so great a rate of speed that, when the "Union" was made out ahead, it was not possible to avoid running into her.

The Court, therefore, suspends the certificate of the said Richard Benson for three months, but recommends that during the period of such suspension he be allowed a first mate's certificate.

The Court makes no order as to costs.

Dated the 21st day of May 1878.

(Signed) H. C. ROTHERY, Wreck Commissioner.

We concur in the above report.

(Signed) R. ASHMORE POWELL, } Assessors. B. G. W. NICOLAS, }

Judgment.

The Commissioner.—The circumstances of this case are extremely simple; the facts are almost undisputed; the witnesses having on the whole given a fair and straightforward account of the transactions; and the only question which we have to consider is, whether the conduct of the master of the "Sherburn" was such as to deserve either censure or punishment from the Court.

The "Union" was a ketch of 46 tons, built in 1833 at Sutton, in the county of York, and belonged to two persons residing at Blakeney, in Norfolk. She left London on the 29th of April last, with a cargo of 75 tons of manure and 20 casks of flour, bound to Blakeney, in Norfolk; and having a crew of three hands all told, namely, a master, mate, and boy. At 10.30 p.m. of the 30th, at which time she was between the Nore and Mouse Lights, the mate came on watch, and the boy went below. The master also retired to his cabin, coming up, however, on deck from time to time; but at midnight he came on deck, and called the boy. At this time, we are told that the wind was light from the west-north-west, the sea was smooth, and the vessel was heading east and by north under all sail, making one and a half knots an hour, and she was nearing the Mouse Light. After he had called the boy, the master went aft, and he then observed the lights of a steamer a little on his starboard quarter. The lights that he saw were the mast-head and port lights, which showed that she was heading, not directly for the ketch,—for, if so, all three lights would have been visible,—but that her head was turned more or less away. As a fact, the steamer was then, as it proved, on a course parallel to that of the ketch, namely, east by north. Apprehending no danger, the master went down into the cabin to put the kettle on the fire, and, having done so, he returned on deck, and then observed that the steamer was closing in upon them. Becoming alarmed, he and the mate hailed the steamer as loud as they could, and the boy whistled through his fingers. No other steps appear to have been taken to attract the steamer's attention, and she came on and struck the ketch on the starboard quarter, sinking her almost immediately. The master succeeded in clambering up by the fore rigging on to the steamer's bow; the boy threw himself into the water, and was ultimately picked up by the steamer's boat; but the mate was unfortunately drowned.

The story told by the steamer's people is as follows: She is an iron vessel, of 643 tons gross, 437 tons net register, and is fitted with engines of 80-horse power. She was built in 1866, and belongs to some gentlemen residing at Sunderland; Mr. Thomas Jowsey Reay, of No. 7, "The Cedars," Sunderland, being the managing owner. She appears to have been a good vessel, and was employed by her owners in carrying coals from Sunderland to London, returning to Sunderland in water ballast. She left London at 7 p.m., on the 30th of April last, having at the time a crew of 17 hands, all told. Having discharged her pilot at Gravesend, she proceeded down the river at full speed. It was the mate's watch from 8 to 12 that night, but the master was on the bridge the whole of that watch, and indeed seems to have been there from the time she left London. The vessel was steered from amidships, and the master stood on the bridge near the helmsman. At 12 o'clock the watch was called, and in about 10 minutes afterwards they came on deck. Graham, the boatswain, went to relieve the mate on the bridge; a man named Hall went on the topgallant fore-castle on the look-out; and Harder went to the wheel. Just before the mate went below, the master, thinking that he was rather too near the Mouse Sand, ordered the helm to be altered half a point to east and by north half north; and after continuing on that course for a short time, it was again altered to north-east and by east half east. The night, we are told, was intensely dark, lights could be seen at a considerable distance, but objects not further than a ship's length. The vessel continued at full speed, going, we are told, about 9 knots; and almost immediately after the last alteration of the helm a cry was heard from forward, to starboard the helm. The master immediately gave orders to starboard the helm, and telegraphed to the engine room to stop the engines, and turn them full speed astern; but before these orders could take effect, she struck the ketch, with the results that I have already stated. No charge is made against the master of not having used due diligence to save the crew of the ketch; he seems to have lost no time in lowering his boat, and it was by that boat that the boy was saved.

Now it has not been denied by Mr. Roche that, under the 15th and 17th Articles of the Regulations, it was the duty of the "Sherburn," being a steamer as well as the overtaking vessel, to get out of the way of the "Union;" and the question which we have to consider is, how it was that the master of the "Sherburn" failed to discharge the duty thus cast upon him. The excuse given by the master is that the night was so dark that it was quite impossible to see the ketch sooner than she was seen, and that then it was not possible to avoid running into her; but that, if those on board the "Union" had shown a light, they would have seen her in sufficient time to have avoided her. That, as I understand it, is the defence set up by the master of the "Sherburn."

That the night was extremely dark, there can, I think, be no doubt whatever. All the witnesses from the "Sherburn" stated that an object could not be seen at more than a ship's length off; some said that they could not see the boat when it had got only about two or three times its own length from the ship; and the engineer told us that he could hardly see the men in the boat when she was alongside. The lad too from the "Union" stated that, whilst he was in the water, he could hear the voices of the men in the boat, but could not see them until they were close to him. The evidence is conclusive that the night was an intensely dark night; lights, no doubt, could be seen, but not objects on the water; and it was a night therefore in which it behoved the master to exercise more than ordinary precaution in navigating this vessel. Indeed, we were told by the mate that, in going down the river, he called the master's attention to the fact that, whilst lights could be seen, the hulls of vessels could not be made out.

The master of the "Sherburn" told us, indeed, that, if the ketch had shown a light, he would have seen it, and have had time to avoid her. But, in the first place, the law imposes no such obligation upon an overtaken vessel. No doubt it is only reasonable to expect that a man, seeing a steamer bearing down upon him, should take all the means at his command to indicate his presence; and this the crew of the ketch appear to have done by shouting, hailing, and whistling. The master of the ketch told us that he had a flare-up in the cabin, but owing to the sudden alteration of the steamer's helm he had no time to go down and get it; nor could he take the light out of the binnacle lamp and

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show it, as the glass was fixed, and the light would have been instantly blown out. There appears then to be no blame attributable to those on board the ketch; indeed none such was charged; they did all that could be expected of them under the circumstances to indicate their presence to the approaching steamer.

The question then arises, whether the master of the "Sherburn" was justified, on such a night and under such circumstances, in going down the river, and through a crowded channel, at such a speed that there was no time to avoid a collision with the "Union" after he had made her out. Now, I am relieved from having to make any very minute examination of this question, by the report of a case, which is to be found in the first volume of the Law Reports, Probate Division, entitled the "City of Brooklyn." It was an appeal from the Admiralty Division, and in giving judgment both Lord Justice James and Mr. Justice Lush made some remarks, which appear to me to be peculiarly applicable to the present case. Lord Justice James said:—"The learned Judge" (referring to the Judge of the Admiralty Division) "was of opinion that the ship complained of was going at a speed not to be justified, having regard to the state of the night, the position of the coast, and the probability of there being other vessels in the way. I am bound to say that, however convenient it may be for commerce and for travellers, however convenient it may be to be able to go to America at 11 or 12 miles an hour, that is still a speed at which it does not seem to us to be reasonable for a steamer like this to go, when not far from the coast, and on a night so dark, that, according to the evidence of their own witnesses, they could not see another vessel more than the length of the ship ahead." Mr. Justice Lush says:—"I am also of the same opinion. I think the rule of law with regard to travelling at sea is identical with the law of travelling on the high road. No one on a dark night has a right to go at such a rate of speed as not to be able to escape an accident if he happens to follow immediately in the wake of another, whether it be by sea or by land. I think that the rate of speed was an unjustifiable rate for that vessel to run at on such a dark night, when she could not discern another vessel until within her own length of that vessel. As to contributory negligence, I do not think there is any necessity for a ship ahead to look out for ships that are behind her, unless the danger is apparent. It is only when there is an apparent danger that the necessity arises to do the best they can for their own safety. Here the persons on board the first ship did so, but when it was too late."

Now it appears to me that the present is a much stronger case. In the case of the "City of Brooklyn" the vessels were in the open sea some 35 miles from the Old Head of Kinsale. Here they were in the "Swin," a channel little more than a mile wide, through which a great number of vessels, both sailing and steam vessels, pass up and down continually, and where the master of the "Sherburn" might reasonably expect that he would meet and overtake other vessels. It may perhaps be said that the "City of Brooklyn" was going from 11 to 12 miles an hour, whereas the "Sherburn" was only going at the rate of nine knots. Whether a speed of 11 or 12 knots an hour for a vessel like the "City of Brooklyn," with her large crew and strong and powerful engines, was or was not more than equivalent to a speed of nine knots for a vessel like the "Sherburn," with her comparatively small crew, and engines of only 80

horse power, may possibly be open to question; but, at any rate they were both going at full speed; and that under the circumstances, was an excessive rate of speed. In both cases the night was, according to their own admission, so dark that they could not see an object at more than a ship's length ahead, and in both cases the distance at which an object could be seen was not sufficient to enable them to avoid a collision.

It was said by Mr. Roche that, even had the "Sherburn" been going at only half speed, the collision would still have been inevitable. But we do not think that that is quite so clear. Had the "Sherburn" been going at only half speed, the time required to traverse the space between herself and the ketch would have been longer, and consequently she would have had more time, after sighting the ketch, to take steps to avoid the collision. As a matter of fact, the manœuvre which she adopted of starboarding her helm was the most unfortunate that she could have taken. When the two vessels were first approaching each other they were on parallel courses, both heading east by north, and the "Sherburn" being on the "Union's" starboard quarter, she would, had she continued her course, have passed clear along the "Union's" starboard side. It was the alteration of her helm from east and by north, first to east and by north half north, and afterwards to north by east by east half east, which brought about the collision by turning the steamer's head towards the ketch's stern. Had the steamer been going at only half speed, it is not at all impossible but that she might have passed clear under the stern of the other vessel before reaching her. But, at all events, if she had been going at only half speed, she could have been stopped much more quickly, and, as I have already said, she would have had more time to take measures for avoiding the collision.

It was also said that it is the universal practice of seamen to go at full speed on a dark night. All that we can say is, that if it is the universal practice of seamen, however convenient it may be to them and to their owners, it is a practice which this Court certainly will not countenance, and which is especially reprobated by Lord Justice James in the case of the "City of Brooklyn." There can be no doubt that this master has gained the respect and esteem of his owners, manifested by his having been in their service as master for a period, I think, of nine years. He was on deck, and attending to his duties, from the time of leaving London. At the same time we cannot allow a case of this description to pass unpunished. The object of the Court is to prevent other masters from doing as this master has done. A mere reprimand, in our opinion, would not have the same effect of preventing other masters from committing the offence of navigating a crowded channel at a rate of speed dangerous to the lives and property of those with whom he may fall in. As, however, the conduct of this man has on the whole been creditable in other respects, we shall award the smallest punishment which it is our practice to inflict, namely, the suspension of his certificate for three months, and during the time of that suspension we shall recommend to the Board of Trade that he have a first mate's certificate.

Of course you do not ask for any costs, Mr. Hamel?

Mr. Hamel.—No, I am not instructed to ask for any costs.

The Commissioner.—If you did, I do not think that under the circumstances we should be disposed to grant them.

H. C. ROTHERY,
Wreck Commissioner.