1886.

LALU MULJI THÁKAR v. KÁSHIBÁI.

plaintiff any redress in the present suit. Whether he has any remedy now against Vanmáli, it is not for us to say.

We reverse the decree of the District Judge, and restore that of the Subordinate Judge, rejecting the claim. The plaintiff to pay costs throughout.

Decree reversed.

ADMIRALTY JURISDICTION.

Before Mr. Justice Bayley.

1886. *January* 14, 18, 19, 21, 25, 26, 28; *March* 8.

OOKERDA'POONSEY AND OTHERS, PLAINTIFFS, *v.* THE STEAM-SHIP "SA'VITRI," HER TACKLE, APPAREL AND FURNITURE, DEFENDANTS.*

Admiralty suit—Collision—Both vessels to blame—Suit for damages by owners of cargo—Costs.

The owners of cargo on board the H. sued the owners of the steam-ship S. for damages resulting from a collision which occurred between the H. and the S. The Court found that both vessels were to blame for the collision.

Held, following the English authorities, that the plaintiffs could only recover from the defendants half of the damages which they had sustained.

Held, also, on the authority of *The City of Manchester*(1), that in such suit each party should bear their own costs.

SUIT to recover the sum of Rs. 14,079-4-9 as damages alleged to have been sustained by the plaintiffs by reason of a collision between the steam-ship "Sávitri" and a *patimár* called the "Huttihanmunt."

The first and second plaintiffs were the owners and shippers and the third plaintiff was the consignee and insurer of certain cotton of the value of Rs. 15,884 which was shipped on board the "Huttihanmunt" on the 3rd January, 1883, to be carried from Kárwár to Bombay. Early on the morning of the 5th January, 1884, while proceeding on the said voyage with the said cargo on board, the "Huttihanmunt" was run into by the steam-ship "Sávitri" and became a total wreck. Most of the cotton was

* Suit No. 3 of 1883 (Admiralty).

(1) 5 Prob. Div., 221.

1886.

OOKERDA' POONSEY v. THE S. S. "SA'VITRI."

wholly lost, and the remainder was greatly damaged. The plaintiffs estimated their loss at Rs. 14,079-4-9, which they sought to recover in this suit, alleging that the collision was solely attributable to the negligence and improper conduct of those on board the "Sávitri."

The defendants in their written statement charged that the collision was solely attributable to the negligence and unskilful navigation of the *patimár*, and alleged that at the time of the collision the *patimár* carried no lights.

Macpherson and *Lang* for the plaintiffs.

Latham (Advocate General), *Jardine* and *Russell* for the defendants.

The following authorities were referred to :—*The Milan*(1); *The Netherlands Co.* v. *Chartered Bank*(2); *The I. C. Stevensor*(3); *The Englishman*(4); *The Khedive*(5); *The Hochung*(6); *The Arklow*(7); *Maclaren* v. *Compagnie Francaise*(8); *The Beryl*(9); *The John McIntyre*(10); *The Stanmore*(11); *The Benares*(12); *The Emmy Haase* (13); *The Fanny*(14). As to costs, *The City of Manchester*(15); Stat. 37 and 38 Vic., c. 85, s. 17 ; Marsden on Collision, page 120.

BAYLEY, J.:—In this case the two first plaintiffs as owners and the third plaintiff as insurer of certain cotton shipped on board a *patimár* sue the owners of the steam-ship "Sávitri" to recover damages for the loss of cotton which resulted from a collision which took place at sea between the *patimár* and the "Sávitri" on the morning of the 6th January, 1883. The suit came on for hearing before me on the 14th January last, and was heard on that day and on six subsequent days, and was concluded on the 11th February.

The following issues were raised :—

(1) Lush. Adm. Rep., 388.
(2) 10 Q. B. Div., 521.
(3) L. R. 5 P. C., 316.
(4) 3 Prob. Div., 18.
(5) 5 Ap. Cas., 876.
(6) 7 Ap. Cas., 512.
(7) 9 Ap. Cas., 136.
(8) 9 Ap. Cas., 640.
(9) 9 Prob. Div., 137.
(10) 9 Prob. Div., 135.
(11) 10 Prob. Div., 134.
(12) 9 Prob. Div., 16.
(13) 9 Prob. Div., 81.
(14) 44 L. J. Adm., 34.
(15) 5 Prob. Div. 3. S. C. in Appeal, *ibid.*, p. 221.

1886.

OOKERDA' POONSEY v. THE S. S. "SÁVITRI."

(1) Whether the plaintiffs shipped on board the *patimár* the cotton, as in the plaint alleged.

(2) Whether the plaintiffs suffered by the said collision the loss in the second paragraph of the plaint alleged.

(3) Whether the collision was attributable to the negligence and improper conduct of those on board the "Sávitri."

(4) Whether the collision was not attributable to the negligence and improper conduct of those on board the *patimár*.

(5) Whether the *patimár* did not violate the regulations for preventing collisions at sea under the Queen's Order in Council for 1879, especially with regard to lights.

(6) Whether the plaintiffs are entitled to the damages in the plaint claimed, or any and what part thereof.

As usual in cases of this kind, the evidence was of the most conflicting character. On the one hand, the plaintiffs and their witnesses alleged that the collision was entirely due to the negligence of those on board the "Sávitri", and, on the other hand, the defendants and their witnesses contended that it was entirely owing to the negligence of those on board the *patimár*. Forty-nine witnesses, in all, were examined. Of those, twenty-five were examined by Commission, and the rest gave their evidence at the hearing before this Court.

Two main points have to be considered in deciding upon the claims made in this suit: first, was the *patimár* in fault; and, secondly, was the "Sávitri" in fault? As I have said, the evidence has been of the most contradictory nature; but, on the whole, I have not found much difficulty in arriving at a conclusion with respect to both these questions. The collision occurred early on the morning of the 6th January, 1883. The plaintiffs' witnesses allege that the collision occurred at six o'clock, while the witnesses for the defendants give an earlier hour, *viz.* 4-45 o'clock. However this may be, it is clear that the collision took place before sunrise, which, it is admitted, was on that day at 6-35 o'clock A.M.

Now, the regulations for preventing collision at sea, which have the force of law under Her Majesty's Order in Council of

the 14th August, 1879, lay down certain rules with regard to the carrying of lights by ships at sea, which it is necessary to refer to.

Article 2 provides as follows:—" The lights mentioned in the following article, and no others, shall be carried in all weathers from sunset to sunrise."

Article 3, clause (*b*), provides as follows:—" A sea-going steam ship when under way shall carry on the starboard side a green light, so constructed as to show an uniform and unbroken light from right ahead to two points abaft the beam on the starboard side; and of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least two miles."

Article 6 is as follows:—" A sailing ship under way or being towed shall carry the same lights as are provided by Article 3 for a steam ship under way, with the exception of the white light, which she shall never carry."

Under these rules it is clear that it was incumbent on those on board the *patimár* to have had, at the time at which the collision took place, being before sunrise, a green light on the starboard side of the ship, a red light on the port side, and no white light whatever. If this regulation was not observed, the *patimár* must be held to have been in fault.

Now what is the evidence upon this point. (His Lordship referred in detail to the evidence upon this question, and continued:—) Upon this evidence I have arrived at the conclusion that at the time of the collision the *patimár* was carrying no lights at all, and, consequently, I must hold that she was in fault, and was violating the rules upon this subject which she was bound to obey.

The next important question is, whether the " Sávitri " was in fault. The plaintiffs contend that she was, and they rely upon the 17th and 18th articles of the regulations to which I have referred. These articles are as follows:—

Article 17.—" If two ships, one of which is a sailing ship and the other a steam ship, are proceeding in such directions as to involve risk of collision, the steam ship shall keep out of the way of the sailing ship.

1886.

OOKERDÁ POONSEY v. THE S. S. "SÁVITRI."

Article 18.—"Every steam ship, when approaching another ship so as to involve risk of collision, shall slacken her speed, or stop and reverse if necessary."

It is admitted that although the "Sávitri" stopped, yet she did not reverse her engines; and the plaintiffs contend that she thereby violated the 18th article, and was really the cause of the collision.

There appears to have been a good watch kept on board the "Sávitri," and from the evidence it would seem that, when first seen from the "Sávitri," the *patimár* was about a quarter of a mile distant. There was a fresh breeze blowing, but the mate of the "Sávitri" says he could not make out in what direction the *patimár* was steering. Under these circumstances, articles 17 and 18, which I have read, clearly indicate the duty of those on board the "Sávitri". First, by article 17 they were bound to keep out of the way of the *patimár*; and, secondly, it was their duty "to stop and reverse if necessary." If when the mate first saw the *patimár*, and was unable to ascertain her course, the engines of the "Sávitri" had been reversed, there would have been no collision; for, it appears that she is a handy, easily managed vessel. Since the hearing of this case began, three experiments have been made, in order to ascertain the time within which the "Sávitri" can be stopped when going at full speed, and the evidence is that on the first occasion she was stopped in sixty seconds, on the second in one minute and twenty seconds, and on the third in one minute and two seconds. Probably on the morning of the collision even less time would have been required, as the evidence is that the tide was against her: so we are justified, I think, in concluding that, if the engines had been reversed when the *patimár* was first sighted, there would have been no collision.

In the result, then, I must hold that both ships were in fault, the *patimár* violating articles 2, 3 and 6 of the Regulations for preventing collisions at sea, and the "Sávitri" violating articles 17 and 18.

Such, then, being my findings upon the issues raised upon these points, what is the law applicable to the case? A large number of cases were cited at the hearing, but I will only refer to those

which have been decided since 1880. The first case I will mention is *The Stoomvaart Maatschappy Nederland* v. *The Directors of the P. and O. Company*(1). There it was held that "the 'Regulations for preventing collisions at sea', made under the authority of the Merchant Shipping Acts, 1854 to 1873, must, under the 17th section of the 36 and 37 Vic., c. 85, be strictly followed. Actual necessity, not considerations of discretion and expediency, even though skilfully acted on, can alone excuse their non-observance."

Lord Watson in his judgment (p. 900) said: "I think it is impossible, upon a careful consideration of these successive enactments, to avoid the inference that the legislature did not intend, in certain specified circumstances, to leave mariners to decide for themselves, but, on the contrary, intended to prescribe rules to be observed by all in these circumstances; and that no one was to be excused for non-compliance, or exempted from the statutory consequences of non-compliance with the rules, in circumstances to which they were applicable, unless he could bring himself within a statutory exception. I am also of opinion that in enacting these regulations, and in fencing them with provisions as to the consequences of non-observance, the legislature was not declaring or even relying upon any known principle of law, but was deliberately creating many new duties, with correlative responsibilities, unknown to the common law. It is farther apparent that the repeal of section 29 of the Act of 1862, and the substitution for it of section 17 of the Act of 1873, must have been intended to increase the stringency of the statutory regulations.

"The interpretation of section 17 of the more recent Act, so far as required for the decision of the present case, does not appear to me to be attended with difficulty. If a vessel at or about the time of collision with another infringe a statutory rule which was in the circumstances applicable, and if it be not established that a necessity existed for departing from the rule, the vessel so infringing must, in terms of the Statute, be held to have been in fault."

(1) 5 Ap. Cas., 876.

1886.

OOKERDA POONSEY
v.
THE S. S. "SAVITRI."

In the case of *The Hochung*[1] the head-note is as follows: —"Where two ships incurred damage in a collision, and it was found that one of them was to blame for improper navigation, and that the other had infringed the regulations with respect to lights,

"*Held*, that, in the absence of proof that such infringement could not possibly have contributed to the collision, the damage must be divided according to the ordinary rule of the Court of Admiralty."

Again, in *Maclaren* v. *Compagnie Francaise de Navigation á Vapeur* , the House of Lords has decided that, "in accordance with the 18th sailing rule, under Order in Council, 14th of August, 1879, it is the duty of those in charge of a steam ship in motion, when they perceive that a risk of collision is involved, to reverse their engines and bring their ship to a standstill on the water." The *Emmy Haase*[3] and the *John McIntyre*[4] are also cases in point. In *The Beryl*[5] the effect of article 18 of the Regulations was considered; and Fry, L. J., said: "The precise question in this case is whether, having regard to article 18, it had become necessary for the 'Beryl' to stop and reverse sooner than she did. The words 'if necessary' in that rule must mean if and when necessary; that is to say, that article 18 comes into operation from time to time whenever the circumstances existing at the time make it necessary that the article should be acted on. The 'Beryl' was bound to slacken her speed and she did so; then the risk continued, and, the direction in the article being a continuing one, it still applied. The 'Beryl' continued to go on at this slackened speed to within 300 yards of the other ship, and it is clear that, having regard to this article, the 'Beryl' continued to advance longer than she should have done." See also *The Dordogne*[6].

Here, then, is a case in which both the vessels are to blame for the collision that has occurred; and in the present suit we have the owners of cargo, which was on board of one of those vessels,

(1) 7 Ap. Cas., 512.
(2) 9 Ap. Cas., 640.
(3) 9 Prob. Div., 81.
(4) 9 Prob. Div., 135.
(5) 9 Prob. Div., 137 at p. 144.
(6) 10 Prob. Div., 6.

1886.

OOKERDÁ POONSEY v. THE S. S. "SA'VITRI."

suing the owners of the other vessel for the damage which they have sustained by the collision. It is curious that the law applicable to such a case was not laid down until the year 1861. In *The Milan*[1], decided in that year, it was held that where both vessels were to blame in a case of collision, the owners of cargo in one vessel could only recover half of the damages from the owners of the other vessel. That rule has never since been disputed. It is referred to with approval in *The Chartered Mercantile Bank of India* v. *The Netherlands India Steam Navigation Co.*[2], and I will follow it in the present case. My order will, therefore, be that the plaintiffs recover from the "Sávitri" half the damages which they have sustained by the collision on the 6th January, 1883. In the Admiralty Jurisdiction of this Court we are bound to follow the practice of the Admiralty Courts in England, and as the rule there appears to be to give interest upon the damages received [3], the plaintiffs must have interest.

With regard to costs, the rule is laid down by the Court of Appeal in the case of *The City of Manchester*[4], and upon that authority I shall order that each party bear their own costs.

Attorneys for plaintiffs:—Messrs. *Little, Smith, Frere, and Nicholson.*

Attorneys for defendants :—Messrs. *Chalk and Walker.*

(1) Lush. Adm. Rep., 388.
(2) 10 Q. B. Div., 521 at p. 538.
(3) See Williams and Bruce, p. 80; *The South Sea* in Swabey's Adm. Cas., 141.
(4) 5 Prob. Div., 3. S. C. in appeal, *ibid.*, p. 221.

ORIGINAL CIVIL

Before Mr. Justice Scott.

THE BOMBAY BURMAH TRADING CORPORATION, LIMITED, PLAINTIFFS, *v.* DORA'BJI CURSETJI SHROFF, DEFENDANT.*

1886 *April* 20.

Company—Power of directors to deal with profits either by declaring a dividend or by appropriating to reserve fund—Power of shareholders to interfere with declaration of dividend.

The Articles of association of the B. Co. provided (*a*) that the directors might with the sanction of the company in general meeting declare a dividend; (*b*) that

* Suit No. 141 of 1886.