

BURNS, &c.
v.
STIRLING, &c.

PRESENT,
LORD PITMILLY.

BURNS, &c. v. STIRLING, &c.

1819.
March 1.

REDUCTION of a decree in the Admiralty Court.

An injury to one vessel found to have been occasioned by carelessness of the master and crew of another.

DEFENCE.—The injury was occasioned by the carelessness of the crew of the vessel belonging to the pursuers.

ISSUE.

“ Whether the damage sustained by the
 “ ship Two Sisters, and cargo on board of
 “ said ship, in consequence of being run
 “ foul of by the sloop Christian, the pro-
 “ perty of the pursuers, in the harbour of
 “ Ely, upon the 17th day of November
 “ 1814, or about that time, was occasioned
 “ by the ignorance, carelessness, or inatten-
 “ tion of the master or crew of the said ship
 “ Christian? Or whether the collision be-
 “ twixt the said two vessels, and consequent

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“ damage to the said ship Two Sisters, and
“ cargo, was occasioned by the ignorance or
“ carelessness of the master and crew of the
“ ship Two Sisters ?
“ Damages laid at L.200.”

In a storm in November 1814, the Two Sisters ran into Ely harbour, two hours after high water, and soon took the ground. The sloop Christian, a larger vessel, entered soon after, and also took the ground. At low water the master of the Two Sisters employed his crew, and other hands, to carry out one anchor as far as they could into the sea, and another towards the pier. The master of the Christian went to Kirkaldy, it was said, for the purpose of getting from the owners a new anchor, in place of one he lost during the storm, and left his vessel in charge of the crew, and some fishermen, who act as pilots at Ely. The fishermen went on shore at low water, and promised to return when the tide flowed, if it was then possible ; but the storm increasing, they did not return, but came to the pier, and made a signal to the crew to drop their anchor. This was accordingly done; but before the vessel had sufficient length of cable, she struck the Two Sisters repeatedly, and

stove in her planks, which rendered it necessary for the master to cut her cables, and allow her to drift on the shore.

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The witnesses differed as to whether the *Two Sisters* was afloat before the collision.

Cockburn, for the defender, stated, that it was sufficient if he could shew that the damage was not done by the *Christian*. It was occasioned by the *Two Sisters*, as she, being the smaller vessel, ought to have cut or slackened her cables. The *Christian* was in better hands than if the master had been on board. If there was no blame on either side, then we are entitled to have a verdict, finding the facts.

Jeffrey, in opening the case, and in reply, contended, that the crew of the *Christian* did not take the necessary precautions at low water: That, had the cables of the *Two Sisters* been cut, the insurance might have been lost: That when all the blame is on one side, reparation is due.—*Woodrop-Sims*, 21st November 1815. 2. *Dodson*, 83: and 2. *Dodson*, 83. that the only witnesses the pursuers had brought were the crew of the *Christian*, to swear that they were not negligent.

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LORD PITMILLY.--This resolves into a simple question of fact, whether the loss was occasioned by the negligence of the crew of the one vessel or of the other; and we have nothing to do with the amount of the injury.

As you have paid so much attention to the evidence, and as it is so clear, I shall not go over it in detail, but would beg of you to distinguish it into two periods.

It is clear, that in coming into harbour, it is the duty of mariners to provide for their own safety, and that of others, and not to wait till the moment of danger. With this view, you will look anxiously and carefully; first to the proof of the precautions taken by the masters of both vessels, from the time of their coming into harbour, till the next tide; and then, the evidence applicable to the facts, at the moment of danger; which, however, is not so important as the first period.

During the first period, the crew of the Two Sisters carry out their anchors, &c.

The master of the Christian, on the other hand, leaves his vessel, which, in my opinion, was very blameable. The next question is, what the crew ought to have done; whether to carry out anchors, or a rope to the pier; and as there is contradictory evidence on this

subject, I shall state it to you: [His Lordship then stated the evidence.]

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There were eight or nine witnesses who swore that a rope might have been sent to the pier; but in opposition to this, there is strong evidence for the defenders.

A question of law may occur, whether, if either party was negligent at the first part of the day, the liability in damages will be affected by the negligence of the other, at a subsequent period. It is not necessary to go into much legal discussion: I shall only say, that if one party makes every preparation against the approaching danger, it will not be sufficient to prove, that in the moment of danger, he did not make use of every means that may appear proper to a cool spectator. To subject him, there must be proof of gross negligence, and that he acted in a manner in which a man of ordinary prudence would not have acted at the moment of danger. It is not sufficient that you are uncertain whether a different conduct at that moment might not have led to a different result. If you have doubts, then you must go back and consider the precautions used, before the time of danger.

There is contradictory evidence as to

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whether it was the duty of the master of the Two Sisters to slacken his cables; but the remarks that have been made as to the credit due to the different sets of witnesses, in matters of professional opinion, apply here. The *facts* are not to be questioned, but their *opinion* may be biassed.

If you think there were faults on both sides, then you may return the facts that have been proved; but I have little doubt that you will not find this necessary.

Verdict—" That the damage sustained by
" the ship Two Sisters and cargo, was occa-
" sioned by the carelessness or inattention of
" the master and crew of the ship Christian."

Jeffrey, Jamieson, and Henderson, for the Pursuers.

G. J. Bell and Cockburn for the Defenders.

(Agents, *James Gillon, Alexander Forsyth, and George M'Dougall.*)

PRESENT,

LORD GILLIES.

1819.
March 10.

SMITH v. JAMIESONS.

Damages for
breach of con-
tract.

AN action of damages for breach of contract.