Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Ocean Steamship Company, owners of the S.S. "Hebe," v. The owners of the S.S. "Arratoon Apcar," from the Vice-Admiralty Court of the Straits Settlements (Settlement at Singapore); delivered 30th November 1889.

Present:

LORD MACNAGHTEN.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by Lord Macnaghten.*]

The collision which led to this litigation took place in the Straits of Malacca on the 22nd of May 1888, about 3.35 a.m., between the S.S. "Hebe" and the S.S. "Arratoon Apcar."

Both vessels were under steam alone. The wind was southerly and moderate. The weather was fine and the sky clear. The regulation lights of both vessels were in order and burning brightly.

Both vessels were considerably damaged by the collision.

Cross actions were brought in the Vice-Admiralty Court of the Straits Settlements. Each vessel accused the other of being the sole cause of the disaster. The actions were consolidated, and tried together. Judgment was given on the 3rd of August 1888.

The learned Judge found the "Hebe" alone to blame. He accepted the account given by the witnesses for the "Arratoon Apcar,"

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and came to the conclusion that the "Hebe" was navigated with reckless negligence, and that the persons in charge of her at the time of the collision were, one and all, ignorant and incompetent.

From the decree founded on this judgment the owners of the "Hebe" appealed.

At the hearing before their Lordships the learned Counsel for the Appellants did not deny that the "Hebe" was to blame; but they contended that the evidence of the Respondents' own witnesses proved that the "Arratoon Apcar" was also in fault.

The facts of the case as they may be gathered from the evidence on behalf of the "Arratoon Apcar" are in substance as follows:—The "Arratoon Apcar," steering S. 60 degrees E., sighted the masthead light and the red and green lights of the "Hebe" when the two vessels were about five miles apart, and apparently as nearly as possible on opposite courses. The "Arratoon Apcar" was going about ten knots an hour at the time. She ported one point, and in about two minutes lost the "Hebe's" green light, and then she steadied on that course. Shortly afterwards the green light of the "Hebe" appeared again about two points on her port bow. The "Arratoon Apcar" then ported another point and again lost the "Hebe's" green light, and kept on that course until the "Hebe," being about 2½ points on the port bow, suddenly shut out her red light and showed her green light for the third time. It is impossible to determine the distance between the two vessels at this moment; but their Lordships think that the learned Judge was probably right in supposing that it must have been a little more or a little less than half a mile. The officer in charge of the "Arratoon Apcar" at once saw his danger. He gave the order "hard-

a-port," and went himself to the wheel house to make sure that the order was carried out. He saw his vessel beginning to come round before he left the wheel. Then he went to the telegraph and stopped the engines. The collision took place almost immediately afterwards, the starboard bow of the "Hebe" which was still going full speed striking the port bow of the "Arratoon Apcar" at something less than a right angle. The engines of the "Arratoon Apcar" were not reversed until after the collision.

On this state of facts it was contended by the learned Counsel for the Appellants that the "Arratoon Apcar" infringed the regulations for preventing collisions at sea in three particulars. They argued (1) that the "Arratoon Apcar" ought to have slackened speed before the green light of the "Hebe" came into view the third time; (2) that the engines of the "Arratoon Apcar" ought to have been stopped and reversed at the time when the officer in charge gave the order "hard-a-port"; and (3) that any rate the engines of the "Arratoon Apcar" ought to have been reversed as well as stopped before the collision.

The learned Judge in the Vice-Admiralty Court, who does not seem to have had the assistance of nautical assessors, appears to have felt little or no difficulty upon any point of the case except upon the one question whether it was the duty of the officer in charge of the "Arratoon Apcar" to reverse as well as to stop. The excuse put forward at the trial for not reversing was that the "Arratoon Apcar" had a left-handed screw, and that its action would have "deadened" the effect of the port helm if the engines had been reversed. With some hesitation the learned Judge accepted this excuse, and exonerated the "Arratoon Apcar," from all blame.

Their Lordships are however compelled to take a different view. They are advised by their nautical assessors that before the green light of the "Hebe" appeared the third time there were sufficient indications to the officer in charge of the "Arratoon Apcar" (supposing him to have been a person of ordinary skill using reasonable care) to show that the two vessels were approaching so as to involve risk of collision. They are further advised that a prudent seaman in the position in which that officer was placed by the conduct of those on board the "Hebe" would have stopped, or at the least have slackened speed, until the course of the approaching vessel could be made out with something like certainty.

Under any circumstances their Lordships would be slow to differ from their nautical assessors on a question of navigation. In the present case, thinking as they do that the risk of collision was not determined when the "Arratoon Apcar" ported the second time, they see no reason for not giving effect to the advice which they have received. They are therefore obliged to hold that the "Arratoon Apcar" was to blame for not slackening speed in good time before the third appearance of the "Hebe's" green light.

The error on the part of the "Arratoon Apcar" may seem venial compared with the misconduct of those on board the "Hebe." But their Lordships have no power to absolve a vessel which infringes the regulations for preventing collisions at sea from the consequences prescribed by statute unless a plea of necessity is made out.

The view which their Lordships have taken under skilled advice renders it unnecessary to pronounce an opinion on the conduct of the officer in charge of the "Arratoon Apcar" after the "Hebe's" green light appeared the

third time. It was probably too late then to prevent a collision. Their Lordships however think it right to say that they are not satisfied that the excuse for not reversing ought to have been accepted as sufficient, nor are they convinced that the officer in charge of the "Arratoon Apcar" after he saw the danger was justified in going to the wheel before giving orders to stop. Though the time lost was short there was an appreciable delay in complying with the regulations.

In the result their Lordships will humbly advise Her Majesty that the decree under appeal ought to be varied by pronouncing the "Arratoon Apcar" to blame as well as the "Hebe," with the usual consequences, including a direction to assess the damages sustained by the "Hebe," and by discharging the order as to costs.

There will be no costs of the appeal.