

UNIVERSITY OF LONDON
W.C.1.

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No. 62 of 1904 INSTITUTE OF ADVANCED
LEGAL STUDIES

31539

In the Privy Council.

ON APPEAL FROM HIS BRITANNIC MAJESTY'S SUPREME COURT
FOR CHINA AND COREA AT SHANGHAI.

A

Between THE OWNERS OF THE BRITISH STEAMSHIP
"EMPRESS OF INDIA" - - - (Defendants)

Appellants

and

B

THE IMPERIAL CHINESE GOVERNMENT,
Owners of the Cruiser "QUANGTAI" - (Plaintiffs)

Respondents

C

Case on behalf of the Appellants.

1. This is an appeal from a judgment dated the 6th day of
November 1903 and an Order or Decree made in pursuance thereof dated
the 29th day of December 1903, of His Britannic Majesty's Supreme
Court for China and Corea at Shanghai in Admiralty in a collision action
whereby the collision in question was pronounced and decreed to have
been caused solely by the fault or default of the master and crew of the
British s.s. "Empress of India."

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2. The Appellants (Defendants in the action) are the Canadian
Pacific Railway Company and are and were the owners of the "Empress
of India" a British steamship registered at the port of London of 6,000
tons gross register and subsidised by the Lords Commissioners of the
Admiralty for service as an armed cruiser. The Respondents (Plaintiffs
in the action) are the Imperial Chinese Government and were the owners
of the "Quangtai" an armed cruiser of 2,200 tons register. The
"Empress of India" and the "Quangtai" came into collision on the
17th August 1903 in the China Sea in about Lat. 22.54 N. and Long.
116.46 E. Both vessels received damage and the "Quangtai" sank

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A about 2 hours after the collision, 12 of her crew and one passenger being drowned. The question to be determined by this appeal is whether the "Empress of India" should be held alone to blame for the said collision as decided by the learned Chief Justice who tried the action or whether as the Appellants humbly submit the "Quangtai" should be held alone or partly to blame for such collision.

B 3. The Respondents instituted this action in the said Court against the Appellants for the recovery of the amount of damage sustained by them in consequence of the said collision and on the 28th September 1903 filed their Petition. The Appellants appeared to the action and on the 27th October 1903 filed their answer to the said Petition. Copies of the Petition and answer and of the Preliminary Acts filed by the Respondents and Appellants respectively will be found in the Appendix at pages 3 to 11.

D 4. The action came on for trial before Sir Hiram Shaw Wilkinson Chief Justice of the said Supreme Court assisted by Captain Chas. H. H. Moore R.N. and Lieutenant A. E. House R.N. as Nautical Assessors and was heard on the 6th 7th 10th 11th 12th 13th and 14th days of November 1903. Witnesses were examined and gave evidence on behalf of both the Respondents and Appellants. The evidence of the witnesses will be found in the Appendix at pages 13 to 30 and pages 32 to 59. The documents put in at the trial will be found in the Book of Exhibits.

E 5. The case made by the Appellants at the trial was that on the 17th August 1903 at about 9.45 p.m. the "Empress of India" in the course of a voyage from Woosung to Hong Kong manned by a crew of 233 hands had arrived some 7 miles past the Lamock Islands when the stern light of the "Quangtai" was observed about 8 miles distant and bearing almost ahead but very slightly on the starboard bow. The weather was fine and clear the night being dark and there was very little wind. The "Empress of India" was making about 14 knots an hour through the water on a course of S. 65 W. true (there being practically no variation between the true and magnetic courses in that locality). Her regulation lights were duly exhibited and were burning brightly and

a good look-out was being kept on board of her. The "Empress of India" continued on her course and the stern light of the "Quangtai" broadened on the starboard bow slowly at first but afterwards more rapidly as the "Empress of India" drew nearer. At 11.38 p.m. when approaching Breaker Point the stern light of the "Quangtai" being then about one point or a little more on the starboard bow and rather less than a mile distant the course of the "Empress of India" was altered 4 degrees to starboard and she continued on a course of S. 69 W. true. At 11.45 p.m. the "Quantai's" light had broadened to about 2 to 3 points on the starboard bow. At that time a junk without any light exhibited was observed about three quarters of a mile distant and about 1 or 2 points on the starboard bow whereupon the helm of the "Empress of India" was starboarded half a point and shortly afterwards when it appeared that the "Empress of India" would pass the junk all clear on the starboard hand the order was given to resume the course but immediately afterwards and before the order was carried out the "Quangtai" was observed to be swinging rapidly to port under starboard helm. The helm of the "Empress of India" was immediately put hard a starboard and her port engine was put full speed astern but the "Quangtai" although she was loudly hailed to port her helm closed in rapidly under starboard helm opening out her red light and with her bowsprit struck the starboard side of the forecandle of the "Empress of India" and then with her port bow struck the bulwarks at the fore part of the promenade deck of the "Empress of India" after which the two vessels fell together and then separated. According to the evidence of the Appellant's witnesses the angle at which the vessels first came in contact was from 3 to 4 points. At the moment of the first impact the starboard engine of the "Empress of India" was stopped and her port engine was then put ahead. After the collision the "Empress of India" stood by the "Quangtai" until she sank about two hours later and rendered all possible assistance in saving her crew.

6. The Appellants charged the "Quangtai" with neglecting to keep a good look out neglecting to keep her course improperly starboarding her helm and keeping starboard helm improperly attempting to

A cross ahead of the "Empress of India" neglecting to give any whistle signal or warning to indicate her change of course and neglecting to comply with Articles 21 and 29 of the Regulations for Preventing Collisions at Sea.

B 7. The case made by the Respondents was that at about 10.45 or 11 p.m. on the 17th August 1903 the cruiser "Quangtai" in the course of a voyage from Shanghai to Hong Kong and Canton with munitions of war and carrying a crew of 178 hands and 6 passengers was about off Good Hope Cape when the two masthead lights of the "Empress of India" were observed right astern at a distance of about 8 miles. The "Quangtai" was making about 9 knots an hour and was then steering W.S.W. by compass which allowing for 5 degrees Westerly deviation on her compass would be about S. 62½ W. true. After a time the red and green lights of the "Empress of India" also came in sight bearing astern and at C 11 p.m. the course of the "Quangtai" was altered about quarter of a point to starboard and she continued on a course S. 66 W. true. The "Empress of India" which was overtaking the "Quangtai" continued to approach coming straight on without altering her course or speed and at 11.50 p.m. crashed alongside the "Quangtai" striking the "Quangtai" D on the port quarter with her starboard bow and then grazed along her starboard side carrying away her boats and two after guns and then sheered off to port striking her again on the port quarter with her stern.

E 8. The Respondents charged the "Empress of India" with neglecting to keep a good lookout neglecting to take in due time proper measures for avoiding the collision neglecting to keep out of the way of the "Quangtai" and neglecting to comply with Article 24 of the Regulations for preventing Collisions at Sea.

F 9. On the 29th day of December 1903 Judgment was delivered pronouncing the "Empress of India" alone to blame for the said collision and condemning the Appellants and their bail in the costs of the action and referring the damages to the Registrar and Merchants to assess the amount thereof. A copy of the Judgment will be found in the Appendix at pages 64 to 77 and a copy of the Decree or Order issued in pursuance thereof at page 78 of the Appendix.

10. The learned Chief Justice found that a *prima facie* case had been made out by the Respondents against the Appellants and that the Appellants had failed to discharge the burden cast upon them of showing excuse for the collision. On the question as to whether the "Quangtai" starboarded he said that the testimony of the witnesses on the one side and the other appeared so conflicting that it would have been extremely difficult for the Court unaided by nautical considerations to form an opinion which statement was entitled to credence. He therefore requested his assessors to give him their opinion upon the probabilities of the respective statements in issue. They were of opinion that the "Quangtai" did not starboard and after hearing and considering their reasons and considering the evidence the learned Judge concurred in and adopted their opinion. Upon the question as to the parts of the two vessels which first came in contact which was one of the main issues of fact in the case he accepted the evidence of those on board the "Empress of India" and rejected that of the witnesses from the "Quangtai." He found however that the collision was brought about by the alteration of 4 degrees in the course of the "Empress of India" at 11.38 p.m. so as to cross the course of the cruiser and the failure thereafter to keep a good look-out.

11. The Appellants humbly submit that the said Judgment and Decree are wrong and should be reversed or varied and that the "Quangtai" should be pronounced alone or in part to blame for the said collision and that the Respondents should be condemned in the costs of the said action and of this appeal for the following amongst other reasons.

REASONS.

1. Because the collision was solely caused by the "Quangtai" neglecting to keep her course.
2. Because assuming that the parts of the vessels which first came in contact were those stated by the witnesses for the Appellants as found by the Court the collision could not have occurred in the manner described by the Respondents and

could not have occurred unless the "Quangtai" had starboarded her helm.

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3. Because the findings of fact upon which the judgment of the Court was founded were inconsistent with the evidence given by either side and were solely based upon the supposed probabilities of the case whereas the probabilities based upon the proved or admitted facts were greatly in favour of the case presented by the Appellants.

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4. Because the judgment was against the weight of evidence.

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T. F. DAWSON MILLER.

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Appellants' Case.

WILLIAM A. CRUMP & SON,

17, Leadenhall Street,

London, E.C.