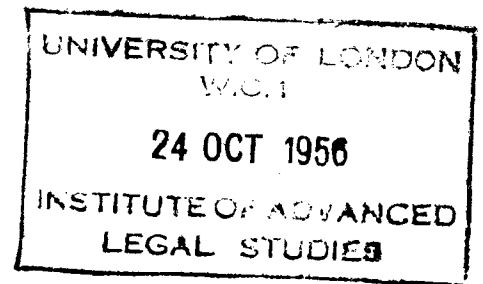


In the Privy Council.

No. 62 of 1904.



31538

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

BETWEEN

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

AND

THE IMPERIAL CHINESE GOVERNMENT,
OWNERS OF THE CRUISER "QUANGTAI"
(Plaintiffs) *Respondents.*

Case on behalf of the Respondents.

1. This is an Appeal from a Judgment or Decree of His Majesty's Supreme Court for China and Corea, dated December 29th, 1903, whereby after finding the Steamship "Empress of India" solely to blame for a collision between the said steamship and the Cruiser "Quangtai," there was made against the Appellants, the owners of the said steamship, and their bail, the usual Decree for damages and costs, and the usual reference to the Registrar and merchants.

Record, pp.
64, 78.

2. The action was an action *in rem* against the steamship "Empress of India," whereof the Canadian Pacific Railway and Steamship Company, hereinafter called the Appellants, were the owners, and was brought by the Respondents, as Plaintiffs, for damage by collision between the said steamship and their cruiser the "Quangtai," which occurred in the China Sea about 15

miles from Breaker Point at about 11.48 p.m. on the 17th August, 1903, whereby the "Quangtai" was sunk and totally lost. Copies of the pleadings will be found at pages 3 to 8 of the Record, and of the Preliminary Acts at pages 8 to 11 thereof.

Record pp.
3—11.

3. The action was tried on the 6th, 7th, 10th, 11th, 12th, 13th, and 14th of November, 1903, before Sir Hiram S. Wilkinson, C.J., assisted by Captain C. H. H. Moore, R.N., and Navigating Lieutenant A. E. House, R.N., as Nautical Assessors.

4. On behalf of the Respondents the following facts were proved:—The "Quangtai" (a steam cruiser of 2200 tons register) was on the night of 17th August, 1903, on a voyage from Shanghai to Hongkong, carrying 6 passengers and munitions of war for Canton, and manned by a crew of 178 all told. Her regulation lights were duly exhibited and burning brightly. Good Hope Cape light had been sighted at 10.38 p.m., and shortly afterwards the mast-head lights of a steamer, which proved to be the "Empress of India," were observed astern, at an estimated distance of six to eight miles. At 11 p.m. the "Quangtai's" course, which from 10 o'clock had been W.S.W. by compass, was altered to W. by S. $\frac{3}{4}$ S. by compass (equal to S. $65\frac{1}{3}^{\circ}$ true). Her speed was about 9 knots through the water. Shortly after 11 the side lights of the "Empress of India" came into view, and it was apparent that she was a steamer overtaking the "Quangtai" on practically the same course. From time to time after the first observation of her side lights the "Empress of India" was observed to be about astern, or a little on the port quarter of the "Quangtai," until she overtook her, striking her on the port side a sliding blow, and doing considerable damage to her guns, boats, and davits. Immediately after the collision the engines of the "Quangtai" were stopped, and her helm was ported, and she sheered off to starboard, and the "Empress of India" at the same time sheered off to port. As the vessels separated the "Empress of India's" stern came in contact with the "Quangtai's" port quarter, making, apparently with her starboard propeller, a large hole in the "Quangtai" below the water line, causing her to fill and sink in about an hour and three-quarters. The passengers and crew of the "Quangtai," with the exception of the captain, one passenger, and eleven hands, were rescued by the "Empress of India's" boats. From 11 p.m. until the collision no alteration was made in the course or speed of the "Quangtai."

5. Under these circumstances, the Respondents contended that the collision was brought about solely by the fault of the "Empress of India."

6. According to the case presented by the Appellants, the "Empress of India," a steamer of 6000 tons gross, on a voyage from Woosung to Hongkong, while proceeding at a rate of 14 knots through the water, on a course S. 65° W. true, observed the stern light of the "Quangtai" distant about 8 miles and about 1° on the starboard bow, on which bearing it remained till about 20 minutes before the collision, when it was alleged that it was seen to broaden

on the "Empress of India's" starboard bow, and this was taken to indicate that she had ported and altered her course about six degrees to the westward. In reliance upon this supposed alteration of the "Quangtai's" course, at 11.38 p.m. the course of the "Empress of India" was altered 4° to the westward, to pass inside Pedro Blanco. It was further alleged that at 11.45 the helm of the "Empress of India" was starboarded half a point to avoid a junk without lights which was supposed to have been seen at a distance of three-quarters of a mile a point or two on the "Empress of India's" starboard bow, and between the courses of the two vessels. An order was next given to resume course, but, it was alleged, the "Quangtai" was almost immediately seen to be swinging rapidly to port under a starboard helm, for the supposed purpose of avoiding the above-mentioned junk, and thereupon at 11.47 the helm of the "Empress of India" was hard-a-starboarded, and the port engine reversed, and the "Quangtai" was hailed to port her helm, which she did not do, and so, it was alleged, caused the collision; the "Quangtai" striking with the bluff of her port bow the starboard side of the "Empress of India" at the fore-gangway, and sliding along her side. It was further stated that after the collision the starboard engine of the "Empress of India" was stopped, and her port engine set full speed ahead to stop her swing to port, but that the "Quangtai's" stern swung rapidly towards the "Empress of India," as if under the influence of a port helm, striking the starboard propeller of the "Empress of India," and so sustaining the damage which caused her to sink.

7. On behalf of the "Empress of India" it was contended that the collision was caused by the alleged starboarding of the "Quangtai" apparently for the purpose of passing on her starboard side the supposed unlighted junk on her port bow, and continuing to starboard longer than was necessary to accomplish that purpose, notwithstanding the hailing from the "Empress of India." But for these manœuvres the "Empress of India" would, it was said, have passed the "Quangtai" at a distance of at least a quarter of a mile; and therefore it was contended by the Appellants that the "Quangtai" was solely to blame for the collision.

8. The witnesses from the "Quangtai" denied that her course was altered between 11 and 11.38 p.m. as suggested by those on board the "Empress of India," and also denied that they had altered their course for any junk, or had seen any junk in their way. Further it was contended on behalf of the Respondents that the apparent broadening of the "Quangtai's" stern light on the "Empress of India's" starboard bow was due to the latter vessel rapidly overhauling the former, and did not indicate any alteration of the "Quangtai's" course; and that the "Empress of India's" alteration at 11.38, from a course slightly divergent from, to a course converging with that of the "Quangtai," was the real cause of the collision. The evidence of the Respondents upon the above points was believed, and their contentions were accepted by the Court with the approval of the Nautical Assessors.

Record, p. 42.

Record, pp. 33, 40.

Record, p. 35.

Record, p. 40.

Record, p. 40.

Record, pp. 43, 53.

Record, p. 38.

Record, pp. 33, 41.

Record, p. 38.

Record, pp. 33, 34.

Record, pp. 41, 36, 59.

Exhibits "J" and "P."

Record, pp. 15, 18, 20.

Record, pp. 15, 18, 21.

Record, pp. 36, 42.

Record, pp. 72-76.

9. On the 29th of December, 1903, the Chief Justice delivered Judgment, finding that the "Quangtai" had kept her course, and that the "Empress of India" had infringed Article 24 of the Regulations in failing to keep out of her way; and that those on board her had neglected to keep a good look out in failing to observe the indications that she was rapidly overhauling the "Quangtai," and was much nearer to her than they supposed. With respect to the alleged junk, the opinion of the Court, assisted by the experience of the Nautical Assessors, was that in fact there was no junk in the position alleged by the witnesses for the Appellants. The Chief Justice accordingly pronounced the "Empress of India" alone to blame. The reasons for his Judgment will be found at page 64 of the Record.

10. The Respondents submit that the said Judgment is right, and ought to be affirmed for, among others, the following

REASONS.

1. Because the "Empress of India," being an overtaking vessel, failed to take proper measures to keep out of the way of the "Quangtai," and failed to comply with Article 24 of the Regulations.
2. Because those on board the "Empress of India" failed to keep a good look-out or to observe that they were rapidly overhauling the "Quangtai," and misjudged her distance from them and the course which she was steering.
3. Because the collision was caused by the alteration of the course of the "Empress of India" to a course converging with that of the "Quangtai."
4. Because the questions involved are questions of fact, and the judgment of the Chief Justice, who heard and saw the witnesses, ought not to be disturbed.
5. Because the judgment of the Supreme Court is right.

W. PICKFORD.

R. B. D. ACLAND.

JOHN MANSFIELD.

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CASE

ON BEHALF OF THE RESPONDENTS.

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