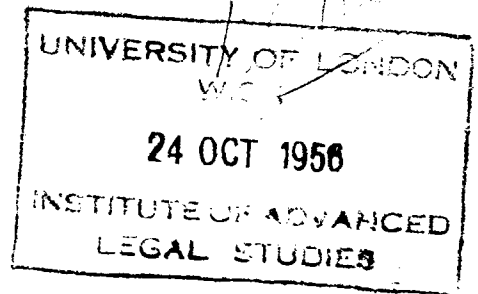


44796



In the Privy Council.

No. 62 of 1904.

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*.

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

No.	DESCRIPTION OF DOCUMENT.	Date.	Page.
1	Plaintiffs' Petition of Claim	28th September 1903	3
2	Defendants' Answer	27th October 1903	6
3	Plaintiffs' Preliminary Act	- - -	8
4	Defendants' Preliminary Act	- - -	10
5	Chief Justice's Notes at Hearing	- - -	11
6	Judgment	- - -	64
7	Decree	29th December 1903	78
8	Motion for Leave to Appeal	8th January 1904	79
9	Security	5th February 1904	79
10	Order	8th February 1904	80
11	Acting Registrar's Certificate	22nd July 1904	81
12	List of Documents omitted from Record	- - -	82

## RECORD.

## Exhibits.

Exhibit Mark.	Nature of Documents, &c.	Put in by and Owned by.	
A.	Model of cruiser - - - - -	W. Cooper	
B.	Notice of Customs <i>re</i> position of wreck	"	
D 1.	Deck log-book of "Quangtai"	"	See Exhibit Book.
D 2.	Plan of "Quangtai." (Deck plan, looking down)	"	
D 3.	Plan of "Quangtai." (Horizontal plan, showing length of ram)	"	See Exhibit Book.
D 3.	Plan of "Quangtai." (Sectional plan, looking fore and aft)	"	
E.	Chart with courses marked from Lamocks to collision	"	
F.	Sketch of turning radius of "Quangtai" by former commander	"	
G.	Note of force of wind	Mr. Sharpe	
H.	Chart with courses marked and positions drawn	"	See Exhibit Book.
I.	Official log of "Empress"	"	"
J.	Diagram of courses and collision, drawn to scale by Captain Marshall	"	"
K.	Engineer's log of "Empress"	"	
L.	Plan of damage to "Empress"	"	See Exhibit Book.
M.	" " (original)	"	
N.	Report of surveyors at Hong Kong	"	
O.	Rough sketch of position of steamers and junk	"	
P.	Diagram of courses and collision, drawn to scale by Captain Marshall. (Additional to J.)	"	See Exhibit Book.
Q.	Rough deck log of "Empress."		"
R.	Deck log of "Empress."		"

# In the Privy Council.

No. 62 of 1904

## 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.

## RECORD OF PROCEEDINGS.

No. 1.

In His Britannic Majesty's Supreme Court for China and  
Corea at Shanghai.

In Admiralty.

28th September 1903.

The Imperial Chinese Government, Owners of the  
cruiser "Quangtai" - - - Plaintiffs,

versus

The Owners of the British Steamship "Empress of  
India" - - - Defendants.

10 To Frederick Samuel Augustus Bourne, Esquire, Acting Chief Justice of  
His Britannic Majesty's Supreme Court for China and Corea.

The Petition of the Plaintiffs shows, as follows:—

1. The Plaintiffs are the owners of the cruiser "Quangtai" of 2,200 tons  
register, which at the time of the event hereinafter referred to was on a

RECORD.

No. 1.  
Plaintiffs'  
Petition of  
Claim, 28th  
Sept. 1903.

RECORD.  
 No. 1.  
 Plaintiffs'  
 Petition of  
 Claim, 28th  
 Sept. 1903—  
*continued.*

voyage from Shanghai to Hong Kong and Canton, manned by a crew of 178 hands all told, and carrying, in addition to her proper armanent, guns and munitions of war for the Imperial Military forces in Canton, and six passengers.

2. The Defendants are the owners of the British screw steamship "Empress of India."

3. The "Quangtai" left Shanghai on the 11th August 1903 at about 12.15 a.m., anchored at Gutzlaff the first night and next morning at 5 o'clock started again. Anchored again at Fu Yau Island on the 13th August 1903 about 7 p.m., and left on the 16th August 1903 at 7.30 a.m. and started for 10 Hong Kong.

4. At 10.38 p.m. on the 17th August 1903 sighted Good Hope Cape light and at 10.54 sighted Breaker Point light proceeding at the rate of about nine knots. The "Quangtai" had her regulation lights properly fixed and burning brightly, and a good look-out was being kept on board of her. The weather was dark but clear. The course at 11 p.m. was west by south  $\frac{3}{4}$  south which would take the cruiser straight to Pedro Blanco Island. At about 10.45 p.m. the lights of a steamer astern were sighted at a distance of about 8 or 9 miles off. Those on watch saw the two masthead lights in a direct line. This steamer afterwards proved to be the British steamship "Empress of India." 20 There was no vessel ahead. The red and green lights of the "Empress of India" became visible concurrently when she was at a distance of about 2 or 3 miles.

5. The "Empress of India" was seen rapidly overtaking the cruiser "Quangtai" and the "Quangtai" kept her course without alteration until after the collision occurred. The "Empress of India" did not alter her course or speed but came straight on, crashing alongside the "Quangtai," striking the "Quangtai" on the port quarter with her starboard bow and grazed along the side of the cruiser, smashing her boats. Immediately after the collision the helm of the cruiser was put hard-a-port and the engines were 30 stopped. The "Quangtai" then sheered off to starboard and the "Empress of India" to port, striking the cruiser with her starboard propeller and inflicting injuries to her which caused her to sink in about two hours' time after the collision off Breaker point. Position bears N. 82° W. mag., distance 15 miles. The collision occurred at about 11.50 p.m.

6. After the collision the "Empress of India" stopped at a distance of about two miles from the cruiser and stood by to render assistance.

7. The cruiser blew her whistle for assistance and the "Empress" sent a boat and subsequently two large boats in which and in the boats of the cruiser 166 out of the officers and crew and five of the passengers were saved. 40

8. The pumps of the cruiser were set to work immediately after the collision, but the water gained on them rapidly and at about 1.30 a.m. on the morning of the 18th August 1903 she keeled over and then sank by the stern, carrying down with her her Commander Captain Chee Fung Yee, the fourth engineer, seven able-bodied seamen, two boys, and one stoker and one passenger.

RECORD.  
No. 1.  
Plaintiff's  
Petition of  
Claim, 28th  
Sept. 1903—  
*continued.*

9. A good look-out was not kept on board the "Empress of India" previous to the collision.

10. The "Empress of India" improperly neglected to take in due time proper measures for avoiding the collision.

11. The "Empress of India" improperly neglected to keep out of the way of the "Quangtai."

12. The "Empress of India" did not duly observe and comply with Article 24 of the "Regulations for Preventing Collisions at Sea."

13. The collision was caused by the improper and negligent navigation of those on board the "Empress of India," and was not in any way caused or contributed to by those on board the "Quangtai."

The Plaintiffs therefore pray:—

1. That the Plaintiffs have judgment against the Defendants for the damage occasioned to them by reason of the collision and for costs.

2. That the bail given by the Defendants be condemned in such damages and costs.

3. That the amount of such damage may be referred to the Registrar for his report.

4. That the Plaintiffs may have such further or other relief as the nature of the case shall require.

The Defendants to this Petition are The Canadian Pacific Railway and Steamship Company.

DRUMMOND AND WHITE-COOPER,  
Counsel for the Plaintiffs.

The Defendants to this Petition are The Canadian Pacific Railway and Steamship Company, whose solicitors are Messrs. Stokes and Platt, who have agreed to accept service.

I certify that I served a copy of this Petition on Messrs. Stokes and Platt solicitors for the Defendants on September 29th 1903 at 2 p.m.

T. MACDONALD,  
Usher.

RECORD.

No. 2.  
Defendants'  
Answer,  
27th Oct.  
1903.

No. 2.

In His Britannic Majesty's Supreme Court for China and Corea at  
Shanghai.

In Admiralty.

The Imperial Chinese Government, owners of the  
cruiser "Quangtai" - - - - - Plaintiffs.

*versus*

The owners of the British steamship "Empress of  
India" - - - - - Defendants.

In answer to the said Petition the Defendants say as follows :—

10

1. The Defendants are The Canadian Pacific Railway Company whereof the head office is at Montreal in the Dominion of Canada. The Defendants are the owners of the Royal Mail twin screw steamship "Empress of India," registered in London, of 6,000 tons gross burden, and subsidised by the Lords Commissioners of the Admiralty for service as an armed cruiser. At the time of the events herein-after mentioned she was on a voyage from Woosung to Hong Kong, manned by a crew of 233 hands all told.

2. On Monday the 17th August 1903 at about 9.45 p.m. the "Empress of India" had just passed the Lamock Islands. The night was dark, the weather was fine, the wind was light, the "Empress of India" was proceeding 20 at a speed of about 14 knots an hour through the water, her regulation lights were duly exhibited and burning brightly, and a good look-out was being kept. In these circumstances those on board observed at a distance ahead of about eight miles a white light which proved to be the stern light of the "Quangtai."

3. As the "Empress of India" proceeded the white light gradually opened out on her starboard bow until, as she was about to pass the "Quangtai," the white light suddenly began to close in, and the "Quangtai" was observed to be turning to port across the course of the "Empress of India." Immediately thereafter the "Quangtai's" red light appeared, and (the 30 "Quangtai" continuing to swing round with great rapidity) her port bow struck the starboard side of the "Empress of India" near the break of the fore-castle. When the "Quangtai" changed her course as aforesaid the "Empress of India" was heading in a direction divergent from the course of the "Quangtai," and if the "Quangtai" had kept her course and speed the "Empress of India" would have passed her in ample safety at a distance away of a quarter of a mile or thereabout. The collision occurred about 15 miles E. by S. of Breaker Point, and at about 11.48 p.m.

4. The "Empress of India" took all proper measures to avoid the collision, and to minimise the force and effect of the impact, and to render assistance to the "Quangtai" afterwards. Immediately when risk arose through the 40

"Quangtai" changing her course as aforesaid, the "Empress of India's" helm was put hard a-starboard and her port engine was reversed full speed, and those on board her perceiving that collision could then only be avoided by the "Quangtai" porting, repeatedly hailed her to do so. After the collision the "Empress of India" stood by the "Quangtai" until she sank at 1.27 next morning, and the "Empress of India" remained at the scene of the collision for some hours afterwards.

RECORD.

No. 2.  
Defendants'  
Answer,  
27th Oct.  
1908—con-  
tinued.

5. To those on board the "Empress of India" it seemed that the "Quangtai" must have negligently failed to observe until close thereto, a junk which was on her port bow, and that those on board the "Quangtai" must then have lost all presence of mind. The junk was not in the "Quangtai's" way, and if she changed her course for the junk, as was unnecessary, she ought to have ported instead of starboarding.

6. A good look-out was not kept on the "Quangtai."

7. The "Quangtai," though the overtaken vessel, neglected to keep her course.

8. The "Quangtai," improperly starboarded her helm.

9. The "Quangtai," having starboarded her helm as aforesaid improperly persisted in swinging round to port, though such action rendered the collision certain, and though the collision would have been avoided by the "Quangtai" porting.

10. The "Quangtai" improperly attempted to cross ahead of the "Empress of India."

11. The "Quangtai" gave no whistle or signal or warning of any kind to the "Empress of India" to indicate the said change of course.

12. Both before and after the collision, the "Quangtai" was navigated in a reckless and improper manner.

13. Those on board the "Quangtai" neglected to comply with the established practice of seamen, and violated the principles of the general maritime law, and particularly of Articles 21 and 29 of the Regulations for Preventing Collisions at Sea.

14. By reason of the collision damage was suffered by the Defendants to an amount exceeding \$50,000.

15. The collision was not caused or contributed to by any improper conduct on the part of the Defendants or their servants, but was solely

RECORD. occasioned by the negligent navigation of the "Quangtai" as hereinbefore shown.

No. 2  
Defendants'  
Answer,  
27th Oct  
1903—con-  
tinued.

16. In any event the Defendants deny liability in respect of the alleged loss of life on board the "Quangtai."

17. Save as aforesaid the Defendants deny all the allegations contained in the Petition.

Dated the 27th day of October 1903.

STOKES & PLATT,  
Solicitors for the Defendants.

I certify that I served a copy of this answer upon Messrs. Drummond 10 and White-Cooper, Solicitors for the Plaintiffs, on the 28th day of October 1903.

T. MACDONALD,  
Usher.

No. 3.  
Plaintiffs'  
Preliminary  
Act.

No. 3.

In His Britannic Majesty's Supreme Court for China and Corea at Shanghai,

In Admiralty.

The Owners of the Chinese Cruiser "Quangtai" - Plaintiffs,

*versus*

The Owners of the British Steamship "Empress of India" - Defendants. 20

Preliminary act of the Chinese Cruiser "Quangtai."

1. The names of the two vessels which came into collision, and the names of their respective masters. Chinese Cruiser "Quangtai," Commander Chee Fung Yu. R.M.S. "Empress of India," Commander O. P. Marshall, R.N.R.

2. The time of the collision as nearly as can be stated. 11.50 p.m., 17th August 1903.

3. The locality of the collision. Off Breaker Point. Position Breaker Point bears N. 82° W. mag., distance 15 miles. 30

4. The direction of the wind at the time. S.W. force two blowing on port side.



- |     |   |   |
|-----|---|---|
| 5.  | The state of the weather.   | Slightly cloudy and misty.  |
| 6.  | The state and force of the tide.  | Two or three knots towards shore.   |
| 7.  | The course and speed of the vessel when the other was first seen.                                       | W. by S. $\frac{3}{4}$ S. Speed about nine knots. 53 revolutions.   |
| 8.  | The lights, if any, carried by her.   | One light in the stern, masthead light, green and red lights on starboard and port sides, all burning brightly.   |
| 10  | 9. The distance and bearing of the other vessel when first seen.  | About eight or nine miles off, about the same course as the cruiser, directly astern.   |
| 10. | The lights, if any, of the other vessel which were first seen.  | Masthead lights.  |
| 11. | Whether any lights of the other vessel other than those first seen came into view before the collision. | Red and green lights seen concurrently.   |
| 20  | 12. What measures were taken, and when, to avoid the collision.   | No measures were taken by the cruiser to avoid the collision prior to the time when the vessels first struck. After colliding the cruiser's helm was put hard a-port to clear her from the "Empress." |
| 13. | The parts of each vessel which first came into contact.   | The "Empress's" starboard bow and the cruiser's port quarter.   |

RECORD.  
 No. 3.  
 Plaintiffs'  
 Preliminary  
 Act—con-  
 tinued.

DRUMMOND AND WHITE-COOPER,  
 Counsel and Attorneys for the Owners of the "Quangtai."

RECORD.

No. 4.  
 Defendants'  
 Preliminary  
 Act.

No. 4.

## Defendants' Preliminary Act.

In His Britannic Majesty's Supreme Court for China and Corea  
 at Shanghai.

In Admiralty.

The Imperial Chinese Government, Owners of the  
 Cruiser "Quangtai" - - - - Plaintiffs,

*versus*

The Owners of the British Steamship "Empress of  
 India" - - - - Defendants. 10

## Preliminary Act on behalf of the "Empress of India."

- |   |   |
|---|---|
| 1. The names of the two ships which came into collision, and the names of their respective masters. | 1. The British Steamship "Empress of India," Oswald Percival Marshall. Chinese Cruiser "Quangtai," name of Commander unknown. |
| 2. The time of the collision as nearly as can be stated.  | 2. About 11.48 p.m. on Monday the 17th August 1903.   |
| 3. The locality of the collision.   | 3. In the China Sea, about latitude 22 degrees 54 minutes N., and longitude 116 degrees 46 minutes E. 20                      |
| 4. The direction of the wind at the time.   | 4. Light airs and calm.   |
| 5. The state of the weather.  | 5. Fine, clear, but dark.   |
| 6. The state and force of the tide.   | 6. Slight flood.  |
| 7. The course and speed of the vessel when the other was first seen.                                | 7. Course S. 65 W., speed about 14 knots an hour through the water.   |
| 8. The lights, if any, carried by her.  | 8. Proper regulation lights.  |
| 9. The distance and bearing of the other ship when first seen.                                      | 9. Distance about eight miles. 30<br>Bearing almost ahead.  |
| 10. The lights, if any, of the other vessel which were first seen.                                  | 10. Stern light.  |

11. Whether any lights of the other vessel other than those first seen came into view before the collision.

12. What measures were taken, and when, to avoid the collision.

10

13. The parts of each vessel which first came into contact.

11. Just before the collision the red and masthead lights.

12. Immediately when risk of collision arose through the "Quangtai" changing her course, the "Empress of India's" helm was put hard a-starboard and her port engine was reversed full speed, and those on board her, perceiving that collision could then only be avoided by the "Quangtai" porting, repeatedly hailed her so to do.

13. The "Quangtai's" bowsprit struck the starboard side of the "Empress of India" near the break of the forecastle.

RECORD.  
No. 4.  
Defendants' Preliminary Act—continued.

No. 5.

Notes of Evidence taken by Chief Justice Sir Hiram Shaw Wilkinson.

At hearing.

Friday, the 6th Day of November 1903

20

The Imperial Chinese Government, owners of the cruiser "Quangtai,"

*versus*

The owners of the British steamship "Empress of India."

Before

Sir Hiram Shaw Wilkinson - - Chief Justice  
and

Captain Charles H. H. Moore, R.N., H.M.S.  
"Sirius," and Lieutenant A. E. House, R.N.,  
H.M.S. "Sirius." - - Nautical Assessors.

Mr. White-Cooper and Mr. Symonds for Plaintiffs.

Mr. Sharpe and Mr. Platt for Defendants.

30

Mr. White-Cooper puts in chart, applies to amend Petition by adding the word "light" after "Good Hope Cape" in paragraph 4, and to insert the words "at 11. p.m." between the words "the course" and "was."

Consented to and ordered.

Mr. White-Cooper reads Petition and Answer.

Registrar opens and reads Preliminary Act.

No. 5.  
Chief Justice's Notes at Hearing.

## RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

Mr. White-Cooper: The course in the "Quangtai's" Preliminary Act is the compass course. The difference is about 5 per cent. That is, S. 70 W. magnetic; S. 65 W. true. I am informed S. 65 W. is the true course.

Mr. Sharpe: Course S. 65 W. is true.

Mr. White-Cooper opens for Plaintiffs: Refers to model as not to scale to representing style of cruiser—single engines compound—speed about  $9\frac{1}{2}$  knots, has done 12. Steam steering gear worked from bridge.

Armed 2 Armstrong 7 in. b.l. guns.

40-pounder.

1 40-pounder q.f.

1 Hotchkiss.

1 Gatling.

10

*Sic.*

In command of Chee Fung Yee, experience 20 years service; 36 years in command; of "Quangtai" six months.

4 Deck officers.

4 Engineers.

6 Quartermasters.

1 Boatswain.

6 Boatswains mates.

Total 178 crew and six passengers, friends of Captain.

20

Carrying arms and munitions to Canton to suppress rebellion.

Cruiser  $9\frac{1}{2}$  knots, "Empress" 14 knots. "Empress" gaining a little over four miles an hour.

(Court refers to Preliminary Act of Cruiser).

At 9.30 course of Cruiser was S.W. by W.  $7/8$  W., S. 66 W. true. "Empress" S. 64 W.

At 11 Cruiser S. 65 W. 11.38 "Empress" S. 68 W.

Cruiser passing outside Pedro Blanco. "Empress" passing inside, on her course, so far as can be seen by log, was inside.

Courses convergent, not divergent as stated by "Empress."

30

When "Empress" saw Cruiser first says she was ahead, and just before collision about three points on starboard bow.

Having seen Cruiser ahead two hours, had plenty of time to determine what to do.

Ought to have observed.

Article 24.

See Article 22.

See Article 20.

Notwithstanding in Article 24 show Article 24 overrides others. Overtaken and overtaking. 40

Converging overtaking ought to pass under stern.

Those on Cruiser no more taken by surprise than "Empress."

Their duty is laid down in Article 21.

See Article 27.

If overtaken ship alters her course she must show to Court necessity for doing so. RECORD.

"Empress" bound to keep clear of cruiser.

Cruiser not to hamper "Empress" by any unjustifiable alteration of course.

On bridge besides Captain were the Navigating Officer, Third Lieutenant, and Gunner. Quartermaster at wheel—wheel being on bridge.

After collision "Empress" did the right thing—stood by—sent boats and took off a great part of crew.

Points of disagreement very few.

10 Agreed as to weather.

Night fine.

Wind light.

Stern light of cruiser seen at distance of 8 or 9 miles.

Lights of "Empress" seen a long way off.

Mr. Sharpe admits cruiser's lights were all in order.

"Empress" an overtaking vessel within Article 24.

Time of collision.

Mr. Sharpe agrees with Mr. White-Cooper as to position in which the wreck lies in 16 fathoms.

20 S. 82° E. 15 miles from Breaker Point Lighthouse or Breaker Point bears N. 82 W. Mag., distance 15 miles. But it is agreed that she may have drifted after the collision.

Mr. Sharpe saying she changed position considerably.

We disagree on following points:—

(1.) Whether or not cruiser altered her course. Paragraph 3 of Answer.

"Empress" intended to pass at a distance of quarter mile.

Was that a safe distance?

We admit until ships came in contact we did not blow our whistle or syren.

(2.) We were reasonably entitled to assume that the steamer, a large and powerful steamer that was overhauling us, would pass clear.

30

Commander Ma:

Ching Pih Kwang declared to interpret truly.

Ma Yuen-Yu, Chinese, warned.

I am Commander in Chinese Navy over 20 years. I was Deputy Commander of "Quangtai." Have been Deputy Commander over 10 years—about 10 years. Have been in Navy over 20 years.

Was in "Quangtai" on night of collision.

I know when "Quangtai" was first built in Foochow Arsenal 15 years ago.

Was composite ship—fitted with steam steering gear—wheel was on upper 40 bridge.

One wheel above and one below. Wheel below spare wheel. House wheel.

Left Shanghai 19 of 6th Moon (11th of August).

Captain's name Chee Fung Yee. We were trained at same place, Pei Yang Squadron.

He joined "Quangtai" at end of last year, Chinese; was in about six months.

## RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

Our crew numbered 178.

No foreigners on board. We were carrying down munitions of war to Canton.

There were six passengers.

My watch was from four to eight on night of collision.

At time of collision I was in my cabin—was asleep and was awakened by noise.

Was on deck on poop above my cabin.

I saw the steamer was touching our port quarter.

I saw the starboard side of the steamer.

She grazed along a long way—carried boats and davits away (shows on 10 models). "Empress" alongside with bow near bow of "Quangtai."

Starboard bow on port quarter and grazed along—swept all guns, boats and davits away.

I afterwards saw bows of "Empress" going over to port and bows of "Quangtai" going to starboard.

The "Empress" was higher.

As they separated the "Empress's" stern part touched port quarter of "Quangtai."

I inspected the damage that was done—found a big hole on the port quarter where the water came rushing in. 20

The hole was below the water line.

I saw it myself—I was inside—I went to lower deck. The water was coming in nearly in a line with the gangway below the gangway.

The planks were broken.

When I saw the water was coming in I gave orders to work the pumps.

I went off in the "Empress's" boat—I saw the "Quangtai" sink stern first.

I recognise this book.

Deck log book of "Quangtai."

Fair copy log book lost. 30

Mr. White-Cooper: The words "11.0 Alt. Co. to W. by S. & S. comp." were put in afterwards, about a week ago.

Thirteen were drowned—

- 1 Captain.
- 1 Fourth Engineer
- 7 Sailors.
- 1 Stoker.
- 2 Boys.
- 1 Passenger.

Cross-examined by Mr. Sharpe: I was not on deck from 8 o'clock till the collision. I was in my cabin. First I heard of collision was shouting. I went on deck. The "Empress" was already alongside. I did not see "Empress" strike port gun sponson.

I could not say whether "Empress's" bow touched port sponson.

As soon as ships collided "Quangtai's" engine stopped. "Empress's" stern came round, struck our port quarter. After ship's bows went apart they did not come together. We were using steam steering gear.

The "Quangtai" was not very easily manœuvred.

She had a ram and was not very quick.

I was in "Empress" when "Quangtai" sank.

I had been on board "Empress" about 46 minutes.

Was not near "Quangtai."

10 It was about 20 feet from water to top of rail at bow. We were deeply loaded.

Shown log book.

I signed as officer of watch from four to eight.

Passed Lamock  $4\frac{1}{2}$  miles away.

I took a 4-point bearing.

To Court: When I came on deck our ship was not going very quick. After the collision we stopped our engine.

The "Quangtai's" engine was stopped when I came on deck. The engine was not working, the propeller made no noise.

20 Adjourned till 2.15.

Quartermaster Mr. Chang:

Chang Yue Ling, warned and examined through Ching Pih Kwang.

I was Quartermaster in "Quangtai."

On night of collision I was on duty from 10 to 12, on the bridge. I was to attend the wheel. I was alone at the wheel.

On coming on duty I was told to steer W.S.W.

I got those orders from the man at the wheel before.

At eleven I got the order W. by S.  $\frac{3}{4}$  S.

From that to the collision I got no order to alter my course.

30 In fact, I did not alter my course.

The collision was about a quarter to 12 or 11.45.

After ship struck, as soon as she struck, captain gave order to port.

I carried out that order and put to hard-a-port.

When the two ships touched the ship would not answer her helm.

I did not see the collision.

I left the wheel after half past 12.

I then stood away from the wheel.

The "Quangtai" answers her helm easily.

40 When going full speed, to get her off her course six points she goes very quick, but I do not know the time.

I saw no junks or fishing boats in the line of our course. I only saw the light of the lighthouse.

I left the cruiser at one o'clock. I was saved in one of the "Empress's" boats.

The wheel was on the bridge, not in a house.

RECORD.

—  
No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

There was no clock near the wheel.

I had my own watch.

The officer who stood by the compass gave the order to change the course at 11 o'clock.

It was 11 o'clock when the officer gave the order to change.

The watch officer told me it was 11 o'clock.

I looked at my watch when I got the order.

The officer always gives the time when he gives an order to change the course.

I don't always look at my watch. I knew very well the time without looking at the watch.

Looking at my watch, it is now 2.55 (correct).

I did not see any light of the "Empress's" before the collision.

Re-examined: They ring bells on the Chinese men-of-war.

I could check my watch.

Chen Chin Tang, Chinese, warned and examined through same:

Examined by Mr. Symonds: I was third officer of "Quangtai."

I was transferred from the Nan-Yang squadron.

I have been in the Navy 25 years.

It was a fine starry night, the night of the collision. I was on flying 20 bridge at time of collision, all the time of my watch, from eight to 12.

On bridge with me were the captain, navigating lieutenant, gunner, and quartermaster, the last witness.

Besides this there were on watch two in the bow, one signalman on the lower bridge, one at the stern.

Before 11 o'clock we were going W.S.W.

At 11, course was altered to W. by S.  $\frac{3}{4}$  S.

By the Court: The stern light was below the lower boom (spanker boom). At back of light it was screwed by iron.

The light was hung by a rope from the ensign staff in a round lantern. 30

The fitting was in the shipyard.

Examination resumed by Mr. Symonds: The Captain only gave the course.

Did not tell where he was to go.

I was on flying bridge just before the collision.

I was on the port side, the Captain was on the starboard side.

At 11 o'clock I saw the ship coming up and the Captain said we would keep our course.

It was about eleven o'clock the ship coming up was first reported.

The report from the stern sentry was before 11. 40

I first saw the lights of the steamer coming up at 40 odd minutes past 10.

I saw a white light.



About 15 minutes past 11 I saw a green light and white light. By white light I mean the masthead light.

I knew it was an overtaking ship.

Not long before time of collision I saw the red light.

At first I only saw the white light, then the white and green, and then the three lights.

I saw the red light over 10 minutes before the collision. I was watching from time to time, not the whole time.

The other ship was coming nearer.

10 Between time I first saw her and time of collision I did not observe any change in the course of the other ship.

When the other ship was coming closer I heard the Captain give no order except to keep your own course.

He gave that order to the man at the wheel.

The stern sentry reported ship coming up, and the Captain replied all right.

I saw the collision.

Describes it by models.

20 (Came up straight behind, scraped along our port side till her bow was past our bow, and then she sheered off).

The starboard bow of "Empress" struck "Quangtai's" port quarter.

It was about seven or eight feet from the stern.

A hole was made in the "Quangtai" below the lower deck, on port quarter.

The hole was made by the propeller of the "Empress" on her turning, the starboard propeller.

Cross-examined: At time of collision the Captain was directing the navigation of the ship.

At 10.40 the white light was straight astern.

30 I only saw one white light.

From time to time I turned round and saw the "Empress."

I saw three times the light was straight astern, only the white light.

The "Empress" all those times was straight astern. After that I saw the green light first.

The "Empress" was still straight astern.

I saw then the red and green together and the white.

When I first saw all three lights together the "Empress" was a little on our port side.

I first saw all three lights together about ten minutes before the collision.

40 From \* I first saw the light till ten minutes before the collision I was no change of course in the "Empress."

I think she came without any change of course from first until the collision.

† I saw her † Sic.

I was on port side of bridge.

The bow of "Empress" came within a few feet of me.

I was just beginning to turn away.

## RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

When bow of "Empress" passed me it just scratched a little the gun sponson below and a little further forward of me.

The "Empress" was rapidly swinging.

It was the "Empress" was going round, not the "Quangtai."

I do not know whether foretop mast or bowsprit of "Quangtai" was not broken.

The "Quangtai's" port bow did not strike starboard bow of "Empress."

It did not occur.

Before collision I did not hear shouting from "Empress" "port your helm." 10

Mr. White-Cooper admits there was no signalling from "Quangtai" before collision.

The "Quangtai" did not change her course before collision for a junk.

I saw a fishing boat light on the port bow, about half-past 11.

I saw no other junk light or junk before the collision.

I did not keep the log between 8 and 12.

I did not see a steamer overtake us and pass us after passing the Lamocks.

I do not remember a steamer ahead of us all the time on our port bow.

The order was given at 11 by Captain, course "W. by S.  $\frac{3}{4}$  S." 20

That was all he said.

I heard the order given.

Re-examined: Marks hole on model.

\* Sic.

I went down, attended the pump, and saw the \*

To the Court: The Captain came on deck occasionally.

When we first saw light the Captain was on bridge.

He went down for a little and came up again.

He had been on deck continuously for more than an hour before the collision.

He gave no other order before the collision.

After the collision he gave the order to port. 30

I cannot remember where bow of "Empress" was at the time, I was excited.

After I heard the Captain give the order to port I went down to attend the pump and can give no particulars, after that was on deck from 11 till collision.

At 11 I estimated the "Empress" was four or five miles away. I cannot account for only seeing one white light on "Empress."

I went below twice between 10 and 11.

Chang Ting Chau, Chinese, warned and examined through interpreter: 40

I was Navigating Second Lieutenant in "Quangtai."

I served two months in "Quangtai."

During that period I was Navigating Lieutenant.

I served seven years in the Navy.

My watch on night of collision was from eight to 12.

I was on the bridge.

There were also on bridge: one Captain, one Third Lieutenant, one Gunner, and one Quartermaster.

The tide was about two knots towards the shore.

The log was kept on bridge.

Fair copy was kept in cabin.

From eight to 12 it was my duty to keep the log.

At eight Captain was on bridge.

10 At time of collision I was standing near compass.

I was on bridge from eight to 12, all the time.

The Captain was sometimes below in Chart-room and sometimes came up on bridge.

When I went on duty I asked my predecessor the course.

At 10 course was altered to W.S.W.

Deviation 50 West.

At 11 W. by S.  $\frac{3}{4}$  S., was by Compass S. 71 W., true S. 66 W.

From eight to 12 I had charge of the navigation.

We would have been abreast of Pedro Blanco next morning.

20 We used an English Admiralty chart.

Our course would have taken us outside Pedro Blanco. Course was laid down beforehand by Captain.

We took bearings at Good Hope Cape light, and collision took place before we got bearings from Breaker Point. Last bearing was Good Hope Cape light.

Our charts were lost in the steamer.

I am familiar with regulations for preventing collisions at sea.

I first saw lights of the steamer about 11 p.m.

First I saw masthead light, two lights. They were directly astern.

30 The two were in line.

I saw them first myself, when ship came nearer.

At time of collision I saw the green light.

I looked round occasionally.

I saw the green light and red light directly astern come into view at different times.

First masthead light and then red and green at same time.

When I first saw masthead lights, I thought she was about eight miles away.

When I saw red and green I thought she was four or five miles off.

40 I heard her reported from man on watch in stern. He made his first report about 11.15 p.m.

Word is passed on by quarter-deck watch to watch officer. I was watch officer.

I did not report to Captain.

The third officer reported to Captain.

The Captain said to Second Lieutenant "keep her course."

As she got nearer I heard man in stern repeat the sighting.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
--continued.

## RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

The second time the Captain said "all right."

I don't know the time when the third report was made. I looked round.

The "Empress" was getting closer and closer.

The Captain showed no anxiety.

I thought she would keep out of our way.

I knew the Regulations that it was her duty to keep out of the way.

After the order at 11 o'clock I heard the Captain give no order to alter the course.

When Captain gave order to alter course he sometimes gave it to me, sometimes direct. 10

Bridge was 20 feet wide.

As regards the cruiser no alteration was made in the course.

I did not observe the change if any in the course of the "Empress."

I did not look to see.

The "Empress" was directly astern immediately before collision, say, five minutes before she appeared to be directly astern.

At this time we were travelling about nine knots through the water.

I did not take much interest in the overtaking steamer. I paid more attention forward than aft.

When the "Empress of India" struck I was looking forward. I heard a 20 shout from the stern.

Shows on model.

"Empress" striking "Quangtai" almost right astern slightly on port side of stern.

Her course was nearly parallel.

(Shows how "Empress" passed alongside of "Quangtai" and went off to port).

Captain of "Quangtai" gave order to port at time of collision, just at moment of collision.

He ordered stop the engines. 30

There is the usual telegraph from bridge to engine-room.

Mr. Sharpe admits immediately after the collision the engines of "Quangtai" were stopped.

Adjourned till 10 a.m. to-morrow.

H. S. WILKINSON, C.J.

Saturday, 7th November 1903.

Imperial Chinese Government (Owners of the Cruiser "Quangtai.")

*versus*

Owners of the British Steamship "Empress of India"

Chang Ting Chang, examination continued: 40

I went down from bridge after a few minutes to deck to inspect damage.

I saw one gig and one cutter damaged and one gun: the muzzle of the gun on the port quarter was pointing forward, the gun carriage was broken, a 40-pounder. The muzzle projects over the side than a foot.\*

That is all I saw on deck.

I went below to inspect damage.

The water was coming in under the water line. I don't know exactly where it came in. I can't point out on model where water was coming in.

When on bridge before collision I did not lose my presence of mind.

I was not anxious when I saw steamer coming from behind, because the  
10 overtaking ship ought to keep out of our way.

I saw no junk in our way.

I saw a small light on our port side.

Junks usually carry a common glass lamp.

They can be seen usually about two miles with the naked eye on a night  
like that.

We used opera glasses and telescopes.

It is my duty to scan the horizon from time to time with an opera glass.

I thought if the steamer would pass it would be very close when passing.

The Captain gave no order to give a signal to the overtaking steamer.

A safe distance to pass an overtaken steamer would be a mile—in my  
20 experience in the Chinese Navy.

(The ram of the "Quangtai." Tracing of plan put in. Admitted  
correct.)

Witness: The ram projects 13 feet.

She takes about six minutes to make a complete circle.

The diameter would be about 700 yards, circumference over 2,000 yards,  
with the helm hard over.

I have not tried by myself, I was told. I was only there two months.

In that time I was once to Hong Kong and back and was not in  
30 manœuvres.

The bowsprit projects 90 feet long.

I left "Quangtai" in "Empress's" boat at 1.30 a.m.

The "Empress" was about one mile off.

The effect of collision was not to take way off "Quangtai."

The "Quangtai" drifted, but I don't know which way.

I saw "Quangtai" sink stern first.

After collision, I saw some junks just before "Quangtai" sank. I don't  
know whether any junks saved anything from "Quangtai." The junks came  
very near, not alongside. That was shortly before she sank.

40 Light of junk on port side before collision, was about two or three  
miles off.

Cross-examination deferred.

Wang Toon (Chinese) warned: I am employed in Foochow Arsenal. I  
was student of designer when designer built ship "Quangtai." The original  
plans are in Foochow Arsenal. These plans are correct.

Put in, Exhibit D 1, &c., and admitted.

RECORD.

No. 5.  
Chief Jus-  
tice's Notes  
at Hearing  
—continued.

\* Sic.

RECORD.  
 No. 5.  
 Chief Justice's Notes  
 at Hearing  
 —continued.

Chang Ting Chang cross-examined: I was navigating lieutenant on "Quangtai."

The Captain was actually navigating the ship that night and the whole of my watch from eight to 12.

The Captain from 11 till the collision did not leave the bridge.

All orders for navigation were given by Captain.

I first saw "Empress" at 11.

Before that I heard there was a light and at 11 I saw it. At that time, 11 o'clock, the light was dead astern, two masthead lights.

When I saw all four lights she was nearly as possible straight astern.

Every time I looked round after that I saw the two side lights.

I saw "Empress" about five minutes before collision, all four lights were directly astern.

After that I did not look round.

Five minutes before collision the "Empress" was directly astern overtaking us quickly. I knew she was overtaking us. I did not take the trouble to look round again.

At 11.15 first report made of "Empress" by look-out astern.

The "Empress" was about seven miles astern then and captain then immediately gave order that "Quangtai" was to keep course.

If captain had not given order the steersman would not have altered course.

The "Quangtai" never did anything except to keep her course.

When I see an overtaking ship come right astern I think it is the duty of the overtaken ship to do nothing but keep her course.

(Shows position of ship at first contact and afterwards.)

The two aft boats were broken and the gangway, not the fore boat.

The fore topmast had been lowered on account of the typhoon.

At no stage of the collision did the bows of the two ships come together.

"Quangtai's" bowsprit never struck the "Empress" forward.

"Quangtai's" port bow never struck starboard bow of "Empress."

Just before collision we did not change our course for a junk.

From eight to 12 we never altered our course for a junk.

We were making for Hong Kong.

A steamer passed us near Lamocks on our port side.

I saw stern light of that steamer on our port bow up to time of collision.

Our Captain could speak English.

(Referring to "Quangtai's" deck log.)

When ship heads W.S.W. our compass was 5° deviation. We had tested for this voyage.

It was about 1 $\frac{3}{4}$  hours from collision till ship sank.

The pumps were worked.

I suggested to put a sail round stern of ship; that suggestion was not adopted.

There ought to be collision mats on board, but I don't know whether they were or not. I was only two months on board.

I know there was no attempt to use a collision mat.

I made up those entries for our watch.  
 The time of altering course is put in remark column.  
 The actual course in the course column: at nine course was W.S.W. At  
 10 course was also W.S.W.  
 Remark column: 9.30 altered course to W.S.W.  $\frac{7}{8}$  W. mag.  
 The entry of Captain at 9.30 was right.  
 At 10 o'clock we altered course again back to W.S.W., and the change  
 was omitted to be entered.  
 During whole of watch in weather column is "M" mist; could see stars  
 10 sometimes; saw moon after collision; could see side lights five miles away.  
 Wind all through S.W., force two.  
 Was it not nearly a calm, and where was "Empress"?  
 I did not notice when ships were stopped.  
 Speed. They were shown by patent log: between six and seven,  $9\frac{1}{2}$  miles;  
 between seven and eight,  $10\frac{1}{2}$  miles. (Average speed, six to eight—10 knots).  
 10.38 Good Hope cape light ahead.  
 I cannot say exactly how far away.  
 9.30 altered to S.W. by W.  $\frac{7}{8}$  mag.  
 (Mag. within  $\frac{1}{4}$  degree of true.)  
 20 S.W. by W.  $\frac{7}{8}$  W. = S. 71 W.  
 Allowing for error S. 66 W.  
 Next in remark column: 11 altered Co. W. by S.  $\frac{3}{4}$  S.  
 There were changes of courses not put down in "remark column."  
 Entries at 12 were made by the gunner while on board the "Quangtai"  
 before the collision.  
 At that time we did not know the run, and the run column was left blank.  
 The gunner took the observations.  
 The instruments were on the quarter deck.  
 The log was kept in the chart box on the upper bridge. Clean log was in  
 30 cabin. Chart in chart room. I saved the log.  
 I did not save the others; I was attending to other work. No other logs  
 were saved.  
 The last entry in the remark column was made by me, within the last few  
 days.  
 At 10 o'clock there was a change.  
 I can recollect no order not put in chart column.  
 Re-examined: W.S.W. in degrees is S. 67.30 W. compass, and true  
 S. 62.30 W.  
 S.W. by W,  $\frac{7}{8}$  W. (mag.) S. 66 W., difference  $3\frac{1}{2}^\circ$   
 40 At 9.30 tide set in to land.  
 The change at 9.30 was made on account of observation.  
 The Captain had the same idea about the tide, but the men went down to  
 the pumps.  
 Pumps—two hand pumps—and pumps pumped by the donkey engine in  
 engine room.  
 I was in last "Empress's" boat from "Quangtai."

RECORD.

No. 5.  
 Chief Jus-  
 tice's Notes  
 at Hearing  
 --continued.

RECORD.

—  
 No. 5.  
 Chief Jus-  
 tice's Notes  
 at Hearing  
 —continued.

To the Court: Directly the helm is put over the ship turns at once. It was about 11 p.m. I noticed that "Empress" eight miles off. We were going 9½.

Song Hwei-Ching, Chinese, warned and examined through interpreter:

I was assistant gunner in the "Quangtai."

In Navy 15 years.

I was on watch on night of collision, from eight to 12. I was running about, walking about; no fixed place of duty.

Saw light of steamer a little after 10 o'clock. 10

Saw a white light; was standing then on starboard side of bridge.

I reported to Captain; Captain was on duty at time. I reported ship aft. Captain answered, said does not matter.

I thought steamer was away off six or seven miles.

I watched her from time to time.

Saw side lights come into view; about three or four minutes after mast-head light.

Saw with naked eye.

Green light I saw first, and then the red.

I came to the conclusion steamer was overtaking us. I reported again to 20 captain.

Captain said, "Does not matter."

I came down from bridge every half hour to see men were on station.

I had to muster the men.

I called the names of men and told them to go to stations, not every half hour, once a watch.

I thought the ships would collide.

I was watching the ship shortly before they collided.

When she was close I saw both red and green lights.

I was on starboard side of bridge. 30

Shows ships coming together.

(The other ship ran along the side and then sheered off to port.)

I went down to the deck—the gun on the port side was carried away; muzzle knocked on board; gun-carriages were broken, capsized.

The cutter forward was turned in.

The two aft guns were turned in. No damage to the third gun, gun of same size.

I went below to inspect damage.

The water was coming in below the gangway below the water-line.

I went with the Captain. 40

I saw the water coming in; it was rushing in from the hole below the water-line.

This was before the officer from the "Empress" came on board.

I did not go down with the officer from "Empress."

I thought the "Quangtai" was sinking very quick.



Engine-room is separated from other part by bulkheads. No water-tight door—only a door. RECORD.

The door was closed.

The last line in log-book was written by me. I wrote the last line and the last three entries about the patent log and the knots speed in last lines.

I had to look after the patent log and heaving the log.

I wrote in the last line; it was exceptional.

I did not write the last line.

Only the speeds and patent log.

10 Cross-examined: I did write the last line—the whole of the last line.

I can write English. I can't write very well.

On the bridge during my watch: captain, navigating lieutenant, third officer.

Captain sometimes went down to chart-room—not all the time on bridge—all the time either in chart-room or bridge.

When I first saw "Empress" I was on starboard side near the wheel.

I saw two white lights.

Afterwards I first saw the green and then the red light.

I saw the red light nearly same time as I saw green light.

20 After that, when I looked at "Empress," I always saw both red and green.

When I happened to look at the "Empress" she was right astern of "Quangtai."

I was on "Quangtai" seven years.

I know what a "collision mat" is.

We have them on board.

We used them for exercise.

On that occasion the collision mat was brought up, but it was only a very small piece. They had no big pieces.

30 The collision mat was not put over the hole; the tide was too strong and the mat too small. By the tide I mean the water rushing in.

The fore-topmast was lowered, only the fore-topmast.

Lieutenant Chang Ching Chang recalled: I have marked the courses on this chart from the Lamock ahead till the collision.

Adjourned till Tuesday, 10th November, at 10 a.m.

H. S. WILKINSON, C.J.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

RECORD

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

Tuesday, the 10th day of November 1903.

Imperial Chinese Government, owners of the cruiser "Quangtai,"

*versus*

Owners of the British steamship "Empress of India."

Appearance as before.

Mr. White-Cooper calls—

Chu Chin Pang (Chinese) warned: I am at present in command of the cruiser "King-Ching," lying down the river. Before getting that command I was in command of the "Quangtai" for four years. When in command of "Quangtai" I have tested her on various occasions when in the open sea. 10

Her turning capacity with helm hard over at 10 knots the diameter was a little over 700 yards, and the time 13 minutes. Of course not a perfect circle; the circle would be nearly 2,400 yards very nearly.

Draws sketch of evolution.

Exhibit F.

The helm being hard over takes considerable speed off.

To Court: I usually put ship full speed before putting the helm hard over.

In those circles she is about 10 seconds after the helm is put hard over before she begins to turn. 20

To Mr. Sharpe: She would swing through fewer degrees in first minute than in second.

The "Quangtai's" propeller was right-handed.

Lin Sin Tun (Chinese), warned and examined through interpreter:

I was a sailor on the "Quangtai," and was on watch on the night in question. Watch from 11 to 12, at the stern. My watch was in the stern, about half way between the wheel and the port bulwark.

I walked about from port to starboard.

After coming on watch, a little while after, I saw a light, a white light.

In a little time I knew it was a steamer's light, not at first. 30

I knew it was a steamer's light, I could see distinctly. I watched the light.

I saw another light, another white light.

They were not in a straight line, a little inclined.

Afterwards I saw a green light.

I thought it was a few miles away, about two or three miles away.

I reported to the bridge, "Lights astern."

There was an answer from the bridge "Understood," or "We know it," or "All right."

I made first report. I can't remember the time. 40

It was immediately I saw the white light.

When I saw the green light I reported again.

There was an answer from the bridge, "We know."

I saw many electric lights beside the masthead lights.

When steamer came very close all the men on the quarter-deck shouted out "Will soon collide," and so on, shouting out.

(The witness describes on model that "Empress" passed the side of the "Quangtai" without touching until she came round and touched "Quangtai" with stern.)

To Court: (Again shows starboard bow of "Empress" touching port side of "Quangtai" about bridge.)

All this time he was standing in the stern. When the "Empress" came  
10 alongside I went to starboard side of "Quangtai."

We were struck on the port side.

The bow of the "Empress" did not strike us, the stern struck us. (Points out between the third and fourth port-hole on the port side of model).

After feeling the touch of the other ship I went close to the port side.

(Shows what he saw when he went over to port. The "Empress's" stern was touching the port side of the "Quangtai," and the "Empress" was swinging over to port.)

To Mr. White-Cooper:

After the collision I went down to attend the pump. I saw the boats  
20 carried away and the guns damaged. The three after port guns.

I did not see distinctly. I did not pay much attention to it.

Cross-examined: Soon after I came on duty I saw the masthead light of "Empress."

That would be a few minutes after I came on duty.

Shortly after that I saw a second white light.

Shortly after that I saw the green light. I never saw the "Empress's" red light.

To Court: When I saw the two white lights one was only a little higher than the other.

I did not notice whether the lower light was to the right of the higher or  
30 not.

I looked at the white light of the other ship from both the port side of the gun and from the starboard side. From both positions the white light appeared a little on our port side.

I did not look from straight behind the gun.

The stern light of the "Quangtai" was an oil light.

The smoke of the "Quangtai" was blowing.

I can't remember.

When I went to the port side to look at the "Empress" after the collision  
40 I had to get on the bulwark, I could not see over the poop from the deck.

Wong Tah Chen (Chinese), warned and examined through interpreter:

I was a sailor of the "Quangtai" when the collision took place.

My watch was from 11 to 12, port side of the fore-castle. I did not see the ship coming up from behind.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

## RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing—  
continued.

After the collision I saw no damage to the bowsprit, and no damage to the jibboom, nor the whiskers (the bowsprit guys).

No cross-examination.

Yang Seng Tao (Chinese), warned and examined through interpreter:

I was sailor on "Quangtai" on night of collision.

My watch was from 11 to 12, on starboard side of fo'castle. I did not see the "Empress" coming from behind.

The bowsprit of the "Quangtai" was not damaged, nor the jib-boom nor the whiskers.

No cross-examination.

10

Mr. Sharpe and Mr. White-Cooper: It is admitted that the speed of the engines of "Quangtai" was not altered until after the collision.

Chen Chuan (Chinese), warned and examined through interpreter:

I was signalman on "Quangtai" on night of collision.

My watch was from eight to 12 on lower bridge.

On night of collision I saw no lights of an approaching steamer.

There was a collision that night.

I went down to call the watch, as soon as I came up I saw the lights.

That was 11,50.

I know it was that time I went down to call the watch.

The light I saw when I came up from lower deck.

We were near colliding.

The other ship was very near.

I could not tell the distance.

I saw white and green lights.

I shouted out—just shouted out.

I was on the port side near the gangway.

I ran to the starboard side.

I saw the ships colliding.

Shows on model bowsprit of "Empress" over port quarter of "Quangtai,"<sup>30</sup> and the "Empress" then scraping along the side of the "Quangtai" (by the cannon he says) and then sheering off to port and the stern of the "Empress" over the port quarter of "Quangtai."

The damage to the gun; I can't say by what part of the "Empress" it was done.

The after gun, one gun thrown in.

The boats and davits were damaged. I did not see the forward boats, I only saw the stern boat damaged—the after boat on port side.

Cross-examined: When he came up from below to the quarterdeck I did not shout to the officer on the bridge.

To Court: I did not observe how the smoke of the "Quangtai" was blowing, I was excited.

20

40

Kou Ta Teh (Chinese), warned and examined through interpreter: **RECORD.**  
 I was chief gunner of "Quangtai" on night of collision.

My watch was the morning watch from four to eight.

Until shortly before the collision I was asleep.

I was wakened up by the noise from the sailors.

When wakened up I was sleeping on the quarterdeck.

I saw a steamer approaching. She was about a hundred yards off at the time.

I saw a white light and green light, no other lights.

10 I saw the ship come in contact with the "Quangtai."

Shows on models how ships came together.

Bow of "Empress" touched the "Quangtai" on port side between mainmast and mizen mast, glanced off. "Empress" sheered to port and her stern struck the port quarter of the "Quangtai."

I went below to inspect the damage.

The water was coming in near small magazine, damage done near small magazine.

The small magazine was filling with water.

20 I tried to get in but could not. The water inside pressed against the door.

Two hand pumps were set to work.

We broke open the door. We could not get into the magazine. It was full of water.

Chang Ting Chai re-called :

To Mr. Sharpe: Our deviation card was made up in Shanghai and our deviation for W.S.W. was 5° West.

The card was put up in chartrooms soon after leaving Woosung.

30 To Court: The deviation table was made on the 17th and 18th of Chinese month.

The ship was swung outside Woosung (17th, Sunday the 9th and 18th, Monday the 10th).

Left Woosung on the 19th.

The ship lay at Woosung.

The deviation table was made up two months ago. A quarter was chequed W.S.W. quarter on the 17th and 18th.

The ship when we swung was inside the outer bar, below the Custom House.

I compared the deviations on the way down by the sun.

We did it twice; the deviation was right.

40 We were burning Japanese coal, I believe.

It made smoke.

The smoke blew nearly aft, a little to the starboard side, that is over the starboard quarter.

Mr. Sharpe not objecting.

**RECORD.**  
 No. 5.  
 Chief Justice's Notes  
 at Hearing  
 —continued.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

Mr. White-Cooper calls—

Lin Kin Chang, warned and examined through interpreter: I was Gunnery Lieutenant on the "Quangtai" on the night of the collision and I was below in my cabin when the collision occurred. I went up on the bridge shortly after. I stayed with the Captain.

The Captain remained on the bridge until shortly before the end.

I went off in the last boat.

The ship heeling over threw me overboard and I was picked up.

I was with the Captain near the gangway. The Captain was thrown backwards. I did not see him after I was thrown in the water. There was 10 awnings on the deck.

The water rushing in when the ship heeled over threw the Captain in on the deck. I had something to hold.

The Captain had nothing to hold and was carried in by the water.

The ship went down immediately afterwards.

Cross-examined by Mr. Sharpe: The Captain could speak English. When I went up on the bridge, I saw one of the officers of the "Empress" talking to Captain on the bridge.

I can't say whether there were boats nearly empty alongside.

Q.—Did you hear the foreign officer in a small boat shortly before the 20 ship went down cry out in English and the Captain reply in English?

A.—I did.

I understand a little English. The Captain said "I won't leave the ship until everyone has left."

That was spoken in English.

He said in English—"Wait until all the ship's crew come into the boat, and I'll come too."

Q.—Did you hear another foreign officer say the same and get the same reply?

A.—I heard it only once.

The first time the foreign officer asked "How many lives still on board?" 30 and the Captain said "Half still on board."

I can't tell how long that was before the ship sunk.

This concludes Plaintiff's case.

Adjourned till 2.30.

2.30 p.m.

Mr. Sharpe opens for Defence.

Story of "Quangtai" inconsistent with injuries to "Empress of India."

Two stories irreconcilable.

Law: We admit that it is *primá facie* duty of overtaking ship to keep 40 out of the way.

The correlative duty of overtaken ship is to keep her course and speed.

Art. 21.

No presumption that overtaking ship to blame.

## Marsden 39.

Overtaken ship must justify departure.

Marsden, 39 and 475, 476.

Captain in room occasionally—in and out.

Two officers on bridge—extra second and third.

Quartermaster on bridge, besides quartermaster at wheel.

Look out crow's nest and forecastle.

Speed about 14 knots.

Travelling over ground nearly 15.

10 9.36 "Empress" had just passed Lamocks.

Changed course to S. 65 W. true.

About nine minutes after 9.45 white light seen dead ahead of "Empress," which proved to be of the "Quangtai."

The "Quangtai" from this time was ahead, with tendency to open out on starboard bow.

"Empress" kept same course.

A little before 11.30 about 20 minutes before collision, light of "Quangtai" opened out further on starboard bow, until then light was nearly dead ahead.

In ten minutes when "Quangtai" had widened out for about a point.

20 At 11.38 Captain came out to change course.

He remained out some time. While there light still broadening out.

11.45, when "Quangtai's" light had broadened out about three points, an unlighted junk seen between two courses, about one point on starboard bow of "Empress," the "Quangtai" being three points on starboard bow.

The junk being unlighted, course could not be made out.

"Empress" starboarded her helm about  $\frac{1}{2}$  point.

Captain hearing order, came out and was told by second officer that he had starboarded and showed position of junk.

30 Captain remained a short time till white light of "Quangtai" broadened till it was four points.

It was seen that junk had crossed course of "Quangtai" and was crossing course of "Empress," was going about W.S.W.

Then second and third officers perceived "Quangtai" was swerving to port.

Ordered starboard, and instantly after, when "Quangtai" was seen to be swinging round.

Then "hard-a-starboard."

Orders practically simultaneously.

40 Captain of "Empress" and officers hailed "Quangtai" to port. "Quangtai" swung round to "Empress's" starboard bow.

Immediately after "Quangtai's" red light was seen.

"Quangtai" passed between "Empress" and junk.

Port bow of "Quangtai" striking "Empress of India."

At time of collision "Empress" had come round three points.

Captain M. telegraphed to reverse port engines.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

RECORD,  
 No. 5.  
 Chief Justice's Notes  
 at Hearing  
 —continued.

Hulls swung together very rapidly.

First mark on "Empress" was made by the bowsprit of "Quangtai.")

Presently after port bow of "Quangtai" struck starboard side of "Empress" near bridge.

Gun-sponson of "Quangtai" struck "Empress" amidships. Both heeled over and ram inflicted grazing blow on "Empress," a little forward of bridge.

"Quangtai" swung out, got under counter of "Empress."

No doubt "Quangtai" was struck by propeller of "Empress."

Time, from order to hard-a-starboard till actual impact was very little over one minute, perhaps  $1\frac{1}{4}$  minutes.

It was impossible for "Empress" alone to avoid collision, "Quangtai" ought to have ported. 10

Immediately after first impact, Captain put port engine ahead again, and starboarded astern, to keep off "Quangtai." "Quangtai" having ported frustrated manœuvre.

"Empress's" suggestion: That "Quangtai" did not see junk till close to it, and lost head.

"Quangtai" solely to blame.

Captain Marshall calls—

Oswald Percival Marshall (British), sworn: 20

I hold an extra master's certificate about 21 years. I am lieutenant in Royal Naval Reserve. I am now in command of the "Empress of India." I have been in command about 13 years, ever since she was built.

On the voyage in question, we left Woosung early on Sunday night 16th August. All went well till evening of Monday.

That evening weather was very fine, very clear, very dark.

No moon till after collision.

An excellent night for seeing lights.

Wind was very light, what there was was easterly. That was my own observation. 30

By consent witness gives report of Cape of Good Hope Lighthouse.

Direction S.E., E.S.E., force 1 to 2. (Ex. G.)

Steaming speed 14 knots through the water.

Between the Lamocks and Cape Good Hope light over ground we made 14.9.

Officers from 8 to 12.

Mr. Davis, extra second officer.

Mr. Greenstock, third officer.

I was on bridge several times during the watch.

Two quartermasters, one on bridge, one on wheel. 40

Two look-out.

One on fo'castle head.

One on crow's nest.

Boatswain's mate and full watch about decks.

Our lights were burning brightly.



Mr. White-Cooper says there is no question about lights.

At 9.36, five miles after passing the Lamocks, changed course to S. 65 W. true.

Cape Good Hope reported at 11.01,  $16\frac{1}{2}$  miles off abeam.

Soon after altering course after passing Lamocks saw two lights, a light on port bow probably stern light of steamer, and the light in question nearly ahead slightly on the starboard bow  $1^{\circ}$  or so, enough to say it was on starboard bow not on port.

At 11.38 next changed course.

10 I came on deck to make the change.

I hauled her in  $4^{\circ}$  round Breaker Point.

At this time the light was a good point on starboard bow. I remained long enough after changing our course to see that light was still broadening on starboard bow. Then I went to my room. My room is on the bridge.

When in my room I soon after heard an order to starboard. I went on bridge to see why.

When I got on bridge the light of "Quangtai" had broadened to three points.

While I was on the bridge it continued to broaden.

20 The officer of the watch, the extra second officer, told me why he starboarded.

The light continued to broaden for a time.

There was no suggestion of danger up to that point while light continued to broaden.

Very soon after I went on the bridge it appeared to me the "Quangtai" was closing.

I gave the order to starboard. As I gave that order I was sure she was closing and gave the order hard-a-starboard.

The order was starboard—was carried out.

30 To save time I worked the telegraph myself and gave the order to reverse the port engine.

The result was the "Empress" swung rapidly round to port.

The "Quangtai" still closed on us and I hailed her loudly to port her helm.

I saw no sign of that having been done.

She continued to come in.

I think all the officers hailed her to port. I am sure one.

There is no doubt the "Quangtai" was well within range at the time.

40 him After the collision I was hailed by one of the officers in the boat. I heard and he was much further off.

Witness shows on models position of impact.

The bluff of her bow taking us under the green light was the first I saw.

Afterwards subsequent examination leads me to believe that the bowsprit I presume took us under the fo'castle.

What I saw, the bluff of the port bow of "Quangtai" struck us on starboard side at fore gangway.

The "Quangtai's" stern swung towards us rapidly.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

I concluded she was under port helm, if any.

Until then she was under starboard helm undoubtedly.

After the first impact as she was swinging alongside I stopped the starboard engine, put the port engine that had been reversed full speed ahead, the object being to stop the swing that had now become very rapid.

But for the "Quangtai" being on a port helm that I consider would have stopped the swing, especially if the "Quangtai" had kept her speed.

The starboard propeller ought to have been stopped.

There was time to stop after the order was given, and we did not feel the propeller grinding on the "Quangtai." I believe we would have felt it if the engine had been going. It is my opinion that the starboard propeller was stopped. 10

When she struck us her port sponson struck us. She seemed to swing off and the stern of the "Quangtai" got under our counter and grounded on our propeller.

After that we used the engines to keep her near the "Quangtai."

We sent eight boats and the "Quangtai" had two in the water.

The first boat was despatched a few minutes after the collision.

The "Quangtai" sank at 1.27.

The "Empress" was quite near. The boats stood out for some time. 20

There was a moon and there was no question of anyone being left.

The "Empress" stayed till 4 o'clock.

There was a considerable swell towards the end.

If "Quangtai" had not changed her course we could have overtaken and passed the "Quangtai" a good quarter of a mile.

The usual course to Hong Kong is inside Pedro Blanco.

I have never gone outside.

I have never known a ship go outside except by typhoon or fog, in clear weather not.

It was our intention probably to change our course again at Breaker Point. 30

At 11.38 when we changed our course the "Quangtai" was something less than a mile away.

Between my order hard-a-starboard to the collision was from a minute to a minute and a half.

The "Empress" swung about three points from the hard-a-starboard helm and reversed port engine, judged by subsequent experience.

I have laid down the "Quangtai's" courses on the chart as given in this Court.

That course does not make it possible for the "Empress's" two side lights to be seen an hour before the collision, taking the courses we actually steered and the courses they say we steered. 40

It does not put the "Quangtai" as widening on our starboard bow, as we say they did.

My opinion is that the courses they have given are unreliable.

Cross-examined: There is the rough deck log, deck log, engineers'.  
 The rough deck log is entered up either during or at end of watch.  
 Some things, as change of courses, are noted soon after they take place.  
 The first officer writes up deck log from rough deck log and observes any  
 improbabilities.

RECORD.  
 No. 5.  
 Chief Jus-  
 tice's Notes  
 at Hearing  
 —continued.

When we passed the Lamocks, at 9.16.  
 Looking at deck log: Course at 9.36 was?  
 Going down to Hong Kong and passing the buoy on scene of wreck.  
 I would always give the wreck a very wide berth.  
 10 I think I should not give her less than a mile.  
 Overtaking a steamer in the daytime, I consider anything about  $\frac{1}{4}$  mile  
 a safe distance to pass her, always given fine weather.  
 At night I see stern light of steamer, I consider  $\frac{1}{4}$  mile ample distance.  
 The fact that the ship ahead may manœuvre, may alter her course.  
 We altered our course about 10 minutes before the collision, The  
 "Quangtai" was then a good point on our starboard bow. I put the distance  
 then at something less than a mile.  
 At 11.38 we edged in to shore.  
 As we looked at the cruiser the angle widened.  
 20 That would be the effect of our overtaking her and the fact that the  
 courses widened.  
 If they were on parallel courses the light would widen, but not to the  
 same extent.  
 My course was inside Pedro Blanco.  
 I have heard that the "Quangtai" was going outside.  
 The courses would not necessarily converge before Breaker Point.  
 When we first saw the "Quangtai" alter her course to port?  
 When I came on deck about 11.45 on hearing the order "starboard," I  
 should say the "Quangtai" was something less than  $\frac{1}{4}$  of a mile off, and  
 30 she rapidly reduced the distance to nothing.  
 The turning circle of the "Empress" with the helm only is 1.8 of a mile  
 ( $1\frac{8}{10}$ ths of a mile).  
 Referring to exhibit: Why did not you port your helm and run under her  
 stern?  
 Because I considered we would have run the "Quangtai" down.  
 Mr. White-Cooper refers to Rule 22.  
 If positions on that plan (Exhibit H) are correct, I consider the porting of  
 our helm would have been dangerous, I do not say impossible.  
 Two vessels approximately in those positions. We were running away  
 40 from her all the time, while if we resumed our course we would have found it  
 very hard to keep clear of her.  
 It was never a question of crossing her bow, as we should have turned  
 completely round on her starboard helm without doing so.  
 At 11.46/40 when the risk of collision first occurred.  
 If we had ported and reversed our starboard engine, the reverse of what  
 we did, and the "Quangtai" had resumed her course, we must have run  
 into her.

RECORD.

The blue line joining 11 W. 46/40 would be between half a mile and a quarter mile.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

I came on the bridge about 11.45 or soon after 11.45.

I did not take the time.

I had been on the bridge about a minute after I heard starboard order given. Then I gave order "starboard" and "hard-a-starboard" in rapid succession.

Adjourned till to-morrow morning at 10 a.m.

H. S. WILKINSON, C.J.

Wednesday, 11th November 1903.

10

Oswald Percival Marshall (cross-examination continued) :

Puts in plan showing witness's account of collision and position of vessels from 11.45 to 11.48, time of collision (Exhibit J).

At 11.38 when course was altered 4° to starboard. It was after that that the cruiser appeared to be a point on our starboard bow. I did not take a bearing, but about a point. That would bring us nearer the course of the cruiser, provided cruiser kept the course she was steering.

The compass on "Empress" is out on the bridge, distinctly not closed in.

I did not take the bearings myself, not by the compass. I just gave an estimate, one gets a very good idea of a point after being at sea some time. 20

I formed no estimate of the speed of the "Quangtai" except that we were overtaking her.

Exhibit J.

Referring to Exhibit G. (?)

The distance taken in the plan between the courses of the two ships is to start with, taken at about 300 yards.

Q. If "Quangtai" had kept her apparent course would your alteration of course not bring your courses nearer?

A. No. She appeared to be diverging after the change of course.

I judged that by rapidity the bearing altered after the course was changed. 30

I cannot give absolute reasons why I judged the broadening was due to her divergence and not to our overhauling. The fact remains I did.

You proposed to pass her at a distance of a quarter of a mile.

I don't think the quarter of a mile entered into my consideration at that time.

I had no doubt it would be all right.

That is the junk.

The junk was seen by the officer of the watch, and he pointed out the position to me, that was at 11.45 or soon after, I came out on hearing the order a little to starboard. 40

I had no doubt the cruiser was overhauling the junk, and none that we were overhauling the junk. RECORD.

I considered we would have passed the junk long before passing the "Quangtai."

The junk had no light on her, and we would have passed some 300 or less than 300 yards off.

Our ship is 150 yards long, 485 feet over all, 460 feet for practical purposes.

The course of cruiser appeared to be altered to starboard.

10 Except that the bearing when I came on deck from time to time, which always appeared to me to be widening her course, was not a matter of deep concern to me.

The officer of the watch will probably be able to give more information.

I came on bridge when I heard order to starboard.

That was about three minutes before collision.

I did not think we were too close. I thought the vessel was closing and altering her course, which was intelligible, knowing the position of the junk, my order then to starboard was immediately followed by hard-a-starboard and was practically the same order.

20 The junk being there, and we knowing the junk was there, we saw there was an excuse for alteration.

I did not anticipate that she would alter her course.

I never have imagined she would have altered her course towards us.

The junk was on "Quangtai's" port bow.

I could not say whether there were obstacles on her starboard bow, but others could, obstacles with lights would certainly have been seen by us.

The effect of starboarding our helm to avoid the junk would make the course of "Quangtai" appear to be widening.

Referring to official log.

30 Statement of John Baillies.

I heard no order to resume course.

Q. The effect of coming back on course would make the "Quangtai" appear to be closing in?

A. I don't think she ever came back to her course.

It is impossible for me to give evidence of degrees of compass when I did not look at it.

I did not look at the compass at all myself.

It was not always conjecture.

The bearings were practical.

40 In forming an idea of a quarter of a mile that, I think, is a matter of experience. It is not a matter of exact measurement.

The other ship's course was unexpected; she stopped broadening and then the order to starboard and hard-a-starboard were given in rapid succession.

When we saw this we reversed the port engine which would have the effect of lessening the speed, certainly.

Port engine was reversed for about a minute.

RECORD.

—  
No. 5.  
Chief Jus-  
tice's Notes  
at Hearing  
—continued.

Q. Assuming that the entry in the Engineers' log is port engine stop 11.47, Ast. full speed 11.47, ahead full speed 11.47, is that what you call reversing port engine for about a minute?

A. I call that reversing about a minute.

I do not consider that in the engine-room fractions of a minute are taken. In the hurry of reversing I don't think the fractions of a minute could be taken from the clock.

The order stop and full speed astern was, in fact, one order, with a pause in the telegraph at stop.

In fact the order on the telegraph, full speed astern, remained on the telegraph till after the impact, the "Quangtai" swinging alongside, the port engine was put full speed ahead to stop the swing, and the starboard engine was stopped. 10

I do not say that the times given in the engineer's log are not correct.

I don't think I ever said the impact was at 11.48.

The port engine was put full speed astern at 11.47 before the collision. The collision took place at 11.48.

Fractions of minutes are important, but they cannot be booked to fractions of a minute.

The "Empress" was still somewhat astern of the cruiser when I noticed 20 the change in her course, she was about four points on our bow.

Looking at the plan, I would say the cruiser altered her course about six points, 76° roughly.

I have taken course of cruiser well within her turning powers.

She would take three minutes to turn these seven points, taking 13 minutes to do the circle.

I think a little less than three minutes.

I don't pretend the plan is exact, I have worked it out well within her turning powers.

Q. If you had reversed both your engines when you first saw the puzzling 30 movement of the cruiser?

A. I think the collision would not have taken place in the same manner, but we would have run right into her.

With both engines reversed going at 14 knots, I believe we would have stopped the ship in a mile, but I have no experiments.

We could not have stopped her in less than a mile, not much.

It is to be observed that engineers may not be standing at levers.

The turning is quicker in the first half circle.

With one engine reversed she would then have lost her way and practically 40 stopped.

If the two ships started at the same time it may fairly be supposed that our circle would be inside that of the "Quangtai."

Q. When we\* saw the "Quangtai" edge in towards you, was it not your duty as a careful seaman either to starboard your helm or slacken your speed?

A. I did both.

The time was apparently too short for us to get out of her way.

\* P. Youz.

I take it the ships were too near together ?

I do not admit that.

If we had been half a mile apart the cruiser would not have caught us.

If we had given half a mile I doubt if it would have occurred.

When we put port engine full speed astern that would bring our stern round.

We stopped when "Quangtai" came alongside.

There are four blades to our propellers.

All four blades were injured.

10 Q. Then the blades must have been reversing at time of impact ?

A. I think not.

My own idea after a careful observation of the blades in question is that the "Quangtai" grounded on one blade which has sustained most damage. They don't project beyond the line of our ship. The "Quangtai" being lower than us got under our counter. I think the "Quangtai" may have grounded on one blade and that the other blades may have been bent by the engine turning as it does when practically stopped or by the weight of the "Quangtai" turning it twice. The one blade is bent one way and the three others the other way. If the propeller had been revolving they would all have been bent in one way.

20 This is not an expert opinion.

I was on the bridge when collision occurred on starboard side of midships.

I did not notice whether the jibboom of the cruiser was injured in any way.

I think it more likely that the order to port on the "Quangtai" was really executed as an order to starboard.

There was room to go between us and the junk.

I consider it distinctly unreasonable that they should have starboarded at all, but having done so they should have resumed their course.

Having passed the junk she should have resumed her course.

30 There is a reason for her altering her course though in my opinion wrongly.

Re-examination : On this sketch (Exhibit J.) I have made of approximate courses, I have not dealt with "Quangtai" as hard-a-starboard as much as if it had been hard-a-starboard. She would continue more at normal speed not being hard-a-starboard.

11.38 when I changed course to starboard.

If ships were as other side say—that is on same course—the "Empress" being dead astern at a distance of three-quarters of a mile, in these circumstances what would have been effect of 4° to starboard—that would have had 40 the effect of turning the "Quangtai" to our port side, and we would have passed the "Quangtai" on our port side.

The "Quangtai" was never from the time we observed her on our port bow.

To Court : The advance of "Empress" before turning ?

With helm hard over, engines going 14 knots—she would commence to turn within a ship's length, gathering volume up to 22° in the first minute.

RECORD.

No. 5.  
Chief Jus-  
tice's Notes  
at Hearing  
—continued.

The helm can be put over I should imagine in about 20 seconds—not under. I never tried it.

If we reversed one engine the 22° would become 34°.

Henry Lennox Davies (British), sworn: I am extra second officer in "Empress of India." I have been with company 2½ years. I have held an Extra Master's Certificate since 1897.

I am Sub-Lieutenant in R.N.R.

In Naval Reserve about 12 years altogether, and worked as officer in steamer 10 years.

I was in charge of watch on night of collision from 8 to 12. 10

The third officer was junior officer of watch.

Very good night for seeing lights.

First saw stern light of "Quangtai" at 9.45 by night glasses.

It was not otherwise visible. The distance of our horizon from bridge was seven miles. I judge we should see stern light eight miles.

At 9.36 we had changed our course to S. 64 W. compass S. 65 W. true.

We continued on this course till 11.38.

Until about 20 or 25 minutes before collision the light was practically ahead—a little on our starboard bow never on our port bow.

About 20 minutes before the collision, I observed the light broaden out 20 on the starboard bow.

When we altered our course at 11.30 to S. 69 W. true the stern light of "Quantagi" was then a little over a point on our starboard bow.

I should say a little under a mile away.

The speed of our ship through the water was 14 knots.

I estimated the speed of "Quangtai" was between 9 and 10 knots through the water.

The Captain came on deck several times during the watch and came out to change the course at 11.38.

We remained on S. 69 W. true till about seven minutes after. 30

At 11.45 I observed a junk showing no light about one or two points on our starboard bow and between the courses of the two ships.

The position of "Quangtai's" light was then about three points on starboard bow.

The junk when I sighted her was I should say  $\frac{3}{4}$  mile away.

I could not at first see which way junk was heading—was uncertain as to her speed and the direction of her head.

I gave the order to "starboard" about  $\frac{1}{2}$  a point.

That order was carried out.

The Captain was not on bridge when I gave order. He was in his room 40 which is on the bridge. He came out on bridge almost immediately after.

I pointed out the position of the junk to him.

We continued about 1½ minutes in that direction.

I then clearly saw the junk, and saw the junk was heading out from the land about S.W., movement almost imperceptible.



When I saw all clear, I gave the order to resume his course—the junk then appeared to be quite clear of both steamers.

Immediately after I had given order to resume course, I observed the "Quangtai" was swinging rapidly to port under starboard helm.

The Captain and I almost immediately gave the order to starboard and hard-a-starboard.

The order hard-a-starboard was carried out at once. The Captain reversed port engine full speed at the same time. He did it himself.

The reply came immediately.

10 I saw by the automatic indicator that the engine was going astern.

We hailed the "Quangtai" to port her helm as soon as we came within hailing distance.

I am of opinion she should have heard. The "Quangtai" took no notice. I heard no sound on board the "Quangtai" until immediately before the impact. Then I heard a voice on the bridge give some order in Chinese.

As she came towards us I saw other lights.

I saw a red light almost immediately after I gave the order hard a-starboard.

20 While the "Quangtai" was swinging the junk was shut out by the "Quangtai's" bow. Shortly after the junk appeared on her starboard quarter. Shows on models.

First impact was apparently her bowsprit or some such projection struck us on starboard side of the fo'castle. Next the bluff of her port bow struck us heavily on the bulwarks about the fore part of the promenade deck. She closed in against us—the two ships closed together—both ships heeled in different directions.

30 The "Quangtai" then slid along the side, damaging our plates amidships a little above the water line, swept astern, scraping nearly all the way along the "Empress's" side. Her head then swung out to starboard. Her stern getting under our quarter.

The two ships then got clear.

She got over on our starboard quarter and stopped.

(Sterns some distance apart, heads lying at angle of 50°).

Then the two ships drifted apart.

At the first impact orders were given by telegraph to stop starboard engine.

The port engine was then put full speed ahead.

The reply came up from the engine room at once.

40 us. I believe the starboard engine was stopped when the "Quangtai" struck us. I felt no jar on the bridge.

Supposing "Quangtai" had kept her course I consider the "Empress" would have passed at a distance of at least  $\frac{1}{4}$  mile.

There was no reason that I could see to oblige the "Quangtai" to change her course. If she had kept her course I consider she would have passed the junk about 150 yards.

If the "Quangtai" wanted to give the junk a wider berth she ought to have ported and gone under stern of junk.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

After collision, by Captain's orders all our available boats were launched—all our boats except one, which was injured.

I went to the "Quangtai" in No. 6 boat, the fourth boat away.

I had a great deal of difficulty in getting the "Quangtai" to leave the vessel.

I was near "Quangtai"—I had just pushed off from "Quangtai" about three minutes before she sank.

The Captain of the "Quangtai" was on bridge when I left. I hailed him twice—last time just before I pushed off. I told him the ship was sinking fast and he had better come down to the boat. 10

He replied "I stay here."

My opinion is he went down deliberately with the ship.

After "Quangtai" sank we pulled over the place where she sank—back and forward about  $\frac{3}{4}$  hour.

The "Empress" remained on the scene till about 4 o'clock.

(Adjourned till 2.30.)

2.30 p.m.

Examination resumed: Referring to Exhibit H.

I made the diagram on that chart of the collision, giving the position of the two ships from 11.28 to time of collision.

To Court: I have taken the speed of the "Quangtai" at 10 knots, and the speed of the "Empress" at 14 knots, and the courses according to my own observation. 20

I make course of "Quangtai" S.  $65\frac{1}{2}$  W. up to 11.28, that is their own course.

After that at S. 71 W. I judged she was making that latter course by observation.

True courses.

About 20 or 25 minutes before collision cruiser appeared to be right ahead perhaps  $1^\circ$  on starboard bow.

She would see both side lights up to 11.28.

I did not see many junks about before collision, I did after. 30

We had not before 11.45 altered our course to avoid another vessel.

At 11.38 I put the courses of the two vessels 220 yards from our ship.

250 yards from where "Quangtai" was to our course.

At that hour 11.38 we altered our course  $4^\circ$  more to the west.

I was quite certain the courses were diverging, she was widening out from 10 minutes before we altered our course at 11.38.

The widening out was too rapid to be accounted for by our overtaking.

The night was clear, and before we altered our course for the junk at 11.45 I could see the hull of the vessel, and could see that she was diverging. 40

From personal experience of ten years in steamers, I was able to judge that the courses were diverging.

On a night like this I could see the hull of a vessel like the "Quangtai" about  $\frac{3}{4}$  mile.

At 11.45 I first observed the junk.

(Three minutes before collision).

My attention was still directed on steamer. They were not very far apart.

The junk when I first saw her was about  $\frac{3}{4}$  mile off.

If the "Quangtai" had gone straight she would have passed clear of junk.

It was not necessary for "Quangtai" to alter her course to pass the junk, but if she had to alter her course at all it would have been proper to  
10 starboard.

At this time 11.45 (three minutes before collision) the "Quangtai" would be a little over  $\frac{1}{4}$  mile from us.

About  $1\frac{1}{2}$  minutes after we altered course for junk I saw "Quangtai" alter her course.

It would have been very dangerous for us to have ported to pass astern of the "Quangtai."

It was quite likely it was possible to avoid collision by passing under "Quangtai's" stern if we had known she would keep her course to starboard.

I have never seen it tested how soon "Empress" can stop reversing both  
20 engines.

She would run on  $\frac{1}{4}$  mile anyhow I would say.

It was about  $1\frac{1}{2}$  minutes before collision I saw "Quangtai" was coming in on us. I did not notice any alteration of her course till  $1\frac{1}{2}$  minutes before collision.

They would have altered their course before that.

One and a half minutes before collision by the "Quangtai" having put her helm to starboard it would be a little under  $\frac{1}{4}$  mile. She would have to come round about six points.

It would be  $80^{\circ} 7$  points.

30 Distance at 11.45 of "Empress" from scene of collision, I have put at 1,400 yards.

I think the "Empress" could have stopped in that distance. I have never seen it tried.

Q. Can you alter your course seven points in  $1\frac{1}{2}$  minutes only by the rudder?

A. No. Not many points; not as many as seven.

Q. Could the cruiser do that in  $1\frac{1}{2}$  with a ram?

A. You must observe that she was well under swing when I saw her  $1\frac{1}{2}$  minutes before the collision. Her light was still widening although she had  
40 turned to come into us.

I know she was not converging when I got near enough to see her.

We altered our course for the junk and the quartermaster had not time to bring her back on her course till the order hard a-starboard was given.

He got the order to resume course, but he had not time to carry it out.

The ship had not come round to her course.

The "Quangtai" would be swinging before I could detect it.

There was no reason why we should slacken.

RECORD.

No. 5:  
Chief Justice's Notes  
at Hearing  
—continued.

I saw the red light immediately after the order "hard a-starboard" was given.

For that light to come into view she must have come round nearly three points from the course 71.

I consider  $\frac{1}{4}$  mile a very safe distance on a clear night and no wind it would be safe to go 200 yards inside that.

We could see the junk  $\frac{3}{4}$  mile away; the wind was scarcely moving.

Voice might on calm night travel 200 yards.

Captain said "I stay here." I only heard those three words. I did not catch anything further. It is not likely he would have said "until all else go." I would have heard him, I was close alongside at the ladder.

That might have been three to five minutes.

After I shouted to Captain other people left "Quangtai" in other boats.

Re-examination: At 11.38 the "Quangtai" had already passed point where courses were 220 yards apart; she had gone about  $\frac{3}{4}$  mile.

I have never seen how soon "Empress" can stop with both engines reversed.

From 11.45 I never lost sight of "Quangtai" more than a few seconds until I saw her swing round.

From the moment I saw her begin to swing I considered starboarding was the only course to take to avoid the collision—she should have ported—and I hailed her to do so. 20

If she had ported when we told her and we had ported, probably we would have struck her stem on her quarters.

To the Court: I put "Quangtai's" course at S. 271 W. at 11.28, because I thought she then changed about  $\frac{1}{4}$  point to starboard. Up till then she was steering much the same course as we were.

I took compass bearings of the light between 11.38 and 11.45.

The first bearing I took after I saw her broadening out would be  $\frac{1}{2}$  point on our bow, that would be about 11.35. I did not take a note of the time. 30

At 11.38, before altering the course, I took a bearing and saw it was more than a point on our bow.

I used the standard compass on the bridge.

I took one before we sighted the junk and still I saw it was broadening out.

I cannot give exact bearing but it opened out another point before I saw the junk.

I wish to say if "Quangtai" had kept her course as they say they did when we ported and went to starboard, we would probably have passed astern of her before we got to the place of collision. 40

If the "Quangtai's" course had not been altered to starboard, I probably would have altered course to port or starboard to keep clear. But she having altered her course to starboard, I did not see the necessity then.

I was at standard compass. I did not take a special note of bearings. I only saw that she was altering her bearing quickly.

Once when Captain M. came on the bridge he asked me what the light was. I told him it was the stern light of a steamer we were overhauling.

After altering course to S. 69° W., I did not speak of it, but I understood the Captain saw the light at that time.

I considered the alteration in the bearing of her light was due to her altering her course to starboard.

Our going extra speed over "Quangtai" would contribute to the widening out.

It would not be so much at a distance as closer up.

10 Arthur Greenstock (British) sworn :

I am third officer of "Empress of India." I have been third officer about two years.

I hold a Master's certificate about six years.

Prior to joining C.P.R. service I was in Royal Navy about three years as Naval Reserve Officer. I belong to the R.N.R. I hold a commission.

I was officer in the Union Line.

On night of collision my watch was from eight to 12.

I was junior officer.

Mr. Davies was senior officer—the extra second.

20 The duties of junior officer :

To check compass errors.

Visit rounds.

See that the steering is carried out properly—proper course made.

See sign-lights burning brightly.

Generally and in well being and safe navigation of ship under senior officer of watch.

On that night I first saw "Quangtai" a little before 10—about a quarter to 10.

I saw her stern light.

30 It was ahead of us.

The course of the "Quangtai" seemed to be about same as ours, slightly opening out on starboard bow.

From first seeing "Quangtai" she never appeared to be on port bow.

I left bridge about 11.20 to go the rounds.

I returned in about 20 minutes.

I went into the chart-room to write into log "rounds correct." I had done so when I heard the order "starboard" from the senior officer of the watch.

40 I saw the Captain pass through the chart-room on his way from the cabin which is on the bridge.

I followed the Captain out of the chart-room on to the bridge.

I heard Mr. Davies, senior officer, explain to Captain why he had starboarded.

Mr. Davies pointed out a junk to the Captain. I saw the junk. It was a little more than a point on our starboard bow and between the courses of the "Empress" and "Quangtai."

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

RECORD.  
 —  
 No. 5.  
 Chief Jus-  
 tice's Notes  
 at Hearing  
 —continued.

I would say the junk was half a mile or three-quarters from our ship.  
 I could see junk was heading about S.W. out from the land on the port tack.

When I noticed the junk I noticed the "Quangtai" was from two to three points on our starboard bow.

She was broadening out on our starboard bow all the time.

I heard the order, "Starboard," "Hard-a-starboard."

Captain and extra second officer gave those orders. The orders were given in quick succession.

I saw the Captain go to the telegraph and put the port engine full speed 10  
 astern, and I myself saw the engine.

The Captain gave this order to the engine-room directly after he had given the order, "Hard-a-starboard."

When these orders were given, the "Quangtai" was getting nearer. She had starboarded apparently.

I did not at the moment see any other lights of "Quangtai."

A moment or two afterwards I saw "Quangtai's" red light.

The red light appeared almost directly after order to hard-a-starboard and port engine full speed astern.

The junk disappeared on the other side of the "Quangtai," and re-appeared 20  
 under her stern.

I saw two vessels come into collision.

Shows on model how vessels came into collision.

The first point of contact.

The bowsprit of "Quangtai" hit the "Empress" about the break of the fore-castle.

At the time of contact the two vessels made an angle of about 45°.

After the contact we heeled over to port, and the "Quangtai" slid along our side, and after that our bows swung off.

At that time I heard the port telegraph an answer from the engine-room 30  
 full speed ahead.

The starboard engine had been stopped.

The hull of the ship struck us first about the waist.

The port bow of "Quangtai" struck us below the bridge in the waist.

Reversing port engine and helm hard-a-starboard had this effect: our bows swung away from "Quangtai" and left her.

Before "Quangtai" changed her course there was no danger of collision, *i.e.*, when we saw the junk.

I saw the junk about four or five minutes before the collision.

It was about one and a half minutes or two minutes before the collision. 40

I saw the "Quangtai" change her course.

If the "Quangtai" had not changed her course for the junk, I would say we could have passed about a quarter of a mile.

I saw position of "Quangtai" and junk. If the "Quangtai" altered her course at all she ought to have ported and gone under stern of junk.

If she had continued her course she would have passed under the stern of the junk about 200 yards.

After collision I went in boat to "Quangtai."  
 I took about 45 men off from the "Quangtai."  
 I was in a boat a little distance off when she sank.  
 I had ample room to take another 20.  
 I had difficulty in getting men from the "Quangtai." They seemed  
 frightened to jump from ship to boats.

RECORD.

—  
 No. 5.  
 Chief Justice's Notes  
 at Hearing  
 —continued.

Cross-examined: The entry in official log was written by second officer at my dictation.

I dictated it after the collision before we got to Hong Kong.

10 That would be the next morning.

Mr. Davies the extra second officer was not present when I dictated this.

Since then "Empress" had been to Vancouver and back with the same officers.

As is natural, the officers talked about it on the voyage to Vancouver and back.

I left bridge about 11.20 and came back in 20 minutes—seven bells had been struck about eight minutes.

20 There was a clock right over me. I looked at the clock when I made the entry, rounds correct.

It was the order starboard brought me out (not hard-a-starboard).

Mr. Davies saw the junk before I did. He pointed it out to Captain.

I think half mile or three-quarters as the distance to the junk is about correct.

I was watching the junk and the "Quangtai" too.

I certainly saw the "Quangtai" for a whole minute before the collision occurred.

The bowsprit hit the "Empress" on the fo'castle.

30 I did not see the bowsprit broken, but when I passed the "Quangtai" I saw she had no bowsprit.

The standing bowsprit was left—the jib-boom must have been broken.

I cannot say all the standing bowsprit was broken, but the jib-boom was broken.

I would say the "Quangtai" was coming into us with some speed.

Q. How do you account for the "Quangtai" not ramming the "Empress"?

A. It was a glancing blow and the run of the bows of the "Empress" would require an angle of more than 45°.

The "Quangtai" heeling over would make the ram strike us under water with a glancing blow.

40 Off Swatow we would expect to find junks off Swatow.

We did not see many.

We saw some—some lighted—some unlighted.

I saw the junk some four or five minutes before the collision. I could not be certain.

In five minutes she would be about 2,300 yards away.

I could not say the exact number of minutes.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

I would not say it was more likely to be about two minutes.

I knew the the course the "Empress" was steering.

After 11.38 it was S. 69 W. true.

I saw steamer about three points on our starboard bow and she was broadening out.

I did not take any bearings. It is not necessary to take bearings.

Q. How far off was "Quangtai" when you saw her after visiting the rounds?

A. From half mile to three-quarters mile.

To stop "Empress" by putting engines at full speed astern I could not say exactly. I should not like to say.

I have tried it in other ships not in "Empress of India."

Re-examined: The bluff of "Quangtai's" bow struck "Empress."

The effect would be to cant the cruiser's bow away from the "Empress."

I think the head would be thrown off by the bowsprit coming in contact.

That would lessen angle of contact.

To Court: On my return from my rounds I came on the bridge and went straight into the chart-house.

I came out immediately after the Captain.

The cruiser was widening out at that time.

I know by having seen the "Quangtai's" stern light when I went below and when I returned to the bridge that she had been widening out.

When I went below to go the rounds she was about one point on our starboard bow, and when I came out after order had been given to starboard she was bearing from two to three points, as far as I could remember.

She widened out to about four points—certainly not more—when I was standing there.

The stern light was getting more on the bow.

I noticed she was getting nearer.

She kept her bearing nearly four points, and I could see more of the ship's length.

She got so close you could see she had got a ram.

I also made out she had three masts.

I saw masthead and red light after order to hard-a-starboard and put engines full speed astern.

I was standing about midships of bridge and I went over to starboard side.

When I came out on bridge I looked at the compass.

She was S. 69 W. I looked at the standard compass. I looked at compass before ship began to swing to the first order to starboard, not order for the junk but the order starboard—hard-a-starboard. Before she swung to the starboard.

The duty of senior officer of watch is to report to junior officer the courses to put down in the log. I knew she had already been steering



S. 64° W. and the course was altered at 11.38 in the log book. I did that about 11.40 when I was in the chart-room.

Mr. Davies told me when I came up from rounds that it had been altered.

She was not quite on her course when I looked at the compass.

When I looked at the compass she was about 67. She was swinging to port.

I could not swear she was S. 69 W. by the standard compass when I looked at it.

10 She was within a degree or two of her course at any rate.

Hedley Thomas Richardson (British) sworn :

I am a certificated chief engineer and senior engineer, R.N.R., and a member of the Institute of Marine Engineers. Have been about 20 years a certificated chief engineer. I am superintendent engineer of the Company at Hong Kong. I remember "Empress of India" arriving at Hong Kong after this collision, made a cursory examination of her damages and ordered repairs to go on at once.

The "Empress" was lying at Company's buoy in the harbour.

I then called in Lloyd's surveyor to make a Lloyd's survey for damages.  
20 The next morning Lloyd's surveyor came on board. We made a survey together of all the damage above the waterline.

Ship was docked three days after arrival, and we finished survey above and below.

That is plan of starboard side of "Empress" showing damage. It is perfectly correct taken from actual measurements from the ship.

Adjourned till 10 o'clock to-morrow morning.

H. S. WILKINSON, C.J.

---

Thursday, 12th November 1903 :

Hedley Thomas Richardson, examination continued :

30 I have drawn the water line on Exhibit L.

I marked this copy of builder's plan. (Exhibit M.)

The red mark forward was made apparently by a round object in the quartermaster's room.

In my opinion it would be made by the bowsprit or some of the forward gear.

The long red mark on upper deck bulwark shows where the plating was indented, frames bent, and gangway gear carried away.

In my opinion I consider that would be done by the bluff of the bow of the "Quangtai."

40 Below that and below the waterline just above the orlop deck beams in No. 2 hold, approximately five feet below the waterline on ship's arrival with that draft.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

In my opinion that would be caused by the ram.

Next, abaft, that is on the main deck amidships, one plate stove in; three frames bent badly.

In my opinion, that would be caused by the gun sponson.

Next there, are three plates on the main deck level on starboard quarter badly indented, running from silk room through intermediate to boys' quarters.

In my opinion, that I think was caused by the "Quangtai" rounding in on our quarter.

Finally, we find all four blades of starboard propeller damaged (not shown 10 on plan).

Two blades were bent back at right angles, the others were slightly bent I think in the same direction.

In my opinion, that was caused by the stern of the "Quangtai" striking the propeller.

To Court: It might have been the bilge keel of the "Quangtai" caused the below waterline damage.

The damage forward to the quartermaster's room might have been done 20 by a boat's davit.

The waterline marked as taken from the official log is 19.5 forward and 24.1 aft.

That is the line drawn on the plan.

Examination continued: If there was a swell the heights would be affected by the swell.

We cannot be certain of the heights and depths for that reason.

Cross-examination: I am an employé of the Company.

If the bowsprit made damage forward, the damage below water might have been made by the ram, the "Empress" going forward.

The two vessels meeting at an angle of 45°?

The first blow would be just a touch.

It could not have been an anchor, it was a blunt point.

I still think the ram caused it.

The "Empress" was docked the previous voyage, about nine weeks or two months previous.

That dent was made between last docking and this docking.

When the bluff of the bow touched they might be at an angle of 30°.

Our ships don't usually get a knock.

\* Sic. The only indentation observed in that or other "Empress" \* was on the bilge keel by vessel sitting on something in Vancouver.

If the engines had been going ahead all four engines would have been 40 badly damaged.

If the propeller had been actually stationary only two blades would have been injured.

But it is almost impossible to keep the engines perfectly stationary.

† Sic. We took no photograph of.†

Re-examined: The injury which I think was caused by the ram was discovered by the rivets leaking. RECORD.

To Court: The bilge keels on "Empress" were half-way between the water line and the keel 240 feet long and 20 inches wide, the length of the "Empress" being 440 between perpendiculars. No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

Newman Mumford, sworn:

I am and have been for eight years Lloyd's Surveyor in Hong-Kong. Before that I was surveyor to Lloyd's Registry in England and other places.

After "Empress of India" arrived in Hong-Kong after this collision I 10 surveyed the damage.

I surveyed in harbour and outside below in dock.

Mr. Richardson was with me when I made this survey.

Shown Ex. L.

That correctly shows the damage.

I made a full report of the damage.

That is a full report.

It is quite correct.

The first damage is on fo'castle sheer streak\* plate immediately under the porthole. \* Qy. strake

20 It is an indented plate, not a large indent, about six or seven inches.

It is not a sharp indent, it would be caused by some blunt thing.

The next injury is the bulwark plating, one bulwark plate abreast the saloon marked yellow on the plan was badly indented.

It was caused by a very hard blow from something. One sheer streak† † Qy. strake. also abreast of the saloon and two frames. Must have been caused by a very severe blow.

The third injury is three indented plates about a foot above the orlop deck string (five or six feet below water line, I should say, I did not measure that).

That was a blow from some blunt body.

30 It was at junction of three plates.

By a strong blow from something.

I know the ship was in collision with a cruiser and I take it to have been caused by the ram.

Next is a plate amidships.

This was fractured immediately above main deck. That must have been caused by some projecting point.

Looking at model, I should say it was caused by the sponson plate which fractured.

40 The next was one plate (same blow) immediately below, two frames badly bent, two frames slightly.

That was a very severe blow, plates were very strong.

Next two, main deck, their streak† plates indented and two above badly † Qy. strake. indented, the two above were taken out.

Below poop on starboard side abreast of poop.

Three frames slightly bent in this vicinity.

## RECORD.

That is to after end of ship.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

Cross-examined: There was nothing in the injury done by the sponsor inconsistent with the "Empress" having come up from behind and striking on the sponson.

The dent below the water line was a blunter dent. I don't think it could be caused by the bilge keelson. I don't think it would be caused by the bilge keel.

Without a proper model I could not say whether it could be caused by the bilge.

I don't know of anything but the ram to cause the indent. 10

It does not look like an indent caused by an anchor.

The injury forward might be caused by an anchor or bowsprit.

Re-examined: If "Empress" came up behind there would be probably more injury on "Empress" right along. It would be continuous.

To Court: I could not say from my observation whether object struck from forward back or from back forward. I did not observe how the paint was scraped.

John Baillis (British), sworn:

I am Quartermaster on "Empress of India." Have been in employ of 20 C.P.R. three and a half years. I belong to R.N.R. Fourteen years at sea.

On night of collision my watch was 8 to 12 and 10 to 12 at the wheel.

When I went to wheel I was steering S. 63 W. compass. Ten minutes before the collision I was told to change it.

Captain gave me order 4° to starboard.

After that I heard a report from the crow's nest, but I could not tell what it was.

I heard Mr. Davies say "all right."

I received order "starboard half point." Then in quick succession, "resume course," "starboard," and "hard-a-starboard."

The helm was put right over to hard-a-starboard.

I saw the Captain go to the engine-room telegraph, but I could not say 30 what the order was.

I heard the Captain and Mr. Davies and Mr. Greenstock shouting "why don't you port?"

So far as I could see there was no notice taken of that shouting on board the "Quangtai."

At that time the "Quangtai" was swinging in to the starboard side of fo'castle.

(Shows on model the two ships bow to bow at an angle of about 30°.)

I did not see much more—I was in the wheel house.

After collision I went in second boat to "Quangtai." 40

I was by the "Quangtai" in my boat when she sank.

My boat was empty.

There was plenty of time for everyone to be saved. They were very reluctant to come away. RECORD.

I steered by the wheel-house compass.

Cross-examined: I could not tell time of collision or time of changing course. Chief Justice's Notes at Hearing — continued.

The 10 minutes is my own judging—I did not see the clock.

I kept her head half point to starboard 1½ minutes or 2 minutes.

She answers her helm quickly.

I could not tell how long going at 14 knots it takes to get her half point off her course.

Have steered in "Empress" for long time. I could not judge how long.

I got three orders in one: Resume course—starboard—hard-a-starboard.

She had not begun to swing back.

I had to watch the course.

Wheel-house glass windows front and side square-cornered house.

To Court: I saw the foremast of "Quangtai." It came a little on front of wheel house.

I could not see the funnel.

I did not see the lights of the steamer at any time before the collision.

I could not see a junk.

At request of Mr. Platt: I could not see very well for glare of compass.

My mate was in the wheel house—Roberts.

I was at the wheel—Roberts was standing by on the bridge.

When I got the three consecutive orders Roberts was outside.

I was steering all the time from 10 o'clock to time of collision.

Thomas Roberts (British), sworn:

I am Quartermaster on "Empress of India." Have been in service of C.P.R. three years. Thirty-six years at sea.

On night of collision my watch was from 8 to 12, 8 to 10 at the wheel and from 10 to 12 on the bridge.

I handed over wheel to Baillis at 10 o'clock.

Soon after 10 o'clock I heard report from crow's nest "light ahead."

Directly after I looked and saw the light myself.

The light was right straight ahead.

Then I heard report from crow's nest "Vessel on starboard bow without light."

That report was made just before the collision.

I saw the junk.

I heard Mr. Davies give order "starboard half point."

The junk would be three-quarters of a mile off and a point on starboard bow.

At that time I saw "Quangtai's" white light.

"Quangtai" would be bearing three points on starboard bow.

## RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

A couple of minutes after that I heard Captain Marshall give order "starboard"—"hard-a-starboard."

The "Quangtai" was then swinging round on a starboard helm passing our bow.

The junk was then shut in by the "Quangtai." The "Quangtai" got in between us and the junk.

I heard Captain Marshall and the second officer asking them where they were going to, why did they not port their helm.

There was no answer.

Shows on plan bows of "Quangtai" coming to bows of "Empress" at 10 angle of 30° or so.

After first touch we were on starboard helm. "Quangtai" went away in this way.

(Astern turning off from "Empress.")

The next I saw of her she was on our starboard quarter.

If the "Quangtai" had continued her course she would have cleared the junk and had 150 yards to spare.

The white light continued to bear ahead until 20 minutes before the collision.

It then appeared to me to broaden out on starboard side.

20

Cross-examined: After leaving wheel my post was on bridge. I did not know course was altered 10 minutes before collision.

I had to look out and keep handy if required.

It is none of my business to take compass bearings.

When the order starboard half-point the white light was about three points on our starboard bow.

I did not see smoke of cruiser.

Could see her hull.

She was broadening out, we were overtaking her.

I could see the hull when she was three points on bow.

30

I could not say distance of cruiser, much further than junk, she was astern of junk, could not tell distances from junk.

The cruiser would be about quarter mile from us.

She had widened then out to four points.

I continued to watch light.

I first saw it close in about three minutes before the collision.

They saw it closing in before I saw it. When I heard order "hard-a-starboard" I looked and saw her closing in.

Our helm was hard-a-starboard and she had a minute before she came alongside, she had plenty of time to port her helm and get out of the way.

40

The junk was practically motionless.

The cruiser ought to have passed in shore of the junk and we outside.

Junk was going seaward, we star-boarded to get out of her way.

The cruiser passed between us and the junk and shut the junk out of my sight.

The "Empress" answers her helm very easily, comes back on her course very easily.

Going 14 knots pulling helm hard over takes 20 seconds to get her head round three points? I never noticed time it took.

I saw captain working engine-room telegraph, could not say what it was.

Did not notice smoke of steamer which was very light.

It did not seem to me we would pass too close.

I have seen the "Empress" passing another ship overtaking her under quarter of a mile.

10 To Court: The "Empress" might have gone three points over when "Quangtai" struck her.

When Captain gave order "starboard, hard-a-starboard," I looked and saw "Quangtai" and I saw white light and red light just breaking open.

When I heard the order "starboard half point" I thought it was to clear the junk. I had seen the junk then.

The white light was right ahead until 20 minutes before the collision.

It then began to widen out to starboard.

The next time I had a look at her she would be two points or  $2\frac{1}{2}$  points on our starboard bow.

20 I could not tell the time.

She was about three points when order to starboard was given.

She widened out gradually as we were overtaking her.

The last time she would be about four points.

She was four points on bow when order was given, starboard, hard-a-starboard.

Adjourned till 2.30.

2.30 p.m.

John Godfrey (British), sworn :

I am A.B. on board "Empress of India."

30 On night of collision my watch was eight to 12.

I was on duty in Crow's nest from 10 till 12.

15 years at sea.

First saw stern light of "Quangtai" shortly after going into Crow's nest at 10 o'clock.

When first seen bore right straight ahead.

It continued straight ahead till 20 minutes before the collision.

Then she broadened out on our starboard bow.

I remember reporting junk without a light.

That would be about 11.45.

40 The junk was about three-quarters of a mile away about a point on starboard bow.

I sung out "vessel without light on starboard bow."

I saw at that time the "Quangtai" bearing about three points on starboard bow.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

RECORD.

She suddenly altered her course when about four points away and swung rapidly to port.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

When four points on starboard bow I estimate "Quangtai's" distance at about  $\frac{1}{4}$  mile.

I heard, I think, Captain's voice giving order "starboard" and "hard-a-starboard" in quick succession.

I heard shouting from our bridge. I heard Captain sing out to port their helm.

Shows on model how ships touched; bow to bow at an angle of about  $30^{\circ}$ .

I saw the two vessels come together.

I saw them swing alongside, and then the "Quangtai" went astern.

From the order "starboard" and "hard-a-starboard" till vessels touched would be a minute or two minutes.

From time I reported junk till vessels came in contact I would say was about three minutes.

When I saw junk I judged she was heading out to sea.

If "Quangtai" had held her course she would have cleared the junk and plenty room to spare.

Cross-examined: I don't know what course "Empress" was steering.

Marks on paper: "Quangtai"  $\frac{1}{4}$  mile off, junk  $\frac{3}{4}$  mile.

I knew the time, 11.45. I was waiting to hear the bell.

You could just see the black hull of the cruiser.

We were gaining on "Quangtai."

I could not give exact time the collision took place, at 11.48.

I just reported lights ahead.

Did not report change in course of other vessel.

The "Quangtai" was a little further ahead than I have put her. I did not observe her distinctly.

I did not notice smoke of cruiser.

"Quangtai" had been broadening out.

I saw the red light as soon as it opened out to me. I could not say how long before collision.

Shows the "Quangtai" when four points away, turn in towards "Empress," and "come on top of us."

When they touched, stem of "Quangtai" was about break of "Empress's" fo'castle.

She then grazed alongside.

Did not notice "Quangtai" heel over.

Did not see her separate.

Diagram put in O.

Re-examined: When I reported an unlighted junk to bridge, "Quangtai" was bearing three points on our bow.

I could not say how long after that "Quangtai" bore four points.

I could plainly see "Quangtai" change her course and swing round to "Empress."



To Court: When "Quangtai" first struck I could look down on "Quangtai," not before. It was very dim; you could hardly see the bridge of "Quangtai." Could not see man at wheel.

I could not tell whether she ported her helm.

I did not see stern of "Quangtai."

When she swung alongside I could hear shouting.

I saw "Quangtai" swinging before I saw red light.

I did not see the boats or davits of "Quangtai" smashed. I only heard a creaking sound, something falling from aloft, blocks or something.

10 I knew the "Quangtai" came between me and the junk and hid her from my view, and I could not see her any more. I did not see her again.

I might have seen junk over "Quangtai" if smoke or masts did not hide her.

But I was more interested at the time in the "Quangtai."

Charles Montague Winney (British) sworn :

Sixth engineer on "Empress of India."

At sea as engineer seven years.

My watch on night of collision was from eight to 12.

I was in charge of port engine.

20 Just before collision.

The first order I received was "stop," "full speed astern," practically one order. That was at 11.47.

I was on bottom platform in engine room.

Platform where levers are.

I was within a few feet of levers when telegraph rung.

I reversed at once.

I was conscious of collision. The engine had been going astern some time when I felt the shock.

30 The next order was "full speed ahead," immediately after or at time of impact.

I carried out the order at once.

The next order was "stop"; a few seconds after "full speed ahead."

After that I stood by manœuvring the engines to order.

There is a board at back of levers for putting down times on.

I chalked up times on this occasion at first convenient opportunity after the second stop I spoke of.

The times were as near as I could then remember.

We don't enter fractions.

We enter to the nearest minute.

40 The times I have given are approximately correct.

To Court: From board times are transferred to slate and then to this log.

Examined: A few minutes after full speed ahead there was a stop not in log.

Cross-examination: I only felt the first impact distinctly—I only felt one impact. It only appeared to me a very slight shock.

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

I have nothing to do with keeping this log.

The relieving engineer, a junior to me, transcribes.

Re-examination: I should say engine was going astern before collision fully three-quarters of a minute.

To Court: To alter from full speed ahead to full speed astern takes from about 10 to 15 seconds. The port engine made about 30 revolutions astern before I got order to stop it. The speed was increasing rapidly, at that time she would be going full speed.

Andrew Thomson Brown (British), sworn:

Eighth engineer on "Empress of India." 10

Have been about 18 months.

My watch on night of collision was from eight to 12.

In charge of starboard engine.

I was aware in engine-room when collision occurred.

A minute or 1½ minutes before I felt the shock I heard port engine-room telegraph rung. I can see into port engine-room.

When I looked through porthole I saw port engine telegraph at full speed astern.

The engine was going full speed astern when I looked through.

I stood by my own lever expecting an order. 20

I received an order from starboard engine to stop; that was after I felt the first shock.

I stopped it immediately. I should think I got engines stopped in 10 seconds after I got the order.

I heard the "Quangtai" strike us again—strike us aft immediately after I got the order "stop."

I had the engine stopped when I felt the shock.

The engines were practically stopped. There was no power in propeller—the propeller made half a turn forward and half a turn aft.

If the propeller had struck anything when going ahead, the engine would have stopped and immediately propeller got free she would have raced away. 30

Nothing of that sort occurred. I felt no shock from the engines, not the slightest.

I chalked up the time of this order immediately the order was executed.

We don't record fractions of minutes in our log.

The times are only approximate.

Cross-examined: To Court: The engine was never brought up or slowed up by any obstruction either before or after getting order to stop.

Two of the propeller blades were badly bent over as if something had sat on top of them. 40

The two blades were bent aft.

Oswald Percival Marshall, re-called:

How did you say "Quangtai" got under "Empress's" quarter? Explains.

The weeping at below-water-damage was discovered in Hong Kong when discharging cargo before it was discovered outside. RECORD.

If it had been caused before the collision we would have known.

The smoke of the cruiser was not noticed by me—if it had been I would have noticed it.

The smoke never obscured the view of cruiser.

This closes case for defence.

Adjourned till 10.30 a.m. to-morrow.

H. S. WILKINSON, C.J.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

Friday, 13th November 1903. 10.30 a.m.

10

Oswald Percival Marshall, recalled :

Puts in new plan—Exhibit P.

The speed is taken at nine knots in this plan. The plan as regards bearings and distances is only approximate.

It is agreed that the engine-room log of "Quangtai" shows steaming at 9½ knots, and that engineer if called would depose to 9½ knots steaming.

Mr. Sharpe up for Plaintiffs:

Two stories irreconcilable.

Only certain time is time of collision 11.48.

Don't pretend story precise as to angles, distances and moments.

20

If "Empress" came straight up behind no question but "Empress" to blame.

If "Empress's" story correct not to blame.

"Quangtai" came round to port.

The junk was there.

"Quangtai's" story--

(1.) Improbable, incredible.

(2.) Inconsistent with our ("Empress's") injuries.

(3.) If true (which is not admitted) shows "Quangtai" in fault.

30

1. Practically out of the question officered as "Empress" was.

2. If vessels came together as "Quangtai" say, injuries to "Empress" would have been different.

3. "Quangtai" would have been in fault seeing steamer coming up astern and doing nothing.

Vessel should take measure when collision otherwise inevitable. You may depart, and you must depart from a rule if you see with perfect clearness almost amounting to certainty that adhering to the rule will bring about a collision and violating a rule will avoid it.

The "Commerce," 3 W. Rob. 287.

The "Ida," 15 L.T. 103.

Kelly J. 103.

Marsden 527

## RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

## Preliminary Act:—

Williams and Bruce 369, 3rd ed. (1902).

The "Ebenezer," 2 W. Rob. 206.

The "Inflexible," Swab. 32.

"Anne Lushington," 55.

Marsden 333.

The Plaintiff bound to particulars of rule infringed by other side.

The "Ebenezer" and "Lushington."

Act on Petition.

The "Inflexible," judgment.

Preliminary Act.

Anne secundum allegata et probata.

## Defaults of "Empress of India":—

No specific wrong.

Manœuvre alleged against "Empress."

See as Preliminary Act.

## Article 9 of Petition:—

"Empress." Bad look out.

Stereotyped allegation.

Depending on general conduct of ship as given in evidence.

There was a good lookout.

Captain off and on bridge.

Two officers on bridge.

Quartermaster.

Helmsman whose primary duty is but to look out.

Two lookouts.

Six men looking out beside helmsman.

Saw "Quangtai" an hour before she\*—

10 and 11, 12 Art. 24.

We were overtaking ship and there was a collision.

Art. 24 correlative Art. 21.

Observance of Art. 21 a condition precedent to liability under Art. 24.

"Empress" was complying with Art. 24.

Mars. 39 no presumption that ship required to give way is in fault.

After risk of collision "Empress" took proper course.

Reduced angle of impact.

Gave greater room to "Quangtai."

into "Empress" had reversed starboard engine too she would have run  
"Quangtai" amidship.

Saragossa, 68 L.T. at p. 400.

6 Appeal.

Overtaking ships, two steamers at night, open sea, "may pass within  
10 feet."

Five points on port bow.

Refers to  
Marsden 470  
City of An-  
twerp L.R. 2  
P. C. 25 per  
Westbury C.

\* Sic.

10

20

30

40

H.L. 69 L.T. 664.

Defaults of "Quangtai."

Answer 6 to 15.

Lookout general evidence.

Did not see junk.

Did not see "Quangtai" for an hour after she might.

Officer saw "Quangtai" five minutes before collision and did not look again.

"Quangtai" was bound to take her course.

10 Marsden 508, p. 475, and cases there referred to.

No need for "Quangtai" to change her course for the junk.

Ought to have ported.

Having starboarded, wrongly persisted, could have resumed her course.

This is substantially fault we rely on.

Paragraph 10 of answer. Attempted to cross.

Marsden. To attempt to cross bow of faster ship.

11. Ought to have warned "Empress" of change of course. If she had done so, "Empress" might have begun turning at same time.

John Fenwick. L.R.A. & E. 500.

20 12. Reckless.

After collision no attempt to save ship.

Evidence:—

"Quangtai" must have changed course to port.

Up to a certain time united evidence on both sides makes "Quangtai" dead ahead and "Empress" dead astern.

At that time there was a change and a material change in the course of the "Quangtai."

30 That would be according to Second Officer before 11.38 and "Empress" 11.28. It would appear to be 6° or 7° to starboard, and "Empress" changed at 11.38 made a similar change though to a slightly less extent to 4° in the same direction.

The Defendants contend that from the observation taken on the "Empress" (showing that after 11.20 the "Quangtai" broadened on starboard bow) the "Quangtai" about 11.28 changed her course to starboard 6°, putting her on a course S. 71 W.

The sketches are intended to be on that basis.

The "Quangtai's" story involves that "Empress" is dead astern from three-quarters of hour before collision to collision.

40 The witnesses of "Quangtai" say they saw our red and white lights till shortly before collision.

On "Empress's" observation—

Half point or point on our starboard bow.

"Empress" altered 4° to starboard bow.

We would not have gone to their starboard.

*Reductio ad absurdum.*

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

RECORD.  
No. 5.  
Chief Jus-  
tice's Notes  
at Hearing  
—continued.

If we dead astern and "Quangtai" could see "Empress's" two side lights till time of collision we were practically on same course.

We ported at 11.38 and "Quangtai" kept her course.

If we were dead astern that alteration at 11.38 would have put us on starboard side.

Therefore we were not dead astern and our two lights were not visible to "Quangtai."

Mr. Sharpe :

Suggests Remarks column ought to end at 10.54 and entries opposite 12 entered prematurely—suggests "W. by S.  $\frac{3}{4}$  S." was not made exactly at 11— 10 but some time between 10 and 11.

Suggests that an alteration was made and no entry made about it.

Last change just before collision could be seen by "Empress" would be very obvious to those on "Empress"

The positions of ships what they did in last few minutes is important.

Did "Quangtai" run into "Empress" or "Empress" run into "Quangtai" on her stern?

Besides evidence of "Empress's" people injuries sustained by "Empress" shows it was "Quangtai" struck bow.

It is to be assumed—

- (1.) That ships were on practically the same course or that the "Empress" was a point on starboard bow.
- (2.) The "Empress" altered  $4^{\circ}$  to starboard.

If that is taken, it is to be admitted that they were after that on converging courses—no dispute as to that.

The "Empress" would be coming up converging at  $4^{\circ}$ .

If that is assumed, the "Empress" would have observed—

It would be impossible on such converging course that the angle of white light would have broadened as our witnesses—

11.45 3 points quarter to half a mile.

11.46 $\frac{1}{2}$  4 points to quarter mile.

At 11.45 we starboard half point.

Then  $6^{\circ}$  at 11.46 $\frac{1}{2}$  or so—went over to port something like  $34^{\circ}$ .

At time of collision she came in to us at an angle of  $30^{\circ}$ .

Evidence of passenger in log book referred to by Plaintiffs' Counsel and now referred to by Counsel for defence.

Risk of Collision—

No risk of collision till "Quangtai" changed her course.

Marsden 379 "In estimation"—

380 at foot "In judging"—

Marsden 54/5.

The "Beryl," 9 P.D. 137.

1887 Rand, 12 App. Cas. 247.

H. Lords.

Close shaving—

I submit that is a case which could not be raised here now:

Close shaving—

There was no close shaving.

Marsden, 563.

Distance of half of quarter not close shaving.

The question of whether "Empress" was wrong in not reversing both engines cannot now be raised.

10 Breach must be alleged—

Marsden, 333.

It would have been a wrong manœuvre for "Empress" to reverse both engines.

She would have run into "Quangtai" amidships—

Marsden, 486 500.

Saragossa—

Benares, 9 P.D. 16.

Agony of moment—

Marsden, p. 3.

20 "Bywell Castle," 4 P.D. 219.

Court refers to "The Seaton," 9 P.D. 1.

Adjourned till 10 a.m. to-morrow.

H. S. WILKINSON, C.J.

---

Saturday, 14th November 1903. 10 a.m.

Mr. Sharpe continues :

Art. 29 which he alleged just as much as any other Article.

"The Seaton."

Under paragraph 13 of Petition Plaintiffs would be entitled to show bad seamanship if in support of Plaintiffs' case and consistent with their case.

30 "The Seaton."

We don't admit courses were converging.

Marsden, 32, 33, and note 460, 464.

5 Aspinall, 191.

"The Imbro," 14 P. D.

Mr. White-Cooper for Plaintiffs :

There was no change in our course.

11.38. "Quangtai" S. 65 W.

Distance between two courses—

Course of "Quangtai" and course "Empress" was going to travel over—

40 At 11.38 distance estimated by Mr. Davies at 220 yards.

Slackening speed—

RECORD.

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

**RECORD.**

No. 5.  
Chief Justice's Notes  
at Hearing  
—continued.

Don't rely on not slackening speed.  
But comments that it would have been safer to do so.  
Compass bearing not taken.  
Captain Marshall's diagram on his own assumption.

12.10 p.m.

C. A. V.

H. S. WILKINSON, C.J.

Tuesday, 29th December 1903.

The Imperial Chinese Government, Owners of the  
Cruiser "Quangtai" - - - - - Plaintiffs, 10

*versus*

The Owners of the British Steamship "Empress of  
India" - - - - - Defendants.

Mr. White-Cooper for Plaintiffs.  
Mr. Platt for Defendants.

Judgment finding the "Empress of India" solely to blame, usual decree  
against Defendants the owners of the "Empress of India" for damages and  
costs and the usual reference to the Registrar and merchants.

H. S. WILKINSON,  
Chief Justice. 20

No. 6.

No. 6.  
Judgment.

His Britannic Majesty's Supreme Court for China and Corea, at Shanghai.  
(In Admiralty).

Before Sir Hiram S. Wilkinson, Chief Justice, and Captain C. H. H.  
Moore, R.N., and Navigating Lieutenant A. E. House, R.N., (H.M.S.  
"Sirius"), Assessors.

Shanghai, 6th November 1903.

The Imperial Chinese Government, Owners of the  
Cruiser "Quangtai" - - - - - Plaintiffs, 30

*versus*

The Owners of the British Steamship "Empress of  
India" - - - - - Defendants.

Judgment.

This is a suit for damage by collision instituted by the Imperial Chinese  
Government as owners of the Chinese cruiser "Quangtai" against the owners



of the British Royal Mail steamer "Empress of India," the Canadian Pacific Railway Company. RECORD.

The collision took place between 11.45 and 11.50 on the night of the 17th of August last, off the coast of China between the Lamocks and Breaker Point. The cruiser received such injuries that she sank in about an hour and forty minutes after the collision. In the meantime the mail steamer stood by, and sent boats to the rescue of those on board the cruiser, and 171 out of a total of 184 were saved. The mail steamer remained near the spot until there was no longer any hope of saving life, and, wherever the responsibility may fall for the collision or the effects of the collision, it is satisfactory to know that it is fully acknowledged that the mail steamer did all that could be done for the rescue of those on board the cruiser. No. 6.  
Judgment—  
continued.

At the time of the collision both steamers were bound from Woosung to Hong Kong, and it is common ground that up to about half an hour before the collision, and for some time previously, they had been on the same or nearly the same course (about S. 65 W. true), the cruiser ahead of the mail steamer and the mail steamer following her and overtaking her, and that the lights of each vessel were burning brightly.

The story of the cruiser is that she was steaming about nine knots through the water, that at eleven o'clock her course, which was then W.S.W., or S. 62½ W. true, was changed to W. by S. ¾ S. or, S. 65½ W. true, and kept at

Shanghai, 29th December

that till the collision, that the lights of the mail steamer were first seen something over an hour before the collision, that they were then directly astern, and remained directly astern or a little on the port quarter of the cruiser until the time of the collision.

The story of the mail steamer is that at 9.36, five miles after passing the Lamocks, the course was changed to S. 65 W. true, and that soon after that change of course, that is to say, about two hours before the collision, the stern light of the cruiser was seen nearly ahead, slightly on the starboard bow, about one degree or so, enough to say that it was on the starboard bow, and not on the port bow, that at 11.38, about ten minutes before the collision it had opened out about one point or a little more on the starboard bow, and that the course of the mail steamer was then changed four degrees to starboard or to S. 69 W. true.

Ten minutes after that change of course on the part of the mail steamer, a change which made the course of that steamer converge with the course of the cruiser, as given by those on board the cruiser, the collision took place, and evidence having been given by the cruiser, the overtaken vessel, that she kept her course, the rule with regard to the burden of proof in the case of overtaking and overtaken vessels as laid down by Sir R. J. Phillimore in the case of the "Chanonry" and the "Leverington" [(1878) 42 L.J., Ad. 58] applies, where he said: "I am of opinion that the two vessels are within the rule that one vessel overtaking another shall get out of the way of the other. A *prima facie* case has been made out on behalf of the Plaintiffs, and the Defendants

RECORD. " have therefore, as in the case of a ship at anchor, the burden cast upon them  
 " of showing excuse for the collision."

No. 6.  
 Judgment—  
 continued.

This burden the Defendants in the present case endeavour to discharge. They allege that the mail steamer would have passed the cruiser at a distance of about a quarter of a mile, had not the cruiser star-boarded her helm and run into the mail steamer. An explanation is given for the cruiser star-boarding. It is said that when the mail steamer was overhauling the cruiser, and shortly before the latter was observed to be starboarding, a junk was seen ahead on the mail steamer's starboard bow in such a position as to be slightly on the cruiser's port bow, that the cruiser appeared to starboard in order to avoid the junk, although her proper manœuvre would have been to port; but having starboarded there was still room for her to have resumed her course, but this she did not do, but persistently kept on a starboard helm, swung round rapidly to port, and so brought about the collision.

The defence of the mail steamer is rested upon this statement. The fact whether the conduct of the cruiser was such as here described, whether she starboarded and ran into the mail steamer, is directly put in issue between the two parties to the suit, and 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 is entitled to credence. I therefore requested the naval gentlemen, with whose assistance I have been favoured, to give me their opinion upon the probabilities of the respective statements in issue.

They are clearly of opinion that the statement of the cruiser is correct, and that the cruiser did not starboard, and having heard and considered their reasons, and carefully considered the evidence, I entirely concur in, and adopt their opinion.

Taking the courses as given by the respective vessels, and according to the judgment of the Privy Council in the case of the East Lothian (Lushington 241) " the courses of the vessels ought to be taken from the persons on board of each of them respectively, as likely to be more correctly known by them than by the other party," these have been laid down, and converge at the place of collision. So far then as concerns the courses of the two vessels as given by them respectively, the fact of the collision is sufficiently explained.

But from the statement put forward on behalf of the mail steamer of what was seen from the mail steamer we are asked to infer that for some time before the collision the course of the cruiser was not that which those on board the cruiser say it was.

On the chart put in showing the course of the mail steamer for about four hours before the collision there is a separate plan showing the course of the mail steamer for 20 minutes before the collision, and the course of the cruiser as inferred from what was observed by those on board the mail steamer. This plan gives a graphic statement of how, according to the contention of the mail steamer, the collision was brought about.

Up to 11.28 the two steamers are put as upon almost the same course, the cruiser at S. 65½ W., and the mail steamer at S. 65 W. The mail steamer

keeps that course until 11.38, when her course is altered to S. 62 W. At 11.45, in consequence of her helm being starboarded half a point when a junk was reported on the starboard bow, her course is given as altered to about S. 63 W., and that course is kept until 11.46.40, the helm being then put hard-a-starboard to avoid the collision.

RECORD.

No. 6.

Judgment—  
continued.

The course given to the cruiser up to 11.28 is that given by the cruiser. But from 11.28 a different course is assigned to her. From 11.28 until the time of the starboarding with which she is charged the cruiser's course is put at S. 71 W. At 11.28 the stern light of the cruiser is put at one point on the mail steamer's starboard bow. The cruiser's course, it is stated, was then observed to be altering to starboard, and at 11.38 before the alteration of the mail steamer's course, the stern light of the cruiser is put as thirteen degrees on the latter's starboard bow. The course of the mail steamer is then altered to S. 69 W, true. At 11.45 the stern light of the cruiser is put at twenty-seven degrees on the mail steamer's starboard bow at a distance of about 700 yards. At 11.46.40 the stern light of the cruiser is put at forty-eight degrees on the mail steamer's starboard bow at a distance of about 450 yards. She is shown as swinging round to port. It is at this juncture that the helm of the mail steamer is put hard-a-starboard, and at 11.48 the two steamers are shown in collision, bow to bow, the cruiser having crossed the course of the mail steamer, and heading about S. 12 E., the mail steamer having also got to the south of her course and heading about S. 33 W., the angle at which they are put down as meeting being an angle of about forty-five degrees. The speed of the vessels in this plan is taken at 14 knots for the mail steamer and 10 knots for the cruiser.

If it could be shown that the main facts stated or assumed in this presentation of the relative courses of the two vessels are necessary to explain the evidence given by the witnesses from the mail steamer on matters of fact and not of opinion, we should be driven, as the learned Counsel for the mail steamer urged we should be driven, to the conclusion that the witnesses on one side or the other had perjured themselves. But, as laid down by Dr. Lushington in the case of the "East Lothian," "we must always in these cases endeavour to come to a conclusion without imputing perjury to one side or the other," and in this case I think we can do so.

But first we have to see whether this presentation of the case is consistent with all the facts and circumstances as stated by the witnesses from the mail steamer.

The following general statement of what happened was entered in the official log of the mail steamer the day after the collision:—

"It appears that at 11.1 p.m. on 17th August ship steering S. 65 W. (true), weather very fine, clear but dark, passed Good Hope Cape Lo 16½ miles off, there being then two steamers ahead, one on either bow, steering more or less as ourselves. One bell 11.45 p.m. (11.47 log book or apparent time) was about to be made when a junk was reported by the look-out and seen from the bridge, having no lights out and being uncertain as to her movements, the helm was put to starboard to give her a wider berth, the deck stern lights of one of the steamers referred to being north of the junk and

RECORD.  
 No. 6.  
 Judgment—  
 continued.

about three points on our starboard bow. The master hearing order to starboard came on the bridge and directed that helm should be starboarded to give steamer a still wider berth, when it was noticed that the steamer was rapidly starboarding and closing with us, the port engine was immediately reversed full speed, but the steamer which proved to be the Chinese cruiser "Quangtai" closed and struck us on starboard side at an angle of about 20 degrees to 30 degrees by forward gangway ladder ripping it away, the starboard engine was then stopped and the "Quangtai" slid along ship's side and it was supposed she had sustained no injuries beyond a glancing blow. Engines were at once used to bring ship back to the vessel who now showed signs of distress by frequent blasts on syren, boats were cleared away and two lifeboats at once dispatched to assist; finally eight of ship's boats were taking off her crew, she apparently having received damage aft, evidently from contact with our starboard propeller."

Then follow particulars of the rescue work, and of the sinking of the cruiser at 1.27 a.m.

It will be at once observed that while the plan makes the two vessels meet at an angle of about 45 degrees, the entry in the log book makes the angle one of between 20 and 30 degrees, and this agrees with the evidence of most of the mail steamer's witnesses, and is also more in accord with the injuries sustained by the mail steamer. In another plan, drawn during the trial, the angle is shown as 40 degrees, and that seems to be the lowest angle the manœuvres assumed in the plan admit of.

If the vessels had met at that angle the damage at the points of first impact would probably have been much more serious.

But a more important element is the element of time. We cannot expect to have in a collision a record of the exact moment at which each thing is seen or done, but we have in this case the means of judging with reasonable accuracy the interval which elapsed from the time the cruiser was seen to starboard until the bows of the two vessels came into collision.

The Commander says that very soon after going on the bridge it appeared to him that the cruiser was closing and he gave the order to starboard, that as he gave that order he was sure she was closing, and gave the order to hard a-starboard, and, as he did so, to save time, he worked the telegraph himself and ordered the port engine to be reversed, and he says that the order to reverse the port engine remained on the telegraph until the first impact. The engineer in charge of the port engine says that he was standing within a few feet of the levers when the telegraph bell rang, that he reversed at once, and that the next order full speed ahead was given at the time of or immediately after the impact. He said that it takes from 10 to 15 seconds to alter from full speed ahead to full speed astern, and he estimated that the engines were going astern fully three quarters of a minute. But he afterwards said that the engine made about 30 revolutions astern before the order to stop was given, that in the first quarter of a minute they would probably make 10 to 15 revolutions, the second quarter more, and the third quarter more still. It would seem probable therefore that they were actually going astern for not more than half a minute, and this is rather borne out by the entry in the engine room log:

"Port engines, stop 11.47, astern full speed 11.47, ahead full speed 11.47." Allowing time to put the engines astern, and allowing half a minute as the time the engines were going astern the whole time which elapsed from the moment the order hard a-starboard was given until the ships were in collision bow to bow was probably not more than three quarters of a minute.

RECORD.  
No. 6.  
Judgment—  
continued.

Now for the cruiser to go from the place assigned to her in the mail steamer's plan at the time of the mail steamer's order hard-a-starboard to the place of collision would take nearly twice that time. In the plan, taking the initial speed of the cruiser at 10 knots, the time taken is 1 minute 20 seconds, and in a corrected plan, where the speed is taken as nine knots, the time required is 1 minute 30 seconds. If the available time is reduced by a half or nearly a half, and I arrive at the conclusion on the evidence that it must be so reduced, it is clear that the cruiser could not possibly have executed the manœuvre attributed to her. She could not in the time available have traversed the distance, and if the bearings given by the mail steamer are correct, the distance between the cruiser and the mail steamer must have been much less than was estimated by the mail steamer, and the distance between the courses must also have been less. In the time available, moreover, the mail stramer herself could not have got into the position assigned to her in the plan. We have no reliable evidence as to how far her head had turned from the time of the order hard-a-starboard until the first impact. No compass observation was taken on board the mail steamer, but whatever may have been the direction of the ship's head, the time available was scarcely sufficient to allow the body of the ship to get clear of the advance of her course.

Then it may be observed as to the course of the mail steamer, immediately before the order to hard-a-starboard was given, she is described as having been for about a minute and a half on a course about six degrees south of her regular course in consequence of the order starboard half a point when the junk was reported. But no effect is allowed for the order to resume her course, which was given by the officer of the watch, and I am of opinion that some effect must be allowed for this. The order was given, but was not heard by the Commander, and it was probably given before the Commander reached the bridge.

I have come, then, to the conclusion that the time which elapsed between the order hard-a-starboard and the collision was considerably less than the time taken in the plan, and consequently that the time which elapsed between the reporting of the junk and the collision was also less. I think it probable that the time did not exceed two minutes. That being so, I am advised that the fact of the cruiser's stern light bearing about three points on the mail steamer's starboard bow was quite consistent with the two steamers having kept their respective courses, the cruiser about S. 65½ W. true, and the mail steamer about S. 69 W. true, and I have come to the conclusion that up till that time they had kept their courses, but that they were much nearer to each other than was appreciated by those on board the mail steamer. I have also come to the conclusion that after the order was given by the officer of the watch of the mail steamer to starboard half a point, and her head had gone off to port under a starboard helm, she had nearly if not altogether resumed her

**RECORD.** course when the order hard-a-starboard was given, and that after that order was given there was not time for the mail steamer to alter the direction of her head so much as is put down on the plan, and that she had not time to get off the course she was on until she was on the top of the cruiser, in other words, that when the order hard-a-starboard was given the collision was inevitable, not by reason of the cruiser starboarding, but by reason of the mail steamer having kept her course too long without taking any steps to avoid the cruiser.

**No. 6.**  
**Judgment—**  
*continued.*

Before the question of the cruiser starboarding or not starboarding is disposed of, it is necessary to consider the evidence with regard to the junk. The learned Counsel for the Defendants laid much stress on this element in the case, as a ground for the contention that the cruiser must have altered her course. Let us see how that evidence stands. 10

All those on board the cruiser who were examined on the point testified that they saw no junk. One very material witness both as regards this point and as regards the movements of the cruiser generally was absent, that is, the commander of the cruiser who was on the bridge and in charge of the navigation at the time of the collision and for some time before. He was among those who were drowned when the cruiser sank, and I shall have occasion to refer to the subject of his death. But for the matter now in hand, it is enough to say that the witnesses from the cruiser who were asked had they seen any junk answering in time and position to the junk in question all denied that they had seen such a junk. 20

If we turn to the general statement in the official log book of the mail steamer we find the junk is mentioned, but the bearing is not given. The statement is signed by the commander and the mate, but so far as regards the junk it appears to be entirely an impersonal statement. The mate was not examined, and he does not appear to have been in a position to see what took place before or at the time of the collision. Those on board the mail steamer by whom the junk might have been seen, were, as we have been told, seven in all, that is, the extra second officer, who was the officer of the watch, the third officer, two quartermasters, one at the wheel and one near the wheel-house; and two look-out men, one on the forecastle head, and one in the crow's nest, and the Commander. In the general statement in the official log book there is no mention of the Commander having seen the junk, and, having heard his evidence, I am satisfied that he did not see it. In his examination in chief he was not asked whether he had seen it, and the learned Counsel for the defence sought to get in evidence of the junk by asking him what the officer of the watch had told him. In cross examination he was asked about the junk and he said the officer of the watch pointed out its position, and the rest of his evidence with regard to the junk was mostly by way of argument. I arrive at the conclusion that the officer of the watch did not succeed in bringing the junk within the Commander's actual observation. In drawing any conclusion from this, allowance must, of course, be made for the Commander having come out of his own room into the darkness and requiring some time before he could see as clearly as one who had remained on deck. Each of the other six members of the ship's company made their statements with regard to the collision. 30 40

which were taken down and entered in the official log the day after the collision.

RECORD.

With an exception I shall refer to, in only two of these statements is there any reference to the junk, that is, in the statement of the officer of the watch and the statement of the look-out in the crow's nest. The extra second officer says:—

No. 6.  
Judgment—  
continued.

10 "I was officer of the watch from 8.0 p.m. to time of collision; and first saw the steamer at about 9.45 p.m. right ahead (stern light), she gradually altered her bearing to the north, and before altering our course from S. 64 W. to S. 68 W. at 11.38 p.m. she was well on the starboard bow. When overhauling the steamer and when she was about three points on the starboard bow I observed a junk about two points on our starboard bow, and I ordered the helm to starboard in order to give the junk a wider berth, and I ordered the course to be resumed on seeing everything well clear. Just as the Commander came on the bridge to me the vessel appeared to be altering her course to port and the commander gave orders to starboard and to hard-a-starboard in quick succession, reversing the port engine, and soon after the vessel struck us just forward of the bridge, and I stopped engines at Commander's orders. I was then  
20 sent to report on damage over the side and soon afterwards went to the "Quangtai" in my boat and assisted in bringing off the crew. In the first place I was surprised to see the "Quangtai" starboard her helm to avoid the junk as the latter had little way upon her, and being upon the "Quangtai's" port bow, to port was the obvious course to take, but even after having starboarded, I consider that had the "Quangtai" resumed her course after clearing the junk there was ample room for the two steamers to pass clear of each other. Instead, the "Quangtai" appeared to keep her helm hard-a-starboard until she struck us, being previously loudly hailed by Commander and myself to port her helm."

30 The statement of the look-out in the crow's nest is as follows:—

"I was on the look-out in the crow's nest of the 'Empress of India' from 10.0 p.m. till time of collision. I saw a fishing-boat on the starboard bow without lights and between the ship and the 'Quangtai,' I saw the 'Quangtai' alter her course to port and pass between the ship and the fishing-boat. Up to the time of the 'Quangtai' altering her course there was any amount of room between our ship and the 'Quangtai.' I consider that had the 'Quangtai' resumed her former course on clearing the fishing-boat there would still have been plenty of room between the vessels. She did not alter her course back at all."

40 The exception I have referred to is the statement of the third officer. There is in it a reference to the junk, but it is erased, and there is in it no further mention of the junk. He says:—

"I was on duty from 8.0 p.m. till time of collision on the night of August 17th. I had just visited the rounds and returned to the bridge as the Commander went out. I saw a (here follow the words 'junk on

RECORD.  
 No. 6  
 Judgment—  
 continued.

the, but these words have the pen drawn through them, and the narrative continues) steamer on the starboard bow about three points, and noticed she was altering her course to starboard. I heard the order hard-a-starboard, and then the port engine reversed full speed. I heard the Commander hail the vessel to put her helm to port, and I yelled out too."

In none of the other three statements is there any reference to the junk. The look-out on the forecandle head was not called as a witness, but his absence is accounted for by an entry in the official log saying that he had deserted at Vancouver. In his statement he says:—

10

"I was on the look-out last night on the forecandle head of the 'Empress of India' from 10.0 p.m. till the time of collision. During that time I reported several lights and vessels. I noticed that we were overhauling a steamer on the starboard bow and considered that there was plenty of room. I noticed the steamer alter her course to port and soon strike our ship. I did not see any sign of her altering her course to starboard."

There is here not a word about the junk in connection with the cruiser altering her course to starboard, and I arrive at the conclusion that he saw no junk. Neither of the quartermasters in their statements make any reference to the junk. The quartermaster at the wheel in his evidence says he could not see a junk, but this is fairly accounted for by his being inside the wheel-house with his eyes on the compass and not in favourable circumstances to observe an object at sea on a dark night. The quartermaster in attendance was called, and he spoke of seeing the junk, but in his original statement he makes no mention of it, and the only direct reference we have to the junk in the personal statements contained in the log book are in the statements of the look-out in the crow's nest and of the officers of the watch.

20

In the statement of the look-out no bearing is given. In the statement of the officer of the watch the bearing of the junk is given as about two points on the starboard bow of the mail steamer, while at the same time the stern light of the cruiser was about three points on the starboard bow.

30

If we look at the plan put in by the mail steamer we find the junk put down as bearing barely a point on the mail steamer's starboard bow when on the course assigned to her before the order to starboard half a point was given, and no wider bearing could be well given consistently with the theory which the plan was intended to support. At the hearing evidence was given by some of the witnesses on the part of the mail steamer that the bearing was about a point or between one point and two points on the mail steamer's starboard bow. The assessors having heard all the evidence came to the opinion that there was no junk. They have no doubt, and I have no doubt, that the look-out reported a vessel on the starboard bow without lights, and that the officer of the watch when he looked, saw what he took to be a vessel without lights. But the assessors are of opinion that what they saw was not a junk but was the loom of the fore part of the cruiser with the topmast

40



housed. I concur in and adopt this opinion. The bearing given by the officer of the watch in his original statement in the official log, and I accept that statement in preference to evidence given later when the effect of the evidence had been more fully thought out, is consistent with what on other grounds I have arrived at as the relative positions of the vessels. I am quite satisfied on the evidence that the mail steamer had got much closer to the cruiser than was realised by those on board the mail steamer, and that it would have been impossible for the cruiser with her stern light at that time bearing three points on the mail steamer's starboard bow to have got out of the way of any vessel right ahead of her two points on the mail steamer's starboard bow, much less to have by starboarding got out of the way of a vessel on her port bow.

The evidence given months afterwards of those who made no reference to the junk in their statements taken down on the following day does not appear to me to be of much value. Without imputing to any of them an intention of saying what they believe not to be true, the effect of their since having sailed together and having discussed as one of the witnesses said they did discuss, and as they naturally might be expected to discuss, the incidents of the collision, the impression of each as to what he himself saw cannot be as accurate as it was on the day after the collision.

Having heard the detailed evidence of the look-out on the crow's nest as to what he could see and what he could not see, I am satisfied that the night was one in which things other than lights could not well be seen at a distance. The latter part of the night was bright, but the moon did not rise until after the collision. At the time the vessel was reported the night was such that the look-out could very well make the mistake which in the opinion of the Assessors and of myself he did make, and the same consideration, the darkness of the night, adds to my doubt of the accuracy of the present impressions of some of the witnesses as to what they saw on that night.

There was another argument used on behalf of the mail steamer in favour of the theory that the cruiser had starboarded, namely, that the stern light of the cruiser had opened out rapidly on the mail steamer's starboard bow showing that her course was divergent from that of the mail steamer up till the time the order starboard half a point was given, and that she had therefore got into such a position that the collision could only have happened through the cruiser starboarding.

Now, the first widening out referred to is that from the time the cruiser was one degree on the mail steamer's starboard bow until she was about one point on the starboard bow. In the plan put in by the mail steamer there is the note "11.28 'Quangtai's' stern light one degree on 'Empress's' starboard bow, observed 'Quangtai' alter course to starboard," and then at 11.38 the bearing is given as 13 degrees when "Empress" altered course to S. 69 W. true, that is an alteration of 12 degrees in ten minutes, and I am advised that such an alteration would be hardly if at all perceptible so as to indicate a change of course to an observer on the mail steamer. There is evidence, moreover, that the alteration of the bearing had taken place before 11.28. The second officer said that he left the bridge to go the rounds at 11.20 and the cruiser was then about one point on their starboard bow. The widening

RECORD.

No. 6.  
Judgment—  
continued.

RECORD.

No. 6.  
Judgment—  
continued.

to one point therefore appears to have already taken place before 11.28, and there appears to have been no widening whatever between 11.28 and 11.38 as noted on the plan.

The widening out to one point I am advised is quite explained by the overtaking and overtaken vessels being on parallel or almost parallel courses, and indicated no divergence in the course of the overtaken vessel.

Then there is the widening of from one point to three points between 11.38 when the course of the mail steamer was altered to S. 69 W., true, hauling her in four degrees nearer to the course of the cruiser.

There is no evidence of the slightest value that this widening of the 10 bearing was continuous. The Commander appears to have thought that it was widening when he went to his cabin after giving the course, but the widening, if continuous, was such as could only be determined in the short time the Commander was on deck by compass observation, and he frankly said he took no compass observation.

The third officer was below from 11.20, and did not again observe the hearing of the cruiser until he went out on deck, when the order starboard half a point was given. When he went below she was about one point on the starboard bow. When he came out on the bridge again she was bearing from two to three points as far as he could remember. Then the quartermaster in 20 attendance did not observe the light from the time it was right ahead until it was two points or  $2\frac{1}{2}$  points on the starboard bow, and he could not give the time when he saw that. The look-out on the crow's nest gives no bearing from the time the cruiser was right ahead until she was three points on the starboard bow. Then there is the officer of the watch. He said that he did take compass bearings, but he appeared to be not quite certain on this point and he could give no particulars, and I am satisfied that no widening of the bearing was observed, and that there was no material widening of the bearing until the time the order starboard half a point was given or just before, and that the cause of the widening at that time was that the mail steamer was 30 overhauling the cruiser on a course that was converging with that of the cruiser, that they were approaching the point of convergence, and were, as I have already said, much nearer to each other than was realised on board the mail steamer.

There is a statement in the official log book which was volunteered by a passenger, who gave his impression of what he saw when the collision was about to take place, and as it was discussed on both sides it may be well to refer to it. The passenger says:—

“About 11.50 p.m. on 17th August I was standing underneath the bridge on the starboard side watching a steamer which we were passing on 40 our starboard side; she was apparently about 400 yards away from us, and we appeared to be steering a parallel course. When our bow was in a cross line with her stern she appeared to me to alter her course to cross our bows, and I remember thinking she can't go before us and she can't go behind us, therefore what can she be going to do. I heard the officer on the bridge above me shout 'Port your helm there,' but as it seemed to me she swerved still nearer to us, and struck us about 20 feet forward of where

I was standing. I went up on the bridge, asked for the Commanding Officer who was there, told him I was a witness of the whole occurrence and willing to testify to what I had seen if called upon, as I did not consider the 'Empress of India' to blame. I have 25 years' experience in steamers in various parts of the world."

RECORD.  
No. 8.  
Judgment—  
continued.

If he means here that the cruiser was 400 yards away when her stern was in a cross line with the mail steamer's bows there would have been no collision. His estimate of the distance must have been very much in excess of the actual distance, and that seems to have been the case with nearly all the witnesses.  
10 But I am advised that the apparent alteration of the course of the cruiser is what would present itself to a spectator in the overtaking vessel when she arrived in the position he describes with regard to the overtaken vessel, the two vessels being on convergent courses. The apparent starboarding of the cruiser which presented itself to those on board the mail steamer was not only no proof that she did starboard, but was, I am advised, what might be expected to present itself in the circumstances which on other grounds I have found to exist.

If the mail steamer had merely failed to prove that the cruiser starboarded, there are cases which go to show that the mail steamer being the overtaking  
20 steamer must be held to blame, but Counsel for the mail steamer urged that that was not enough, that the cruiser must prove that she did not starboard. It is not necessary to go into the cases on this point. If this obligation lies on the cruiser I think that it has been fulfilled. I consider that it is satisfactorily proved that the cruiser did not starboard. The learned Counsel for the mail steamer who argued the case with great ability, and took every point which could properly be taken, further cited what was said by Lord Westbury in delivering the judgment of the Privy Council in the "City of Antwerp" and the "Friedrich" (L. R. 2 P. C. 25). "When a steamer is condemned for  
30 "having omitted to do something which she ought to have done, it seems just  
"to require clear proof of three things, first, that the thing omitted to be done  
"was clearly within the power of the steamer to do; secondly, that, if done, it  
"would, in all probability, have prevented the collision; and thirdly, that it  
"was an act which would have occurred to any officer of competent skill and  
"experience in command of the steamer."

In the case of an overtaking steamer, it would appear to be quite sufficient to show that she did not keep out of the way, even if no specific fault could be shown on the part of the overtaking steamer. But in this case I find that the collision was brought about by the alteration of the course of the mail steamer at 11.38 so as to cross the course of the cruiser, and the failure thereafter to  
40 keep a proper look-out. Counsel for the mail steamer dwelt upon the numbers who were on the look-out, but, the look-out men having reported the light of the cruiser, the responsibility for observing the subsequent course of the cruiser fell upon the officers on the bridge. The third officer had left the bridge to go his rounds before the alteration in the course, and did not go out on the bridge again until the order starboard half a point was given, and the Commander was also away from the bridge from shortly after giving instructions for the change of course. It is not suggested that the absence of the Commander or

RECORD. of the third officer from the bridge was in itself wrong. The Commander cannot be always on the bridge, and the third officer was absent in the usual course of his duty. But the result was that there was only the officer of the watch to keep a look-out on the movements of the cruiser, and it was all the more incumbent on him that he was hauling in his own vessel more closely to the course of the cruiser. I am satisfied after the most careful consideration that he did not keep a good look-out, and that the collision took place in consequence.

No. 6.  
Judgment—  
continued.

The alteration of the course is similar to that which formed the subject of the judgment in the case of the "Seaton" (9 P. D. I.), and which was there held not to be justifiable. But if a good look-out had been kept the effect of the alteration would have been in time to prevent the collision. It is suggested by the Assessors that the failure to keep a good look-out on the part of the officer of the watch may be partly accounted for by his attention being taken up with getting the ship steadied on her course and his eyes being fixed on the compass for some time at least for that purpose. With that, however, the cruiser is not concerned. 10

I have assumed throughout that the parts of each vessel which first came into contact was the bluff of the port bow of the cruiser and the starboard side of the mail steamer forward. That is what was first seen by the Commander of the mail steamer. The Assessors are of opinion, and I quite agree with them, that the collision could not have taken place, as stated, in the preliminary act of the cruiser, that is, the mail steamer's starboard bow striking the cruiser's port quarter. In the preliminary act of the mail steamer the parts of each vessel which first came in contact are the cruiser's bowsprit striking the starboard side of the mail steamer near the forecastle head. The Commander of the mail steamer did not see the bowsprit strike, but there was damage done which it was supposed must have been done in that way. If it were material it might be necessary to consider carefully the evidence with regard to the bowsprit. But it is not material. The statement of the cruiser in the preliminary act that the parts which first came in contact were the mail steamer's starboard bow and the cruiser's port quarter is under the circumstances of more importance. Counsel argued that if it is found not to be correct, the doctrine of *Secundum allegata et probata* would apply. But the cruiser has alleged and proved the infringement of Article 24 of the Regulations, and, putting aside all the rest of their allegations, that, according to the judgment of the Privy Council in the "Hochung" and the "Lapwing" (7 App. Cas., 512) would entitle the owners of the cruiser to recover. But Counsel further argued that the evidence given on behalf of the cruiser in favour of this allegation went to show that the other evidence given by the same witnesses was also untrustworthy. But I think it right to say that the witnesses from the cruiser appeared to me to give their evidence truthfully, and the Assessors are of the same opinion. The witnesses did not all agree as to the parts which first came in contact, and, judging from the respective positions in which they were, it appeared to me that they might very well have been under the impression that the vessels struck where they said they did. Their evidence, taken with the evidence of the Commander of the mail steamer, 20 30 40

leaves a doubt whether the injury near the break of the fore-castle may not have been caused by one of the davits of the cruiser before the hulls of the vessels came in contact, and whether the angle at which they were to one another at that time may not have been caused by the bow wave of the mail steamer catching the stern of the cruiser and swinging it round. But it is not necessary to pursue that inquiry further. Suffice it to say that, having considered with the Assessors the differences in the statements of the witnesses on this and other points which were relied on by Counsel as discrepancies, I have come to the conclusion that these are for the most part accounted for  
 10 by the different positions in which they were placed, and that there is no reason to doubt their *bona fides*.

RECORD.  
 —  
 No. 6.  
 Judgment—  
 continued.

I have referred to the death of the Commander of the cruiser. I was sorry to hear the suggestion that he went down deliberately with the ship. After hearing the explicit evidence of the gunnery-lieutenant who was alongside of the Commander when the cruiser went down, the suggestion to my mind was clearly disproved, and I regret that Mr. Davies, who had been officer of the watch on the mail steamer at the time of the collision and afterwards in charge of one of the rescue boats, and with whom the suggestion appears to have originated, was on his examination asked to state his opinion  
 20 after the evidence of the gunnery-lieutenant had been given.

I find, then, that the mail steamer was in fault, and that the cruiser is not precluded by anything in the pleadings from recovering against the mail steamer.

But it was argued that, assuming the case to be as stated by the cruiser, the cruiser ought to have done something to avoid the collision, that she ought to have ported. But Counsel had already cited the judgments in the Court of Appeal in the case of the "Saragossa" (68 L.T. 400) showing how strictly the overtaken ship is held not to deviate to one side or the other so as to embarrass the overtaking ship which is to have the choice of passing on  
 30 either side. The cruiser was right in holding on until it became clear that the collision would not be avoided by the action of the mail steamer alone, and I am of opinion that the cruiser could not then by porting have avoided the collision.

I find, then, that the mail steamer, the "Empress of India," is alone to blame, and there will be the usual decree against the owners for damages and costs, and the usual reference to the Registrar and Merchants.

RECORD.

No. 7.  
Decree, 29th  
Dec. 1903.

No. 7.

In His Britannic Majesty's Supreme Court for China and Corea, at  
Shanghai.

In Admiralty.

The Imperial Chinese Government, owners of the  
Chinese cruiser "Quangtai" - - - - - Plaintiffs,

*versus*

The owners of the British steamship "Empress of  
India" - - - - - Defendants.

This suit having come on for trial on the 6th, 7th, 10th, 11th, 12th, 13th 10  
and 14th days of November, and the 29th day of December 1903 before Sir  
Hiram Shaw Wilkinson, Knight Chief Justice of this Court assisted by  
Captain C. H. H. Moore, R.N., and Navigating Lieutenant A. E. House, R.N.,  
in the presence of Counsel for the Plaintiffs and the Defendants upon reading  
the pleadings and upon hearing the evidence adduced and what was alleged  
by Counsel on both sides this Court doth pronounce and decree that the  
collision in question in this action was solely occasioned by the fault or default  
of the master and crew of the British steamship "Empress of India" and for  
the Plaintiffs' claim for damages in consequence thereof And it is further  
decree that the said Defendants and their bail be condemned in the said 20  
damages and costs And this Court doth order that the said damages be  
referred to the Registrar assisted by Merchants to assess the amount  
thereof.

Dated the twenty-ninth day of December 1903.

I certify that I served a copy of this decree on Messrs. Stokes and Platt,  
Solicitors for the Defendants, on the 9th day of January 1904.

T. MACDONALD,  
Usher.

No. 8.

RECORD.

In His Britannic Majesty's Supreme Court for China and Corea,  
At Shanghai.

In Admiralty.

The Imperial Chinese Government, Owners of the  
Cruiser "Quangtai" - - - - - Plaintiffs,

*versus*

The Owners of the British Steamship "Empress of  
India" - - - - - Defendants.

No. 8.  
Motion for  
leave to  
appeal, 8th  
Jan. 1904.

10 The Defendants by their Counsel Winfrid Alured Comyn Platt move that they have leave to Appeal to His Majesty in Council against the decree of this Honourable Court dated the twenty-ninth day of December one thousand nine hundred and three.

Dated this eighth of January one thousand nine hundred and four.

W. A. C. PLATT,  
Counsel for the Defendants.

Take notice that this motion will come on for hearing before this Court on Monday the 11th day of January 1904 at 10.30 o'clock in the forenoon.

20

J. C. E. DOUGLAS,  
Registrar.

I certify that I served notice of motion on Messrs. Drummond and White-Cooper Solicitors for the Plaintiffs the 9th day of January 1904.

T. MACDONALD,  
Usher.

No. 9.

No. 9.  
Security, 5th  
Feb. 1904.

In His Britannic Majesty's Supreme Court for China and Corea,  
At Shanghai.

Dated the fifth day of February 1904.

In Admiralty.

30

The Imperial Chinese Government, Owners of the  
Cruiser "Quangtai" - - - - - Plaintiff and Respondents,

*versus*

The Owners of the British Steamship "Empress of  
India" - - - - - Defendants and Appellants.

Winfrid Alured Comyn Platt, Counsel for the above-named Defendants and Appellants, brings into Court the sum of two thousand five hundred dollars (\$2,500) as security for the prosecution of the Appeal of the said Defendants and Appellants against the decree of this Court, dated the twenty-

RECORD. ninth day of December one thousand nine hundred and three, and the payment of all such costs as may be awarded to the above-named Plaintiffs and Respondents by His Majesty in Council or by the Lords of the Judicial Committee of His Majesty's Privy Council.

No. 9.  
Security, 5th  
Feb. 1904—  
continued.

W. A. C. PLATT,  
Counsel for the Defendants.

Received the above sum of two thousand five hundred dollars (\$2,500), this 5th day of February one thousand nine hundred and four.

J. C. E. DOUGLAS,  
Registrar.

10

Receipt given.  
J. C. E. D.

No. 10.  
Order, 8th  
Feb. 1904.

No. 10.

In His Britannic Majesty's Supreme Court for China and Corea,  
at Shanghai.

In Admiralty.

The Imperial Chinese Government, Owners of the  
Cruiser "Quangtai" - - Plaintiffs and Respondents,

*versus*

The Owners of the British Steamship "Empress of  
India" - - Defendants and Appellants. 20

This Court upon the application of the above-named Defendants and Appellants made the eleventh day of January one thousand nine hundred and four for leave to appeal to His Majesty in Council against the Decree of this Court dated the twenty-ninth day of December one thousand nine hundred and three, and upon hearing Counsel for the above-named Defendants and Appellants and the above-named Plaintiffs and Respondents having ordered that upon the Defendants and Appellants giving security by deposit on or before the ninth day of February one thousand nine hundred and four of the sum of two thousand five hundred dollars for the prosecution of the appeal and for payment of all such costs as may be awarded to the above-named Plaintiffs and Respondents by His Majesty in Council or by the Lords of the Judicial Committee of His Majesty's Privy Council And the above-named Defendants and Appellants having on the fifth day of February one thousand nine hundred and four deposited in Court the said sum of two thousand five hundred dollars. Now this Court doth order that the said Defendants and Appellants have leave to appeal to His Majesty in Council against the said Decree of this Court dated the twenty-ninth day of December one thousand nine hundred and three And this Court doth further order that the execution of the said decree be stayed pending the Appeal of the said Defendants and Appellants. 30

Dated the 8th day of February 1904.

40



No. 11.

In 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).

RECORD.

No. 11  
Acting Registrar's  
Certificate,  
22nd July  
1904.

10 I, Herbert Phillips, Acting Registrar of His Britannic Majesty's Supreme Court for China and Corea, do hereby certify as follows:—

1. That the foregoing is a true and correct transcript of the Record in this Court.

2. That security, to the extent of two thousand five hundred Mexican dollars, has been given by the Canadian Pacific Railway Company, the Appellants, from the judgment of this Court, to the satisfaction of the Court, for the prosecution of the appeal, and for the payment of all such costs as may be awarded to the Respondents by the Judicial Committee of His Majesty's Privy Council.

20 3. That the fees for the preparation of this Record amount to one hundred and forty-four dollars, of which one half is payable to copying clerks.

HERBERT PHILLIPPS,  
Acting Registrar.

Dated 22nd July 1904.

## No. 12.

## RECORD.

No. 12.  
List of  
Documents  
omitted from  
Record.

*Note.*—List of Documents omitted from Record.

1. Undertaking by Defendant to enter an appearance and to give bail, dated 26th August 1903.
2. Submission of Plaintiffs to jurisdiction, dated 28th September 1903.
3. Security paid in by Plaintiffs, 28th September 1903.
4. Bond for 90,000*l.* entered into by Canadian Pacific Railway Company, dated 27th August 1903.
5. Summons taken out by Defendants for further time to file their answer, 10th October 1903. 10
6. Summons taken out by Defendants for still further time to file their answer, 16th October 1903.
7. Affidavit by Mr. J. H. Teesdale, of 17th October 1903, filed in support of summons of 10th October 1903.
8. Further affidavit by the said J. H. Teesdale, of 20th October 1903.
9. Application to set down case for hearing.
10. Notice of hearing.
11. Copy of Subpœna to Newman Munford.
12. Summons, dated 29th June 1904, taken out by Plaintiffs for the hearing of an application for Defendants to show cause why the Transcript Record should not be forwarded to the Registrar of His Majesty's Privy Council forthwith. 20

*Note.*—By consent of solicitors for both parties the forwarding of the Transcript Record was postponed to allow of Defendant's taking Counsel's opinion in Montreal.

HERBERT PHILLIPS,  
Acting Registrar.

---

In the Privy Council.

No. 62 of 1904.

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

---

BETWEEN  
THE OWNERS OF THE BRITISH STEAM-  
SHIP "EMPRESS OF INDIA" -  
*(Defendants) Appellants,*  
AND  
THE IMPERIAL CHINESE GOVERN-  
MENT, OWNERS OF THE CRUISER  
"QUANGTAI" - *(Plaintiffs) Respondents.*

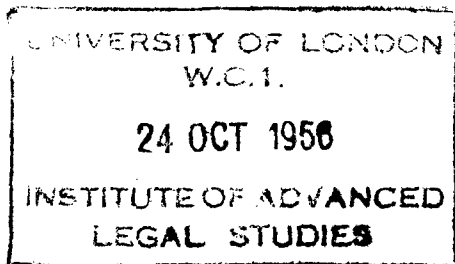
---

RECORD OF PROCEEDINGS.

---

WILLIAM A. CRUMP AND SON,  
17, Leadenhall Street, E.C.,  
*for Appellants.*

WADESON AND MALLESON,  
7, Devonshire Square, E.C.,  
*for Respondents.*



31540

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Owners of the British Steamship "Empress of India," v. The Imperial Chinese Government, Owners of the Cruiser "Quangtai," from His Britannic Majesty's Supreme Court for China and Corea; delivered the 4th August 1905.*

Present at the Hearing :

LORD MACNAGHTEN.

LORD DAVEY.

LORD JAMES OF HEREFORD.

SIR ARTHUR WILSON.

SIR J. GORELL BARNES.

*Nautical Assessors :*

ADMIRAL RODNEY M. LLOYD, C.B.

CAPTAIN W. F. CABORNE, C.B., R.N.R.

[*Delivered by Sir J. Gorell Barnes.*]

This is an Appeal from the Supreme Court for China and Corea at Shanghai in a suit which arose in consequence of a disastrous collision which occurred between the Chinese cruiser "Quangtai," belonging to the Imperial Chinese Government, and the British Royal Mail steamer "Empress of India," belonging to the Canadian Pacific Railway Company, about 11.48 p.m. on the 17th August 1903, off the coast of China, between the Lamocks and Breaker Point. The cruiser received such injuries that she sank in about an hour and forty minutes after the collision. The mail steamer in the meantime stood by and sent boats to the rescue of those on board the cruiser, and did all that could be done to save

life; 171 out of a total of 184 were saved. Unfortunately, the commander of the cruiser, who was on the bridge and in charge of her navigation at the time of the collision, and for some time before, was among those who were drowned when the cruiser sank, so that his evidence was not forthcoming.

A suit was instituted by the Imperial Chinese Government, the owners of the "Quangtai," against the owners of the "Empress of India," for the recovery of the amount of damages sustained by the Plaintiffs (Respondents) in consequence of the said collision, and this suit was heard before Sir Hiram Shaw Wilkinson, the Chief Justice of the Supreme Court, assisted by Nautical Assessors, in November 1903, and the learned Judge afterwards found that the "Empress of India" was alone to blame for the collision, and pronounced the usual decree against her owners and their bail for the damages sustained by the Plaintiffs, and costs, with the usual reference to the Registrar and merchants. From this Judgment the Appellants appeal, contending that the "Quangtai," should be pronounced alone or in part to blame for the collision.

At the time of the collision both vessels were bound from Woosung to Hong Kong, and shortly before the collision the "Quangtai" had been on a course of S. 65 W. true, and the "Empress of India" on a slightly converging course, S. 69 W. true, the cruiser being ahead of the mail steamer, and the mail steamer following her and overtaking her. It was therefore the duty of the "Quangtai" to keep her course and speed, and of the "Empress of India" to keep out of the way of the "Quangtai."

The case for the "Quangtai," which is a vessel of about 2,200 tons register, is that she was steaming about nine knots an hour through the

water, that at 11 p.m. her course was slightly altered to W. by S.  $\frac{3}{4}$  South, or S.  $65\frac{1}{2}$  W. true, that this course was kept until the collision, that something over an hour before the collision the lights of the mail steamer were seen astern a long distance off, that the lights remained directly astern or a little on the port quarter of the cruiser until the collision, that the "Empress of India" rapidly overtook the "Quangtai," that the "Quangtai" kept her course without alteration after 11 p.m. until the collision occurred, but that the "Empress of India," instead of keeping clear of the "Quangtai," came on and ran up alongside her, striking her on her port side, and that before the vessels sheered clear of each other the cruiser was struck by the starboard propeller of the "Empress of India," and afterwards sank from the injuries received.

The case for the mail boat, which is a vessel of 6,000 tons gross burden, is that she was proceeding at a speed of about 14 knots an hour through the water, that about two hours before the collision the stern light of the "Quangtai" was seen bearing almost ahead, that as the "Empress of India" proceeded the "Quangtai" opened out on her starboard bow until, as she was approaching and about to pass the "Quangtai," that vessel suddenly starboarded her helm and came across the course of the mail boat, and that, although the mail boat did all she could to avoid the collision, it was thus brought about by the wrongful action of the "Quangtai." The suggestion on the part of the mail boat for this starboarding of the "Quangtai" is that there was a junk ahead of and between the courses of the two steamers, and that those on the "Quangtai" acted improperly and violently by starboarding to clear the junk when they could and ought to have ported to clear her, having regard to the position of the mail boat at

that time. The Appellants contend that the "Quangtai" starboarded as much as six points in her endeavour to clear the junk.

It will be observed from this brief outline of the cases of the two vessels that the questions raised are purely questions of fact, and the result of the case depends on whether or not the "Quangtai" kept her course, for, if she did, the "Empress of India" must be found solely to blame. It was not contended that if the "Quangtai" kept her course, she could or ought to have done anything else to avoid the collision. The learned Judge stated in his Judgment that he considered that it was satisfactorily proved that the cruiser did not starboard, with the result that he decided the case in the Respondents' favour.

Counsel for the Appellants argued before their Lordships that the conclusion of the learned Judge was erroneous principally on two grounds:— first, that he found that the parts of each vessel which first came in contact were the bluff of the port bow of the cruiser and the starboard side of the mail steamer, as contended for by the Appellants, and not, as contended for by the Respondents, the mail steamer's starboard bow and the cruiser's port quarter, and that the angle of the blow which the Appellants sought to establish from this, coupled with the evidence in the case, showed that the "Quangtai" must have come towards the "Empress of India" under starboard helm in order to produce this result; and, secondly, that the improbability of the mail boat, from which the cruiser had been seen for a long time ahead, being allowed to run up close when on the port side so as to come into collision with her was so great that the story of the witnesses for the "Quangtai" ought not to have been accepted, and that the "Quangtai" probably altered for the alleged

junk in an excessive manner, and thus brought about the collision.

In support of the first point a carefully reasoned argument was addressed to their Lordships by Counsel for the Appellants, based upon a minute examination of the courses and speeds of the two vessels, and of the nature of the damage received by the "Empress of India," which was surveyed after her arrival in port. With regard to the first point their Lordships have examined the plans referred to in argument together with the evidence on both sides as to the nature of the collision, and the damage done, and have had the advantage of the advice of their nautical assessors, who are of opinion that the nature of the damage is more consistent with a contact at a very fine angle, possibly increased somewhat from that at which the vessels were nearing each other by the effect of the bow wave of the mail steamer catching the stern of the cruiser and swinging it round, than with the angle at which the Appellants contend the collision took place. In this opinion their Lordships concur. It appears to be in accordance with the general nature of the damage sustained by the vessels, with the way in which the "Empress of India" must have slid past the cruiser, with the contact of the propeller of the former with the cruiser, and more particularly with the fact that, if the angle of collision and action of the cruiser had been such as the Appellants contend for, it is most difficult to understand how it is possible for the ram with which the cruiser's bow was armed not to have cut into the mail boat if the cruiser were swinging towards her at 9 knots an hour under a hard-a-starboard helm, and thus struck her at the angle suggested by the Appellants.

With regard to the second point above-mentioned, the improbability of the cruiser



acting in the manner imputed to her by the Appellants appears to their Lordships and to their nautical assessors to be greater than the improbability of the action imputed to the mail steamer. For the former involves a starboarding by the cruiser of a most extraordinary character, amounting to some six or seven points, without any adequate reason for so doing. It was alleged that she so acted in order to avoid the junk already mentioned. The learned Judge, who saw the witnesses, has found that there was no junk which required or caused any action by the cruiser, and even if this finding be questioned on the ground that although none of the Respondents' witnesses saw any such junk, yet that there was a strong body of evidence from the Appellants' side as to its presence, it is to be noticed that the officer of the watch on the mail boat stated in his evidence that the junk appeared to be clear of both steamers, so that there seems to have been no necessity for the cruiser to have made any change of course for the junk, and even if the junk were ahead of the cruiser a very slight alteration of the course of the cruiser would have enabled her to clear the junk without any difficulty, as the junk on any view of the evidence was scarcely moving. Moreover—no doubt after a careful consideration of the case—the master of the mail boat appears to have expressed the case for the Appellants in a certain diagram which has been much commented on by Counsel, and demonstrates the extraordinary and improbable action which it is necessary for the Appellants to impute to the cruiser in order to make out their case against her. Again, there are indications in the evidence which show that the vessels were exceedingly close together at the time when it is alleged that any change was noticed by those on the mail boat in the

course of the cruiser. Some calculations on this point are made by the Chief Justice, and the entry in the engineer's log of the mail boat supports this view.

Upon the general features of the evidence it is to be observed that the learned Chief Justice, a judge of experience in dealing with the class of witnesses who came before him, in his Judgment stated that the witnesses from the cruiser appeared to him to give their evidence truthfully, and that his assessors were of the same opinion, and after a lengthy hearing his exhaustive judgment shows that he must have come to the conclusion that the truth rested with the Respondents.

The broad conclusions at which he arrived seem to be that the two vessels were in fact on slightly converging courses, that the mail boat was allowed to get much closer to the cruiser than those on board of the former realized, and that in attempting to pass too close to the cruiser the collision occurred.

The arguments of the Appellants have failed to convince their Lordships that the learned Chief Justice has come to an erroneous decision, and they will humbly advise His Majesty to affirm the Judgment of the Court below, and to dismiss the Appeal. The Appellants will pay the costs of the Appeal.

---