

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.

