

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Owner of the S.S. "Kwang Tung" v. The Owners of the S.S. "Ngapoota," from the Supreme Court of the Straits Settlements; delivered 22nd May 1897.

Present:
LORD WATSON.
LORD HOBHOUSE.
LORD MORRIS.
SIR RICHARD COUCH.

[*Delivered by Lord Morris.*]

The "Kwang Tung" and "Ngapoota" were two small local steamers and plying locally. About 12.40 a.m. on the 24th April 1894 the "Kwang Tung" was on a voyage from Penang to Teluk Anson in the Straits of Malacca and was steering at the rate of nine knots an hour. The "Ngapoota" was coming in the opposite direction on a voyage from Teluk Anson to Penang and when about fifteen miles north-west of Tanjong those on board the "Kwang Tung" observed the "Ngapoota" between three and four miles off. The Appellant alleged the vessels were end on. The Respondents alleged they were green to green. The case occupied several days at hearing before Mr. Justice Law in the Court of Penang and he finds that the account given of the matter on behalf of the owners of the "Kwang Tung" is the true one. That account is,—that when the ships got within one and a half miles of each other the green

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light of the "Ngapoota" was closed in and that when within about half-a-mile of each other the three lights of the "Ngapoota" became visible, that immediately Captain Cobb of the "Kwang Tung" put his helm hard to port, blew his whistle and shouted to the "Ngapoota" to port, but that seeing the "Ngapoota" swinging round he gave orders to stop and reverse, that the engines were reversed and going astern so that the rate of the "Kwang Tung" was reduced to about seven knots at the time the collision took place, the cause of collision was the improper starboarding by the "Ngapoota" and that vessel was condemned by the learned Judge as the sole cause of the collision.

The case came on appeal before the Chief Justice and Mr. Justice Leach in the Court of Appeal. They affirmed the decision of Mr. Justice Law on the facts of the case and held that the "Ngapoota" was to blame for the collision but they held as a matter of law that the "Kwang Tung" had disobeyed Article 18 of the Regulations under the Merchant Shipping Act and consequently was also thereby in default. Article 18 of the Regulations says:—"Every steamship when approaching another ship so as to involve risk of collision shall slacken her speed or stop and reverse if necessary."

Their Lordships are of opinion that the case does not turn on any question of law but depends on matters of fact,—whether on the evidence the Captain of the "Kwang Tung" had complied with rule 18. Their Lordships concur in the principle laid down by Mr. Justice Butt in the case of the *Emmy Haase*, L. R. 9 P. D. 81, viz., that compliance with rule 18 at the very moment when danger becomes apparent is not necessary; for a man must have time to consider whether he should reverse or not. The Court is not bound to hold that a man should exercise his judgment instantaneously, a short,

but a very short time must be allowed him for this purpose.

In the present case when the ships were at a distance of about half-a-mile as Captain Cobb estimated, at a less distance in the opinion of Mr. Justice Law, the "Ngapoota" shows green lights and shuts in the red but even then if the "Ngapoota" had continued her course there would have been no collision, but when observing the wavering course of steering of the "Ngapoota" Captain Cobb put his helm hard to port, blew his whistle, and shouted to those on board the "Ngapoota" to port and then gave orders to stop and reverse, the only fault alleged to have been committed by Captain Cobb is that he did not give the order to stop and reverse soon enough. At the rate the ships were proceeding a minute and a half at the most would cover the distance between the ships from the time the three lights of the "Ngapoota" came into view to the "Kwang Tung." Mr. Justice Law considered the distance was less than half a mile and that consequently the interval of time was less than a minute and a half and was within a minute. The case therefore turns on seconds of time. Their Lordships have been advised by their assessors and are of opinion that under the circumstances Captain Cobb rightly manœuvred. The period within which the engines could be stopped after an order given to stop would be twenty to thirty seconds and as they had been stopped and reversed the delay alleged as a fault could not have been more than a few seconds. This delay their Lordships are of opinion was not a faulty delay, the time being occupied in giving proper directions.

Their Lordships in result have on the evidence arrived at the conclusion that the Captain of the "Kwang Tung" did obey article 18 of the Regu-

lations as to stopping and reversing and they approve of the judgment of Mr. Justice Law. Their Lordships will therefore humbly advise Her Majesty that the judgment of the Court of Appeal should be reversed in so far as it holds the "Kwang Tung" partially to blame for the said collision and that the judgment of Mr. Justice Law should be restored. The Respondents are to pay to the Appellant the costs of both Courts and of this appeal.
