

Judgment of the Lords of the Judicial Committee of the Privy Council on the Consolidated Appeals of The Owners of the Ss. "Ta Ning," her cargo and freight v. The Owners of the Ss. "Da Sing," her cargo and freight; and of the Owners of the Ss. "Da Sing," her cargo and freight v. The Owners of the Ss. "Ta Ning," her cargo and freight, from His Britannic Majesty's Supreme Court for China and Corea; delivered the 27th October, 1909.

Present :

LORD MACNAGHTEN.

LORD ATKINSON.

LORD COLLINS.

LORD GORELL.

Nautical Assessors :

ADMIRAL SIR ARCHIBALD L. DOUGLAS,
G.C.V.O., K.C.B.

COMMANDER W. F. CABORNE, C.B., R.N.R.

[*Delivered by Lord Gorell.*]

The Appeal and Cross-appeal in this case are from a Judgment delivered on the 3rd April, 1909, by Mr. Justice Bourne, the Acting Judge of His Majesty's Supreme Court for China and Corea, at Shanghai, sitting in Admiralty.

[49] P.C.J. 155.—L. & M.—100—28/10/09. Wt. 98.

The Appeals arise out of a collision which took place on the 22nd November, 1908, in the Yangtze River, a little below Kiangyin, between the "Da Sing," a Chinese single screw iron steamship of 184 tons register, and the "Ta Ning," a British single screw wooden steamship of 144 tons register.

The "Da Sing" was bound down the Yangtze River on the evening of the day mentioned, and the "Ta Ning" was bound up the river. The "Da Sing" had, shortly before the collision, left her anchorage off Kiangyin, and, according to her case, had proceeded from that anchorage on a course N.E. by E. $\frac{1}{2}$ E. down the river, on the South side of the channel—that is to say, in her proper water, according to the regulations. The "Ta Ning" was proceeding up the channel on nearly an opposite course, and her case was that she was proceeding on the North side of the river. The two vessels met in violent collision, with the unfortunate result that the "Da Sing" was sunk, and certain of her passengers and crew were drowned and the "Ta Ning" was damaged seriously about the bows, and beached.

The main contest at the trial appears to have been with regard to the side of the channel on which the collision took place, the "Da Sing" asserting that it took place on the South side, and the "Ta Ning" asserting that it took place on the North side. The learned Judge came to the conclusion that it took place on the South side of the channel. There seems to their Lordships to be no reason for dissenting from the view which the learned Judge took upon that point. In substance his decision is in accordance with the true inference to be drawn from the facts that the "Da Sing" had been at the usual place of

anchorage for calling at Kiangyin, and that, on the course which she would in all probability make, and which, according to her evidence, she did in fact make, from that point, N.E. by E. $\frac{1}{2}$ E., she would follow a track on the South side of the channel. Secondly, it accords with the evidence of the Captain of a salt revenue junk, who states that he was proceeding down the river shortly before the collision, and that the "Da Sing" passed his boat at a time when he was on the North side of the middle of the channel, and the "Da Sing" was on the South side. Thirdly, it appears that the position of the wreck was proved without any doubt, so far as the evidence at the time was concerned, to have been at a spot which is shown on exhibit 5, and, having regard to the direction of the current, it follows that the collision must have taken place on the South side of the channel. That being so, the main contention at the trial was correctly decided in favour of the "Da Sing," and it was rightly held that the "Ta Ning" was to blame for the collision.

The Cross-appeal raises another point, namely, whether or not, notwithstanding the fact that the "Ta Ning" is held to blame, the "Da Sing" ought also to be considered to blame. She has been held to blame by the learned Judge on two or three grounds. The first ground is that, assuming her case, as stated by the principal witness called on her behalf (*i.e.*, the Quartermaster), to be correct, she did not in the first instance allow sufficient room for the up-coming vessel, which was then fine upon her starboard bow. Now, it appears from the evidence of the witness referred to that the "Ta Ning" was first made out on the starboard bow of the "Da Sing," and that, at that time, or thereabouts, the Master

of the "Da Sing" gave two short blasts on the whistle and ordered his helm to be starboarded half a point, so as to give a certain amount of room. But if the vessels, at the time when that was done, were proceeding with the green lights respectively open, and there was any material distance between them, it is obvious that starboarding half a point would be amply sufficient to enable them to pass in safety, so long as each kept showing her green light to the other.

The next point on which the learned Judge has laid stress is that Article 28 of the Regulations for Preventing Collisions was infringed by the "Da Sing." But when the evidence is examined, it seems clear that, although two short blasts were given a second time at or about the time of the collision, there was no time, at that moment, for any effective action to be taken on the part of the "Da Sing," and that therefore she cannot reasonably be held to have been guilty of any infringement of the Regulations, even if it were correct to place upon those Regulations the interpretation which the learned Judge has placed upon them. The position at that time was such that those on board the up-coming vessel appear to have been awakened in some way to the presence of the "Da Sing" proceeding down, and to have acted violently under a port helm, at a time when the down-coming vessel had practically no time to do anything or to take any action which would avoid the collision. It does not even appear to be suggested in the course of the case that the "Da Sing" ought to have reversed her engines or ought to have in any way checked her way. The probability is that, assuming her story to be correct, the red light of the "Ta Ning" suddenly came into sight at such close quarters that no time was left for those on board

the "Da Sing" to do anything to avoid the collision, and that is in accordance with certain evidence given by witnesses from the "Ta Ning," that the two short blasts given by the "Da Sing" at the last moment had not in fact finished before the collision took place.

Their Lordships also feel that it would be a great hardship to condemn the "Da Sing" on materials such as those placed before them, when the responsible officers, the pilot and the master of the vessel, who were among those who were drowned, could not be called to give any explanation as to their action before the collision took place. The broad case is one in which a vessel on the wrong side of the river coming up took violent action to avoid a vessel which was in her right water, going down, at a time when that vessel had no sufficient opportunity of avoiding the difficulty in which she was thus placed.

In the result, therefore, their Lordships are of opinion, and they will humbly advise His Majesty to the effect, that the Appeal on behalf of the "Ta Ning" should be dismissed; that the Cross-appeal should be allowed; that the Judgment of the Supreme Court should be set aside, and Judgment entered in favour of the Owners of the "Da Sing," her cargo and freight, for the amount of the damages sustained by them, with costs, in the said Supreme Court; and that it should be referred to the Registrar of the said Supreme Court to ascertain the amount of the said damages.

The Appellants in the first Appeal, who are the Respondents in the second Appeal, will pay the costs of the Appeals.

