

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of the
Peninsular and Oriental Steam Navigation
Company, the Owners of the Steamship
"Geelong," v. the Owners or others in-
terested in the Norwegian Barque "Glimt,"
from the Vice-Admiralty Court of Hong-
Kong; delivered 4th December 1873.*

Present :

SIR JAMES W. COLVILE.

JUDGE OF THE HIGH COURT OF ADMIRALTY.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

THIS is an appeal from a decision of the Vice-Admiralty Court of Hong-Kong in a case of collision. Their Lordships must express their regret that the preliminary act in the Court below, owing apparently to a mistake in the Order of Council of 1859, furnishing rules for the Vice-Admiralty Courts, is not identical with the form of preliminary act adopted in the High Court of Admiralty, but omits several important particulars required in that form.

The collision in this case took place between a Norwegian barque, a sailing vessel called the "Glimt," and a large steamer belonging to the Peninsular and Oriental Steam Navigation Company, called the "Geelong," about eight o'clock at night on the 10th February 1872. The collision seems to have been somewhere off an island called Green Island, which is off Hong-Kong. The nature of the collision was that the stem of the steamer struck the sailing ship abaft the mainmast on the port side.

The learned Judge of the Court below, assisted by nautical assessors, came to the conclusion that the steamer was alone to blame for this collision. There was a difference of opinion between the nautical assessors upon the only question which has been substantially argued before their Lordships; namely, whether this collision was the result of inevitable accident or not. The learned Judge of the Court below, following the advice of that assessor whose opinion was that the collision was not caused by inevitable accident, came to the same conclusion, and gave elaborate reasons for it; his judgment was that the steamer was alone to blame for this collision.

Now, their Lordships have listened attentively to the arguments addressed to them on this subject. They have also carefully considered the evidence, and have conferred with the nautical assessors who have been summoned to give them their aid in this case, and their Lordships are of opinion that no sufficient ground has been shown why the decision of the learned Judge of the Court below should be reversed.

That decision proceeded almost exclusively upon the fact that there was no sufficient look-out, having regard, of course, to all the circumstances—the night, the place where they were, entering into a harbour, and all the other facts of the case. The night, is admitted to have been what is called a dark and cloudy night, but a night upon which lights were specially visible. Now, no injustice can be done to the Appellant in this case if that statement which is most in his favour, and which is put forward by himself in his preliminary act, be adopted, and according to that statement he saw this barque a quarter of a mile distant, and according to the evidence three points on his starboard bow.

Their Lordships are advised by their Nautical Assessors that in that state of things the proper course to have pursued would have been to starboard the helm of the steamer, and that thereby the danger of collision would have been avoided. What she did was to port her helm, which was an improper course to pursue. That point does not appear to have been taken in the Court below, and therefore their Lordships would be unwilling to rely upon it alone in sustaining the decision of the learned Judge; but their Lordships are also of opinion that the decision was properly founded upon the evidence that there was no proper look-out.

Their Lordships, therefore, will humbly recommend to Her Majesty that the decision of the Court below be sustained, and this case dismissed with the usual costs.

