

Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of the "City of Peking" v. The Compagnie des Messageries Maritimes, from the Vice-Admiralty Court, Hong Kong; delivered 1st December 1888.

Present:

LORD WATSON.

LORD FITZGERALD.

LORD HOBHOUSE.

LORD MACNAGHTEN.

MR. STEPHEN WOULFE FLANAGAN.

[*Delivered by Lord Watson.*]

This is an appeal brought by the owners of the "City of Peking" against a judgement of the Vice-Admiralty Court of Hong Kong, condemning their ship and bail in the amount of damage occasioned to the steamship "Saghalien," belonging to the Compagnie des Messageries Maritimes, and her cargo, by the collision of the two vessels, which occurred within the harbour of Hong Kong shortly after 2 p.m. on the 29th of November 1886.

The northern fairway of the harbour, which is about two fifths of a mile in breadth, runs westward from the south-western extremity of a promontory, jutting into the harbour from the north, which is known as Kowloon Point. At the time of the collision the "Saghalien" was lying opposite to Kowloon Point, her head being moored to a buoy on the southern side of the fairway, which left her free to swing with wind or tide.

The "City of Peking," which is a screw steamer of 5,042 tons burthen, and 425 feet in length, entered the harbour from the east, against a half ebb tide, on her way to her own moorings, which are situated on the north edge of the fairway nearly a mile to the west of Kowloon Point.

It is not matter of dispute that, after she came within the limits of the harbour, the "City of Peking" was steered straight for the Meeanee buoy, which lay between her and the "Saghalien," until she reached a point about three fifths of a mile to the east of the latter vessel; and that appears to be the usual and proper course.

The account which is given, by her own witnesses, of the subsequent navigation of the "City of Peking," from the point in question till the collision took place, is as follows. In ordinary circumstances, her helm at that point would have been ported, so as to bring her towards the centre of the fairway, and she would in that case, if she had continued to obey her helm, have passed the "Saghalien" at a considerable distance. But that course was obstructed by two large junks which were heading towards Kowloon Point. These junks were in reality anchored, but they were supposed to be under way, owing to the fact that their sails were set, and were filled by a light easterly wind, and that their hawsers were on their port side. In these circumstances the speed of the "City of Peking" was reduced from 10 to between $4\frac{1}{2}$ and 5 knots an hour, and her helm was ported and steadied on a course nearer to the south side of the fairway, which, if maintained, would have carried her astern of the junks, and about 400 feet ahead of the "Saghalien." When she was astern of the junks, and about 90 feet from them, but before she came abreast of the "Saghalien," the witnesses for the "City of Peking" assert that her head was suddenly caught by a strong tidal current, running southwards from Kowloon Point at the

rate of 4 to 5 knots an hour, which at once canted it round to port. The captain, who was himself in charge upon the forward bridge, then gave three consecutive orders, all of which were promptly obeyed. He first ordered the helm to be put hard-a-port, but that had no effect. At that moment his vessel was less than twice her own length from the "Saghalien," and he at once saw that there was imminent danger of collision. In fact the two ships were so near to each other that, in his judgement, he could not have got clear of the "Saghalien" by going full speed ahead. He accordingly gave the order to stop and reverse, and at the same time directed the third officer to go to the chief engineer and tell him to back her as hard as possible. On the return of the third officer from that errand, but not till then, he gave the order to drop the starboard anchor, which was the only one ready to let go, the port anchor having been unshackled just before they came abreast of Kowloon Point. These proceedings failed to stop her way, and the stem of the "City of Peking" struck the "Saghalien," which was then heading to the north, nearly amid-ships, causing damage both to hull and cargo.

The learned Judge of the Vice-Admiralty Court came to the conclusion, upon the evidence, that the statements made by the witnesses of the "City of Peking" as to the alteration of her helm at the distance of three fifths of a mile from the "Saghalien" are erroneous, and that she was actually steered throughout upon a course which necessarily brought her at right angles on the "Saghalien." Except upon very clear testimony their Lordships would be unwilling to hold that a well equipped vessel like the "City of Peking," with her officers and crew at their posts and on the outlook, had deliberately run down a ship at anchor; but there appears to them to be no ground for that inference in the present case.

The learned Judge relied upon the evidence of Isuard and Delmas, the second captain and lieutenant of the "Saghalien," and that of Captain Paul, of the "Tanais," who all state that, when they saw the "City of Peking," she was bearing straight for the "Saghalien." Had these witnesses observed the whole course of the "City of Peking," their evidence would have been material; but having regard to the time at which their observations were made, it does not conflict with the evidence for the "City of Peking." Only one of the three, Delmas, saw her at some distance off, when she fired a gun on entering the harbour, at which period of time she was admittedly steered for the Meeanee buoy, which was nearly in a line with the "Saghalien." He then went about his own business, and saw no more of her, until her crew were preparing to let go the starboard anchor. Isuard no doubt says that he never lost sight of her, and that she never changed her course; but it clearly appears from his evidence that he did not see her at all, until just before she was observed for the second time by Delmas. Captain Paul's opportunities of observation were equally limited. He says "it was perhaps a minute from the time I first saw her till the collision."

Whilst their Lordships are prepared to acquit the "City of Peking" of having steered a straight course for the "Saghalien," it does not necessarily follow that, in their opinion, she must be absolved of all blame in the matter. When a vessel under steam runs down a ship at her moorings in broad daylight, that fact is by itself *prima facie* evidence of fault; and she cannot escape liability for the consequences of her act, except by proving that a competent seaman could not have averted or mitigated the disaster, by the exercise of ordinary care and skill.

The Appellants attribute the collision wholly

to the effect upon their vessel of the current which caught her head, to counteract which they maintain that every reasonable precaution was used which ordinary skill and prudence could suggest. It appears to be an undoubted fact that, in certain states of the weather, at half ebb, the tide setting eastwards sweeps down the western shore of the promontory of Kowloon, and is thereby deflected, and runs, with considerable force, in a southerly direction across the fairway. These currents are exceptional, but that they do occasionally, although at distant intervals, occur, is known to mariners who frequent the harbour, and was known to the captain of the "City of Peking." The evidence on both sides establishes that it is impossible to lay down any rule in regard to the recurrence of these exceptional tides; they may occur at any time, even when least anticipated, and a cautious mariner is therefore bound always to keep in view the possibility of their being met with. There can be no reason to doubt the statement of the captain that he did not expect to meet with a current of the force of that which he encountered, but, however little expected, it was his duty to be prepared for such a contingency. The fact that he had been compelled, by the apparent position of the two junks, to keep to the southern edge of the fairway made that duty the more imperative. Their Lordships are not prepared to hold that, using all due precaution, he was not entitled to steer upon the course which he proposed to follow. The liability or non-liability of his ship appears to them to depend upon this consideration,—whether, at the time when she was caught by the current, he was prepared to use, and did actually use, all ordinary and proper measures for averting the collision?

There is a serious conflict of testimony as to the actual force of the current at the time of

the collision, some witnesses estimating it at half a knot, and others at nearly five knots, an hour. Their Lordships do not think it necessary to decide between these conflicting views, or to determine the precise strength of the current on the occasion in question. It appears to them that, assuming his statement on that point to be correct, the evidence nevertheless establishes that the captain of the "City of Peking" failed, in two particulars, to take proper steps for checking the way of his ship.

In the first place, their Lordships have been advised by their nautical assessors, and they have no hesitation in holding, that the starboard anchor ought to have been dropped at the same time when the order to stop and reverse was given. That an appreciable interval of time must have elapsed between the giving of the second and third orders is made clear by the evidence of the captain and third officer; and the second captain of the "Saghalien" is probably not far wrong in his estimate of distance, when he states that, at the time it was dropped, the two vessels were not more than 200 feet apart. Seeing that 60 fathoms or 180 feet of chain were payed out with the anchor, there must have been very little time for it to operate before the collision occurred.

In the second place, their Lordships have been advised that, in the circumstances in which the "City of Peking" was placed, her port anchor ought also to have been in readiness, and ought to have been let go, so soon as the ship ceased to obey her helm in consequence of the current. In that opinion they entirely concur. In such circumstances, the keeping of both anchors in readiness is a safe and ordinary precaution, it being impossible to predict which of the two it may become necessary to drop, or that both will not be required. That a second

anchor, if dropped in time along with the first, would have had a material influence in averting the collision, or minimizing its effects, can hardly be questioned by the Appellants, whose third officer states in his evidence, "I dare say two anchors would have held her." The fact seems to have been that those in charge of the "City of Peking," although they ought to have been aware of the possibility, thought there was no probability of danger from a current; and, acting on that speculation, they allowed the port anchor to be unshackled before the junks were reached. In other words, they took their chance, and the ship must bear the consequences.

It is right to state that these views are in entire accordance with certain of the findings in the Court below. Their Lordships will humbly advise Her Majesty that the judgement appealed from ought to be affirmed, and the appeal dismissed. The Appellant must pay the costs of the appeal.

