

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The China Navigation Company, Limited v. The Asiatic Petroleum Company, Limited, and The Taku Tug and Lighter Company, Limited, from His Britannic Majesty's Supreme Court for China and Corea; delivered the 27th October, 1909.*

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Present at the Hearing :

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 Macnaghten.*]

This is an Appeal from the Supreme Court for China and Corea at Shanghai in a collision case.

The collision took place about 7 p.m. on the 15th of March, 1907, between the SS. "Tientsin" and the "Scot," a lighter in tow of the tug "Hsinho" in the North reach of the river Haiho.

The "Tientsin" was going down the river on an ebb-tide of 1 to 1½ knots. The weather was fine and clear. The wind North. The tug and

tow were coming up. When rounding the bend between the New City reach and the North reach on a port helm, those on board the "Tientsin" observed the two mast-head lights, and shortly afterwards the red light, of the tug and the red light of the tow about half a mile off on the West or right hand side of the stream, heading at a slight angle towards the other side, which was the proper side for vessels coming up the river to take. As soon as the tug was observed the "Tientsin's" engines were put at half-speed, and when the red light of the "Scot" came into sight, the "Tientsin" blew one short blast on her whistle to indicate that she was altering her course to the starboard. The tug did not give an answering signal, but she kept her red light open, when suddenly first the "Scot" and then the tug opened their green lights and the tug gave two short blasts. The "Tientsin" gave another short blast, reversed her engines full speed, and gave three short blasts on her whistle. The tug altered her course again, shewing her red light and tugging the "Scot" across the bows of the "Tientsin." The "Tientsin" escaped the tug, but ran into the "Scot," injuring her so severely that she had to be beached and the cargo of oil which she was carrying was lost.

In their Lordships' opinion the tug was solely to blame for this collision and the "Tientsin" was not in fault. The Assessors concur in this opinion.

The Acting Judge who tried the case found the tug to blame, but he also found the "Tientsin" to blame, and that on two grounds. In the first place he thought the "Tientsin" ought to have stopped altogether when she got no answering signal from the tug. Their Lordships do not concur in this view. Though no answer was given, the tug seemed to be acting in

accordance with the rule of the road, and the "Tientsin" was quite justified in proceeding on her course—moving cautiously at half-speed as she did. As long as the tug and tow shewed their red lights and the vessels were port to port, there was no reason to apprehend danger. Then the learned Judge thinks that the "Tientsin" ought to have made every effort to get clear over to the starboard side of the Channel "even at the risk of grounding on the shelving bank." He relied apparently on an answer given by the Second Mate to the effect that "they might have gone further to starboard." The Second Mate, however, was not in charge of the vessel. It is not quite clear what was meant by this answer or what was the moment of time with reference to which the Second Mate was speaking. The point does not seem to have been made at the trial, and no question bearing upon it was put to the Captain who was in charge of the vessel. It does not appear to their Lordships that the Captain of the "Tientsin" failed in his duty in any respect, or that under the circumstances he could have done more to avoid collision than he did.

Their Lordships will therefore humbly advise His Majesty that the Appeal should be allowed, and the Action dismissed with costs, including in such costs any costs of the reference directed by the Order of the 10th of October, 1908 (the costs up to consolidation to be paid by the Respondent the Asiatic Petroleum Company and the subsequent costs by both the Respondents), and that any costs paid by the Appellants should be refunded.

The Respondents will pay the costs of the Appeal.

