

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Owners of the Norwegian S.S. "Normandie" v. The Owners of the British S.S. "Pekin," from the Supreme Court of China and Japan ; delivered 3rd July 1897.

Present :

LORD HOBHOUSE.

LORD MACNAGHTEN.

LORD MORRIS.

SIR RICHARD COUCH.

SIR FRANCIS JEUNE.

[*Delivered by Sir Francis Jeune.*]

This is an appeal from a decision of the Supreme Court for China and Japan sitting in Admiralty, in which the S.S. "Normandie" was held alone to blame for a collision which took place between her and the S.S. "Pekin" in the River Whangpoo, on the 3rd of April 1896.

Much depends upon the locality of the collision. At Pootung Point the Whangpoo makes a sharp bend towards the south returning indeed on its course at something more than a right angle, and to the eastwards of that Point the stream is divided by a line of buoys into two navigable channels, the northern being called the inside, and the southern the outside channel. The westernmost of these buoys is known as the Old Dock Buoy. The "Pekin" was proceeding up the inside channel along the line of buoys, that is to say on the starboard side of that channel, and the "Normandie" was coming down the river to the

southward of mid-channel. It is clear that, when near the Old Dock Buoy, the "Pekin" ported, and that, at or about the same time, the "Normandie" starboarded. The "Normandie" afterwards endeavoured to port, but her helm failed to act owing to what is termed the "Chow Chow" water, which is, it would appear, a well-known area of eddies or whirlpools off Pootung Point. The result was that a collision occurred well to the north of the river, and somewhat to the eastwards of Pootung Point, the stem of the "Normandie" striking the port bow of the "Pekin."

The evidence is not clear as to the whistles given by the two vessels. The learned Chief Justice of the Supreme Court has found that "at the same time two blasts of the 'Normandie's' whistle were blown as a signal to the 'Pekin,' those on board the 'Pekin' simultaneously blew one blast of her whistle." Those on the "Pekin" dispute the double blast of the "Normandie," but their Lordships think that, accepting as they do the above finding as correct, it may well be that one of the two whistles of the "Normandie" coincided with the one whistle of the "Pekin," and so those on the "Pekin" heard only one whistle from the "Normandie," and believed that only one was given.

The appeal raises the question of the conduct of both vessels. As regards the "Normandie," their Lordships entertain no doubt of the correctness of the judgment of the learned Chief Justice condemning her. They agree with his view that "the spot where the collision took place is not in dispute and it is impossible to look at it and not see that the 'Normandie' was improperly navigated to bring her there." It would appear that both up-going and down-going vessels navigate the inside and outside

channels indifferently, but without deciding whether, under the circumstances, it was the duty of the "Normandie" to take the outside channel, it is clear that, even if she elected to go by the inside channel, she should never, if proceeding for the starboard or southern side of it, have got so near to the north bank of the main channel. The learned Chief Justice has held further that the "Normandie" was to blame for not stopping and reversing; and in this decision also their Lordships concur.

With regard to the conduct of the "Pekin" two charges are insisted on by the learned counsel for the Appellants. First, it is contended that the two vessels were crossing vessels within the meaning of Article 22, and that the "Pekin" failed to keep her course, and, secondly, that the "Pekin" did not stop and reverse in due time.

The first of these charges raises the question, were those two vessels crossing vessels within the meaning of Article 22? and also the further question whether the "Pekin" kept her course?

The effect of Article 22 has been made clear by several authorities. The cases of the "*Velocity*" (3 P.C. 44) the "*Ranger*" (4 P.C. 519) and the "*Oceano*" (3 P.D. 60) have explained and illustrated the distinction which exists in the effect of this rule as regards vessels navigating the open sea, and those passing along the winding channels of rivers. The crossing referred to in Article 22 is "crossing so as to involve risk of collision," and it is obvious that while two vessels in certain positions, and at certain distances, in regard to each other in the open sea may be crossing so as to involve risk of collision, it would be completely mistaken to take the same view of two vessels in the same positions and distances in the reaches of a winding river. The reason, of course, is that the vessels must follow and must be known to intend

to follow, the curves of the river bank. But vessels may, no doubt, be crossing vessels within Article 22, in a river. It depends on their presumable courses. If, at any time, two vessels, not end on, are seen, keeping the courses to be expected with regard to them respectively, to be likely to arrive at the same point at or nearly at the same moment, they are vessels crossing so as to involve risk of collision, but they are not so crossing if the course which is reasonably to be attributed to either vessel would keep her clear of the other. The question, therefore, always turns on the reasonable inference to be drawn as to a vessel's future course from her position at a particular moment, and this greatly depends on the nature of the locality where she is at that moment.

Their Lordships have re-stated these propositions, because they appear to them decisive of this part of the present case. They are advised by their assessors, and it appears to them clear, that, having regard to the features of the locality, at the time the "Pekin" ported her helm, that is to say when she was near the Old Dock Buoy, the vessels were not crossing vessels within the meaning of Article 22. It was reasonable for those on the "Pekin," as, without fault on their part, they did not hear the double blast of the "Normandie" before they took action with their helm, to assume that the "Normandie" would take the outside channel, in which case their courses would not cross, or would take the southern side of the inside channel, in which case their courses would indeed cross but not so as to involve risk of collision.

The above considerations show the distinction between the present case and that of the "*Leverington*" (11 P. D. 117), which was relied on by the Appellants. In that case, the vessels were held by the Court of Appeal to be, as they

unquestionably were, crossing vessels within the meaning of Article 22. The "Leverington" coming up the Cardiff Drain at a place before it divides (as it then did) into the channels leading to the East Bute Dock and the Roath Basin respectively, and proceeding for the East Bute Dock (as appears from a full report of the judgment of the Lord Chancellor) had the "Rapid" which was in the channel leading to the Roath Basin, 3 or 4 points on her starboard bow. She slightly quickened her speed for the purpose of crossing the bows of the "Rapid" and so keeping out of her way, and would have accomplished her object had not the "Rapid" frustrated it by porting. It is clear that the two vessels were crossing each other's courses, for they could not else have reached their destinations, and at a time which involved a risk of collision; and it is equally clear, especially having regard to the extreme narrowness of the channels, that the "Rapid" should have been aware of the fact.

The learned Chief Justice in the Court below has based his judgment not so much on the above view, as on the conclusion at which he has arrived that the "Pekin" did in fact, though porting her helm, keep her course. She did so, because, owing to the bend in the river, that was the proper and ordinary method of reaching the starboard side of the main channel for a vessel which had been coming up by the outside portion of the divided channel. This is also the view of their Lordships' Assessors, and their Lordships agree with it.

The remaining question is whether the "Pekin" reversed her engines in due time. There is evidence which was pressed with considerable force against the "Pekin" on this point. According to the account given on her behalf, and as the learned Chief Justice has found, she reversed her paddles when the vessels were only

300 feet apart. It is clear that she stopped her engines without reversing them at an earlier time, and it is urged that though she may have brought herself to a standstill by the time of the collision, had she reversed sooner the collision would have been avoided. The evidence of the Captain of the "Pekin" is as follows: "When I first distinguished the 'Normandie' I was at the Old Dock Buoy, and he looked to me as if he was about opposite Ariel. I then ordered one whistle, and go slow and port a little; whistle was blown, ported, and the speed slackened. He seemed to be going neither one side nor the other My next orders were to blow one whistle and stop. I heard these executed. When he was 300 feet from me I went full speed astern." It is clear, therefore, that when, or even before, the "Pekin" stopped her engines, the situation was seen to be one of difficulty, and that the engines were not reversed until after an appreciable interval. It is of the utmost importance that vessels should reverse their engines in order to bring themselves to a stop, as soon as ever risk of collision arises, and if their Lordships were sitting as a Court of First Instance in the present case they might find it difficult to say that the "Pekin" fulfilled her duty in this respect. But there is nothing on the notes of the evidence to show that those responsible for the navigation of the "Pekin" were asked to explain why they did not reverse their engines at an earlier time, and there is nothing from which it can be clearly made out what was the length of the interval of time which separated the orders to stop and to reverse. The learned Chief Justice, however, saw the witnesses, and heard their evidence given at full length, and not in the abbreviated form in which it appears on the notes. He evidently had his attention directed to the point, and he has found that "before the collision the

“ ‘Pekin’ was not proceeding at an improper
“ rate of speed, and that she took all the measures
“ she could by stopping and reversing her
“ engines to avoid the collision.” From this
decision their Lordships do not feel it necessary
to dissent.

The Appeal must therefore be dismissed with
costs, and their Lordships will humbly advise
Her Majesty accordingly.

