

Counsel for Pursuer—Trayner—Lorimer.
Agent—David Crole, Solicitor of Inland Revenue.

Counsel for Defenders—Mackintosh—A. Mitchell—Guthrie. Agents—Macandrew, Wright, Ellis, & Blyth, W.S.

Friday, July 4.

SECOND DIVISION.

A. B. v. C. B.

(*Ante*, p. 598.)

Process—Appeal to House of Lords—Execution pending Appeal—Husband and Wife.

The Court of Session having in an action for nullity of marriage by a wife against her husband found and declared the pretended marriage to be null, given expenses to the pursuer, and ordained the defender to pay her the taxed amount thereof, and the defender having appealed to the House of Lords, the pursuer presented a petition for interim execution pending appeal, to the effect of enabling her to recover payment of the expenses. The Court *allowed* interim execution to that effect, and refused to ordain her to find caution for repetition in the event of the judgment being reversed.

The defender (C. B.) having appealed to the House of Lords against the judgment of the Second Division (*ante*, p. 598) of 4th June finding his marriage with the pursuer to be null and void, and also against a subsequent interlocutor of 13th June approving of the Auditor's report on the pursuer's account of expenses, and ordaining the defender to pay to her the taxed amount thereof, £319, 12s. 10d., the pursuer presented this petition for interim execution of these decrees, "to the effect of enabling the petitioner to recover payment of the said expenses." The defender did not object to the prayer of the petition being granted, but moved the Court to qualify it by ordaining the pursuer to find caution to repeat the amount of the expenses in the event of the judgment being reversed.

The pursuer objected to the qualification, on the ground that if the defenders succeeded in the appeal the pursuer would be declared to be still his wife.

The defender argued—Meantime the marriage was declared null, and the order should therefore be granted. Besides, the wife had separate estate, which was liable for her expenses.

LORD JUSTICE-CLERK—I think we should act here, not as if the matter were settled, but on the footing that it is still in dependence. That is the true footing.

LORD YOUNG, LORD CRAIGHILL, and LORD RUTHERFURD CLARK concurred.

The Court authorised extract of the decrees of 4th and 13th June, and allowed execution to proceed thereon to the effect of enabling the pursuer to recover payment of the expenses decreed for in her favour by the decree of 13th June, and dispensed with reading in the minute-book.

Counsel for Pursuer—D. F. Macdonald, Q. C.—Jameson. Agents—Boyd, Jameson, & Kelly, W.S.

Counsel for Defender—Trayner—Armour. Agents—Beveridge, Sutherland, & Smith, S.S.C.

HOUSE OF LORDS.

Monday, June 23.

(Before Lord Chancellor, Lords Blackburn, Watson, and Fitzgerald.)

MACLAREN AND OTHERS v. THE COMPAGNIE FRANCAISE DE NAVIGATION À VAPEUR, *et c contra*.

(In Court of Session, December 5, 1883, *ante* p. 177.)

Ship—Shipping Law—Liability for Collision.

Circumstances in which it was held (*reversing* judgment of Second Division) that for a collision happening on a clear night where the lights of the vessels were mutually seen, both vessels were to blame.

Maclaren and others, owners of the "Thames," appealed.

At delivering judgment—

LORD CHANCELLOR—My Lords, in this case I agree generally with the reasons which have led the Second Division of the Court of Session to the conclusion that the "Thames" cannot be exonerated from blame for the collision which happened, and I do not think it necessary to repeat those reasons.

But the question remains, whether the "Lutetia" was free from blame? It does not follow because there was not a proper look-out on board the "Thames," that there was a good look-out on board the "Lutetia," or that credit should be given to all the statements of the witnesses for that vessel. I find it very difficult to satisfy myself where the real truth lies as to the relative courses of the two vessels from the time when they first saw each other down to that of the collision, and as to the precise length of that interval of time; but there is one point on which the burden of justifying her conduct seems to me to be cast upon the "Lutetia" by facts which are beyond serious question. The 18th sailing rule under the Order in Council of the 14th August 1879, agreed to by France and all the other nations mentioned in the second schedule to that Order, is that "Every steamship when approaching another ship so as to involve risk of collision shall slacken her speed, or stop and reverse if necessary." Did or did not the "Lutetia" comply with the rule? If she did not, was her omission to do so a contributory cause of the collision or of the damage which followed?

It is proved to my satisfaction that on board the "Thames" at all events the danger of collision was perceived in sufficient time to enable the engineer to receive and act upon the necessary orders to reverse the engines and stop the ship, and that the "Thames" was actually stopped before the collision took place. Cameron, her first mate says, "When I saw the 'Lutetia's' green light opening to us, I saw that it was impossible to avoid a collision then, and I sang out at once to put the engines full speed astern to avoid being struck amidships. That was sung out to the officer on the bridge, the second mate. To the best of my knowledge that order was carried out, because the vessel was stopped." Gordon