Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Richelieu and Ontario Navigation Company, Owners of the Steamship "Canada," v. The Owners of the Steamship "Cape Breton," from the Supreme Court of Canada; delivered the 14th December 1906.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD ATKINSON.
SIR J. GORELL BARNES.

Nautical Assessors:

ADMIRAL RODNEY M. LLOYD, C.B.
CAPTAIN W. F. CABORNE, C.B., R.N.R.

[*Delivered by Sir J. Gorell Barnes.*]

In this case the Appellants, the owners of the steamship "Canada," appeal from a Judgment of the Supreme Court of Canada dated the 3rd October 1905, allowing an Appeal from a Judgment or Decree of the Judge in Admiralty of the Exchequer Court of Canada, Quebec Admiralty District, pronounced on the 19th November 1904, and ordering and adjudging that the said Judgment should be reversed and set aside, and that the steamship "Canada" was alone to blame for a collision between the Respondents' steamship "Cape Breton" and the said steamship "Canada" in the River St. Lawrence a short distance below the town of Sorel, on the 12th June 1904, at about 2.35 a.m.,

and that the steamship "Cape Breton" and her owners were entitled to recover from the Appellants, and condemning the Appellants to pay to the steamship "Cape Breton" and her owners the damages arising out of the said collision, and that the action should be remitted to the said Exchequer Court of Canada for the assessment of such damages, and that the Appellants should pay the costs below and in the Supreme Court. The aforesaid Judgment or Decree of the local Judge in Admiralty of the Exchequer Court, Admiralty District of Quebec (the Honourable Adolphe Basile Routhier) pronounced both vessels to blame for the said collision, and decreed accordingly, and in this Appeal the Appellants contend that the Judgment of the Supreme Court of Canada should be reversed and the Judgment of the Judge in Admiralty restored, while the Respondents contend that the Appeal should be dismissed.

A preliminary point was raised by the Respondents that as the Appellants had not applied for nor obtained the leave of His Majesty to bring this Appeal, the Judgment of the Supreme Court of Canada is final and conclusive by virtue of the provisions of the Canadian Act, the Supreme and Exchequer Courts Act, 1875, 38 Vict. cap II., Section 47, which provides that—

"The judgment of the Supreme Court shall in all cases "be final and conclusive, and no appeal shall be brought from "any judgment or order of the Supreme Court to any Court "of Appeal established by the Parliament of Great Britain "and Ireland, by which appeals or petitions to Her Majesty "in Council may be ordered to be heard: Saving any right "which Her Majesty may be graciously pleased to exercise by "virtue of Her Royal Prerogative."

But the answer made to this preliminary point by the Appellants was that, notwithstanding the provisions of the Act aforesaid, an Appeal lies by virtue of the provisions of the Colonial Courts of Admiralty Act, 1890,

53 and 54 Vict., cap. 27, which amended the law respecting the exercise of Admiralty jurisdiction in Her Majesty's Dominions and elsewhere out of the United Kingdom.

Section 2 of the last mentioned Act provided for the establishment and jurisdiction of Colonial Courts of Admiralty.

Section 3 gave power to the legislature of a British Possession by Colonial law to declare any Court of limited civil jurisdiction, whether original or appellate, in that Possession to be a Colonial Court of Admiralty, and to provide for the exercise by such Court of its jurisdiction under the said Act, and to limit, territorially or otherwise, the extent of such jurisdiction. In pursuance of this section the Canadian Act of 1891 (54 and 55 Vict. c. 29, Sec. 3) declared the Exchequer Court of Canada to be, within Canada, a Colonial Court of Admiralty, and provided for the exercise by such Court of the jurisdiction, powers, and authority conferred by the said Act of 1890, and by that Act; and Section 6 provided for the appointment of local Judges in Admiralty and (Section 9) for the exercise by them of Admiralty jurisdiction and the powers and authority relating thereto within their respective districts, and Section 14, Sub-Section 2, gave an Appeal direct to the Supreme Court of Canada from any final judgment, decree, or order of a local Judge subject to the provisions of the Exchequer Court Act regarding Appeals.

Section 5 of the Act of 1890 provides that—

"Subject to rules of Court under this Act judgments of a "Court in a British Possession given or made in the exercise "of the jurisdiction conferred on it by this Act shall be subject "to the like local appeal, if any, as judgments of the Court in "the exercise of its ordinary civil jurisdiction, and the Court "having cognizance of such Appeal shall for the purpose "thereof possess all the jurisdiction by this Act conferred "upon a Colonial Court of Admiralty."

Section 6 (1) of the Act of 1890 provides that —

"The appeal from a judgment of any Court in a British "Possession in the exercise of the jurisdiction conferred by "this Act, either where there is, as of right, no local appeal or "after a decision on local appeal, lies to Her Majesty the "Queen in Council";

and by Section 15 the expression "local appeal" means "an appeal to any Court inferior to Her "Majesty in Council."

Their Lordships are of opinion that the express provisions of the said 6th Section of the Act of 1890 conferred the right of appeal to His Majesty in Council from a Judgment or Decree of the Supreme Court of Canada pronounced in an Appeal to that Court from the Judgment or Decree of the Colonial Court of Admiralty for Canada constituted under the Acts aforesaid given or made in the exercise of the jurisdiction conferred upon it by the said Act of 1890. Their Lordships therefore permitted the Appeal to proceed upon the merits, and the case was accordingly heard.

The case arose out of the collision already referred to, and on the 21st June 1904, the owners of the "Canada" brought their action against the "Cape Breton" in the Exchequer Court of Canada, Quebec Admiralty District, to recover for the damages which they had sustained by the collision. In that action the Defendants counterclaimed for the damages which they had sustained in the collision. The case was heard before the local Judge already mentioned, and in November 1904 he delivered an elaborate Judgment and pronounced his Decree aforesaid, holding both vessels to blame for the collision. From this Judgment the Defendants (Respondents) appealed to the Supreme Court of Canada. The Appeal was heard by Sir Elzéar Taschereau, C.J., and Sedgewick, Girouard, Nesbitt, and Idington, JJ., and

the Court (Girouard, J., dissenting) held that the "Canada" was alone to blame.

The Appellants on the present Appeal admitted that the "Canada" was to blame, and the sole question to be determined on this Appeal is whether the "Canada," was solely to blame or whether both vessels were to blame.

The evidence in the case is extremely voluminous, the witnesses on both sides having been examined and cross-examined at extraordinary length, but the facts of the case are very simple, and the point upon which the matter to be determined on this Appeal rests is a very short one. In order to make this plain it is necessary to state shortly the circumstances under which the collision took place.

The "Canada" is a paddle-wheel passenger steamer of 1,167 tons register. She was bound, on the occasion in question, from Quebec towards Sorel, a place on the south side of the River St. Lawrence. Her regulation lights were duly exhibited and burned brightly, and she had electric lights in her saloons and cabins. She was proceeding, shortly before the collision, up the deep water channel, which is about 800 feet wide, marked by red buoys on the north side and by black buoys on the south side, and after passing a black buoy marked on the chart as 141 L she starboarded her helm with the object of proceeding from the deep-water channel towards Sorel.

The "Cape Breton" is a screw cargo steamer of 1,180 tons register and 1,761 tons gross register, engaged in the coal trade between Sydney, Quebec, and Montreal. She had been at anchor off the harbour of Sorel on the morning in question, had weighed anchor, and was proceeding down the St. Lawrence with her regulation lights duly exhibited, and thus met in

the same channel the "Canada," which was proceeding up the river.

Stating the facts very shortly, so far as it is now necessary to state them, the "Canada" proceeded up the channel and, after some slight alterations in her course, as her witnesses allege, her helm was starboarded with the object of directing her course towards Sorel, and it seems now clear that that course was taken without those on board the "Canada" having noticed any coloured light on board the "Cape Breton," and without having given any signal to the "Cape Breton" that the "Canada" was proceeding to cross the channel in the direction of Sorel. It seems also clear that those on board the "Cape Breton," which was proceeding on her proper side of the channel, had noticed the "Canada" proceeding up the channel, and that at first she was noticed slightly on the starboard bow, but in the course of her progress, owing to the slight bend in the channel, the "Canada" crossed on to the port bow of the "Cape Breton" and both vessels were approaching red to red, but at first after such crossing it seems that the "Canada" for a moment opened her green light so as to give a flash of it to those on board the "Cape Breton," and that it was closed in again, and the vessels approached red light to red light.

It was stated on behalf of the "Cape Breton" in the evidence that afterwards, as the vessels drew nearer, the "Canada" showed all three lights, and that thereupon the pilot of the "Cape Breton" ordered the helm slightly to port and gave one short blast of the whistle, expecting that, when those on the "Canada" had their attention drawn to the "Cape Breton," she would resume her course, close her green light, and pass port side to port side. Instead, however, of doing

so, the "Canada" sounded two short blasts of her whistle and kept on under her starboard helm. Directly the "Canada" gave these two short blasts, the pilot of the "Cape Breton" ordered his helm hard aport and his engines full speed astern, and the whistle was sounded again. Almost immediately afterwards the two vessels came into violent collision, the "Cape Breton" being under her port helm and with her engines reversing full speed astern, and the "Canada" being under her starboard helm and going full speed ahead at about 14 knots. The "Cape Breton" came into contact with the "Canada" on the starboard side of the latter, and the "Canada" sustained so much damage that she sank, and some lives were lost. The "Cape Breton" also sustained damage.

A great contest was raised at the trial as to whether or not the "Cape Breton" was properly exhibiting her side lights for a steamer under way, but that question was decided in favour of the "Cape Breton," and it was further held that those on board the "Canada" were not keeping a proper look out. They appear to have taken the white masthead light of the "Cape Breton" for a steamer at anchor, and never to have noticed either side lights of the "Cape Breton" until the "Cape Breton" signalled with her whistle to the "Canada." The "Canada" was clearly to blame in this case for a defective look-out and improperly crossing the course of the "Cape Breton" under her starboard helm, thus breaking the provisions of Article 25 of the Regulations for preventing Collisions at Sea.

An attempt appears to have been made to justify the action of the "Canada" by virtue of the 33rd rule of the local regulations which provides that "Unless it is otherwise directed by "the Harbour Commissioners of Montreal, ships "or vessels entering or leaving the harbour of

" Sorel shall take the port side, anything in the " preceding Articles to the contrary notwith- " standing." But this rule was not applicable to the place where the collision took place, and there is nothing in the circumstances which would in any way justify the " Canada " in leaving her own side of the channel and attempting to cross the bows of the " Cape Breton." The fact that vessels do at times cross over towards Sorel at about the place where the " Canada " starboarded, and that the " Canada " had lights in her cabins which might have shown that she was a passenger vessel bound to ports on the river was urged at the trial by the Appellants as a reason for holding the " Cape Breton " responsible for not taking action for the " Canada " sooner than was done.

As soon, however, as it is determined that the action of the " Canada " was unjustifiable and contrary to the rules applicable to the place of the collision, the sole question left is whether anything was done or omitted to be done on board the " Cape Breton " for which she ought to be held responsible. The main point taken against the " Cape Breton " on the Appeal was, that as the vessels were approaching, the green light of the " Canada " must have been shown to the " Cape Breton " for such a length of time that those on board the " Cape Breton " ought to have noticed that the " Canada " was attempting to cross her bows in the direction of Sorel, and that the " Cape Breton " ought to have taken action earlier than was done, that is to say, that those in charge of her ought either to have stopped their vessel or to have starboarded their helm and passed the " Canada " green light to green light. This argument was sought to be enforced by a minute criticism of the courses and positions of the vessels principally as given in the evidence of the pilot and other witnesses

on board the "Canada," but the answer to it seems to be reasonably clear to their Lordships, viz., that those on board the "Canada" did not notice, as already stated, the coloured lights of the "Cape Breton," and, therefore, there is nothing in their evidence to negative distinctly the affirmative evidence on the part of the witnesses from the "Cape Breton" that it was only when the vessels were a short distance apart that the green light of the "Canada" suddenly opened on their port bow in the attempt of the "Canada" to cross the channel. At that moment, having regard to the fact that the "Canada" had once before, for a moment, shown her green light and had then shut it out, the pilot of the "Cape Breton" might at first think that she was repeating an act of erroneous steering and would recover her course, and, therefore, he gave her the one-blast signal and ported slightly to give more room for her to do so, as there was no reason for him to suppose that the "Canada" was bound otherwise than on a course up the channel. After that, as already noticed, the helm of the "Cape Breton" was put hard aport and her engines put full speed astern, when the "Canada" gave two short blasts and indicated that she was about to cross the bows of the "Cape Breton."

The questions, therefore, which are raised depend upon the answers to the two following questions which their Lordships have submitted to the Nautical Assessors who have assisted them on the hearing of this Appeal, and are based upon the evidence given by those on board the "Cape Breton," which appears to be in accordance with the true facts and probabilities of the case, although the learned Judge who heard the case in the first instance felt some doubt upon the matter. The questions are (1) Was the pilot of the "Cape Breton" justified

in assuming, until he heard the two short blasts from the "Canada," that the "Canada" could and would pass his vessel port side to port side? (2) Did such pilot omit any proper precaution after hearing those two short blasts, or did he do all that could reasonably be expected of him in the circumstances in which he was placed by the action of the "Canada"?

The answer to the first of these questions is in the affirmative, and to the second, that he did everything that he could reasonably be expected to do.

A minor point was also made by the Appellants that the "Cape Breton" ought to have given a short-blast signal when the "Canada" first showed a flash of her green light, and the helm of the "Cape Breton," it was alleged, was ported slightly, and afterwards steadied so as to bring the vessel back on her course. But to this point the Appellants appear to have originally attached no importance, for it is omitted from their Preliminary Act and Statement of Claim, and it appears to their Lordships and to the Assessors quite immaterial, for the "Cape Breton" was not altering her course or taking any fresh course, and was only doing what was necessary at the time for the purpose of keeping her proper course on the south side of the channel.

The opinion which their Lordships have formed of this case is substantially in accordance with that entertained by the majority of the Judges of the Supreme Court of Canada, and expressed in their Judgments, and their Lordships will humbly advise His Majesty to affirm the Judgment appealed from, and to dismiss the Appeal. The Appellants will pay the costs of the Appeal.