Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Wilson v. *The Canada Shipping Company, (the "Lake St. Clair" and the "Underwriter,") from the Vice-Admiralty Court of Quebec; delivered February 14th, 1877.*

Present:

SIR JAMES W. COLVILE.
SIR ROBERT PHILLIMORE.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

THIS is an appeal from the Vice-Admiralty Court of Quebec in a case of collision which took place between twelve and one o'clock in the morning of the 26th of July in the year 1875. The place of the collision seems to have been off Cape Rosier, in the Gulf of St. Lawrence. The ships that collided were two large vessels, the "Lake St. Clair," an iron ship of 1,061 tons, with a general cargo and a crew of 31 hands, bound for Montreal, and the "Underwriter," a full-rigged ship of 1,481 tons, in ballast, with a crew of 23 hands, bound for Quebec. The nature of the damage inflicted was this,—the "Lake St. Clair" was struck at about right angles, 60 feet from the stern on the starboard side abaft the main-rigging, the bow of the "Underwriter" passing between her main topmast backstays and mainmast stays. Both these vessels were on tacks beating up the River St. Lawrence, and the learned Judge of the Court below, after consulting his nautical assessor, in a judgment which bears the marks of great pains and care, came to the conclusion that the "Underwriter" was alone to blame for this collision. With

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that judgment their Lordships are unable wholly to concur.

In the judgment which their Lordships are about to deliver, they are disposed to assume generally the facts stated on behalf of the "Lake St. Clair" as the foundation for that judgment; that is to say, they are of opinion that she had not any way upon her at the time of the collision, though they are also of opinion that the "Underwriter" could not see the state of her canvas, or so discover that she was in that condition. It is unnecessary to go into an earlier part of the history of this case, upon which, though much discussed in the Court below, the determination of this Appeal, it is now admitted, does not depend. The vessels had tacked shortly before the occurrence which led to the collision. At that time the "Lake St. Clair" had come round upon the port tack, and the other vessel, the "Underwriter," was upon the starboard tack, seeing the green light of the St. Clair." Now there is no doubt that, according to the general rule of navigation, it is the duty of the port tacked ship to get out of the way of the starboard tacked ship; but her defence in this case was that she had thrown herself into stays and that she was helpless and unmanageable at the time of the collision; and, therefore, that the other vessel, though, according to the general law, it was her duty to keep her course, seeing, as she ought to have seen, and knowing, as she ought to have known, the helpless state of the "Lake St. Clair," ought to have executed some manœuvre herself,—the nature of which will presently be adverted to,—which would have prevented the collision.

In this case some nautical questions of considerable difficulty and nicety are raised, and their Lordships have thought it proper to consult very carefully with their nautical assessors and

to put to them certain questions, the results of which I am about to state, so far as they have been adopted by their Lordships.

The first question which requires to be decided appears to be the following:—Was the "Lake St. Clair," in the circumstances of the case, and having regard to her position relatively to the "Underwriter," justified in tacking at all in the face of that vessel? After consultation with the nautical assessors, this question must be answered, their Lordships think, in the affirmative. They think there was then no reason to apprehend that anything would prevent her safely executing that manœuvre at that time.

The next question is whether, if the "Lake St. Clair" had come round so as to be fairly on the port tack, and had seen the red light of the "Underwriter," which is admitted to have been the proper light, and which, according to her own statement, was seen by her at the distance of half to three quarters of a mile, she was right in the manœuvre which she adopted, or whether she might not have taken steps which would have enabled her to get out of the way of the starboard tacked vessel. Their Lordships, after consultation with their nautical assessors, are of opinion that the "Lake St. Clair" ought to have braced her head-yards abox, and not to have hauled her fore-yard, as it is admitted she did, and thus she would have been enabled to give herself stern-way; and moreover would have allowed the "Underwriter" to go safely ahead.

For these reasons their Lordships think that the "Lake St. Clair" is to blame.

In these circumstances their Lordships have had to consider whether the "Underwriter" was not fairly apprised of the condition in which the "Lake St. Clair" was, and whether, on being so fairly apprised, there were not manœuvres which she could have executed which would have, on her

part, prevented the collision; it being perfectly clear that though the port tacked vessel is to get out of the way of the starboard tacked vessel, and the starboard tacked vessel is to keep her course, that rule of navigation does not mean, and never has been construed to mean, that the starboard tacked vessel is to obstinately continue on her course when she sees that, in the particular circumstances, by a variation from it she can avoid a collision. It has been already mentioned that their Lordships are of opinion that the "Lake St. Clair" did not apprise the "Underwriter" of her incapacity to take the proper manœuvres incident to a port tacked ship by the state of her canvas; for the fair result of the evidence appears to be, that the state of her canvas was not visible on board the "Underwriter." But it seems to be a fact in the case, which is well established, that those on board the "Lake St. Clair" did hail to those on board the "Underwriter" at a sufficient distance to apprise them of the condition which they were in; this hailing took place when the vessels were in their Lordships' judgment so far apart as to allow a sufficient interval of time to warn the "Underwriter," if she had attended to the hailing which reached her. It has been suggested that the "Underwriter" ought to have starboarded her helm, and could so have avoided the collision. Their Lordships, after consultation with their nautical assessors, are of opinion that that would not have been a proper manœuvre, but that the "Underwriter" ought to have executed another manœuvre, namely, to have put her helm down at an earlier period than she did, that is, at the moment when the hailing first reached her, which it is clear she did not do, and which if she had done would have avoided the collision,—she would have brought her head to the wind, and there would have been no collision.

Their Lordships are therefore compelled to find that the "Underwriter" was also to blame for this collision; and the decree which they will humbly advise Her Majesty to make will be as follows: To reverse both the decrees of the Court below, there being cross-suits in this case, and to declare in both suits that both ships are to blame; that the damages be assessed according to the Admiralty rule; and that each party must bear their own costs in the Court below and of this Appeal.