

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of the Owners of the steamship "Earl of Lonsdale" v. Robert Sims and Charles Sims, trading under the name of Robert Sims and Co., from the Vice-Admiralty Court of the Province of Quebec: delivered June 18th, 1879.*

---

Present:

SIR JAMES W. COLVILE.

SIR ROBERT J. PHILLIMORE.

SIR BARNES PEACOCK.

SIR ROBERT P. COLLIER.

THIS is an Appeal from a decree of the Judge of the Vice-Admiralty Court of Quebec in four suits brought by the owners of a schooner called the "Marie Olevina," the barge "Canadien," the barge "Jessie," and the cargoes of those barges,—each in a case of collision,—against a steamship called the "Earl of Lonsdale." The "Earl of Lonsdale" was a screw steamer 250 feet in length and of 1,543 tons register, bound from Newport to Montreal with a cargo of coals, and was proceeding up the St. Lawrence. The "Jessie" and "Canadien" were coming down in tow of a steam-tug called the "Rapid," which had two other vessels in tow, namely, a schooner called the "Marie Olevina" and a brig called the "Myrtle." The "Marie Olevina" and "Myrtle" were next to the "Rapid" and were being towed abreast of one another, the "Marie Olevina" being on the port side; and the two barges were towing astern of the brig and schooner, and were lashed together. These vessels were all of small size, none drawing more than from 11 to 12 feet of water.

The "Earl of Lonsdale" was drawing between 18 and 19 feet of water. She was proceeding up the north side of the ship channel in the River St. Lawrence. There was water for at least 200 yards. The breadth of the channel may be said to be about 200 to 300 yards. The "Earl of Lonsdale" was on her way up the St. Lawrence; she had passed the wharf at Port St. Francis, and had entered into the broad channel there, when her pilot and second mate saw the "Rapid" and her towage passing along Iron Shoal towards Port St. Francis. The "Earl of Lonsdale" did not stop in the broad channel above the wharf, nor at the foot of Force Shoal, but went on, seeing the tug approaching with a train of vessels behind her, namely, the two sailing vessels and two barges which have been mentioned. The "Earl of Lonsdale" and the tug passed upon parallel courses from 60 to 100 feet apart. The Judge says, "And then the relative positions of the 'Earl of Lonsdale' to the vessels in tow became such that the hawser by which the 'Myrtle' and the 'Marie Olevina' were towed was cut in two by the stem of the 'Earl of Lonsdale.' The 'Myrtle' escaped, but the starboard bow of the 'Earl of Lonsdale' and the port bow of the 'Marie Olevina' came into contact, which turned her head in the contrary direction, and after that the stem of the 'Earl of Lonsdale' came into collision with the port bow of the 'Canadien' outside and her starboard bow with the bows of the 'Jessie' inside of the 'Canadien.'"

The learned Judge of the Court below, after advising with his nautical assessors, and after a careful review of all the evidence, came to the conclusion that the "Earl of Lonsdale" was to blame for these collisions.

Now it appears to their Lordships that this

conclusion was well-founded upon the evidence. After reviewing that evidence they think that if they had to come to a conclusion for the first time upon it,—if the case had been heard before them in the first instance,—they would have decided in the same manner as the learned Judge did ; but they are of opinion that, unquestionably, there was ample evidence to found the conclusion at which he arrived.

It has already been said the “Earl of Lonsdale” was 250 feet long. She had the tide, or at least the stream, against her, and it would have been very easy for her to have stopped before she went into the channel, and to have allowed this tug with all her train of vessels to have passed in safety, or if she did come into the channel it was her duty to have navigated with great discretion and caution, whereas the evidence shows that she neither stopped nor had any sternway upon her at all. She passed the “Rapid,” and her starboard bow ran into the port bow of the “Marie Olevina,” then her stem ran into the port bow of the “Canadien” and her starboard bow into the bows of the “Jessie.”

It appears to their Lordships, after communication with the sailing masters, that the tug with her tow would have gone quite clear if she had been allowed to keep her course and if the “Earl of Lonsdale” had not crossed to the southward. Their Lordships, therefore, think that the learned Judge was quite right in his finding that the collision was caused by that vessel crossing the channel to the south side, thereby coming into collision with the schooner and the barges.

There remains one question which their Lordships thought worthy of further consideration than it appears to have received in the Court. Perhaps it was not raised there so fully as before their Lordships to-day, but their Lordships desired to have the question argued whether according to

the evidence in this case the "Rapid" did not also contribute to the collision, and whether she was not therefore also to blame? That question is to be answered by various considerations, the first of which is, ought the "Rapid" to have ported more than she did? Because that she did port a little is clear from the evidence of the master of the "Earl of Lonsdale," who says: "The tug, when passing us, though somewhat on a parallel course, was angling a little to the southward, with her helm aport I should think." It has been argued that the rule of navigation requires that at least she should port also, and that if the "Rapid" had done that the collision would have been avoided, even though the "Earl of Lonsdale" might have been to blame for coming across in the way in which she did. It appears however that the "Rapid" left more than half the river to the "Earl of Lonsdale" in which to pass, and their Lordships are not satisfied upon the evidence that she had not abundant space, without any danger of coming upon the shoals on the northern side of the channel, to pass in perfect safety while the "Rapid" pursued her course. It appears also to their Lordships that there was a proper lookout on board the "Rapid," that her navigation was properly attended to, and that she had no reason to anticipate that the "Earl of Lonsdale" would cross or sheer to the southward. It was also argued that the "Rapid" ought to have eased or stopped her engines. But their Lordships, taking all the circumstances into consideration, are not of that opinion. In the first place they must bear in mind the long train of vessels behind her which she had to manage, and which rendered it extremely difficult for her to ease her engines without bringing them into a heap, as it were, one upon another. Their Lordships also remember that she had the cur-

rent in her favour, which rendered the manoeuvre suggested extremely difficult and perilous.

On the whole, therefore, their Lordships see no reason whatever for interfering with the judgment of the Court below, thinking that the learned Judge was perfectly well-founded upon the evidence in coming to the conclusion that the collision was caused by the "Earl of Lonsdale" crossing to the southern point, and thinking also that there is no evidence to support the proposition that the "Rapid" contributed to this collision by any want of proper skill or care on her part.

Their Lordships will therefore humbly recommend Her Majesty to affirm the decision of the Court below, and to dismiss this Appeal with costs.

1914

1914

1914

1914

1914

1914

1914

1914

1914