CASES

DETERMINED BY THE

EXCHEQUER COURT OF CANADA.

TORONTO ADMIRALTY DISTRICT.

ST. CLAIR NAVIGATION COMPANY AND THE SOUTHERN COAL AND TRANSPORTATION COMPANY..... } PLAINTIFFS;

1905
June 22.

AND

THE SHIP "D. C. WHITNEY".....DEFENDANT.

Maritime Law—Collision—Jurisdiction—Foreign Corporation—Discretion.

The Exchequer Court of Canada has jurisdiction in an action of collision brought by a foreign corporation against a foreign ship, although the collision occurred in foreign waters.

2. In such a case the court ought to exercise its discretion to entertain the action.

THIS was an action brought by two foreign corporations, the plaintiffs, against the defendant ship, a foreign vessel, for damages arising from collision.

The main defences were: Want ot jurisdiction, and inevitable accident. The facts of the case are fully set out in the reasons for judgment.

The trial of the action took place at Windsor on the 29th, 30th and 31st March and 14th and 15th April, 1905, when after argument judgment was reserved.

J. W. Hanna for plaintiffs;

W. D. McPherson for defendants.

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

HODGINS, L.J., now (22nd June, 1905) delivered judgment.

This is an action brought by the plaintiffs, the St. Clair Navigation Company, a foreign corporation, for damages caused by the defendant steamer *D. C. Whitney* colliding with their ship *Mongaugon* on the night of the 28th November, 1901, at the Baltimore and Ohio Dock at Sandusky, in the State of Ohio, one of the United States of America; and also by the Southern Coal and Transportation Company, a foreign corporation, the owners of a cargo of coal on the said *Monguagon* against the same defendant steamer for loss and damage to the said cargo caused by the said collision. The defendant steamship was arrested in Canadian waters on the 14th of November, 1902.

One of the principal defences raised by the Inland Star Transit Company, also a foreign corporation, as owners of the defendant steamer, after claiming that both ships are of American register, is as follows: "And the said Inland Star Transit Company submit with deference that under the circumstances herein and in the statement of claim set forth, this honourable court has no jurisdiction to try and adjudicate this action; or if this honourable court should be of opinion that there is jurisdiction in the discretion of the court so to do, then that in the exercise of the said discretion this honourable court should refuse in the circumstances set forth so to do, or to compel the said defendants to submit themselves to the said jurisdiction, but leave the plaintiffs to seek such redress as they may be entitled to against the defendants in the proper courts of the United States of America, according to American law."

This challenge to the jurisdiction of this Canadian Court of Admiralty impeaches the opinion of Sir Leoline Jenkins, Judge of the High Court of Admiralty

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

in the reign of Charles II, "whose opinions," says Wheaton (1), "form a rich collection of precedents in the maritime law of nations," in one of which the judge said: "It is not without a special ease and satisfaction to a foreign plaintiff that we shall have the same marine laws here that we are judged by in his country." (2)

Before considering the question of jurisdiction, it will be proper to refer to the judgment of our Supreme Court in *Monaghan* v. *Horn* (3) which decided that the Vice-Admiralty Courts in British possessions, and the Maritime Court of Ontario (of which this court is the successor), have whatever jurisdiction the High Court of Admiralty in England has over any claim for damages done by any ship, whether to person or property; and by *The Colonial Courts of Admiralty Act*, 1890, under the authority of which the Parliament of Canada established this court, "it is enacted that the jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters and things as the Admiralty Jurisdiction of the High Court in England, whether existing by any statute or otherwise; and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that court to international law and the comity of nations." (4)

About the earliest case in which the jurisdiction of an English Admiralty Court over a foreign ship was considered was the *Two Friends* (5), a case of salvage for the rescue of an American ship by alleged British

(1) Elements of International Law, 4th ed., pp. 27-8.

(2) See Wynne's Life of Sir Leoline Jenkins, vol. i, p. 764.

(3) 7 S. C. R. 409.

(4) Sec. 2, subs. (2).

(5) 1 C. Rob. 271.

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

sailors from the enemy on the high seas. Sir William Scott (afterwards Lord Stowell) said. "But it is asked if they were American seamen would this court hold plea of their demands? It may be time enough to answer this question whenever the fact occurs. In the meantime I will say, without scruple, that I can see no inconvenience that would arise if a British Court of Justice was to hold plea in such a case; or, conversely, if American courts were to hold pleas of this nature respecting the merits of British seamen on such occasions;" and he added: "I can see no reason why one country should be afraid to trust to the equity of the courts of another on such a question of such a nature"(1).

The Supreme Court of the United States, in the *Belgenland* (2), concurred in Lord Stowell's decision in the case of the *Two Friends*. Bradley, J. said: "The law has become settled very much in accord with these views. That was a case of salvage; but the same principles would seem to apply to the case of destroying, or injuring a ship, as to that of saving it. Both, when acted on the high seas between persons of different nationalities, come within the domain of the general law of nations, or *communis juris*, and are *primâ facie* proper subjects of inquiry in any Court of Admiralty which first obtains jurisdiction of the rescued, or offending ship, at the solicitation in justice of the meritorious, or injured parties."

Prior to the passing of the Imperial Admiralty Act of 1861, there were some decisions of Dr. Lushington which may be referred to. Thus in the *Johann Friederich* (3), he held that where both parties were foreigners, the important question affecting the jurisdiction of the Admiralty Court was whether the case was *communis juris*, and he held that questions of col-

(1) 1 C. Rob. at pp. 278, 279. (2) 114 U. S. at p. 362.
(3) 1 W. Rob. at p. 37.

lision were *communis juris*. And referring to the law of foreign attachment he said, "it is difficult to understand the ground of disputing the jurisdiction" of the Admiralty Court. See also the *Volant* (1). And in the *Griefswald* (2), he said: "In cases of collision it has been the practice of this country, and, so far as I know, of the European states, and of the United States of America, to allow a party alleging grievance by a collision, to proceed *in rem* against the ship wherever found. And this practice, it is manifest, is most conducive to justice, because in very many cases a remedy *in personam* would be impracticable." See also the *Golubchick* (3), which was an action for wages by Spanish seamen against a Russian ship, the property of Russian subjects.

Legislative history may perhaps show what decisions led to the enactment of sec. 7 of the Admiralty Act of 1861, (24 Vic. c. 10) which provides that "The High Court of Admiralty shall have jurisdiction over any claim for damage done by any ship." And in the *Courier* (4), Dr. Lushington held that under that section the English Court of Admiralty had jurisdiction to try a case of collision between foreign vessels in foreign waters. See also the *Diana* (5) and the *Charkieh* (6).

About the earliest exercise of jurisdiction by a Canadian Vice-Admiralty Court was the *Anne Johanne* (7), where the court held that it had jurisdiction in a case of collision between French and Norwegian vessels on the high seas. See also *Wineman* v. the ship *Hiawatha* (8).

The jurisdiction of the English Admiralty Court over foreign ships has been thus summarized in Mars-

(1) 1 W. Rob. at p. 387.
(2) Swab. at p. 435.
(3) 1 W. Rob. 143.
(4) Lush. 541.
(5) Lush. 539.
(6) L.R. 4 Ad. & Ecc. 59, 120.
(7) 2 Stu. Ad. R. 43.
(8) 7 Ex. C. R. 446.

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

den's *Law of Collisions at Sea* (1), "Actions for collisions are said to be *communis juris*, and the Admiralty Court has never refused to entertain an action merely because both ships were foreign, or their owners not British subjects, or because the collision occurred in foreign waters."

In the Admiralty Courts of the United States this jurisdiction over collisions between foreign vessels has long been maintained As said by Marshall, C.J., in the *Mary* (2), "the whole world it is said are parties in an Admiralty cause, and therefore the whole world is bound by the decision." And in the *Invincible* (3) Story, J. said, "The Admiralty Courts of every country have general jurisdiction in cases of torts committed on the high seas, wherever the person or thing by which the tort is committed is within the territory." And in *Clarke* v *New Jersey Steam Navigation Company* (4), the same learned judge said, "If the present were a suit *in rem*, to enforce a right of property or a lien, or to subject it, as the offending thing (as in cases of collision), to the direct action of the court, the case could not admit of any real doubt; for in all proceedings *in rem*, the court having jurisdiction over the property itself, it is wholly unimportant whether the property belongs to a private person, or a corporation, a citizen or a foreigner, to a resident, or a non-resident, to a domestic, or a foreign corporation. In each and every case the jurisdiction is complete and conclusive." Cited with approval in the *Charkieh* (5).

The later cases sustain these opinions. *The Jupiter* (6), was the case of a collision in the North Sea between a Dutch schooner and a Russian barque, the owners of each being foreigners. Blatchford, J.

(1) 5th ed., p. 198.
(2) 9 Cranch at p. 144.
(3) 2 Gall. at p. 35.
(4) 1 Story at p. 537.
(5) L.R. 4 Ad. & Ecc. at p. 95.
(6) 1 Ben. at p. 542.

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

said, "A general objection to the jurisdiction of the court is taken by the answer. Without going into any extended discussion of the question I am satisfied that this court has jurisdiction," citing the *Johann Friederich* (1), and other cases.

In the case of the *Eagle* (2), the Supreme Court of the United States held that the Admiralty Courts had jurisdiction to try cases of collision in Canadian waters. And in the *Maggie Hammond* (3) it further decided in favour of the jurisdiction of their Admiralty Courts in Canadian claims, where both the place of shipping and the place of delivery of cargo were foreign ports. That was an action between the Canadian owners of the cargo which was shipped in Scotland, and the Canadian owner of the ship, the arrest of the ship having taken place at Baltimore, in the United States. The court, after commenting on the English Act of 1861, and the jurisdiction exercised under it by the English Courts, held that where Maritime liens were enforceable in a foreign jurisdiction, the Admiralty Courts of the United States would exercise jurisdiction to enforce them, even though all the parties are foreigners; but that its enforcement was a matter of comity, adding that Maritime law partook more of the character of International law than any other branch of jurisprudence.

The defence in this action further contends that in any event the jurisdiction should not, as a matter of discretion, be exercised by this court. *In One Hundred and Ninety-four Shawls* (4) the court held that although it rested in the discretion of a Court of Admiralty to hear and determine a controversy between foreigners, it had found no case in which the court had declined the jurisdiction. And Story, J. in *The Jerusalem* (5),

(1) 1 W. Rob. at p. 36.
(2) 8 Wall. 15.
(3) 9 Wall. 435.
(4) 1 Abb. Adm. 317.
(5) 2 Gall. 191.

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

thought that the refusal of jurisdiction by an Admiralty Court might well be deemed a disregard of national comity.

I must therefore hold that this Canadian Court of Admiralty, having the same jurisdiction over the like places, persons, matters things as the High Court of Admiralty in England, has jurisdiction to try the maritime question of collision raised by the pleadings in this case.

The main defence relied upon is "inevitable accident." The evidence of Captain Carney of the *Whitney* is that this vessel is 245 feet long by 40 feet beam and of 1,200 or 1,400 tonnage, or net 1,090 tons. That on the 28th November, 1901, she steamed from Toledo to Sandusky to take on a cargo of coal, that she arrived at Cedar Point in the bay about midnight, and proceeded through the channel to the Baltimore and Ohio Dock; that when about 2,000 feet from the dock he gave the signal to the engineer "to go ahead strong;" that about three times he checked the speed; that owing to the wind blowing about 35 miles an hour, the steamer made lee way, and that each time she did so, he worked her up again; that her speed in approaching the dock was about 2½ miles and not over 3 miles an hour; that after the last signal to stop she moved about 20 feet, and he then gave the signal to reverse the engine, his statement being as follows: Q. 64. "About how far out from the pier was the *D. C. Whitney* at the time you gave the signal to back? A. About 600 feet."

He further states that when about 300 feet from the pier he discovered that the engine did not reverse, owing to its getting on the centre, and that when she reached the pier her speed was about one mile an hour; that the tendency of the wind was to blow her off the dock, making her list to port, and that he was

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

holding her up to the wind. That she struck the side of the dock about 30 feet from the pier and bounded off, and then slipped along the dock to the *Monguagon* and struck her near the centre of her aft upper works and drove her about 150 feet up the dock.

The evidence of Captain Pope of the *Monguagon* is that his ship had a bright light aft about twenty feet above the deck, and about ten or twelve feet from the stern; that the *Whitney* struck the stern of the *Monguagon*, cut her yawl in two, stove in about three feet of the after part of the cabin, opened her seams and drove her up the dock for about 300 feet, causing her to fill and sink. The *Monguagon* is 138 feet long, and was moored to the dock by four lines, one a nine inch hawser, and three others of eight, seven and six inches, as the wind was blowing fresh that night. The force of the collision caused the nine-inch line to pull out the timber-head, and to break the timber-heads each of eight-inch square to which the three other lines were fastened. Other evidence proved the *Monguagon* was moored by the above lines at about 175 feet from the pier of the dock.

The general evidence given by the defendants was to show that it was not customary to keep a man in the crank-pit in close proximity to the pinch-wheel so as to give it the necessary turn to get the engine off the centre; and in giving such evidence Captain Lyons says, "You asked me if it was customary to keep a man standing at the pinch-wheel. You know it is only when you go into port that there would be two men in the engine room It is only down one short flight of steps to this crank room, where he can pinch this off. It wouldn't take a man three seconds to get from the engine room to the crank-pit."

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

The evidence of Mitchell, one of the defendant company's engineers, and of Sager, who was one of the engineers of the *Whitney* at the time of the collision, substantially agree. Sager's evidence is as follows:—Q. 30. "How long did it take to get the engine off the centre from the time you found it was on till you got it off?—A. Not more than a minute and a half, perhaps two minutes." Q. 44. "If you had been standing there now how long would it have taken you to get the engine off the centre?—A. Half a minute;" and to a similar question (Q. 46) he answered "in a minute anyway."

Snider, another engineer witness for the defendants, gave evidence that it was not customary to have a man standing by with the pinch-bar in his hand, and that he had never heard of it "except in places like going up Chicago Creek or Buffalo Creek," and he also said: Q. 48. "You would always have a man pretty close around to get hold of that crowbar? A. I would be around myself." Q. 57. "Is it good seamanship to practice it?" A. "Yes." Q. 52. "Would you say it was a reasonable precaution to take?" A. "Yes, I think so." Q 53. "How long would it take to pry off the centre supposing you were there ready?" A. "A few seconds if you were right there."

Southgate, another engineer witness for the defendants, said: Q. 44. "Don't you think it is good navigation to have either a fireman or second engineer ready to take the engine off the centre in coming into a crowded harbour? A. It would be if we had enough on the boat to do it."

The evidence given by the plaintiffs in rebuttal may be summarized as follows: Tarseney—That if a man was stationed at the pinch-wheel, an engine could be got off the centre in a few seconds, but if he had to go down to the hold, a minute but not more than two.

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

And he further stated: "If an engine is left to itself after the steam is shut off there is a certain momentum that will carry that engine a distance. There may be one, two, or three revolutions, but the engineer in charge of the engine can tell by the force of the motion pretty well whether it is going to get on the centre. All he has to do is to give a little quick motion—give a little steam and it is all right." And in answer to my question he said it was the duty of the engineer to stop his engine in such a form that it will take steam immediately, and be ready to go either forward or backward. And he subsequently said: "A careful engineer would have avoided getting the engine on the centre, and therefore it couldn't have been inevitable."

Blanchard gave evidence that a competent engineer could avoid his engine getting on the centre when he saw it coming; and that an engine would be got off the centre in half a minute, by keeping it going; and when the engineer would see it dropping to pull it up a little.

Bowen, Chief Engineer on the U. S. Revenue Cutter *Morrill*, stated that half a minute would be sufficient to go down to the crank-pit and get the engine off the centre; and he said: Q. 17. "If an engine did become centered, and they did not have a man standing by, what would you say it was?" A. "Carelessness." Q. 21. "If an engineer is paying proper attention to the engine, can the engine be prevented from centreing?" A. "Yes;" and he further said that the momentum of a loaded ship would be greater than that of a light ship.

The evidence established the following facts: That the engine of the *Whitney* got on the centre when she was about (600 plus 175) or 775 feet, or over one-eighth of a mile, from the *Monguagon*;

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

that the force of the wind was at the rate of thirty-five miles an hour, blowing the *Whitney* off the pier of the dock at which the *Monguagon* was moored, but that she struck the dock thirty feet from the pier and then slid along the dock about 145 feet further (the *Monguagon* being moored about 175 feet from the pier), and then struck the stern of the *Monguagon*, cut her yawl in two, stove in about three feet of her upper works and cabin, opened her seams, pulled out one and broke other timber-heads to which the lines of the *Monguagon* were fastened, and drove her up the dock for about 300 feet, where she filled with water and sank. The speed of the *Whitney* as she reached the pier was estimated by her captain at one mile an hour, and the engineer stated he got the engine off the centre in about a minute and a half, perhaps two minutes; and that the chief engineer then gave her the steam so that she should reverse. But it has been left more to inference rather than to direct proof that the engineer reversed before the collision, for the momentum force of the large but unloaded ship *Whitney*, striking a dock and then scraping along it about 140 feet and striking a three-fourths loaded schooner fastened by four hawsers to the dock bending one block and breaking others, and cutting the yawl in two and staving in the stern of the *Monguagon*, and driving her about 300 feet up the dock, must be held to lead to the inference that the captain's estimate of the speed of his ship comes within the following observations of Jeune, J. in the *P. Caland* (1) "If it were necessary to consider the matter, I should have to deal with the question of the force of the blow, and the indications which that presents, I am inclined to think that considerations upon that head might arise which might lead me to think that the

(1) [1891] P. 318, affirmed, 1892, P. 191.

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

P. Caland's speed was somewhat greater than it is said it was." And this seems to be sustained by the fact that when the *Whitney* was at least an eighth of a mile from the pier the order to reverse the engine was given. If the captain's evidence of the speed is correct, then in the absence of clear evidence the inference would seem to be allowable that the engine was not got off the centre and reversed promptly, or at a safe distance of the *Whitney's* passage over the one-eighth of a mile she had to move to reach the *Monguagon*, after her engine got on the centre.

The law of inevitable accident where the maritime offence of collision is charged, requires the offending party to prove that he could not possibly prevent it by the exercise of ordinary care, caution, prompt action or maritime or engineering skill. It is not enough to show that the damage could not be prevented by the offending party at the moment of collision; for one of the crucial questions is—could previous measures have been adopted which would have prevented it or rendered the risk of it less probable. As tersely put by Dr. Lushington in the *Mellona* (1): "By inevitable accident I mean that which no skill, no vigilance, can possibly prevent. If there be a probability of prevention, it is impossible to say that the party was not to blame." And in the *Despatch* (2), he added "inevitable accident is the act of God which no ordinary skill or caution can prevent. It is not a mere accident, but an accident which human caution could not avoid." And Lord Chelmsford, in appeal, said: "In order to establish a case of inevitable accident, he who alleges it must prove that what occurred was entirely the result of some *vis major*, and that he had neither contributed to it by any previous act, or omission, nor, when exposed

(1) 11 Jur. at p. 784. (2) 3 L. T. N. S. 220.

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

to the influence of the force, had been wanting in any effort to counteract it;" and Lord Esher's definition in the *Merchant Prince* (1), may also be referred to

The pinch-wheel and pinch-bar are parts of the machinery of the engine, as much as the steam steering gear is part of the steering machinery of the ship, and should therefore be watched with care when coming into a harbour, or where there is any possible risk of a collision. And in the *Merchant Prince* (2), Lord Esher, reversing Butt, J. (3), commenting on the stretching of the chain of the steering gear of a ship said: "They might have had a man underneath to disconnect the wheel at any moment if they saw the chain getting loose. But then there was the steering wheel aft. Why did they not have a man there so that if anything happened, in a moment he could steer the ship? That is not done. It is said that ordinary sailors would not think of that duty; but these sailors who, I have no doubt, were expert and good sailors, might have thought that there were means of taking the ship out to sea without danger that morning." See also the *Peerless* (4), and the *Merrimac* (5), and *Culbertson* v. *Shaw* (6). The evidence of marine engineers, and of men of nautical skill, in this case proves that an engineer can prevent his engine getting on the centre when he sees it coming, by giving a little steam; and that he could prevent his engine getting on the centre if he skilfully handled it; and that if there was a man standing by the pinch-wheel and pinch-bar, he could have got the engine off the centre in about half a minute. Some of the engineers go so far as to say that it was a want of care to allow an engine to get on the centre. The weight of evidence

(1) [1892] P. at pp. 187, 188.
(2) [1892] P. at pp. 186, 187.
(3) [1892] P. at p. 14.
(4) 2 L.T. N.S., 25.
(5) 14 Wall. 199.
(6) 18 How. 584.

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

satisfies me that the term "inevitable accident" is not applicable to this case, according to the definition given in the cases cited.

The evidence of the Captain of the *Whitney* as to the steering of his steamer is, I consider, not consistent with her course from Cedar Point. She had to steer south-west against a strong north-west wind blowing at the rate of thirty-five miles an hour, driving her westerly from the dock; and that in order "to turn into the dock" and reach her berth, she had to use her helm so as to counteract the force of the wind. Her steering gear was not out of order. And the following evidence of the Captain seems to be material as affecting the defence of inevitable accident: 223. Q. "If you had allowed the wind to have had its way, you would have avoided the *Monguagon*? A. If I had allowed the wind to have had its way, we would have been on the channel bank before we got to the *Monguagon*."

Nor does the evidence warrant the finding that a proper lookout was observed on the *Whitney*. As the steamer was nearing the dock, the mate and the lookout man were dividing their attention between the lookout and preparing the ropes for mooring the ship. A similar division of duty was considered in the *Twenty-One Friends* v. *John H. May* (4), where the lookout was dividing his attention between the lookout and reefing sails. The court held in that case that "No one was devoting his undivided attention to the duty of the lookout;" and that where it does not affirmatively appear that a proper lookout had been observed, the court cannot find that the accident was unavoidable.

The defence therefore fails, and the plaintiffs are entitled to a decree declaring the steamer *D. C. Whitney*

(1) 33 Fed. R. 190.

1905

ST. CLAIR NAVIGATION CO. AND THE SOUTHERN COAL AND TRANSPORTATION CO. v. THE SHIP D. C. WHITNEY.

Reasons for Judgment.

liable for the damages caused by the collision. Reference to the Deputy Registrar at Windsor to assess the damages, and to tax the costs of the action and reference.

Judgment accordingly.