THE COLLISION WITH THE MUNITION SHIP

The event on the harbor gave rise to several indictments and an inquiry by a Commission of which Mr. Justice Drysdale was the President. This Commission took strong grounds against Pilot MacKey, placing the responsibility for the collision exclusively upon his shoulders.

The case between the owners of the colliding ships was tried before Mr. Justice Drysdale on the same evidence that had been taken by the Commission of which he had been President. His decision was, to a great extent, based upon the fact that the collision had taken place on the Halifax side of the dividing line between east and west. But this fact would amount to nothing at all if it should turn out to be true that the Imo, coming seaward from Bedford Basin, had been for some con-

siderable time on the Dartmouth side of the line, that the Mont Blanc had gone as far as she dared to go on that side of the channel, which was her own water, and had justifiably come to the conclusion that the only possible method of preventing a collision was to endeavor, if and while there was time, to cross the bow of the Imo; and if the Imo, instead of continuing her course on the Dartmouth side, thus making a right out of two opposite wrongs, improperly changed it so as to frustrate the effort of the Mont Blanc to prevent the collision. This seems to have been the opinion of the two judges, Brodeur and Migneault.

It must not be assumed that the Imo deliberately chose the Mont Blanc's water to steam in. Before coming anywhere near the Mont Blanc she had passed, farther up towards Bedford, an American tramp going up on the Halifax side, and had been obliged to pass her on the starboard, which brought her towards the Dartmouth side. Farther down she had passed a tug, the "Stella Maria," with two tows. These also she had had to pass on the starboard side. It would be no wonder if she got farther into the Dartmouth side of the channel than the Mont Blanc could judge safe or convenient.

I considered myself fortunate in that I had no responsibility for the decision as to the case be-

tween the ship-owners, and of course I express no opinion here. The result of the appeal in that case was to reverse Judge Drysdale's decision by a majority vote. *Civium ardor prava jubentium* gave me all that I could do in disposing of the cases with which I was bound to deal. One of these concerned the official in charge of the wiring across the mouth of the harbour. To suppose that he had anything in the world to do with the disaster was an utterly lunatic notion. Yet my impression is that the Grand Jury insisted on finding a true bill and placing him on trial. When this bill reached me I got rid of it in the shortest and easiest way possible. It was simply nonsensical, and the fact that a grand jury could find it was symptomatic of the condition of the common feeling.

When Captain MacKey, pilot on board the Mont Blanc, was arrested for manslaughter in causing the death of his colleague and others, I was asked to test the matter by the issue of a *habeas corpus*. It seemed to me that, so far from being negligent or careless, as charged in the information, the defendant had taken every possible care to prevent the collision which was about to be caused by the conduct of the Imo. My views were, in fact, essentially the same as those contained in the opinion of Mr. Justice Migneault in the Supreme Court of Canada on the appeal from the decision

of Mr. Justice Drysdale. In fact I went so far in my decision as to say that I even doubted whether any mistake of judgment had been made by the Mont Blanc, considering the manner in which she was being crowded over on the Dartmouth shore by the course of the Imo. In any case, it surely cannot have been manslaughter for a defendant to have done what was best in his judgment to prevent an impending accident even if, in spite of his best efforts, the struggle was unsuccessful.

The decision releasing MacKey on *habeas corpus* is reported in 29 Canadian Criminal cases, 167. It was probably unpopular. Someone of the infuriated public, meeting one of my boys on the street, and unaware of his relation to me, ventured the opinion that I should have been castrated for it. The newspaper report in this case inadvertently uses the term "port" instead of "starboard." Whether this was my fault or that of an amanuensis or compositor I cannot say; but I perfectly well knew what I was talking about. Ever since reading as a boy Oliver Optic's book, "The Boat Club, or the Bunkers of Rippleton," I have known that the "port" is "the left-hand side looking forward," and, although never an admiralty judge, I have learned that steamers crossing each other should ordinarily proceed port to port.

A motion to set aside my order came before a court composed of Harris, C. J., Ritchie, Longley and Drysdale, JJ., reported in 29 Can. Crim. Cases, 282.

This was a hopeless effort, and it is a reflection on the professional reputation of my old friend Drysdale, that he should have imagined he could support his dissent from the other justices by citing *Sproule's case* in the Supreme Court of Canada. Even the late Mr. Justice Longley, whose standing as a lawyer Judge Drysdale despised, knew enough to distinguish that case, and did distinguish it, before Drysdale, J. was obliged to show his hand.

My impression is that Mr. Justice Ritchie also was, at least, in doubt about my decision on the *habeas corpus*, although he did not say so. But if he was, he also knew, as Mr. Justice Drysdale ought to have known, that my decision was final.