

RECORD.

No. 69.

*In the
Exchequer
Court of
Canada,
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District.*

NOTICE OF APPEAL.

No. 69.
Notice of
Appeal,
May 2nd,
1918.

TAKE NOTICE that Campagnie General Transatlantique intends to and does hereby appeal to the Supreme Court of Canada from the judgment or decision of Honourable Mr. Justice Drysdale and that the same has been set down for hearing on appeal in the Supreme Court of Canada.

AND FURTHER TAKE NOTICE that the required security has been deposited with the Registrar of the Supreme Court of Canada.

Dated at Halifax, N. S., the second day of May, 1918.

W. H. FULTON,

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Solicitor for Campagnie General Transatlantique.

To the Registrar of the Exchequer Court of Canada.

Nova Scotia Admiralty District.

And to the Owners of the Ship "Imo" or their Solicitors or Agents.

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*In the
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REASONS FOR JUDGMENT ON APPEAL TO THE SUPREME COURT OF CANADA.

No. 70.
Reasons for
Judgment
on Appeal
in the
Supreme
Court of
Canada.
By The
Chief Jus-
tice. (Sir
Louis
Davies).

The Chief Justice, (Sir Louis Davies):—

This is an appeal from the judgment of Mr. Justice Drysdale, the Judge in Admiralty, Nova Scotia District, in a case arising out of a collision which occurred in the Harbour of Halifax on the morning of the 6th December, 1917, between the steamers *Mont Blanc* and *Imo*, and caused the awful explosion from the cargo of the *Mont Blanc* consisting of high explosives which resulted in the loss of some thousands of lives and destruction of a part of the City of Halifax. The action was brought in that court by the owners of the French steamer *Mont Blanc* against the Norwegian steamer *Imo*, in which the *Mont Blanc* claimed the *Imo* was solely to blame, and in which the *Imo* counterclaimed that the *Mont Blanc* was solely to blame. 10

The questions as to the liability of the respective steamers depended largely, if not entirely, upon the findings on questions of fact and the learned trial judge who has had much experience in Admiralty cases, and who in this case, as he says, "assisted by two of the best nautical assessors in Canada," came to the conclusion that the *Mont Blanc* was solely to blame, in which conclusion his nautical advisers concurred. The learned judge held, and I think rightly, that once you conclude that the collision took place on the Halifax side of the mid channel, or even in mid-channel, you find the "impossibility of the story" given on the part of the *Mont Blanc*. He says: 20

"The fault to my mind clearly appears to have been the result of the last order of the *Mont Blanc* when being in her own waters on the Dartmouth side she took a starboard helm and reached for the Halifax wharves thus throwing herself across the bow of the outcoming ship *Imo*. Why this order was given I know not but I feel sure it was gross negligence and in so thinking I am supported by the advice and opinion of both nautical assessors. The order for a starboard helm and to lay a course suddenly across the harbour was justified by the officers in charge of the *Mont Blanc* as an emergency order to prevent a collision but taking into consideration the then position of the two ships this claim will not bear investigation." 30

I am in perfect accord with this finding of the trial judge and I agree

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I have read most carefully the evidence of all the witnesses which was called to our attention by counsel on either side; and on this crucial point of the position of the two steamers at the moment of the actual collision the great weight of the testimony shews them to have been pretty nearly mid-channel but a little over on the Halifax side. In fact, the captain of the Mont Blanc himself answers—page 42, line 38—to the question as to where the Mont Blanc was at the time of the collision:—“About the middle 10 of the Narrows between the two shores at the time of the collision,” and the first officer of the Mont Blanc, Glotin, says—page 119, line 6—in answer to the question, “In which position in the channel did the collision occur?” “About the middle.”

Without quoting other evidence on the point, I think that it was conclusively shewn that the collision took place rather on the Halifax side of mid-channel. See Sullivan, page 470, lines 43-45; Rourke, Chief Engineer of the S. S. Douglas H. Thomas, page 238, line 30; Whitehead, page 662, lines 35-38; Captain McLean, page 221, lines 9-13, and page 227, lines 30-34. 20

Once that point is established, I think the learned judges findings are quite correct that the sudden change in the course of the Mont Blanc when Captain Lemedoc blew his two blast signal and his vessel turned to port and steamed in an oblique line across the harbour “till her starboard bow was struck by the Imo cannot be justified,” and that the excuse or reason given for this sudden manoeuvre and change of course will not “bear investigation.” I tried my best during the argument to get counsel to state why in his opinion this manoeuvre could be justified or defended. The only explanation he gave was that the captain of the Mont Blanc who gave the order for the “two whistle blasts” and the change of course 30 across the harbour obliquely, believed, and had reason to believe, that the Imo was actually trying to force herself in between the Mont Blanc and the Dartmouth shore. But the location of the accident either on the Halifax side of the mid-channel line, or even on that line itself, seems to me absolutely conclusive against any such theory or the existence of any such belief on the part of Captain Lemedec.

It may then be asked if he, the captain, had not reason to believe or fear that the Imo was pushing herself or trying to push herself between his ship and shore, what other possible explanation can be offered for that fatal order and manoeuvre, and I answer, as counsel answered me: 40
“None.”

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Up to the moment when that fatal order was given and the Mont Blanc left the Dartmouth side of the channel and steamed obliquely across the channel to the point of collision, she had rightly and properly kept on her course on the Dartmouth side of the channel. In reading her captain's evidence and that of her pilot Mackey, it will be seen that not only up to that moment had she been kept on her proper side of the channel, but that she was kept as close to the Dartmouth shore as it was possible to keep her without danger of her going ashore. See Captain's evidence, page 53, lines 15 and on.

Had the course of the Mont Blanc, instead of being deflected across the harbour when the two blast signal was given, been maintained, there could not possibly have been any collision; that is shewn, indisputably I think, from the location of the collision being fixed either on the mid-channel or on the Halifax side of it. See also the evidence of Captain McLean and Chief Engineer Rourke of the steamer Douglas H. Thomas, page 230, lines 5 to 9, page 234, line 34. 10

I also call attention to the fact that this fatal manoeuvre and the signal for it were made and given by Captain Lamedec himself on his own responsibility, and not on the advice of his pilot Mackey. They could not inter-change views, as the pilot could not speak French and the captain could speak very little English, and they did not converse together. See captain's evidence, page 46. He says that he not only himself blew the two blast whistle but gave the order in French to the helmsman to go to Port or to the left, as he expresses it. 20

Leaving now the Mont Blanc and her manoeuvres and navigation up to the time of the collision, I turn to the evidence respecting those of the Imo.

That steamer had been anchored all night on the west shore of the Bedford Basin. She was in charge of Captain From, who spoke English fluently, (page 403, line 35). Her pilot, William Hayes, was reputed to be one of the best pilots in the service in Halifax, (page 447, lines 9-11), and at the close of the evidence the learned judge said: "I have no doubt of the good standing of Pilot Hayes," page 741. 30

Unfortunately both Captain From and Pilot Hayes were killed by the awful explosion which followed the collision, as was also the first mate. We have only left, to give a statement of the Imo's navigation on that fatal morning, the wheelsman Johansen who, though injured, survived and appeared as a witness.

It was shewn that Pilot Hayes went on board the guardship on that

RECORD. fatal morning between 7.30 and 8 o'clock on his way up the Basin to join the Imo, and was informed that everything was in order to go to sea. From the evidence of Lieutenant Adams of the guardship, pages 688-695, it appears that the Imo had hoisted her flags shewing her commercial number, the guardship having corresponding flags hoisted. In the absence of wind, the flags were hanging limp and the Imo passed from her anchorage on the west side of the Basin close to the flagship in order to see the signal.

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There is, and can be, no doubt whatever that, when the Imo left the guardship and was about entering the Narrows, she met an American tramp coming from the harbour to go into the Basin and that the Imo tried unsuccessfully, by signalling her single blast whistle, to pass this tramp port to port, but was forced by the tramp, who wanted to keep on her course, to pass starboard to starboard. The captain of the tramp, Pilot Renner, frankly states in his evidence that it was entirely his fault that the vessels passed as they did, starboard to starboard, page 448, line 31. The Imo had given a one blast signal which the tramp answered by a cross signal of two blasts, indicating she intended keeping on the Halifax side, and to avoid, as is contended, a possible collision the Imo accepted the situation, answered with a corresponding two blast signal, and the vessels passed as above stated.

At the time the Imo was forced, as argued, to give this two blast signal to the American tramp, the Mont Blanc was distant nearly or about a mile from her. See Captain McLean's evidence, page 217. The Imo then, as Captain McLean says, was heading towards the Dartmouth shore.

Just after passing the American tramp, the Imo met the ocean-going tug Stella Maris with two barges behind her going up the Narrows to Bedford Basin on the Halifax side. The total length of the tug and tow was between 300 and 400 feet. The tug with the barges had left the dry dock about 8.15 for Bedford Basin intending to cross over to the Dartmouth side of the channel, but had only apparently got part of the way across when the Imo came in sight and the captain of the Stella Maris gave orders to turn in closer to the Halifax shore, (page 379, line 25; page 380, line 4; page 487, line 30).

The Stella Maris thus put herself on the wrong side of the channel and in what should be the Imo's waters. Thus it was argued the Imo was for the second time excluded from her proper waters and forced over towards the Dartmouth side.

When the two steamers, Imo and Mont Blanc, were about $\frac{3}{4}$ of a mile apart, the Mont Blanc opposite the dock yard but on the Dartmouth

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side, and the Imo between Piers 8 and 9, and probably also on the Dartmouth side of the centre of the channel, the Imo blew a single blast signal indicating that she was directing her course to starboard, and very soon afterwards a three blast signal indicating that she was reversing and her engines were going full speed astern. Brannen's evidence, page 481, line 17; page 487, line 39, and page 496, line 5, would seem to establish the fact of the one blast signal from the Imo having been given at this time. Very shortly afterwards the Imo, when, as I judge from the evidence, she came opposite the Stella Maris but was still on the Dartmouth side of the channel, blew the three blast signal and reversed her engines. This would throw her head to starboard. Her helm was then, as her wheelsman Johanson stated, put "a little apart," and she proceeded down the channel. 10

As I have said before, the principal persons who could speak specifically as to the navigation and manoeuvres of the Imo from the time she met and passed the American tramp and met and was passing the Stella Maris with her two dredges in tow and from that up to the collision, namely, her captain and pilot and mate, were killed by the explosion and we have to rely upon the evidence of the wheelsman, Johansen, of Brannen, mate of the Stella Maris, and of, among other eye-witnesses, that of Captain McLean and Chief Engineer Rourke, of the Douglas H. Thomas. This latter steamer was the outside one of three steamers lying at the outer end of the Dry Dock. These two latter witnesses were quite independent ones, having no interest whatever to bias them one way or the other. They stood on the deck of their ship occupying perhaps the best vantage ground from which the movements and manoeuvres of the two steamers the Mont Blanc, the Imo, could be observed. I place very great reliance upon their evidence from the fact of their being in an excellent position to see what they have sworn to and from their experience in nautical matters. 20 30

The other witness Johnasen, did not profess to speak with any degree of certainty as to the whistles and signals given by the different ships, but he did speak with certainty and clearness as to the orders he received from the pilot with regard to his helm. These two witnesses, Captain McLean and Chief Engineer Rourke, both speak of the Imo having given a two blast signal, but they both agree that when that was given, the Imo and the Mont Blanc were a mile apart and the Imo was heading towards the Dartmouth side, page 217 and page 233. Counsel contended, I think with reason, that this was the two blast signal given to the American tramp by the Imo and had nothing to do with the Mont Blanc. They then say that one or two minutes after that two blast signal the Mont Blanc gave her first one blast signal, and that next the Imo gave a three blast whistle and reversed her engines, and this three blast whistle was 40

RECORD. followed by another single whistle from the Mont Blanc answered by a single blast whistle from the Imo. McLean says, page 219, the Imo was about abreast of No. 9 Pier when she blew her three blasts, and the Mont Blanc almost directly abeam of witness's ship at Dry Dock, and that between the centre of No. 9 Pier and Dry Dock was about half a mile. Rourke, page 233; Brannen, page 482, line 1; Dixon, page 561, lines 25 to 44; Skarre, page 388, line 14.

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This evidence places the fact of the Imo when entering the channel from the Basin having reversed her engines and straightened her course down the channel a little towards the Halifax side with her helm slightly 10
aport, beyond reasonable doubt.

She had up to that time been heading towards the Dartmouth side, and had, I think, most probably reached that side, but when she straightened out to come down the channel with, as Johansen the wheelsman said, her helm a little aport, she was heading towards the Halifax side and, as Rourke says, she "had reversed her engines, changed her course and had come slightly to the Halifax side, her bow swung to starboard to the Halifax shore and then the Imo blew one whistle and came ahead to starboard heading down our ship," (pages 233-4).

Rourke says, page 234, line 30, "The two steamers were, I would say, 20
300 or 400 yards apart when the Mont Blanc blew her two whistle signal and altered her course to come to port to the Halifax shore. Prior to that, they had been on parallel courses."

Accepting, as I do, after reading it over a second time, the evidence of these two witnesses, Captain McLean and Chief Engineer Rourke, which I find confirmed in some particulars, as I have said, by other witnesses on important points and coming from men perfectly independent and skilled in the matters they were giving evidence on and who enjoyed the great advantage of occupying a position on the deck of their steamer which enabled them to judge better than any other witnesses the crucial 30
points and facts in dispute, I have reached the clear conclusion that the trial judge formed a correct conclusion in adjudging the Mont Blanc to be solely to blame.

If the evidence of McLean and Rourke is accepted, supported as it is, as I have before stated, on important points by Brannen of the Stella Maris; Johansen the wheelsman; Dixon and Skarre, and above all by the fact that the actual collision took place on the Halifax side of the centre of the channel, we must conclude, that the Imo and the Mont Blanc were about a mile apart when the former gave her two blast signal whistles which counsel contend was intended for the American tramp and 40

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could not at the distance the vessels were then apart, have been mistaken by the Mont Blanc as intended for her, also that the Mont Blanc one or two minutes afterwards gave her second one blast signal shewing her then intention to keep to her proper side of the channel, also that the Imo then gave her three blast signal and reversed her engines throwing her head to starboard and blew one signal blast, her bow swinging to the Halifax side, and that at this moment the vessels were about half a mile apart, that the Imo steadily followed the course down about the centre of the harbour, but a little towards the Halifax side; that the ships were within three hundred or four hundred yards of each other when the Mont 10
Blanc changed her course, blew her two whistle blasts and came obliquely across the harbour towards the Halifax shore and that, if she had not made that one fatal mistake and manoeuvre, both steamers would have passed each other without any trouble.

That as emphasizing the impression made upon McLean by this fatal mistake of the Mont Blanc, he remarked to Chief Engineer Rourke, who stood alongside of him at the time, "The Frenchman has given a cross signal and there is going to be a collision."

Summarizing my conclusions I must say that, in my judgment, before the Imo had passed the Stella Maris she was trying to avoid a possible 20
collision with that tug and her scows and heading, in order to do so, towards the Dartmouth side, but that when and as soon as any danger of collision with the Stella Maris and her scows passed, gave three blasts of her whistle; reversed her engines; straightened out her course to come down the narrows under a helm slightly apart with her head towards the Halifax side, and so continued on that course until the collision occurred, when she had reached slightly the Halifax side of the centre line. The distance between these two steamers when the Imo reversed and straightened her course and gave the single signal blast in response to the same signal from the Mont Blanc was between half and three quarters of a 30
mile (Captain McLean, page 214, line 30). Up to that moment the Imo would appear to any onlooker to be rather on the Dartmouth side and to be heading for that side and to this effect is the evidence of a number of the witnesses. For instance McLean speaks of then seeing her starboard side. But from the moment she reversed her engines, straightened her course down the narrows, signalled the Mont Blanc one blast in response to the latter's signal of one blast, she altered her course, turned her head to the Halifax side and steadily followed that course with her helm slightly apart till she reached and passed the centre line and when the collision took place was on the Halifax side of the harbour's centre 40
line. The evidence of Johansen, the wheelsman, McLean and Rourke and Brannen, mate of the Stella Maris, and Dixon and Skarre, speaking from their several points of view, seems to me clearly to confirm this

RECORD. conclusion. I specially call attention to McLean's evidence, (page 220, lines 16 to 25)

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"Q.—The Mont Blanc blew a short blast and some time after blew another short blast—then that was answered by the Imo, by one?

A.—Yes sir.

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Q.—Did you notice, Captain, after the Imo blew this one short blast; she only gave one short blast once according to your judgment and recollection? A.—Yes sir.

Q.—What about her course at that time—one short blast means a course I am going to starboard? A.—Yes sir, I think he altered his 10 course to starboard too—his head was, if anything, towards the Halifax shore—I could see his port side on a very small angle.

Q.—After the one short blast? A.—Yes sir."

On the whole evidence I cannot find the Imo at fault and would dismiss the appeal with costs.

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By Idington, J.*

Idington, J.:—

The Appellant was owner of the Mont Blanc sailing northerly on the morning of the 6th December, 1917, in the Halifax Harbour, lying between Dartmouth and Halifax, when the Respondent was sailing southerly through the same.

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They collided at about 8.45 a. m., at a point on the Halifax side of the centre line of the Fairway which there and for nearly a mile to the north and to the south is fifteen hundred feet, or more, wide and of ample navigable depth extending to either shore.

There was practically no tide or current; scarcely any wind; fine weather; unclouded sky, and only two or three vessels moving in that zone of the harbour.

The Imo's stern penetrated for a depth of nine feet or more the starboard side of the Mont Blanc, about No. 1 hatch, having struck at practically right angles. 30

I am unable to reconcile the evidence, as to signals given, and the alleged several relative positions, and several alleged distances apart of the

RECORD. vessels, when such signals given; and much less so in any way, to demonstrate that the creation of the condition of things at the collision, and in the place in which that took place, was or could be consistent with the theory that it necessarily resulted from the situation with which the Mont Blanc at any of the several stages of its progress was confronted, and therefore was on whole or in part the fault of the Imo instead of being entirely her own as found by the court below.

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I think the appeal should be dismissed with costs

Anglin, J.:—

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J.

I have found it necessary to read all the evidence in the record and to re-read and analyze with great care four-fifths of it. Much of the testimony—particularly in regard to the distances between the vessels when certain important steps were taken and to the signals given and the points at which they were given—is hopelessly conflicting. The estimates of distances are especially unreliable. 10

Because I find myself unable to agree fully in the conclusions of the learned trial judge, I have thought it better to refer briefly to some of the testimony which has led me to take a different view. On two points which seem of vital importance, the learned judge has not made findings. These are the position relatively to the centre line of the channel of the Imo at and immediately before the moment when the Mont Blanc sounded a two blast signal and began to turn to port for which she has been condemned, and the bearing of the course of the Imo on that of the Mont Blanc at and immediately prior to that moment. 20

Upon the whole evidence, although satisfied that had the two vessels maintained their courses as they were immediately before the Mont Blanc sounded the two-blast signal and turned to port they would have collided, I think they were probably not yet in such close proximity—in such imminent danger—that this distinct departure by the Mont Blanc from Articles 18 and 25 of the Rules of the Road was justified as an emergency measure taken “in the agony of collision.” I am not satisfied that she could not still have escaped collision without risk of going ashore by turning yet farther to starboard, or that reversing would not have been preferable to turning to port. I therefore accept the finding of the learned trial judge that this manoeuvre of the Mont Blanc amounted to fault which materially contributed to causing the collision that ensued. 30

I am also inclined to agree with his appreciation of the evidence of the witness Makinney and to accept his rejection of it as untrustworthy.

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But with deference and making due allowance for the loss of the evidence of the pilot and captain of the Imo, who were killed, the weight of the testimony in my opinion sufficiently preponderates to warrant a finding that the Mont Blanc was not solely to blame—that there was also fault on the part of the Imo, responsibility for the consequences of which she should not be allowed wholly to escape.

While it might be difficult to point to any specific incident or feature of the trial warranting that opinion, the study of the whole record has left on my mind an uncomfortable impression that the case of the Mont Blanc in regard to responsibility for the collision was, unconsciously no doubt, prejudiced in the minds of those present at the investigation and the trial by the subsequent conduct of her officers and crew in allowing her to drift into the Halifax docks after the collision, thus imperilling the lives of thousands of people, while seeking their own safety in hasty flight to the Dartmouth shore without taking any steps, or at least any adequate steps, to give warning of the imminent danger even to those in the immediate vicinity, in contrast with that of the men on the Stella Maris and naval launches who jeopardized—and many of them lost—their lives in an effort to put out the fire. This feature of the case was emphasized by counsel for the Imo throughout the investigation. The license allowed him in other respects is indicative of the prevalent sentiment against the Mont Blanc. 10 20

The evidence convinces me that the Imo came down the narrows on the port, or Dartmouth side—in the waters of the Mont Blanc, and that her course as held, at all events until the vessels were probably within 150 or 200 metres of each other, when the Mont Blanc executed her manoeuvre to port, was one improperly cutting into or crossing that of the Mont Blanc, which up to that time had been properly proceeding up on the starboard, or Dartmouth, side of the channel. That this was the course of the Mont Blanc up to the moment when, having given a two-blast signal, she turned to port, is overwhelmingly established. There is virtually nothing to the contrary, the witnesses differing only as to her distance from the Dartmouth shore, some placing her very close to it, others nearer the centre line of the channel. I shall therefore proceed to consider briefly the testimony as to the course of the Imo. 30

It is admitted that she met an American tramp steamer and a tug towing two scows in the narrows and passed both starboard to starboard—the former about the exit from Bedford Basin, the latter farther down. Nickerson, one of the two witnesses called from the tug boat, says that Imo was “quite far on the Dartmouth side” of the channel, (page 371, line 28, line 35); the other, Brannen, also saw her on that side but expected she would later make a turn into mid channel, (page 493, line 11). 40

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Up to the moment when she turned to starboard, immediately after the Mont Blanc had turned to port, the Imo is located on the Dartmouth side of the channel not only by Lemedec, Mackey and Glotin, witnesses from the Mont Blanc, but also by the following independent witnesses:— Whitehead, (page 647, line 40; page 648, line 6); Mayers, (page 357, line 26, line 41); Henry, (page 353, line 26); Johnson, (page 336, line 3); Lieutenant Woolams, R. N. R., (page 742, line 14), and Roberts, (page 743, line 15). From where they were Lieut. Woolams, Roberts, Henry and Whitehead, (page 649, line 40), had especially good opportunities for observing the positions of the Imo and Mont Blanc in the channel, 10 and the qualifications of Woolams, Mayers and Whitehead give added weight to their testimony. A few witnesses, it is true, placed the Imo about the centre, or slightly to the Halifax side, of the channel. But the point at which the collision occurred—about mid-channel, Brannen, (page 491, line 20); McLaine, (page 221, line 10); Lemedec, (page 42, line 38), and Glotin, (page 119, line 4)—if at all, according to the great weight of the testimony, very slightly to the Halifax side of the centre line, Sullivan, (page 470, line 42; page 471, line 1); Rourke, (page 238, line 30), and Whitehead, (page 662, line 36)—puts it almost beyond possibility of doubt that when, very shortly before the collision the Mont 20 Blanc turned to port and the Imo to starboard, (i. e., towards the Halifax side), both ships were on the Dartmouth side of the channel. So close was the point of collision to the centre line of the channel that Henry (page 353, line 20), and Mayers, (page 358, line 26), both thought that it was to the Dartmouth side of the centre line.

Both the vessels had good steerage way when they turned towards the Halifax shore. Apart from direct testimony, undoubted facts—the crash, Woolams, (page 742, line 18); McLaine, (page 251, line 22,); Nickerson, (page 372, line 20); Whitehead, (page 649, line 28), and Dixon, (page 561, line 1), the penetration of the Imo into the Mont Blanc, Spence, 30 (page 734, line 20); Palvadeau, (page 339, line 32); Lemedec, (page 38, line 35); Glotin, (page 102, line 33); Abbott, (page 478, line 20); Birkland, (page 277, line 14); (page 281, line 24); Nickerson, (page 373, line 6), and B'jonnas, (page 81, line 45), and the circumstance that the force of the collision turned the head of the heavily laden Mont Blanc southward from 45 to 60 degrees, Smith, (page 344, line 10); Babineau, (page 322, line 19); Henry, (page 354, line 17); Mayers, (page 358, line 11), and Sullivan, (page 469, line 38)—put that beyond question. Allowing for their movement westward, (i. e., towards Halifax), immediately before they came together, it seems to me to be indubitable that before they 40 turned in that direction both ships must have been on the Dartmouth side of the centre line of the channel.

The testimony that the course of the Imo was directed towards the

RECORD. Dartmouth side and cutting that of the Mont Blanc greatly preponderates. In addition to that of Lemedec, Glotin, Serre, Mackey and Leveque, from the Mont Blanc, we have the following evidence of the fact from independent witnesses, some of whom gave testimony generally favourable to the Imo, McLaine, (page 214, lines 33-40); Brannen, (page 490, line 19); Whitehead, (page 647, line 40); Jenkins, (page 745, line 25); Sibley, (page 744, line 21), and Roberts, (page 743, line 15; line 20).

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Canada.
Continued.*

Although the evidence as to signals is very contradictory and unsatisfactory, the weight of it seems on the whole to favour the view that the Imo at least twice gave two short blast signals indicating a course to port. In explanation it is suggested on her behalf that these were given for the American tramp and the tug and tow which she passed starboard to starboard. The improbability of this explanation in the latter case appears from the evidence of Nickerson, (page 370, line 40; page 382, line 30), and Brannen, (page 481, line 40; page 487, line 40). Both these men, who were on the tug boat, say that their relative positions were such that the Imo's signal could not have been intended for the tug boat. Brannen says it was for the Mont Blanc. At all events it seems obvious that these signals were given under such circumstances that the pilot and officers of the Mont Blanc would probably have taken them to be intended for her, as they swear they did, and that they were most misleading to them. Taken with the Imo's actual course they were calculated to engender the belief that she intended to insist on passing between the Mont Blanc and the Dartmouth shore—starboard to starboard—as she had already passed the American tramp and the tug and tow.

It seems to me reasonably clear that having taken the wrong side of the channel when passing these vessels, whether excusably or not, the Imo most inexcusably maintained her course on that side until just before the collision when she reversed and threw her head to starboard in a belated effort to reach her own side of the channel after the Mont Blanc had begun her mistaken manoeuvre of turning to port.

While the conduct of the Imo may not have amounted to enough to relieve the Mont Blanc of responsibility for throwing over Article 25, (which she had carefully observed up to that point) and disregarding Article 18 when the ships were probably still 150 or 200 metres apart, there is no doubt in my mind that it very materially contributed to causing the collision which ensued. Indeed the disregard by the Imo of Article 25 may be put down as the primary or initial cause of the disaster; and its effect continued up to the last.

It would also seem probable that when the Mont Blanc came to port after blowing a two-blast signal and before the Imo reversed, the vessels

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were, momentarily at least, on parallel courses and the Imo might have passed the Mont Blanc starboard to starboard without colliding with her. The evidence of Lemedec, (page 37, line 4); Glotin, (page 101, line 22), and Mackey, (page 130, line 12; page 136, line 18; page 151, line 4), on this point is very clear. The Imo's reversing and throwing her head abruptly to starboard would seem to have been a mistaken manoeuvre under these conditions, induced, as they were, by her own prior misleading conduct. But this movement, though executed after, may have been directed before her pilot realized that the Mont Blanc actually intended to try to go to port and to pass starboard to starboard.

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On the whole case I am of the opinion that both vessels were at fault in disregrading Article 25. While I incline to think that the Imo was the more blame-worthy of the two, I am not sufficiently satisfied of this to do otherwise than apportion the responsibility equally.

I would for these reasons allow this appeal to the extent I have indicated.

Brodeur, J.:

No. 73.

No. 73.
Reasons for
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on Appeal
in the
Supreme
Court of
Canada.
By Bro-
den, J.

I concur with my brother Mignault. I have come to the conclusion that the collision is due to the fault and negligence of the Imo by coming down the harbour in the waters of the Mont Blanc, and by inducing the latter to change her course. My opinion would be that the Imo should be held alone responsible for the collision. In view of the fact that two of my colleagues hold the Mont Blanc solely liable and that Mr. Justice Anglin would hold both ships at fault, I agree that formal judgment should be entered allowing the appeal with costs and holding both ships equally liable and directing that damages be assessed accordingly and without costs in the Exchequer Court.

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Mignault, J.:—

No. 74.

No. 74.
Reasons for
Judgment
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in the
Supreme
Court of
Canada.
By Mig-
nault, J.

This appeal raises the question of the liability for the collision in Halifax Harbour, on December 6th, 1917, between the S. S. Mont Blanc, loaded with high explosives, belonging to the Appellant, and the S. S. Imo, a Norwegian ship, chartered by the Belgian Relief Commission. That this collision brought about a disastrous explosion, which destroyed a portion of the cities of Halifax and Dartmouth, with an appalling loss of life, may to a certain extent have obscured the real issue, but the consequences of this explosion have obviously nothing to do with the question of liability for the collision itself which has now to be decided.

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Reasons for
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These proceedings were instituted by the present Appellant in the Exchequer Court, Nova Scotia Admiralty District, claiming the sum of \$2,000,000, and the owners of the S. S. Imo, the Southern Pacific Company, filed a counterclaim against the Appellant for a similar amount. After the explosion the matter was investigated by the Wreck Commissioners Court, composed of Mr. Justice Drysdale, assisted by Captain L. A. Demers and Captain Charles Hose, as nautical assessors. The present case was tried before Mr. Justice Drysdale, local Judge in Admiralty, but only one witness (to whom I shall not refer as his testimony was not credited by the learned trial judge) was examined at the trial, the parties 10 having agreed that the evidence taken before the Wreck Commissioners Court should be used in this case. While such a course was undoubtedly more convenient for the parties, it has not helped to clarify the issue, for a considerable part of this voluminous evidence is irrelevant on the question of liability for the collision, and the labour imposed on the court to thoroughly sift it, and to determine what portion has a bearing on this question of liability, has been a most arduous and time consuming one.

Like all cases of this nature, we find here a very considerable variance of statement with regard to what happened in the few minutes which preceded the collision. Some of the versions of the witnesses of the collision 20 are unreliable, the testimony of others is perhaps open to suspicion because they were defending the course of navigation of their own ship, and while the learned judge in the court below came to a conclusion entirely unfavourable to the Appellant, he has unfortunately not made any attempt to analyze—or discuss the evidence. This has forced me to read the whole mass of it, and, having done so, I feel entirely free, although the issue is mainly one of fact, to express my own view of the merits of the present controversy.

Three courses are open to the court on this appeal. It can hold

1. that the Mont Blanc was entirely to blame, and this is what was decided in the court below, 30
2. that the Imo was alone liable for the collision,
3. that both ships were to blame.

In their preliminary acts each ship has stated what she did to avoid the collision. The version of the Mont Blanc is as follows:—

“When the Imo was first seen the Mont Blanc blew one short blast to indicate that she was holding to the starboard side of the Fairway and slowed her engines. After this signal had been answered by two short

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blasts from the Imo the Mont Blanc again gave one short blast which was again answered by two short blasts from the Imo. The Mont Blanc stopped her engines to avoid what appeared to be otherwise an inevitable collision, blew two short blasts and starboarded her helm, bringing the ships in a safe position on opposite parallel courses. After this order was executed, the Imo was seen to swing to starboard. A collision was then inevitable whereupon the Mont Blanc reversed her engines full speed."

The version of the Imo, on the other hand, is that

"Imo was keeping as far as practicable to that side of the Fairway or mid-channel which laid on her starboard side and blew a signal of three 10 blasts and reversed her engines when ships were about one-half to three-quarters of a mile apart. Imo's speed was then reduced to about one mile per hour and engines were not put ahead again before collision and Imo was kept under a port helm and signalled accordingly. When Mont Blanc blew a two blast signal, indicating she was coming to port, and attempting to cross bows of Imo, Imo's engines were immediately reversed and three blast signal blown."

The version of the Mont Blanc is vouched for by her captain, by Pilot Mackey, who was advising the latter on the navigation of the ship, and by her other officers. The unfortunate fact that the captain, the pilot and 20 the first officer of the Imo were killed by the explosion, whereas the whole crew of the Mont Blanc escaped in boats, has deprived the court of authoritative testimony as to the navigation of the Imo by those who were responsible for it, but four of her officers escaped and were called, Peter B'Jonas, second mate; Andrew Johansen, steward; Bjarne Birkland, third mate, and John Johansen, wheelsman. Their testimony naturally has not the same authority as would be attached to that of the chief navigation officers of the ship, but for this of course the Respondent is not blameworthy.

The collision occurred in a narrow channel, not exceeding 2000 feet in 30 width, between Halifax and Dartmouth. The tide was slack and there was virtually no wind, and although some haze existed in the upper stretches of the narrows towards Bedford Basin, the two ships could be easily seen as it was broad daylight, by each other. The Mont Blanc was steaming up the channel on the Dartmouth side on the way to Bedford Basin where she was to await a convoy, for her cargo of munitions was consigned to the French Government. The Imo left her anchorage in Bedford Basin that morning and was going out to sea, being bound unloaded for New York. The Imo was a larger and faster boat than the Mont 40 Blanc, her captain, From, and her pilot, Hayes, were in charge, while the captain, LeMedec, and the pilot, Mackey, directed the Mont Blanc. There is no doubt that both pilots were men of experience.

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The vessels were about a mile apart when they observed each other. I take it that the evidence shews, unquestionably for the Mont Blanc, and sufficiently for the Imo, that both ships were then on the Dartmouth side, which would be the wrong position for the Imo. It is, on behalf of the latter, explained that higher up she had met an American tramp steamer going up on the Halifax side which she passed starboard to starboard, and that further down she cleared a tug, the Stella Maris, with two tows, also going up on the Halifax shore, and which she also passed starboard to starboard. Whatever may have been the cause the Imo was on the wrong side of the channel.

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The testimony of the pilot and officers of the Mont Blanc is that when they saw the Imo, they blew a one blast signal and directed their course to starboard as far as they dared towards the Dartmouth shore. The signal was answered by the Imo, they say, by two blasts, indicating that she was going to port. The Mont Blanc then blew one blast and again the Imo answered by two blasts. They say that then a collision was inevitable if both ships continued on their courses, and to avoid it the Mont Blanc blew two blasts and went to port towards the Halifax side, in order to place the two boats on parallel courses, but the Imo then directed her course to starboard, which may have been brought about by her having reversed her engines, and she struck the Mont Blanc substantially at right angles, penetrating about 8 or 9 feet from the water-line up, opposite the No. 1 hatch, causing a fire on the Mont Blanc. The last signals of both boats immediately before the collision were three blasts, indicating that they were reversing.

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If this testimony be believed, the Imo is to be blamed for the collision, for she was on the wrong side of the channel, and her two blast signal twice repeated was not the proper signal to give, and if it brought about the collision and gave the Mont Blanc sufficient cause to depart from the starboard rule and go to port to avoid a collision otherwise inevitable, the Imo is answerable for the consequences.

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The testimony of the surviving officers of the Imo as to the signals given by both ships does not appear to me sufficiently conclusive to off-set the positive statements of the navigating officers of the Mont Blanc. And the testimony of the other witnesses who observed the two boats is rather confusing and in some cases contradictory. The witness Mayers entirely corroborates the testimony of the officers of the Mont Blanc with respect to these signals, but his story of what happened to him by reason of the explosion is so extraordinary that I do not care to rely on his corroboration.

In all this maze of divergent, if not contradictory testimony, there is one witness who was placed in a very favourable position to observe the

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two ships and whose evidence, I think, will permit me to arrive at a proper decision. I refer to Mr. Herbert Whitehead, R. N., a mate in the service of the Canadian Naval Service, whose testimony is at page 646 of the Record.

On the morning in question Mr. Whitehead was in command of a drifter, and his duties consisted in supplying provisions to the drifters at anchors at Dartmouth Cove and at North West Arm. He left the dock at the Halifax Dock Yard about 8 h. 35 and soon heard a lot of whistling out in the stream, and his helmsman observed it looked like trouble coming there. I will quote extensively from his testimony:

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“Q.—What did you see when you looked? A.—I saw a vessel which afterwards proved to be the Mont Blanc steaming up the harbour and a vessel which afterwards proved to be the Imo, steaming down.

Q.—Where was the Mont Blanc when you first saw her? What part of the harbour? A.—I first saw her as I was backing out from the flag staff.

Q.—Where was she then? A.—She was just about abreast of the dry dock between the dry dock and the Niobe.

Q.—What part side? A.—Dartmouth side of the harbour.

Q.—Had she at that time passed the British cruiser laying at anchor? A.—Yes.

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Q.—Did you see her pass the cruiser? A.—I did.

Q.—Which side of the cruiser did she pass? A.—Between the cruiser and the Dartmouth shore.

Q.—Did you continue to watch her? A.—After the helmsman pointed out there was going to be some trouble, as he said, I watched them; both ships.

Q.—At that time when your attention was again directed to the Mont Blanc where was she? A.—She was then about abreast of the dry dock.

Q.—Which side? A.—Over on the Dartmouth side.

Q.—Had she to your appreciation changed her course from the time you first saw her? A.—Not up to that time.

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Q.—How far away from her was the Imo when your attention was called to her approximately? A.—I should say 600 or 700 yards.

Q.—To the best of your judgment how were their relative courses when you saw them? A.—They seemed to me at that time to be almost headed to each other.

Q.—Can you tell which was the further to the Eastward—nearer the Dartmouth shore at that time? A.—From my position I could not.

Q.—Would you say their masts would be in line at that time or was either inclined towards the other? A.—Was one canted a little?

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Q.—Yes. A.—From my position I could not very well tell that. From where I was they seemed to be almost head on.

Q.—When you say on the Dartmouth side can you give us some idea

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how close they were to that side or if you cannot do that how much were they on the Dartmouth side of the centre channel? A.—Both vessels were well over the centre of the channel. The cruiser you mentioned was anchored about the centre of the channel and the Mont Blanc passed between her and the Dartmouth shore.

Q.—And apparently going up on the same line? A.—Yes.

Q.—You said you heard whistles; give us the first whistle that you noticed; distinguished? A.—The first whistle was a two whistle signal from the Mont Blanc.

Q.—Did you hear any signal from the Imo? A.—I did. 10

Q.—After that? A.—I did.

Q.—What was that? A.—The Mont Blanc signal was followed almost immediately afterwards by a one blast signal from the Imo.

Q.—Was this at a time when they were 600 or 700 yards?

A.—They had approached in the meantime.

Q.—How close would you think the two vessels were when the Mont Blanc blew the two blast signal? A.—I could not say; they were very close.

Q.—Not 100 yards? A.—No, not under that; they were coming up on each other. 20

Q.—The one blast signal from the Imo followed closely after the two blast from the Mont Blanc? A.—Yes.

Q.—Was there enough interval for the people on the Imo to hear the two blast signal from the Mont Blanc before their one blast signal was blown; after the two blast signal was blown on the Mont Blanc was there enough time so that the Imo could hear that before they blew their one blast? A.—Yes.

Q.—Did you as a sea faring man; did it seem to you the second signal was blown in answer to the first? A.—Appeared to me what I call a cross signal in answer to the two blast signal from the Mont Blanc. 30

Q.—Following the two blast signal from the Mont Blanc did not notice any change in her course? A.—I did; she went to port.

Q.—Promptly or slowly or how? A.—She was not steaming very fast and answered the helm rather slowly but she went to port following the signal.

Q.—Can you give us any idea of the speed which the Mont Blanc was steaming at the time she blew the two blast signal? A.—Going very slow. I should judge the speed between two and three knots an hour.

Q.—Could you estimate the speed of the Imo at the time the two blast signal was blown from the Mont Blanc? A.—I could not; but she was 40 going much quicker than the Mont Blanc was travelling.

Q.—When the Imo blew the one blast signal did you notice any change in her course? A.—Yes, she changed to starboard.

Q.—Were there any other signals given before the collision after the signals you have given us and before the collision? A.—Yes.

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Q.—What? A.—The Mont Blanc whistled or gave three blasts indicating he was going astern; that was answered by three blasts from the Imo.

Q.—Was there any great interval of time between these two 3 blast signals or followed one another rapidly? A.—Followed rapidly with an interval of possibly a few seconds.

Q.—The Mont Blanc first and the Imo followed? A.—Yes.

Q.—Did you notice whether in accordance with the signal the Mont Blanc's engines were put astern? A.—I didn't personally I don't believe they were reversed; the signal was given that the engines were going astern but I saw no wash around the propeller to indicate the engines were moving astern. 10

Q.—What about the Imo? A.—Her stern was away from me; I could not tell you.

Q.—After the three blast signal from the Imo was given, could you tell whether her course changed at all after the three blast signal?

A.—No I could not; the Mont Blanc was between me and the Imo.

Q.—By that time she had closed you off as it were? A.—Yes.

Q.—I presume from what you told us, shortly after this the collision happened? A.—Yes. 20

Q.—Can you give us any idea of the time that elapsed from the three blasts given by the Mont Blanc, between that and the collision?

A.—It would no be a minute; less than a minute.

Q.—Did you hear any sound of the collision? A.—I did; crash.

Q.—Describe it as best you can? A.—A crashing, rending sound; I can hardly describe it; as though—well you can imagine how iron will crash with a rending sound.

Q.—Instantaneous or did it last any appreciable length of time? A.—A sudden crash.

Q.—Yes. A.—No, a rending crash. 30

Q.—Extended over some period of time? A.—A short period.

Q.—To your mind did the length of the sound indicate anything whatever as to the nature of the collision as to whether one ship penetrated at all in the side of the other? A.—From the noise I heard, I was sure one ship had gone into the other a certain distance.

Q.—Where was your boat at the moment of the collision?

A.—I was about a hundred yards away from the Mont Blanc."

Mr. Whitehead's attention was called by the whistling, so he can only testify to the signals he heard after he watched the two boats. His statement is important because he was in close proximity and he testifies that 40 the two boats were, when he first noticed them, almost headed on each other.

The contention which the Respondent made at the argument was

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that the Mont Blanc, immediately before the collision, should have continued her course and should not have gone to port. Reliance is placed on Regulations 18 to 25 of the International Rules for Preventing Collisions at Sea, which oblige meeting ships to keep to the starboard or right side of the Fairway. The Respondent says that the Mont Blanc caused the collision by going to port, and that she should have continued her course and left to the Imo the duty of keeping out of her way.

The Appellant, on the other hand, contends that keeping the Mont Blanc to her course would have rendered, in view of the position and course of the Imo, a collision inevitable; that its ship being heavily loaded with high explosives it was justified in going to port as being the only way, had the Imo not gone immediately afterwards to starboard, of avoiding a collision. The Appellant also states that the Imo had placed the Mont Blanc in a very perilous position by wrongly going down the Dartmouth side, and that in this sudden emergency and under all the circumstances, the latter ship had the right to depart from the starboard rule under Regulation 27, which says: 10

“In obeying and construing these Rules, due regard shall be had to all the dangers of navigation and collision and to any special circumstances which may render a departure from the above rules necessary to avoid immediate danger.” 20

The learned trial judge found that the collision took place on the Halifax side, and this, he considers, points conclusively to the Mont Blanc being in fault.

I think, with deference, that the actual place of collision is immaterial in view of the fact that both ships were proceeding on the Dartmouth side, the Imo being wrongly there, and the Mont Blanc having gone to port to avoid the collision and the Imo to starboard immediately afterwards, it is not extraordinary if when the Imo struck the Mont Blanc both ships were on the Halifax side of the centre of the channel. The real question to my mind, is not where the actual collision occurred, but whether it took place through the fault of the Imo, and upon due consideration of all the evidence I cannot answer this question otherwise than in the affirmative 30

In an ordinary case I would greatly hesitate to set aside the findings of fact of the trial judge, but it seems to me, with all respect, that we are after all in at least as good a position, as a court sitting in Halifax shortly after this terrible disaster, to determine upon the testimony the liability for the negligence and lack of proper seamanship which brought about the collision. I have conceived it my duty to read very carefully all the evidence and having done so I have no hesitation in stating as my opinion 40 that the collision occurred through the fault of the Imo.

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In my opinion therefore the appeal should be allowed with costs here and in the court below, and the counter-claim dismissed, also with costs, and an enquiry ordered as to the damages suffered by the Appellant.

In view of the fact however that my learned brothers, the Chief Justice and Mr. Justice Idington, are of the opinion that the Mont Blanc was solely to blame for the collision, that my brother Anglin holds the Mont Blanc and the Imo equally at fault, and that my brother Brodeur concurs in my opinion that the Imo is alone liable, the result is that of the five judges who sat in this case, three hold the Mont Blanc at fault and three decide that the Imo is blame-worthy. On account of these findings, my 10 opinion is that the formal judgment of the court must be entered allowing this appeal with costs, holding both ships equally liable, and directing that damages be assessed accordingly, without costs to either party in the Exchequer Court.

RECORD.

No. 75.

*In the
Exchequer
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DECREE OF SUPREME COURT OF CANADA.

*No. 75.
Decree of
Supreme
Court of
Canada.*

IN THE SUPREME COURT OF CANADA.

Monday the 19th day of May, A. D., 1919.

PRESENT:

THE RIGHT HONOURABLE SIR LOUIS DAVIES, K. C. M. G.,
Chief Justice.

THE HONOURABLE MR. JUSTICE IDINGTON.

THE HONOURABLE MR. JUSTICE ANGLIN.

THE HONOURABLE MR. JUSTICE BRODEUR.

10

THE HONOURABLE MR. JUSTICE MIGNAULT.

| | | |
|------------|-------------------------------------|--------------------------------|
| Between: { | COMPAGNIE GENERALE TRANSATLANTIQUE, | <i>Plaintiff (Appellant)</i> |
| | AND | |
| | THE SHIP "IMO" | <i>Defendant (Respondent).</i> |

The appeal of the above named Appellant from the Judgment of the Honourable Mr. Justice Drysdale, Judge in Admiralty, Nova Scotia Admiralty District of the Exchequer Court of Canada, pronounced in the above cause on the 12th day of June, in the year of our Lord 1918, having come on to be heard before this Court with the assistance of Captain Dixon as Nautical Assessor on the 11th, 12th, and 13th, days of March in the year of our Lord 1919, in the presence of counsel as well for the Appellant as the Respondent, whereupon and upon hearing what was alleged by counsel aforesaid, this Court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment,

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THIS COURT DID ORDER AND ADJUDGE, that the said appeal should be and the same was allowed and the said judgment of the Honourable Mr. Justice Drysdale should be and the same was reversed and

7 A.C. 2802

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RECORD. set aside and found that both ships were equally liable and directing that damages be assessed accordingly.

*In the
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No. 75.
Decree of
Supreme
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AND THIS COURT DID FURTHER ORDER AND ADJUDGE that the Respondent should and do pay to the said Appellant the costs incurred by the said Appellant in the Supreme Court of Canada and that no costs be payable to either party in the Exchequer Court of Canada.

E. R. CAMERON,

Registrar.

No. 76.
Notice of
Appeal.

No. 76.

NOTICE OF APPEAL.

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TAKE NOTICE that the Defendant appeals to His Majesty in His Privy Council from the Decree or Order of the Supreme Court of Canada made the nineteenth day of May, A. D., 1919.

Dated the thirteenth day of June, A. D., 1919.

CHAS. J. BURCHELL,

Solicitor for the Ship "Imo."

No. 77.
Order Fix-
ing Bail.

No. 77.

ORDER FIXING BAIL.

Before the Honourable Mr. Justice Mignault, in Chambers.

Friday the thirteenth day of June, A. D., 1919.

20

UPON MOTION made by Mr. John W. P. Ritchie, of counsel for the Respondent, for an order fixing the bail to be given by the Respondent upon its appeal to His Majesty the King in Council, from the judgment of this Court dated the nineteenth day of May, 1919, to answer the costs of said appeal.

RECORD.

*In the
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No. 77.
Order Fix-
ing Bail.

UPON HEARING read the said judgment of this Court, the Notice of Appeal served on Friday the thirteenth day of June, 1919, the notice of application to fix the bail served herein on Tuesday the twenty-seventh day of May, 1919, filed, and upon hearing counsel for the Respondent and Appellant.

IT IS ORDERED, that the above named Respondent The Ship "Imo" do give bail to answer the costs of appeal to His Majesty the King in Council in the sum of three hundred pounds sterling to the satisfaction of the Registrar of this Court on or before the 20th day of June 1919.

AND IT IS FURTHER ORDERED that the costs of this application 10 be costs in the cause.

(Sgd.) G. B. MIGNAULT, J.

No. 78.
Bond on
Appeal to
the Privy
Council.

No. 78.

BOND ON APPEAL TO THE PRIVY COUNCIL.

KNOW ALL MEN BY THESE PRESENTS that the National Surety Company, an incorporated company doing business in the Province of Nova Scotia, hereby submits itself to the jurisdiction of this Court and consents that if the said ship Imo, Appellant, shall not pay what may be adjudged against them in the above action for costs, that execution may be issued against us, our successors and assigns, goods and chattels, for an amount not exceeding three hundred pounds sterling. 20

Dated at Halifax, N. S., this 31st day of May, A. D. 1919.

Signed sealed, and delivered
in the presence of,

RICHARD N. TYLER.

(Sgd.) L. A. LOVETT,

Resident Vice-President.

(Sgd.) J. G. RAINNIE,

Resident Secretary.

(SEAL).

RECORD.

No. 79

*In the
Exchequer
Court of
Canada,
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Admiralty
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ORDER APPROVING SECURITY

Before E. R. Cameron, Esquire, Registrar, in Chambers.

*No. 79.
Order
Approving
Security.*

UPON APPLICATION of counsel on behalf of the above named Appellant in the presence of counsel of the above named Respondent, upon hearing what was alleged by counsel aforesaid,

IT WAS ORDERED that a certain bond bearing date the 31st. day of May, A. D., 1919, and filed this 13th day of June, A. D., 1919, in which the National Surety Company is obligor and the above named Respondent is obligee as security that the above named Appellant will effectively prosecute this Appeal to His Majesty in Council under the judgment of this Court bearing date the 19th, day of May, A. D., 1919, and will pay such costs and damages as may be awarded against them by His Majesty in Council, be and the same is hereby approved and allowed as good and sufficient security, 10

AND IT IS FURTHER ORDERED that the costs of this application be costs in the said Appeal.

Dated at Ottawa, Ontario, the 13th day of June, A. D., 1919.

(Sgd.) E. R. CAMERON.

*No. 80.
Notice of
Cross
Appeal.*

No. 80.

NOTICE OF CROSS APPEAL.

20

TAKE NOTICE, that the above named Respondent (Plaintiff) by way of cross-appeal, will ask on the hearing of the appeal that the decree or order of the Supreme Court of Canada made herein be varied, and that it may be determined that the Appellant's (Defendant's) ship Imo was wholly to blame for the collision.

Dated at Ottawa the 2nd, day of June, 1919.

CODE & BURRITT,

Agents for Solicitors for Respondents.

RECORD.

BAIL BOND ON CROSS APPEAL.

*In the
Exchequer
Court of
Canada,
Nova Scotia
Admiralty
District.*

*No. 81.
Bail Bond
on Cross
Appeal.*

KNOW WILL MEN BY THESE PRESENTS, that National Surety Company of New York, a body corporate, hereby submits itself to the jurisdiction of His Majesty's Privy Council and consents that if the Compagnie Generale Transatlantique, the Appellant herein, shall not pay what may be adjudged against it for costs in its counterclaim herein, execution may issue against it or its successors or assigns, goods and chattels, for a sum not exceeding three hundred pounds.

This Bail Bond was signed by the said National Surety Company of New York as Surety the fourteenth day of June, A. D., 1919, at the office of Rainnie & Keator 10 Prince Street, Halifax, N. S., before me,

(Sgd.) L. A. LOVETT,

Resident Vice-President.

H. D. KEMPT

of 35 Bedford Row,

Halifax, N. S.

Barrister-at-Law

(Sgd.) J. G. RAINNIE,

Resident Secretary.

(L. S).

RECORD.

IN THE SUPREME COURT OF CANADA.

*In the
Exchequer:
Court of
Canada,
Nova Scotia
Admiralty
District.*

FRIDAY, THE 20th DAY OF JUNE, A. D., 1919.

BEFORE—C. H. MASTERS, ACTING REGISTRAR IN
CHAMBERS.

No. 82.
Before—
C. H. Mast-
ers, Acting
Registrar in
Chambers.

| | | |
|------------|---|----|
| Between: { | THE SOUTHERN PACIFIC WHALING COM- PANY, LIMITED, OF CHRISTIANA, Owners of the Ship "Imo," (Defendant), Appellant. | |
| | AND | |
| | COMPAGNIE GENERALE TRANSATLANTIQUE, (Plaintiff), Respondent. | 10 |

Upon application of Counsel on behalf of the above named Respondent, in presence of Counsel for the above named Appellant, upon hearing what was alleged by Counsel aforesaid.

It is ordered that a certain bond bearing date the 14th day of June, A. D., 1919, and filed this 20th day of June, A. D., 1919, in which the National Surety Company of New York, is obligors and the above named Appellant is obligee as security, that the above named Respondent will effectually prosecute its cross appeal to His Majesty in Counsel, from the Judgment of this Court, bearing date the 20th day of May, A. D., 20 1919, and will pay such costs and damages as may be awarded against them by His Majesty in Counsel, be and the same is hereby approved and allowed as good and sufficient security.

AND IS FURTHER ORDERED, that the costs of this application be costs in the said appeal.

C. H. MASTERS,

Acting Registrar.

No. 1919.

RECORD.

In the
Exchequer
Court of
Canada,
Nova Scotia
Admiralty
District.

No. 83.
Agreement.

Agreement.

IN THE PRIVY COUNCIL, ON APPEAL
FROM THE SUPREME COURT OF CANADA.

Between: { THE SHIP "IMO" (SOUTHERN PACIFIC
WHALING COMPANY, LIMITED,
Owners), (Defendant), Appellants.

AND

LA COMPAGNIE GENERALE TRANSATLANTIQUE,
(Plaintiff), Respondents.

IT IS AGREED between Counsel for the Respondents and Appellants, 10
that the following shall constitute the record of the case and proceedings
on appeal to the Privy Council.

1. The Printed Case, as used on the Appeal to the Supreme Court
of Canada, in two volumes, and in addition, the following:—

- (a) Reasons for judgment of the Supreme Court of
Canada.
- (b) Decree of the Supreme Court of Canada.
- (c) Notice of Appeal to the Privy Council.
- (d) Notice of Cross Appeal to the Privy Council.
- (e) Orders Fixing and Approving Bail in the Supreme 20
Court of Canada on Appeal and Cross Appeal.
- (f) Bail Bonds on Appeal and Cross Appeal.
- (g) Factums of Appellants and Respondents on Appeal
to the Supreme Court of Canada.

Dated at Halifax, N. S., this 17th day of June, A. D., 1919.

C. J. BURCHELL,

HECTOR McINNES.