

## APPEAL FROM QUEBEC ADMIRALTY DISTRICT.

Between

THE CORPORATION OF PILOTS }  
 FOR AND BELOW THE HARBOUR OF } APPELLANTS;  
 QUEBEC (PLAINTIFFS) ..... }

1902  
 Nov. 17.

AND

THE SHIP OR VESSEL "GRAN- }  
 DEE" (DEFENDANT)..... } RESPONDENT.

*Shipping—Pilotage dues—Liability of barge for same—R. S. C. c. 80,  
 sec. 58—"Every ship which navigates."*

*Held*, affirming the judgment of the Local Judge for the Quebec Admiralty District, that a barge, having no motive power of her own, and being towed by a steam-collier within the Quebec Pilotage District, is not liable to compulsory dues under the 58th and 59th sections of *The Pilotage Act* (R. S. C. c. 80.).

APPEAL from the judgment of the Local Judge of the Quebec Admiralty District (1).

October 17th, 1902.

The appeal was now argued in Quebec.

*T. C. Casgrain, K.C.*, cited *The Independence* (2); *The Cleadon* (3).

*C. Pentland, K.C.*, cited *The Sinquasi* (4); *The Quickstep* (5); *Parsons on Shipping* (6); *Desty's Shipping & Admiralty* (7); *American & English Ency. of Law* (8).

*T. C. Casgrain, K.C.*, in reply cited R. S. C. 80, sec. 58; *Imperial Dictionary* (9).

(1) Reported *ante* p. 54.

(5) 15 P. D. 196.

(2) Lush. 270.

(6) Ed. p. 535.

(3) 14 Moo. P. C. 97.

(7) P. 343.

(4) 5 P. D. 241.

(8) *Vo. Navigation* p. 272.

(9) *Vo. Navigate*.

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THE JUDGE OF THE EXCHEQUER COURT now (November 17th, 1902), delivered judgment.

This is an appeal from a judgment of the learned Judge of the Quebec Admiralty District, dismissing an action for pilotage dues.

The following admissions were made for the purposes of the action :

" 1. That the vessel *Grandée*, proceeded against in the present cause, is a barge, over 1,000 tons burthen, the property of the defendants, and employed by them in the coal trade in trading between Sydney, Cape Breton and the City of Quebec during the season of navigation.

" 2. The said barge has no motive power of her own, but is entirely propelled by means of a tow-boat, to wit, one of the steam-colliers of the defendants, trading from Sydney to Quebec and back to Sydney, aforesaid, which collier is exempt from the compulsory payment of pilotage dues to the plaintiffs.

" 3. That the pilotage dues stated in the libel are exigible from the said ship, if she is not exempted under the pilotage statute from the payment of pilotage dues, for the voyages and moorages stated in the summons.

" 4. That the said vessel *Grandée*, during the said voyages and moorages, for the purposes of her navigation, was under the control of the said collier steamer, her crew attending to her wheel and her anchors and hawsers."

By clause (b) of the second section of *The Pilotage Act* (1) it is enacted that the expression "ship" shall, unless the context otherwise requires, include every description of vessel used in navigation not propelled by oars. By the 58th section of the Act cited it is, among other things, provided that every ship which

navigates the pilotage district of Quebec shall pay pilotage dues unless she is exempt under the provisions of the Act. By the 59th section of the Act it is, among other things, enacted that a ship propelled wholly or in part by steam and employed as therein mentioned, shall be exempted from the compulsory payment of pilotage dues. With respect to her employment the *Grandee* was within the exemption. The question as to whether she was liable for the pilotage dues claimed depends upon two considerations. Was she a ship which navigated the pilotage district of Quebec, and so within the 58th section of the Act; and if within that section was she propelled wholly or in part by steam?

Now it may at once be conceded that the term "propelled" is not an apt one to apply to a ship that is being towed, but a ship cannot be said to "navigate" unless it is propelled or moved in some way; and it seems to me that in construing the provisions of the two sections mentioned, one is forced to adopt one or the other of two constructions, either of which is against the maintenance of the plaintiffs' action. Either the 58th section by which, with certain exceptions, pilotage dues are made compulsory, must be limited to ships that have within themselves some power or means of being moved or propelled, or the term "propelled" in the 59th section must be given a meaning large enough to include the means by which the ship is moved. I incline to the first of the two views mentioned. I think the expression "every ship which navigates" means a ship that has in itself some power or means of moving through the waters it navigates, and not a ship that has no such power or means, and which must be moved or propelled or navigated by another vessel. In that view of the case the *Grandee* was not liable to the com-

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pulsory pilotage dues claimed. But if that view is wrong, if it can with correctness be said that the *Grandee* was a ship which navigated the waters mentioned, then we must have regard to the means by which she did so. The vessel by which she was towed must be so connected with her as to make the act of navigation by both her act; and in that view of the case she was propelled by steam, and therefore exempt from payment of compulsory pilotage dues. The judgment appealed from is, I think, the judgment that ought to be entered in this case.

The appeal will be dismissed, and the costs will, as usual, follow the event.

*Appeal dismissed with costs.*

Solicitors for appellants: *Casgrain, Lavery, Rivard & Chauveau.*

Solicitors for respondents: *Caron, Pentland, Stuart & Brodie.*

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