

*Judgment of the Lords of the Judicial Committee
of the Privy Council, on the Appeal of The
Turret Steamship Company, Ltd., v. William
G. Jenks and Others, from the Superior Court,
sitting in Review, for Lower Canada, Province
of Quebec, 20th March 1901.*

Present:

THE LORD CHANCELLOR.

LORD MACNAGHTEN.

LORD DAVEY.

LORD ROBERTSON.

LORD LINDLEY.

(Delivered by the Lord Chancellor.)

IN this case their Lordships have had the opportunity of considering the matter without reserving judgment. Unlike a great many cases of the sort, the surrounding circumstances, as well as the direct evidence, make the cause of the collision particularly clear. The "Turret Age" was going up, and the "Lloyd S. Porter" was coming down the River St. Lawrence. According to the rules which deal with narrow channels such as that which, in one sense, in any event, both vessels were in, speaking broadly each vessel ought to keep to its own side of the road. Their Lordships will not stay for a moment to consider the question who was in, or who was out, of the channel. It is clear, according to the evidence, that the "Lloyd S. Porter," in disregard of that rule, was coming down on her wrong side. The result was that the vessel that was going up, and which was on its proper side, was placed, according to the whole of the evidence, in considerable difficulties. It is idle to speak of the recognition by either vessel of the other as big or little. It is at night. All that the parties can see at a reasonable distance (such a distance as would be necessary to avoid the danger of collision) is the lights by which they are guided, if they see them, and if they look out

for them. So far as the "Turret Age" is concerned there appears to have been a very careful look out. There was no doubt that the pilot was there, giving directions, and observing what was being done. If one looks at the evidence of what was done on board the other vessel, the "Lloyd S. Porter," it is impossible to doubt that there really was no look-out at all. The only person who purports to be looking out at all is the helmsman, who comes on deck about fifteen minutes before the collision. He receives one direction, to keep the vessel so as to avoid the buoy, and then he is left to be guided by whatever he may choose to consider a fulfilment of that direction. It is probably fair to suppose that the point of light that he does select is one which in the then condition of things would enable him to clear the buoy. That is all he does, and that is the only direction given to him, and the only thing that he purports to do. On the other hand, the "Turret Age" is encountered by a vessel which, if it is performing the manœuvres that it ought to perform, will keep clear of them. They proceed, and their Lordships think they had a right to proceed, upon the fair belief that the vessel which they saw was going to perform the proper manœuvres for the purpose of avoiding any difficulty or danger. Suddenly, and without any warning, the vessel that they were meeting changes her course, and suddenly starboards. The whole point of the controversy between the parties resolves itself into a question of whether, upon that sudden manœuvre made by the "Lloyd S. Porter," there was time to avoid the collision by any counter manœuvre that could be made by the "Turret Age."

Their Lordships have had the advantage of a Nautical Assessor, to whom they have propounded the questions: First, as to whether or not the "Turret Age" was right in keeping to the north

side of the channel, and he is of opinion that she was right in keeping to the north side. Their Lordships have also asked him whether, in his judgment, there was time, under the circumstances proved, by any manœuvre on the part of the "Turret Age" to avoid the collision. He is of opinion that there was no time to avoid the collision under the circumstances. Putting those two propositions together, with the circumstances that have been referred to, it would seem to be clear that the one vessel, because she was a light vessel, and because she did not care about great depth of water, was so loosely and vaguely steered, that she might have been in or out of the channel, without there being any wilful misrepresentation in what the witnesses have said. Their Lordships think the more reasonable hypothesis would be, considering what she was steering for, and where she was coming from, that she was in the channel up to a certain time, on the north side of it. The position of the wreck afterwards does not seem to be conclusive as to where she was at the moment of the collision, because there would be, certainly, the question both of wind and stream to be considered; but undoubtedly it brings it all within a very narrow compass.

In the result their Lordships are of opinion that the "Lloyd S. Porter" was wholly and solely to blame, and they will therefore humbly advise His Majesty to allow the Appeal, to reverse the Judgment of the Superior Court in Review with costs, and to reverse the Judgment of the Superior Court and order judgment to be entered for the Appellants in their action, and also in the cross-action which was brought by the Respondents, with the costs of both the action and cross-action, and to remit the case to the Superior Court for the assessment of the damages to be paid by the Respondents. The Respondents must pay the costs of this Appeal.
