LLOYD'S LIST LAW REPORTS

Reprinted (with additions) from "LLOYD'S LIST."

HILARY SITTINGS, 1922.

Vol. X.

LONDON:
PRINTED AND PUBLISHED BY LLOYD'S
AT THE ROYAL EXCHANGE, E.C. 3.
1922

CONTENTS.

NOTE :—These reports may be cited as "10 Ll. L. Rep."

CONTENTS—*continued.* PAGE

CONTENTS—*continued.* PAGE

CONTENTS—*continued.* PAGE

CONTENTS—*continued.* PAGE

CONTENTS—*continued.* PAGE

CONTENTS—*continued.* PAGE

CONTENTS—*continued.*

CONTENTS—*continued.* PAGE

LLOYD'S LIST LAW REPORTS.

REPRINTED (WITH ADDITIONS) FROM

LLOYD'S LIST

WITH WHICH IS INCORPORATED THE

Shipping & Mercantile Gazette.

VOL. X. No. 1] THURSDAY, FEBRUARY 2, 1922. [BY SUBSCRIPTION

COURT OF APPEAL.

Wednesday, Jan. 11, 1922.

MANCHESTER SHIP CANAL DUES.

MANCHESTER SHIP CANAL COMPANY v. BRUNNER, MOND & CO., LTD. ATTORNEY-GENERAL v. MANCHESTER SHIP CANAL COMPANY.

Before Lord Justice BANKES, Lord Justice SCRUTTON and Lord Justice ATKIN.

These cases came on for hearing on appeals by Messrs. Brunner, Mond & Co. in the one instance and the Attorney-General in the other, from a judgment of Mr. Justice Sankey, delivered on Feb. 16, 1921, and published in 6 Ll. L. Rep. 292.

Mr. W. H. Upjohn, K.C., Mr. A. R. Kennedy, K.C., Mr. H. Johnston and Mr. F. B. Reece (instructed by Messrs. Hatt Cook & Chambers, of Northwich, Messrs. Blyth, Dutton, Hartley & Blyth, agents) appeared for the appellants; and Sir John Simon, K.C., Mr. Leslie Scott, K.C., Mr. Cyril Atkinson, K.C., and Mr. C. R. Dunlop, K.C. (instructed by Messrs. Grundy, Kershaw, Samson & Co.), represented the respondents.

In the first action the Canal Company claimed for certain canal tolls and ship dues alleged to be owing to them from the defendants, Messrs. Brunner, Mond & Co., in respect of the user of the Ship Canal by the defendants' vessels between the Western Marsh Lock and Eastham on the Canal in December, 1917; and further for a declaration that the defendants were liable to the plaintiffs for canal tolls and ship dues whenever the defendants' vessels used the canal as aforesaid, and when the bottom of the access between the Weston Mersey Lock and the navigable channel of the River Mersey was at a height of not more than 3 ft. 6 in. above Delamere Dock sill. The defendants denied liability and said that under the Manchester Ship Canal Act, 1885, they were entitled to use the canal free of tolls because the Canal Company had failed and neglected to scour the approach to the Weston Mersey Lock in the manner and to the extent prescribed by the Act. In their turn, Messrs. Brunner, Mond & Co. counter-claimed for a declaration that the Canal Company were under a statutory duty to the defendants and the other Weaver traders and the public to scour the approach to Weston Mersey Lock to the extent prescribed, and to maintain an access between the Weston Mersey Lock and the navigable channel of the Mersey; and the defendants further said that they had suffered special damage by reason of the Canal Company's breach of duty.

In the second action a number of traders on the Weaver Navigation claimed a declaration similar in effect to that claimed by the defendants in their counterclaim in the first action and a mandatory injunction ordering the Canal Company to provide and maintain such an access as claimed.

The Canal Company by their defence denied that their statutory duty was as large and extended as the Attorney-General and the traders contended.

Mr. Justice Sankey in both actions decided in favour of the Canal Company, holding that there had been no breach by them of their statutory obligations. His Lordship dismissed Messrs. Brunner, Mond & Co.'s counterclaim, and made a declaration that the Canal Company were entitled to the tolls and directed an account to be taken.

Mr. UPJOHN, in opening the case for the appellants, said that the Attorney-General's action really raised the whole of the questions in dispute. The Attorney-General asked for a declaration covering the whole construction of the statutory provisions which were in question, and he further asked for an injunction based upon the breaches alleged on his and Messrs.

Brunner, Mond & Co.'s view and construction of those statutory provisions. Mr. Justice Sankey, complained Counsel, did not construe the statutory provisions.

He decided that there had been no breach of any material provisions, but he did not make any findings defining the terms of the statutory obligations. The appellants' contention was that it was the duty of the learned Judge to make a declaration construing the statutory provisions and defining the rights of the Weaver Navigation and the users of it, or, in other words, the rights of the public. It was also his duty to define the obligations of the Canal Company. The appellants also complained that the learned Judge would not grant an injunction and would not declare that there had been a breach of any obligation by the Canal Company so as to enable Messrs. Brunner, Mond & Co. to make any application.

One of those obligations related to the height of the floor of the access channel. There was no dispute that the statutory obligation as to that was admitted and that a breach by the Canal Company for a series of years was admitted, but the learned Judge gave no relief to the Attorney-General in respect of that matter. As to other matters, the appellants complained that in such cases where the obligation was disputed, but where breach of the obligation as alleged was admitted, the learned Judge decided against the Attorney-General as to the existence of the obligation.

Then there was the class of case in which both the obligation and the breach were disputed. There, it was contended, the learned Judge also wrongly decided against the Attorney-General.

The hearing was adjourned.

Thursday, Jan. 12, 1922.

The hearing of these cases was continued to-day.

Mr. UPJOHN, continuing his argument on behalf of the appellants, dealt with the obligation, which he contended was imposed on the Canal Company by their Act of 1885, with regard to the Weaver Navigation. By Sect. 71 (7) he submitted the Canal Company were under a statutory obligation to maintain an access between the Weston Mersey Lock and the navigable channel of the Mersey of sufficient width to enable the largest vessel that could reasonably use the docks at Weston Point, and tugs towing barges and sailing vessels, to pass from and to the navigable channel of the Mersey and to pass each other whether under steam or sail.

Mr. Justice SCRUTTON: Are you arguing that you are entitled to an access as convenient as before the Canal was made?

Mr. UPJOHN did not think he would be wrong in putting his case as high as that. He submitted that the object and effect of the Parliamentary scheme was not only to maintain the *status quo*, but to allow for the growth of the Weaver traffic. There was not to be sterilisation as the result of the coming of the Canal.

Mr. UPJOHN went on to contend that the Canal Company had committed a breach of their obligation in regard to the height of the floor of the access. Unless there were a continuous performance of this obligation it was as bad as no performance at all. The evidence showed that, because of the varying height of the floor and the consequent danger, traders gave up using the access, and, there being no customers, pilots gave up accustoming themselves to the navigation of the access, and tug companies ceased to provide tugs. Therefore the way the Canal Company had treated the access had deprived Messrs. Brunner, Mond & Co., even on days when there was navigable access, of the means of navigating it, because such treatment had deprived them of the services of pilots and tugs. To have discontinuous access, therefore, was, from a business point of view, the same as having no access at all.

The hearing was again adjourned.

Friday, Jan. 13, 1922.

This hearing was further continued to-day.

Mr. UPJOHN, further addressing the Court, submitted that there was a duty upon the learned Judge to decide the question of the obligation and necessity of buoying the access channel. The evidence showed that it was a dangerous channel unbuoyed, declared Counsel, who proceeded to argue that there was originally an obligation upon the Upper Mersey Commissioners to buoy the channel and that it was now for the Canal Company to buoy it themselves or ask the proper authorities to carry out the duty. In leaving the channel unbuoyed the Canal Company had not performed their statutory duty of maintaining an access.

The hearing was further adjourned.

Monday, Jan. 16, 1922.

These appeals were further heard to-day.

Mr. UPJOHN, continuing his opening speech, referred to the shifting of the position of the main deep in the River Mersey and its effect on the Weston Mersey Lock access channel. He said that if Parliament had put upon the Canal Company a duty which the company could not perform, it was their duty to go to Parliament and get something else substituted.

Lord Justice SCRUTTON: Is there not a reported case in which it was stated that Parliament ordered that a new gaol should be built of the bricks of the old gaol, but that the old gaol was to be maintained until the new gaol was built? It seems like "Alice in Wonderland," but I believe it was Parliament.

Mr. UPJOHN said the case for the appellants was that there never was any real difficulty before the Canal Company came, and the meaning of the statutory provision was that the appellants were not to be worse off than before there was a Canal Company, except that instead of having four entrances, all their traffic had to go through the bottle-neck at the Weston Mersey Lock.

The hearing was again adjourned.

Tuesday, Jan. 17, 1922.

Their Lordships to-day heard further legal arguments in these appeals.

Mr. KENNEDY, for appellants, read the judgment of Mr. Justice Sankey. He commented on the fact that the learned Judge made no reference at all to the method by which tug masters were induced to navigate the Weston Mersey access, to the care that was taken to coach them and to protect them.

The hearing was again adjourned.

Wednesday, Jan. 18, 1921.

Resuming his argument to-day on behalf of the appellants in this case, Mr. KENNEDY contended that the Canal Company were under a duty to maintain a safe and convenient access to the Weaver Navigation, and that they had failed in their primary obligation in that respect in failing to buoy the channel themselves or to see that the proper authorities buoyed it. Here there was an artificial barrier; there was no continuity between the main deep and the Weaver Navigation.

The hearing was again adjourned.

Thursday, Jan. 19, 1922.

Arguments were presented to-day on behalf of the Manchester Ship Canal Company.

Sir JOHN SIMON, addressing the Court on behalf of the respondents, declared that the real issue in the case was whether Messrs. Brunner, Mond & Co. and other Weaver Traders were to use the Ship Canal for nothing, or whether they were liable to pay tolls for its use. That issue, it was said, depended upon whether the Canal Company had performed its statutory obligations towards the traders. The declaration which Messrs. Brunner, Mond & Co., by counterclaim, and the Attorney-General, in his action, were asking for, was one which they had not the slightest right to; it did not measure the liability of the Canal Company at all. Owing to the peculiar tidal conditions at Weston, before the construction of the canal it was only on rare occasions that 15 ft. draft vessels were able to go up to the Delamere Dock and then they took the risk of being dock-bound for days on end.

Again on certain neap tides vessels of smaller draft ran a similar risk. The truth was that Delamere Dock was constructed with dimensions in excess of what the tidal conditions of the Mersey would accommodate. When the Ship Canal came to be constructed the question was on what terms Parliament would permit that artificial waterway to be made. The Canal Company must not be regarded as simply interposing a barrier which would prevent the Weaver Navigation getting all their own advantages. On the contrary, the Canal Company was providing an alternative waterway and the statutory provisions put in the Company's Act for the benefit of the Weaver Navigation did not give the latter both all the new advantages arising from the construction of the canal and (as now claimed) more than the old advantages which were enjoyed prior to the construction of the new waterway.

Mr. LESLIE SCOTT, taking up the argument on behalf of the respondents, dealt with the question of buoying. He said that the Weaver Navigation Act of 1866 constituted the Weaver Navigation Trustees the buoying authority for the access to their navigation, while the Upper Mersey Commissioners Act of 1876 made that body the buoying and lighting authority for the Upper Mersey. With these powers in existence there was nothing which constituted the Canal Company the buoying authority at all.

The hearing was again adjourned.

Friday, Jan. 20, 1922.

Further arguments were presented to-day on behalf of the Manchester Ship Canal Company.

Sir JOHN SIMON, resuming his address for the respondents, dealt with the claim of Messrs. Brunner, Mond & Co., that they were entitled to send their traffic along the canal free of charge, because, as they contended, the access between the Weston Mersey Lock and the navigable channel of the Mersey was generally, if not always, above the statutory height of 3 ft. 6 in. and otherwise not navigable. Counsel referred to the evidence in support of his submission that, properly measured, the access was beneath the statutory height, and that the Canal Company were fulfilling their statutory duties in so maintaining it.

Complaint had been made, continued Sir JOHN SIMON, that the Weston Mersey Lock pointed in a south-east direction, whereas it was said that the accesses to the old dock were such that they led out straight into the river. But all that was involved in the Canal Company's statute, and was nobody's fault. With regard to buoying, it was only where there was express provision in the Act that that duty fell upon the company.

The hearing was again adjourned.

COURT OF APPEAL.

Tuesday, Jan. 17, 1922.

PROCEDURE: CROWN AS PARTY TO INTERPLEADER ISSUE.

"MOGILEFF."

Before Lord Justice BANKES, Lord Justice SCRUTTON, and Lord Justice ATKIN.

The hearing was continued of the appeal by the Borneo Company, Ltd., of London and elsewhere, from a decision of Mr. Justice Hill in the Admiralty Division holding that the Crown could not be made parties to an interpleader issue upon a summons taken out by the Under-Sheriff of Lincolnshire to that end. The appellants were execution creditors for some £40,000 in an action which they brought against the steamship *Mogileff* and her owners, the Russian Volunteer Fleet. At the appellants' instance a writ of *fi. fa.* was issued directing the Sheriff of Lincolnshire to seize two other ships lying at Immingham, the *Krasnoiarsk* and *Vologda*, and which the appellants contended were the property of the Volunteer Fleet, but which the Board of Trade asserted were the property of his Majesty, represented by the Shipping Controller. Upon this the Under-Sheriff issued his interpleader summons. Mr. Justice Hill reluctantly came to the conclusion that he could not compel the Crown to the determination of the question of whether the seized vessels were the property of his Majesty or the Volunteer Fleet by the trial of an interpleader issue, but he said that while the question was still undetermined, he could not order the Under-Sheriff to withdraw from possession.

The appeal had stood over with a view to the parties arriving at some arrangement, but it was now stated that the Crown were not in a position to waive their objection to being made parties to an interpleader issue.

The previous proceedings on the appeal were reported in 9 Ll. L. Rep. 463, and the proceedings before Mr. Justice Hill in 9 Ll. L. Rep., 47, 92 and 180.

Mr. F. D. Mackinnon, K.C., and Mr. G. P. Langton (instructed by Messrs. Downing, Middleton & Lewis) appeared for the Borneo Company; the Attorney-General (Sir Gordon Hewart, K.C.) and Mr. L. F. C. Darby (instructed by the Solicitor to the Board of Trade) represented the Crown; and Mr. Holman Gregory, K.C., and Mr. J. R. Ellis Cunliffe (instructed by Messrs. Burton, Scorers & White, of Lincoln, Messrs. Taylor, Jelf & Co., agents) appeared for the Under-Sheriff of Lincolnshire.

Mr. MACKINNON, for the appellants, contended that Mr. Justice Hill was wrong and that the Crown could properly be made parties to the interpleader proceedings.

Counsel for the Crown were not called upon.

Mr. HOLMAN GREGORY, for the Under-Sheriff, in asking that he should be protected as to costs, intimated that he would withdraw from possession of the two ships unless he were directed to remain in possession.

JUDGMENT.

Lord Justice BANKES, in giving judgment, said: This is an appeal from a judgment of Mr. Justice Hill, and I regret very much that it is not possible to take any other view of the matter than the one taken by the learned Judge. The matter arises in this way The appellants obtained judgment against the Russian Volunteer Fleet, and in execution of that judgment they caused a writ of *fi. fa.* to be issued directing the Sheriff of Lincolnshire to seize two vessels which they asserted belonged to the Russian Volunteer Fleet. The Sheriff, acting upon the writ, seized the vessels. Thereupon a claim was made which is contained in a letter written by the Solicitor to the Board of Trade to the Under-Sheriff, in which the Solicitor confirmed a telegram sent the previous day and added: "The vessels are registered in the name of his Majesty represented by the Shipping Controller, London. I shall be happy to produce to you or your representative transcripts of the registers of the respective vessels, showing that they are the property of his Majesty, and, not having heard from you in reply to my telegram, I am to request that you withdraw your officer immediately and report to me that you have done so."

The registers were afterwards produced or verified, and it appears that the vessels were registered in London in the name of his Majesty, represented by the Shipping Controller.

It seems to me quite plain that that was a claim on behalf of the Crown, and it was so understood by the Under-Sheriff. Upon that the Sheriff issued an interpleader summons. It is dated Aug. 16, 1921, and refers to the Crown as claimants, on the one hand, and to the execution creditors as plaintiffs on the other. The Assistant-Registrar dismissed the application on behalf of the Sheriff "that the plaintiffs and claimants appear and state the nature and particulars of their respective claims." Now, an interpleader, as its name indicates,

was a proceeding introduced for the purpose of enabling the Sheriff or other persons who made no claim themselves to the subject-matter which was claimed by two other parties, to appear before the Court and in a summary proceeding get a decision from the Court as between the two claimants as to which of them was entitled to the subject-matter of the claim. It is not necessary to go into the history of the procedure which is now contained in the Rule of Court which deals with interpleader. The learned Judge has held that Order 57, the rule in question, does not apply to or bind the Crown, and that it is not possible to compel the Crown to interplead, and he sums up his view in this way :—

"Let us get back to the underlying principle. The plaintiffs say the principle is that no action lies against the Crown at the suit of a subject, and they say that in asking for an interpleader issue no one is seeking to maintain an action against the Crown; the Crown has asserted a claim and is invited either to withdraw it or to prove it, and, as it does not withdraw it, is directed to prove it. I, however, am of opinion that the rule that no action lies against the Crown at the suit of the subject is part only of the wider principle that the King cannot, against his will, be made to submit to the jurisdiction of the King's Courts."

In my opinion, the view there expressed by the learned Judge is quite accurate. Mr. Mackinnon has based his argument upon two grounds. He says, first of all, there is authority to the contrary of the view expressed by the learned Judge, and he relies upon the case of Reid v. Stearn (6 Jur. N.S. 267). I desire to say that in my opinion that case has really no authority for the proposition for which Mr. Mackinnon cites it or for which, apparently, it has been cited in other actions. It is quite true that in his judgment in that case Vice-Chancellor Stuart said :—

"He conceived, if the Crown was adversely claiming against the stakeholders, that they had a right, when other persons were claiming the same money, to file a bill of interpleader, and to make the Crown a defendant to the bill, because the Crown was one of the parties who were vexing them by contesting the right. The question of the title had not been seriously argued, and he did not decide it one way or the other; but he should not hold that the Crown was an improper party. He thought that the bill had been rightly framed, in bringing all the claimants before the Court."

Now when one looks at the facts of that case one finds that it was a suit instituted by the plaintiff against four defendants claiming the return or payment of a certain sum of money or a direction that the defendants might be decreed to interplead. I ought to say that one of the four defendants was the Crown, but in what form we do not know. But whatever form the action was in it is manifest, I think, that whoever was made defendant as representing the Crown, the Crown consented to the jurisdiction and appeared, and therefore was a party properly before the Court. It was in these circumstances that Vice-Chancellor Stuart made the order he did. It seems to me that that case has no application to the present case or to any similar case where the Crown is objecting that it ought not to be made a party, and in this particular case, objection being taken, there is no jurisdiction to make an interpleader order against the Crown. I pass from that case of Reid v Stearn by saying that it is no authority for the proposition for which it is cited. There are, on the other hand, in the case of Candy v. Maugham (6 Man. & G. 710) very clear indications why the Crown cannot be made to interplead, and for the reasons Mr. Justice Hill has given, which are broader and deeper reasons, it seems to me that interpleader proceedings cannot be taken against the Crown.

A further point which Mr. Mackinnon has taken is not open upon those proceedings, namely that it is competent for these parties, or parties in similar circumstances, to bring an action against the Attorney-General claiming a declaration as to the rights of the execution creditors. That may, or may not be. I express no opinion about it. All I say is that in proceedings where an interpleader summons is taken out by the Sheriff asking only that the Crown may be ordered to appear and be a party to an interpleader issue, it is not competent to treat the matter as though it were an action claiming a declaration against the Attorney-General. We are not asked to make any direction that the Sheriff shall remain in possession and, therefore, the order will be that the appeal is dismissed, with costs, and so far as the Sheriff's costs are concerned, those costs will be added to the costs of the execution

Lord Justice SCRUTTON and Lord Justic ATKIN concurred.

ADMIRALTY DIVISION.

Wednesday, Jan. 11, 1922.

COLLISION SUIT—CROSS APPEALS.

"SHAH" v. "PRINCESS OF WALES."

Before the President (the Right Hon. Sir HENRY DUKE), and Mr. Justice HILL, sitting with Captain Sir A. W. CLARKE, K.B.E., and Captain P. N. LAYTON, C.B.E., Elder Brethren of Trinity House.

In this case the plaintiffs, the owners of the Chatham sailing barge *Shah*, appealed and the defendants, the owners of the Rochester paddle steamship *Princess of Wales*, cross-appealed, from a judgment of his Honour Judge Shortt, in the Rochester County Court. The suit involved a claim and counterclaim for damages arising out of a collision between the two named craft

in Limehouse Reach, River Medway, a little distance above the Chatham Sun Pier and below the Ship Pier, on the morning of July 10, 1920.

The plaintiffs' case was that the *Shah*, a wooden spritsail barge of 40 tons, was lying unladen in Limehouse Reach, moored head down stream to and on the outer side of a hopper lying at anchor about 500 ft. above and inside the line of Sun Pier. In preparation for getting under way, the tide being half ebb of two to three knots force, and the wind S.W. and fresh, those in charge of the *Shah* having observed, so far as the bend of the reach permitted, that no vessels were coming down stream, proceeded to make a line fast from the *Shah's* port bow round her stern and on to the hopper, and then to let go her other moorings in order to swing the ship stern down river. The *Shah* swung shortly off and, being retarded by the wind as soon as it was felt on her port quarter, hung about athwart the stream a little. While she was so swinging and/or hanging, those in charge of her observed the *Princess of Wales* about above or abreast of Ship Pier, making down river for Sun Pier at considerable speed. Although there was ample time and room for the *Princess of Wales* to shape a course to pass under the stern of the *Shah*, the steamer continued to come on, and, with her starboard fore sponson, struck the *Shah's* stern post and rudder a heavy blow, causing her much damage and breaking her adrift. Those in charge of the *Shah* let go her anchor, and she was subsequently docked.

Plaintiffs alleged that those in charge of the *Princess of Wales* failed to keep any or any sufficient look-out, and failed or neglected to steer clear of the *Shah*, or sufficiently or in time alter course, ease, stop or reverse or avoid colliding with the *Shah*, and failed to comply with Arts. 19, 20, 23, 24, 27, 28 and 29 of the Regulations for Preventing Collisions at Sea and/or By-laws 27, 32, 34, 37, 39, 41 and 42 of the Port of London River By-laws.

The defendants' case was that the *Princess of Wales*, a paddle steamship of 163 tons gross and 139 ft. in length, while on a voyage from Strood to Chatham Sun Pier for passengers, was proceeding down the River Medway. The wind was south-westerly strong, the weather fine, and the tide half ebb of about three knots force. The *Princess of Wales*, on a down river course, was making about six knots, and a good look-out was being kept. In these circumstances, as the *Princess of Wales*, on the starboard side of the channel, was shaping a course for Sun Pier, a barge moored to a hopper a little on the Rochester side of Sun Pier suddenly swung out across the channel when the *Princess of Wales* was about 60 yards distant from her, completely blocking the fairway. Although the engines of the *Princess of Wales* were promptly put full speed astern and her helm hard-a-starboard, the fore end of the starboard sponson struck the stern post of the barge (which was the *Shah*), whereby the *Princess of Wales* sustained damage.

Defendants pleaded that those on board the *Shah* negligently and improperly failed to keep a good look-out; failed to indicate that they were about to swing out by hailing or otherwise; swung out at an improper time; and improperly and at an improper time obstructed the channel.

The County Court Judge dismissed both claim and counterclaim, with costs, stating that the evidence on both sides was so unsatisfactory that he and the Assessor assisting him were unable to decide that the case of either party had been made out. Hence the present appeal and cross appeal.

Mr. H. C. S. Dumas (instructed by Messrs. Holman, Fenwick & Willan) appeared for the plaintiff appellants; and Mr. Lewis Noad and Mr. E. W. Brightman (instructed by Messrs. Arnold, Day & Tuff, of Rochester, Messrs. Deacon, Gibson & Co., agents) represented the defendant appellants.

JUDGMENT.

The PRESIDENT, in giving judgment, said:—This case is one of some difficulty. The learned Judge below, sitting with an Assessor, was perplexed by the conflict of evidence upon the particular point in the case, namely, as to when the steamship took action with her engines; and if that appears to be decisive of the case the conclusion of the learned Judge that he could not solve the difficulty by application of the rules of evidence would seem to dispose of the matter. It is necessary therefore to look at the facts to see whether that difficulty in the case does arise in such a way as to make the inability of the tribunal below to accept the evidence on either side an answer to the contention of both parties. In my judgment it does not.

The plaintiffs' case substantially was that at a time when the steamship was coming down the river and had not passed the Ship Pier, the skipper of the *Shah* had at any rate begun to swing his barge; that his barge was, at any rate, swinging; and as he himself says—I do not know with what degree of accuracy—he was "athwart the river."

The distance of the Ship Pier from the position of the barge is 650 ft., and the distance from the Ship Pier to the Sun Pier about 1150 ft. The speed of the steamship, allowing for the ebb tide, would enable her to cover that distance of 650 ft. in not more than a minute upon her master's own account of the matter. Now if the steamship, at the time that this swinging movement was perceptibly in operation, was abreast of or not appreciably below the Ship Pier, then, as we are advised by the Elder Brethren, there was notice of the swinging movement of the barge in sufficient time to have put upon the master of the steamship the obligation of giving a clear berth to the barge and her swinging movement; and not only of giving a clear berth for a swinging movement, which might be adopted with exemplary promptitude, but of making a reasonable allowance for the difficulties of navigation which existed with regard to tide and wind. The strength of the tide is agreed as also