

*Privy Council Appeal No. 43 of 1913.*

The Ship "St. Pierre-Miquelon" - - - *Appellant.*

*v.*

The Renwick Steamship Company, Limited,  
and others - - - - *Respondents.*

FROM

THE SUPREME COURT OF CANADA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF  
THE PRIVY COUNCIL, DELIVERED THE 4TH MARCH 1914.

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*Present at the Hearing:*

LORD ATKINSON.

LORD MOULTON.

LORD SHAW.

LORD SUMNER.

*Nautical Assessors:*

VICE-ADMIRAL ROBERT N. OMMANNEY, C.B.

COMMANDER W. F. CABORNE, C.B., R.N.R.

[*Delivered by* LORD ATKINSON.]

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In this case the owners and the charterers of the steamship *Renwick* instituted on the 30th of December 1911 an Action *in rem* against the Defendant, the *St. Pierre-Miquelon* to recover damages for the loss sustained by them by a collision which admittedly took place between these two ships on the 27th of December 1911 off the coast of Nova Scotia, resulting in the sinking of the *Renwick*. The charterers were the owners of the cargo which this ship carried.

The *Renwick* was a screw steamship about 130 feet long and 666 tons gross register. She was at the time of the collision, 2.45 to 2.50 a.m., on the Thursday of the 27th of

[11.] J. 308. 90.—3/1914. E. & S.

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December 1911, bound on a voyage westward from Port Hastings to Bridgewater, a port about 37 miles distant, with a cargo of coals. The night or morning was at the time dark but clear, the tide was ebbing, but with little force, and there was a slight northerly wind. The speed of the *Renwick* was  $8\frac{1}{2}$  knots. Her course W.  $\frac{1}{2}$  N. by compass, W.  $\frac{1}{4}$  N. magnetic, close to the line of buoys lying along the shore to her northward.

The *St. Pierre-Miquelon* is a French screw steamship about 948 tons gross and 400 tons net register, somewhat larger than the *Renwick*. At the time of the collision she was on a voyage from Halifax to North Sydney (between which ports she regularly traded), carrying a general cargo. Her speed was 10 knots and her course was E  $\frac{1}{4}$  S. by compass, E. magnetic. The courses of the two ships were therefore either directly opposing or parallel. The *St. Pierre-Miquelon* counterclaimed against the owners of the *Renwick* for the damages she had sustained by the collision.

The Action was on the 5th and 6th February 1912 tried before Mr. Justice Drysdale sitting as deputy District Judge of the Exchequer Court of Canada (Nova Scotia Admiralty District). That learned Judge believed the story told by the witnesses examined on behalf of the Respondents, found the *St. Pierre-Miquelon* alone to blame, found against her on her counter-claim, and awarded damages against her.

The Appellant appealed against this decision to the Supreme Court of Canada. The Appeal was heard before the Chief Justice and five of his colleagues when the judgment of Mr. Justice Drysdale was affirmed, Brodeur J. dissenting. The Chief Justice and Mr. Justice Davies stated that if they had to decide on the printed evidence, they would have been disposed to come to a conclusion different from that at which the learned

Trial Judge had arrived, and all of the learned Judges, with the exception of Mr. Justice Brodeur, expressly based their judgments on the fact that Mr. Justice Drysdale had had the opportunity of seeing the witnesses and judging of their credibility, and that therefore his decision should not be disturbed.

It will thus be seen that there were two concurrent judgments on two issues of fact, namely the culpability of the crews of each of the two ships. The rule observed by this Board in dealing with such cases has been laid down in many authorities. It is as clearly and succinctly stated by Lord Macnaghten in the case of *Whitney v. Joyce*, 95, L. T. R (N.S), 74, as in any other in the following words :—

“Now it is well settled that when the question is  
 “ whether concurrent judgments in the courts below shall  
 “ be reversed on the ground that the judges have taken  
 “ an erroneous view of the facts, it is incumbent on the  
 “ Appellant to adduce the clearest proof that there is an  
 “ error in the judgment appealed from, and so to speak,  
 “ put his finger on the mistake.”

Acting upon that rule their Lordships are clearly of opinion that the finding of both Courts on the counterclaim of the *St. Pierre-Miquelon* cannot be disturbed. Mr. Laing who opened the Appeal did not, as their Lordships understood, dispute the general applicability of this rule, but contended that it could not be fairly or properly applied to the claim of the *Renwick* in this case, inasmuch as the story told by the witnesses examined on her behalf could not be reconciled with certain physical facts admitted by both sides, namely, the precise position of the two ships relatively to each other at the moment of collision, the spot and angle at which the *St. Pierre-Miquelon* had struck the *Renwick*. Sir Robert Finlay admitted, as their Lordships understood, that this rule as to concurrent findings of fact could not be applied to a case

where the testimony accepted as true would establish a conclusion which the admitted facts showed to be impossible.

It is not disputed that the *St. Pierre-Miquelon* struck the *Renwick* with her stem on the port side of the latter vessel about the forerigging, nearly at right angles, the blow slanting forwards, so that the real question for decision resolves itself into this, is this an impossible result, if the story told by the Respondents' witnesses be true, or it is reconcilable with that story?

Many questions were put to different witnesses as to the bearing of the ships the one to the other at different times, the distance of one ship from the other and from certain buoys along the shore, and the times which elapsed between different events, but in many cases, especially those in which the crew of the *Renwick* are concerned, the answers are mere approximate estimates, not ascertained or accurately determined by scientific measurements, and nothing could be more misleading than to treat them as if they were the latter and not the former.

There is no substantial difference between the crews of the two ships as to the place where collision occurred. It was at a point marked upon the chart somewhat to the south westward of the Middle Ledge or Country Harbour buoy, and about half a mile from it. It is also established by the evidence given on both sides that the white masthead light of each ship was first seen by the crew of the other when the vessels were four to five miles apart, and further that each ship proceeded on her course for a distance of from one to two miles before any other light of the one ship became visible to those on board the other. From this point onward the respective stories of the two crews diverge. Those on board the *Renwick* state that the second light shown by the *St. Pierre-Miquelon* was her red or port light,

bearing from a point and a half to two points on the port bow of the *Renwick* and broadening on that bow as the ships approached each other, through what has been styled the first stage of the transaction, that is up to the time when the *St. Pierre-Miquelon* showed her green light to those on board the *Renwick*. Those on board the *St. Pierre-Miquelon* state, on the other hand, that the second light shown by the *Renwick* was her green or starboard light bearing first on the starboard bow of the former vessel and continuing so to bear up to a time immediately before the collision, when the *Renwick*, as they alleged, showed to them her red or port light. This latter story has been entirely rejected by the learned Trial Judge who saw the witnesses. It would not be difficult to show that it, too, is scarcely reconcilable with the admitted physical facts. It is, however, the account given by the Respondents' witnesses of the second stage of the transaction rather than of the first, which Mr. Laing insists is so irreconcilable with the relative positions of the two vessels when they came into actual contact as to render it incredible. The two members of the crew of the *Renwick* whose evidence is material on this point are Angus Rudolph, the second mate, and Llewellyn Bragg, an able seaman. The first of these proved that he had been 24 years at sea; had a master's certificate for steamboats, tugs, and coasting trade; that he held this certificate for 2½ years, during which time he had been continually employed as an officer in different steamers; had joined the *Renwick* on the 28th of August previous to the collision; had made frequent trips on the route she was on at the time, and was well acquainted with this coast from "end to end"; that on the morning of the 27th of December about 2.30 a.m., when his ship was about square with the Country Harbour buoy or a little east of it, and about

half a mile distant from it, he saw the masthead light of the *St. Pierre-Miquelon* about one point on his port bow and about, as he thought, 4 or 5 miles distant, that he then told the man at the wheel, Carl Abrahamson, to keep the ship steady as there was another vessel approaching; that the *Renwick* kept her course W.  $\frac{1}{4}$  N. magnetic, steering by the buoys along the shore as the mate had told him to do; that he then saw the red light of the *St. Pierre-Miquelon* bearing  $1\frac{1}{2}$  to 2 points on the port bow of the *Renwick* distant about  $1\frac{1}{2}$  to 2 miles and broadening on the latter's bow as the vessels approached each other; that after about 2 or 3 minutes, when the *St. Pierre-Miquelon* was about a quarter of a mile distant she suddenly showed her green light; that he thought she was taking a bad yaw; that he told the man at the wheel to port a point and a half; that he blew a blast on the whistle to indicate this movement; that the *St. Pierre-Miquelon* answered with one short blast; that he then thought everything was all right; that the *St. Pierre-Miquelon* came on to within 40 or 50 yards of the *Renwick* still showing her green light; that he then told the man at the wheel to put his helm hard-a-port, gave another blast of the whistle, and then rang the signal full speed astern. Now it is admitted by the *St. Pierre-Miquelon* that she heard the *Renwick* give a single blast of her whistle and that she herself gave a single blast also; the witnesses from each ship, however, state that their own ship whistled first. It is practically admitted that the head of the *Renwick* must under the action of her port helm have gone to starboard. This witness gives in Exhibit G 3 a diagram showing according to his notion, the place at which the *St. Pierre-Miquelon* struck the *Renwick* and the angle at which the blow was struck, but it is

obvious that the more the head of the *Renwick* went off to starboard under her port helm the less would be the arc of a circle which the *St. Pierre-Miquelon* must traverse to enable her to strike the *Renwick* stem on, at right angles. This witness was very properly cross-examined at considerable length. Many of the answers he gave were recast in form by Counsel, made less favourable to the *Renwick's* case, put to the witness in the altered form, and in that form adopted by him, the effort of Counsel being steadily directed to get from the witness an admission that when he first saw the green light of the *St. Pierre-Miquelon* the latter was abreast of the *Renwick* on her port beam. It would appear to their Lordships that the whole contention of the Appellants to the effect that the story told by the Respondents' witnesses is refuted by the physical facts and rendered incredible, is based upon the assumption that the admission so struggled for had been in fact obtained. In none of the drawings on the exhibits is such a position of the vessels indicated. As a specimen of the cross-examination one may take the portion at the top of page 16, line 18 :--

" Q. Give me to the best of your recollection the time that elapsed between the time that you first saw the green light and the time that you first saw the red light?—A.

" I judge roughly that it would be two or three minutes.

" Q. When you first saw the green light, how far do you estimate the other ship was away?—A. Somewhere around a quarter of a mile.

" Q. She was then on your port beam?—A. Yes, getting broad on our port bow.

" Q. She was abreast of your bow?—A. Yes.

" Q. As the two vessels approached she was getting broader on your port bow?—A. Yes."

It is quite obvious that the witness meant to say that the *St. Pierre-Miquelon* was bearing on the port bow of his own ship, and that the bearing was broadening as the ships approached

each other, not at all that the *St. Pierre-Miquelon* was abreast of the bow of the *Renwick*. On this occasion, however, the witness adopted Counsel's modification of his answer. On page 18 Counsel seemed to have renewed the struggle with equal success. The examination is as follows:—

“ Q. How far was the other steamer from you when you blew the whistle the first time?—A. I allow that she was about a quarter of a mile; she may have been closer.

“ Q. How long would it take her to travel a quarter of a mile, suppose that she were going ten knots?—A. About two minutes.

“ Q. She was then about abreast of you?—A. Yes.

“ Q.—Indicate by means of the models the positions of the two vessels when you first saw the green light?—  
“ (Witness here indicates positions as shown on G-b.) ”

When Exhibit G-b 56 is referred to, however, it will be seen to be wholly misleading in this respect, that it only represents the bearings of the vessels towards each other, and gives a wholly inaccurate idea of their distance apart. In no sense does it indicate the respective positions of the two vessels, as the question in response to which it was made would lead one to suppose.

The learned Counsel appears to have renewed at page 19 the effort to get the desired admission from this witness. The cross-examination runs thus:—

“ Q. As I understand it, when you first sighted the white light of the *St. Pierre* coming up the coast she was about a point on your port bow?—A. Yes.

“ Q. Then she got broader and broader on your bow?—  
“ A. Yes.

“ Q. Now, when you first saw the green light, was she about opposite your bow?—A. She was a little aft of the bow.

“ Q. Is it not a fact that in order for the change from the green light broad on your port bow to suddenly seeing the red light aft on the port bow, she would have to describe a half circle?—A. Yes.



" Q. You thought that the sudden appearance of the  
" green light was due to the steering of the boat ?—A. Yes,  
" as if she took a bad sheer.

" Q. She has to sheer badly for you to see her green  
" light ?—A. A ship can sheer badly.

" Q. When you saw the light as described on G-b, you  
" did not know what the exact position of the ship was; all  
" you saw was the light ?—A. Yes, about in that position.

" Q. You did not know the position of the ship ?—A.  
" She was not going the way we were.

" Q. You suddenly saw the green light ?—A. Yes.

" Q. You could not see the vessel ?—A. I could not see  
" the hull.

" Q. You don't know how she was heading at that  
" particular moment ?—A. By the bearing of her light I  
" could give a good idea. I saw the masthead light and  
" the green light, and I saw the lights before."

It is obvious that in line 29 the word " green " is printed by mistake for " red," and in line 30 that the word " red " is printed by mistake for green. And from the whole passage it is, in their Lordships' view, perfectly clear that when using the words " aft of the bow " the witness was speaking of the bearing of the *St. Pierre* relatively to the *Renwick*. It may possibly be, if the *St. Pierre* continuing her course parallel to that of the *Renwick* had reached a point where her bow would have been opposite to a point abaft the bow of the *Renwick*, that before she could have traversed the arc necessary to bring her into collision with the *Renwick* at right angles, the latter vessel would have forged ahead sufficiently to have escaped contact, and the *St. Pierre* would have passed under her stern; but on the fair reading of the printed evidence of this witness it is clear to their Lordships that this is not the state of things which he deposed to, that the witness was dealing with the bearings of the two vessels to each other, and that he never meant to suggest that they were relatively in the positions contended for by the Appellant. The Assessors, by whom their Lord-

ships have been fortunate enough to be assisted, concur with them in thinking that this is the true meaning of the nautical language used by the witness in this connection, and advise them that consistently with this evidence properly understood it was quite possible for the two vessels to have collided in the manner in which they admittedly did collide. The second witness whose evidence is material on this point, Llewellyn Bragg, was on the lower bridge of the *Renwick* on the look out on that night. He deposed to the incidents of the first stage of the occurrence, as it was styled, to the same effect as Rudolph, though not with the same fulness or precision as to detail. He stated that when he first saw the masthead light of the *St. Pierre* it was bearing on the *Renwick's* port bow, that when he saw the red light it was broader on the port bow than the white light; that the last time he saw the red light "it was off on the port bow" of the *Renwick*, broad on the port bow, not abeam. That answer is translated by Counsel into "almost opposite your bow," and the question being put to the witness in that form he accepts it and answers "Yes," but the meaning of the witness is quite clear. He further states that when he saw the green light it was right on the side of the *Renwick*; that he could see the vessel, the *St. Pierre - Miquelon*. She was heading for No. 2 hatch of the *Renwick*, and struck her a foot or so aft of the fore-rigging. This witness went into the wheel-house to assist the man at the wheel, and is apparently referring to what he saw when he returned to the bridge immediately before the collision. It is contended by the Appellant that this witness's evidence is discredited by reason of a certain statement which he made in his examination in chief, repeated on cross-examination. After having deposed to the

whistle having been given, the helm of the *Renwick* put a point and one-half to port, and the whistle answered by the *St. Pierre-Miquelon*, he said that he then heard another whistle and heard the order given, "Hard a-port"; that he went to help the man at the wheel to carry out this order; that when this was done he came out to the wheel-house door; that the *St. Pierre-Miquelon* was then approaching the *Renwick*, coming in for her beam; that he saw the stern lights of the *St. Pierre-Miquelon*. On cross-examination he deposed that when he came out of the wheel-house on to the bridge there was a boatswain's locker which shut out the side lights of the *St. Pierre-Miquelon*, and that he looked behind this locker and saw the stern lights. At that time the *St. Pierre-Miquelon*, as he had already mentioned, was coming in for their beam, and it may possibly be that what he meant was that he saw the reflection of the stern lights of the *St. Pierre-Miquelon*, not that he saw the lights full and direct. He could not have any possible object in inventing this incident, and, moreover, the Judge who saw him and heard him give his evidence believed him. The Captain only got on deck a few seconds before the collision occurred, and did not give any material evidence bearing on this decisive point, nor did the first officer.

Their Lordships, advised as they have been, are, on the whole case, of opinion that there is not such irreconcilability between the story told by the Respondents' witnesses and the physical facts of the collision as to render that story incredible, and they will accordingly, in pursuance of the rule already referred to dealing with concurrent findings of fact by the tribunals below before which a case has come, humbly advise His Majesty that this Appeal should be dismissed with costs.

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In the Privy Council.

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THE SHIP "ST. PIERRE-MIQUELON"

2.

THE RENWICK STEAMSHIP COMPANY,  
LIMITED, AND OTHERS.

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DELIVERED BY LORD ATKINSON.

LONDON :

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