

Province of New Brunswick.

SUPREME COURT.

McLeod, J.]

[October 9, 1905.]

CUMBERLAND RAILWAY & COAL CO. v. THE SAINT JOHN
PILOT COMMISSIONERS.

Pilotage Act—"Ships"—"Ships propelled wholly or in part by steam"—Liability of Pilot Commissioners to be sued in corporate capacity—Government officers.

The plaintiff's barges were engaged in carrying coal between ports in New Brunswick and Nova Scotia. These barges were built after the model of a three-masted schooner of four hundred tons, but carried sails of only four hundred yards area, whereas if rigged as schooners they would carry some twenty-eight hundred yards of sail. They were, in fact, always towed from port to port by tugs, though evidence was given that they could be navigated under their own sail. The plaintiffs paid pilotage fees on these barges to the defendant from April 4th, 1893, to May 4th, 1904, and action was brought to recover \$15,680.08, the amount so paid.

Held, 1. These barges were not "ships" under the Pilotage Act since they had not sufficient motive power in themselves for the purposes of navigation and were in fact always propelled by a tug.

2. Even if these barges were "ships" under the Act, they were exempt from payment of pilotage fees under s. 59 (c) as "ships propelled wholly or in part by steam." It is not necessary under this section that the steam propelling power should be in or on the ships themselves.

3. The Saint John Pilot Commissioners are a body corporate created by the Pilotage Act and may be sued in their corporate capacity though no express authority is given in the Act. The liability to be sued is necessarily implied.

4. The Saint John Pilot Commissioners are not part of the Dominion civil service though they take instructions from the Minister of Marine and Fisheries. The act of the Commission-