

the Crown was liable under the provisions of The Exchequer Court Act, 50-51 Vict. c. 16, s. 16(v).

C. Archer, K.C., for suppliant. A. Delisle, for respondent.

Routhier, C.J., Loc. J.]

[Nov. 19, 1904.]

RICHELIEU & ONTARIO NAVIGATION CO. v. SS. CAPE BRETON.

*Shipping—Collision—Look-out—Evidence—Special rule contrary to general rule—Approaching ships—Uncertainty as to course—Damages.*

A pilot in charge of the ship, or the man at the wheel, is not a proper look-out within the meaning of Art. 29 of the Rules for Preventing Collisions of 1897, made under the provisions of R.S.C., c. 79, intituled "An Act respecting the navigation of Canadian Waters." The look-out should have nothing else to do than to scan the horizon and report. The place on the ship where he is stationed need not necessarily be the bows, but it should be the best place on the ship for the purpose.

2. Where there is no proper look-out the burden of proof is on the delinquent vessel to shew that such fault did not contribute to the collision.

3. In finding upon conflicting evidence, the court will give more weight to the affirmative testimony of those who swear to having seen a given thing than to the merely negative testimony of those who swear that they did not see it.

4. Where a ship undertakes to follow a course authorized by custom and a special rule in entering a certain port, but which to another ship approaching her may appear to be an unusual course and contrary to the general rule, it is the duty of the former to signal her course to the latter, and if she fails to do so the latter has a right to presume that the former will follow the general rule.

5. Where there is a danger of collision between two vessels, and they both obstinately follow out to the letter the rules regulating their respective courses when there is no such danger in the event of a collision occurring by reason of their adherence to such rules, both vessels are at fault under Rule 27, which provides that in following general rules due regard must be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from the general rule necessary.

6. Where two steam vessels are approaching each other and each is uncertain and perplexed as to the course of the other, it is