

The leading judgment in support of the decision of the trial Judge was delivered by Davies, J., with whom Idington and Duff, JJ., agreed. There are no notes of the opinions of the learned Judges who took the opposite view. The judgment of Davies, J., is clear and concise, and their Lordships agree with it entirely.

On the appeal before this Board it was, of course, hopeless for the learned counsel for the appellants to contend that the "Prescott" was not in fault. Their argument was that under the Canal Regulations it was the duty of the "Havana," when passed by the "Prescott," to move to some point not less than three hundred feet from the entrance to the lock. They said, what was very true, that, if the "Havana" had not been there in the way, she would not have been involved in the catastrophe.

The regulation on which they relied is sub-sec. (d) of sec. 19. It is in these words:—

"When several boats or vessels are lying by or are waiting to enter any lock or canal, they shall lie in single tier and at a distance of not less than three hundred feet from such lock or entrance, except where local conditions may otherwise require, and each boat or vessel for the purpose of passing through shall advance in the order in which it may be lying in such tier, except in the case of vessels of the first class to which priority of passage is granted as above."

Assuming that under the circumstances the appellants could shelter themselves under such a defence or counter-charge, the answer to their contention is very simple, as Davies, J., points out.

In the first place, the conditions under which the regulation comes into operation were not present on this occasion. There were not several boats or vessels lying by or waiting to enter the lock. The lumber barge, which might have claimed to enter before the "Havana," had waived her turn and was not going forward at the time. The only vessel then about to enter the lock was the "Havana." In the next place the local conditions do not require that vessels waiting to enter should lie by at the distance prescribed so long as there is accommodation at the wing walls. There are snubbing posts along both walls, and it was proved that it was the recognized practice for vessels waiting to enter the lock to lie up there. The south wall was occupied by barges, but there was room against the north wall, and that was the