

pulsory in the cases specified in the Act, but it is not compulsory upon an owner or master of a ship to employ, or give his ship into the charge of, a pilot, either on the ground of his being compelled to pay pilotage dues to any person or otherwise. (See sec. 57 of the Act.)

From 1893 to 1903 the respondents' said vessels were engaged in carrying coal to St. John in the way above referred to, and a dispute existed between the Commissioners and the respondents as to whether the vessels were liable to pilotage dues. During this period it appears that the respondents, while refusing to take pilots on their vessels, were compelled to pay pilotage dues in order to obtain the clearance of the vessels, and, in fact, paid the dues under protest. The amount thus paid between April 24th, 1893, and May 4th, 1903, was \$15,680.08, of which \$7,487.58 were paid more than 6 years before the commencement of the present suit, and \$8,192.50 between September, 1897, and May, 1903, that is to say, within 6 years before the commencement of this suit. In consequence of a decision in the case of the ship "Grande," hereafter referred to, pilotage dues were not paid in respect of the said vessels after May, 1903, but, if payable, the amount thereof in and from May, 1903, to the time of the action was \$735.

In September, 1903, the respondents brought this suit against the Commissioners to recover the pilotage dues paid as aforesaid. They sued on the common counts. The defendants pleaded "never indebted" and the Statute of Limitations, and also claimed the said sum of \$735.

The trial took place before McLeod, J., and on the 9th of October, 1905, he found in favour of the respondents that the vessels were not liable to the pilotage dues, and he directed a verdict to be entered for the plaintiffs for the sum of \$8,192.50. He held that the rest of the plaintiffs' claim was barred by the Statute of Limitations, and he gave leave to the defendants to move to enter a verdict on their behalf for the \$735. The ground of the decision was that, in the opinion of the learned Judge, following the case of the ship "Grande," the vessels came within the exemption of sec. 59 (c) of the Act of 1886, as ships propelled by steam.

The defendants moved the Supreme Court of New Brunswick to set aside the verdict and enter a verdict for the defendants, or for a new trial. The motion was heard before Tuck, C.J. and Barker, Hanington, and McLeod, JJ., and