

the production of the mine, or that there was any lack of coal at the mine or at the pier.

But the question of diligence in this case turns upon the regularity of turn. It is contended that lighters or vessels attendant on the "Great Eastern," then employed in laying the Atlantic cable, at a distance of at least 500 miles from the Port of Sydney, had precedence in loading over vessels reported before them. The argument used by Mr. Gisborne is this—the "Great Eastern" was reported before the "Tagus," and her lighters had to be loaded whenever they came into port, just as if they had been the "Great Eastern" herself. Another argument is, that the "Tagus" had no right to her turn till she had discharged all her ballast, which she did not do till the 30th June, and this by the regulations of the port, which are dated the 1st of July, 1873, the day after the "Tagus" was clear of ballast.

There is a manifest contradiction in these arguments. If it be a good reason to say that a ship has no right to her turn till she is quite clear of ballast, then the "Great Eastern" never had a right to turn, for it will scarcely be contended that the "Great Eastern" was without ballast when laying the Atlantic cable several hundred miles from shore. Again, the ballast rule is not shown to be in force, for the reason given, that the date appeared to be the 1st of July because the printers at Sydney work slowly, is simply absurd. A resolution is not dated the day it is printed, but the day it is passed. Further, the rule is without meaning, except in so far as the ballast being on board renders the ship unfit for loading. In this case it is proved, without contradiction, that the "Tagus" was ready to receive cargo on the 16th June, and that it was Mr. Gisborne who told the Captain not to throw out all his ballast.

This, however, is not the point upon which the court considers the case turns. Mr. Gisborne swears that all extra large vessels are loaded by tender, "that it was the custom to load all high vessels and war ships by tender at the port of Sydney. In fact, it is the custom of all ports." Very little evidence on this point will suffice, for it is difficult to

see how it could be otherwise, unless all vessels that could not come to the pier, were to be excluded from coaling. Besides, the coal for the "Great Eastern" was not a cargo, it was coal with which to move, and therefore, by necessity, it followed the rule for bunker coal. If there was not a rule of that description in all coaling stations, steamships would come to a stand-still, and the first persons to suffer from such short-sighted policy, would be owners of steamers like Mr. Dunkerly.

The question of turn depends entirely on this. It is true the certificate of the port entry books is not a very satisfactory document, but Mr. Gisborne states that no vessels but the "Great Eastern's" lighters passed before the "Tagus," and the Captain's evidence seems to confirm this. Moreover the appellants have not attempted to show that precedence was given to other vessels.

We are therefore to reverse and to dismiss the respondent's action with all costs.

TASSIER, J., dissented.

Judgment reversed.

*Kerr & Carter*, for appellants.

*Lunn & Cramp*, for respondent.

## SUPERIOR COURT.

[In Insolvency.]

MONTREAL, December 29, 1883.

Before PAPINEAU, J.

DILLON, petitioner for discharge, and BEARD, contestant.

*Insolvent Act of 1875—Petition for discharge—Contestation of validity of assignment.*

*The validity of an assignment in insolvency may be contested on the application of the insolvent for his discharge.*

The insolvent presented the usual petition, after the year and a day from his insolvency, for his discharge.

Beard contested on various grounds, among others that Dillon never was or had been a trader; that the proceedings to put him into insolvency were collusive and virtually to permit him to obtain a discharge of his debts.

Dillon demurred to this part of the contestation, alleging it did not constitute a legal ground; that the proceedings to put Dillon into insolvency or their legality or