

COLLISION.—Continued.

duty of the latter to keep clear and give way, and not doing so, she was liable for the damages. *The Arklow*, 66.

6. The last case was reversed on appeal to the Judicial Committee (9 App. Cas. 136), the Court holding where there has been a departure from an important rule of navigation, if the absence of due observance of the rule can by any possibility have contributed to the accident, then the party in default cannot be excused.

Where the lights of the complaining vessel were not properly burning, and were not visible on board the other vessel. *Held*, That in the absence of proof that this latter was also to blame, the suit must be dismissed. *The Arklow*, 72; s. c. 9 App. Cas. 136.

7. The tug *G.* was proceeding up the river St. John, and the tug *V.* coming down; when near Swift Point they came into collision, and the *V.* sank. The *G.*, at the time of the accident, was, contrary to the rules of navigation, near the westerly shore on the port side of the vessel; the *V.* did not exhibit any masthead white light, as required by the regulations. *Held*, That both vessels were to blame; that the collision was occasioned partly by the omission of the *V.* to exhibit her masthead white light, but principally by the course of the *G.*, and a moiety of the damages was given to the *V.* with costs. *The General*, 86.

8. The vessel *M. G.*, under command of a pilot, was entering the Miramichi, and near the Horse Shoe Bar, in the lower part of Bay du Vin, came into collision with a lightship there placed for the safety of navigation. *Held*, That under the evidence no fault was attributable to the *M. G.*; that it was a case of inevitable accident, and the suit was dismissed, but without costs, as the Crown was the promovant, and no costs can be given against the Crown. *The Minnie Gordon*, 95.

9. The *M.*, close-hauled on the port tack, heading about south-west by west, and going about three knots an hour, with the wind

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south, came into collision with the *M. P.*, heading east, and running free about ten knots an hour, and was totally lost. *Held*, from the evidence, that the *M. P.* had no proper lookout; that failure to have a proper lookout contributed to the collision, and she was accordingly condemned in damages and costs. *The Maud Pye*, 101.

10. The *V.*, stone laden, on a voyage from Dorchester to New York, off Tynemouth Creek, in the Bay of Fundy, close-hauled on the starboard tack, came into collision with the *E. K. S.*, running free, in ballast, going up the Bay to Moncton. The night was dark and foggy, and from the evidence it appears that the *V.* had no mechanical fog-horn, as required by the regulations, and that the one she had was not heard on board the *E. K. S.*, which was to windward. *Held*, That it was a case of inevitable accident; that the *E. K. S.* was not to blame, and the action was dismissed without costs to either party. It is a rule of the Admiralty that where there is a material variance between the allegations of the libel and the evidence, the party so alleging is not entitled to recover, although not in fault, and fault is established against the other vessel. *The Emma K. Smalley*, 106.

11. A tug-boat was engaged by the charterers of a vessel, the *E.*, to tow her from the harbor of St. John, N. B., through the Falls at the mouth of the river, beneath a suspension bridge which spans the Falls at the point where the river flows into the harbor. The vessel towed was chartered to carry a cargo of ice from the loading place above the Falls to New York, and the charterers were to employ the tug and pay for the towage services. The tug, having waited to take another vessel in tow, together with the *E.*, was too late in the tide, and in going under the bridge the topmast of the *E.* came into collision with the bridge and was damaged. *Held*, That the Court had jurisdiction to entertain the suit; that the delay of the tug in going through the Falls was evidence of negligence; and the tug and owners