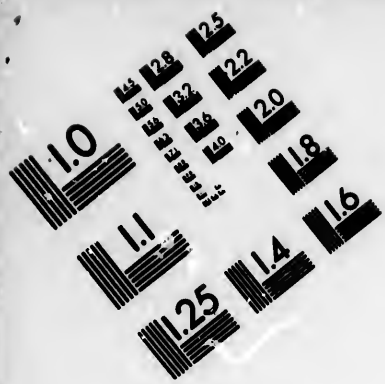

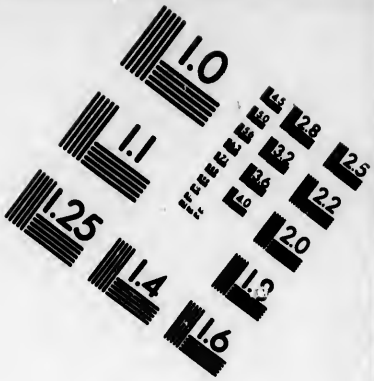

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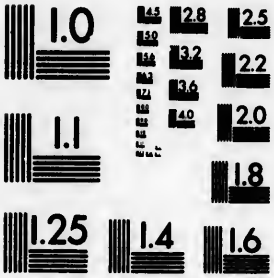

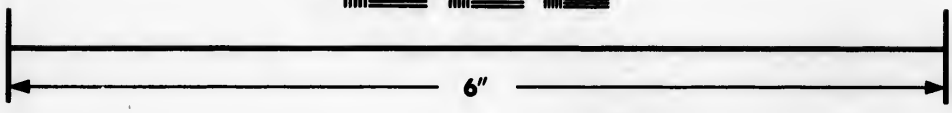

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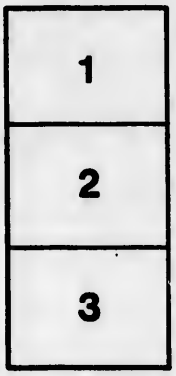

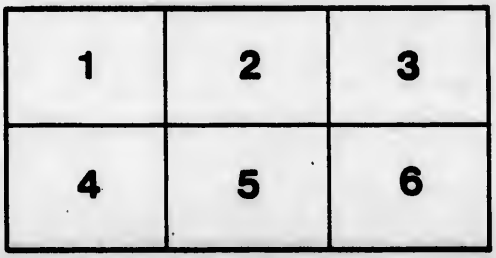

[illegible]

[illegible] Pilot in charge?

As to the first point, the provisions of Law so far as regulated by the Legislature of the Province will be found in the following Statutes :—

59 Geo. III, cap. 12, Sections 8, 12.
4 Vict. cap. 19, " 13, 17.
12 Vict. cap. 114, " 11, 52, 54, 63.
12 Vict. cap. 117, " 5, 14, 18, 21, 41.
13 and 14 Vict. cap. 98.
14 and 15 Vict. cap. 101.

The Imperial Pilotage Acts, to which reference may be made, are the following :—

52 Geo. III, cap. 39.
6 Geo. IV, cap. 125.
Merchant Shipping Act of 1854.

The L. C. Act of 1806, 45th Geo. III, cap. 12, sect. 1 incorporates "The Master, Deputy Master and Wardens of the Trinity House of Quebec," three out of the seven persons mentioned to be residents of *Montreal*; and enacts (sect. 6) that it shall be lawful for the Governor to appoint, by warrant or instrument under his hand and seal at arms, fit and proper persons to be "Branch Pilots *for and above the Harbour of Quebec*, and other fit and proper persons to be "Branch Pilots *for and above the said Harbour*," and (by sect. 12) "that if the Master of "any Ship or Vessel coming to the *Harbour of Quebec*," (except passenger Vessels or River Craft, &c., mentioned in the proviso,) "not having on board a Pilot, shall refuse "or neglect on board and employ any Branch Pilot who shall offer to go on board, and "served on such in the River St. Lawrence, the Master of such Vessel shall pay to such "Branch Pilot half Pilotage to the Harbour of Quebec, from the place at which such Pilot "shall have so offered. Provided always that no Master of any coasting Vessel in River Craft, "or when employed within any part of the Gulf or River St. Lawrence, or when bound to or from "the Labrador Fisheries, shall be subject to take or receive on board a Pilot, anything herein "contained to the contrary, notwithstanding."

The 2 Vict. cap. 49, amended the previous Act of 1806, and incorporated "The Master, "Deputy Master and Wardens of Trinity House of *Montreal*," with jurisdiction from Port Neuf upwards, and with power (sect. 6) to make By-laws, amongst other things, "for the "government and regulation of the Pilots *for and above the Harbour of Quebec*." This Statute (sect. 10) imposed a penalty of £20 on any person, not being a Pilot, acting as such, and a penalty of £10 on any Branch Pilot, acting as such, whilst suspended and deprived of his Branch.

The 12 Vict. cap. 114 is the first Act that enacted (sect. 53) "that the Master of each "Vessel *leaving the Port of Quebec for a Port out of this Province* shall take a Branch Pilot, "to conduct such Vessel under a penalty equal to the Pilotage of the Vessel, which penalty "shall go to the decayed Pilots fund," and (by sect. 54) "That the Master of every Vessel "coming from a Port *out of the Province*, and not having a Branch Pilot on board, shall, on "entering *the Port of Quebec*, under a penalty of £10, hoist the Union Jack at the fore top-"mast head, and leave it so hoisted every day, from day light to dark, until boarded by a

[illegible] Branch Pilots, acting as such; the [illegible] Masters taking any person not being a Pilot; but they [illegible] 1854 (sec. 4[illegible]) declare "that the employment of [illegible] such ships, without possessing a pilotage certificate enabling him so to do, or [illegible] shall be liable to a penalty of £100." It may be mentioned further, that the Ry-[illegible] Act passed on the 3rd May, 1853, do not enact or even to mention compulsory pilotage, although numerous regulations are therein made respecting Pilots.

It is manifest, therefore,—

That by our Provincial statutes, pilotage is not compulsory for the part of the St. Law-[illegible] in question. And

That the Imperial legislation respecting pilotage was never in force in Canada.

This view is sustained by the Honorable Mr. Black, [illegible] Stuart's Vice-Admiralty [illegible], page 185.

The present Imperial Act is [illegible] "The Merchant Shipping Act of 1854," [illegible] 4th part. The first clause [illegible] "The 4th part of this Act [illegible] the following section, [illegible] Kingdom only, and which [illegible]

"Sect. 3[illegible].—No Owner or Master of any Ship shall be answerable to any person whatever for any loss or damage occasioned by the fault or incapacity of any qualified Pilot "acting in charge of such a Ship, within any district where the employment of such Pilot is "compulsory by law."

The analogous provision in the 55th section of the previous English Statute, 6 Geo. IV., chap. 125, may be also quoted, as the clause is to be found in the books turn chiefly on the provisions of this section:

"Sect. 55.—That no Owner or Master of any Ship or Vessel shall be answerable to any "person or persons whatsoever, from or by reason of any neglect, default, incompetency or "incapacity of any licensed Pilot acting in charge of any such Ship or Vessel, during or in "pursuance of any of the Provisions of this Act, where and so long as such Pilot shall be "duly qualified to have charge of such Ship or Vessel, or where or so long as no duly quali-"fied Pilot shall have offered to take charge thereof."

Publication 14th April, 1898.

APPENDIX.

No. 1.

COPY OF JUDGMENT.

The 20th September, 1859.

PRESENT:

The Honorable Mr. Justice [illegible]

"The Court having heard the parties by their Counsel upon the merits of this cause, [illegible] the Plaintiff's Counsel [illegible] the Defendant's Counsel [illegible] the Court doth [illegible] the Plaintiff in the sum of [illegible] with costs."

MORK, GOWEN & PAPINEAU.

P. R. C.

No. 2.

COPY OF NOTES OF EVIDENCE OF ROBERT FORSYTH.

"He is not related, either, or of kin to any of the parties in this cause. He is not interested in the event of this suit. Knows the parties; is Engineer of the Harbour under the Plaintiffs. Knows the limits of the Harbour of Montreal; the Island wharf is within these limits, and lies opposite the Custom-House of Montreal, and extends perhaps about one hundred and fifty yards from the Revetment wall into the River. Recollects the Steamer North American striking the said Island wharf on the 20th of October, 1858. Did not see the actual collision but came there a few minutes afterwards. The Vessel was still at the said wharf. Found that a considerable part of the pilings of the wharf had been broken and the machine of the Vessel was hanging over the bow broken; if had come in contact with the wharf and torn it up. Had the machine not been hanging there, no damage would have happened, as the wharf was sufficiently good to resist the inland pressure. She came on in that way and scraped the wharf; the water around the wharf is considerable distance before it caught a pile, and did other damage for a considerable distance—twenty or thirty feet. He measured the pile, and did other damage for a considerable distance—twenty or thirty feet. He measured it at the time. He immediately reported the collision to the Plaintiffs and was instructed to repair the damage caused to the wharf, by reason of the collision which he did. The persons employed in the repairs were paid, as well as the materials, by the Plaintiffs, and the entries were made under his supervision and are set forth in detail in the Plaintiffs' Exhibit No. 1, filed in this cause, amounting in all to the sum of £23 18s. 2d. This sum was expended to put the wharf in as excellent a condition as it was before. The said Exhibit was made out and certified by witness himself, before the same was paid. The prices charged are the usual prices without any charge for superintendence. The water was one foot over the usual mean level. The weather was fine and the Channel clear. Saw the Iron Dolphin some out of the way; if she had not done so, she would have broken [illegible]. There is no doubt that with proper care and management, the Steamer could have passed up to her berth without any collision. The Channel from the red buoy which lies some two or three hundred yards below the wharf is a Street Channel and is sufficiently wide to allow a Vessel of that size to pass up and another to pass down without difficulty. The Vessels of the class of the *North American*. It is of 200 feet wide at the narrowest place."

CROSS-EXAMINED.

"Witness believes there was a Pilot in charge of the Steamer at the time the collision took place. She was on her way to her berth at that time. The Island wharf projects slightly into the stream. When witness spoke of the payment of the several items of the accounts Plaintiffs' Exhibit No. 1, he did not mean to say that the money passed through his hands. An account similar to that produced was certified by him and paid through the Plaintiffs' Office. Was not present at the payment of all the items of that account. Believes he saw two of the items paid: items of £24 0s. 9d. and item £1 8s. 3d. Witness never saw two Ocean Steamers cross each other in the Channel opposite the Island wharf. Can speak positively as to the day the collision took place."

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[illegible] Pensée [illegible] [illegible] l'Inquest dans le [illegible] [illegible] par le Steamer [illegible] [illegible] le Steamer [illegible] dans [illegible] [illegible] pour le Quai de l'Island Wharf [illegible] [illegible] le Quai [illegible]

[illegible] Valorous [illegible] le Capitaine [illegible] qu'on mettant les passagers sur le pont-du gouvernail [illegible] Quai [illegible] témoin [illegible] passagers du Valorous sur le devant [illegible] placés sur le devant [illegible] [illegible] la bande pour faire le tour nécessaire pour bien [illegible] devant l'Island Wharf. Témoin avait fait avancer les passagers sur le devant pour alléger le derrière du Valorous qui était trop chargé. Témoin a donné son opinion dans son examen en chef, sur la cause de l'accident en question. Témoin a déjà passé plusieurs fois à l'Island Wharf avec des Steamers de la ligne du [illegible] [illegible] [illegible] à cette endroit. Le coup porté à l'Island Wharf fut fort. La barre de l'engin qui était de fer fut brisée dans la collision. Suivant l'expérience de témoin jamais un Pilot [illegible] ou tout autre, Pilot ne peut être responsable des accident imprévus comme celui là causé par le Valorous lorsque les Pilots l'ont sous leur direction. C'est le Valorous [illegible] est seul responsable. Le Valorous lors de la collision en question était tenu à toute vitesse à une certaine distance du Quai, mais lorsque témoin vit qu'il dérivait sur le Quai, il fit arrêter les mouvements pour diminuer le choc, et le faire reculer."