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THE DOMINION COAL COMPANY v. THE  
S. S. "LAKE ONTARIO.

1902  
\*May 9.

*Admiralty law—Collision—Ship at anchor—Anchor light—Lookout—  
Weight of evidence—Credibility—Findings of trial judge—  
Negligence.*

Judgment appealed from (7 Ex. C. R. 403) affirmed.

APPEAL from the judgment of Macdonald C.J. in the Nova Scotia Admiralty District of the Exchequer Court of Canada (1) dismissing the action *in rem* of the appellants with costs.

The steamship "Lake Ontario" was proceeding in charge of a pilot to her dock in the Harbour of Halifax, N.S., on a blustery night in the month of January, 1900, the weather being intermittently clear and cloudy, and came in collision with and sank the appellants' coal

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\*PRESENT :—Taschereau, Sedgewick, Girouard, Davies and Mills JJ.

(1) 7 Ex. C. R. 403.

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barge "A. L. Taylor" lying at anchor on the northern side of George's Island.

The steamship had signalled, by guns and whistles, for a medical officer when approaching the quarantine grounds shortly before the collision occurred and the evidence of her officers and several of her seamen shewed that her officers and crew were alert and anxiously working the ship through anchored vessels in the darkness and in blustery weather; that they came suddenly upon the "Taylor" and that no lights were seen upon her by any of them.

On the other hand, the caretaker of the barge, who was not on deck at the time, swore that a proper anchor light was burning on the barge and his statement as to the light was corroborated by a captain of a fishing schooner lying close by and several boatmen and labourers on the wharves

The trial court judge accepted the evidence for the defence as correct and found that the collision and subsequent loss were wholly attributable to the negligence of the "Taylor" in failing to have a proper anchor light and to keep a sharp lookout. The action was accordingly dismissed with costs and the plaintiffs appealed to the Supreme Court of Canada.

After hearing counsel for the parties, the court pronounced judgment dismissing the appeal with costs as it appeared that the case was clearly one depending solely upon the appreciation of the evidence by the trial judge and that there was evidence on behalf of the defence which, if believed, would entitle the defendant to succeed.

*Appeal dismissed with costs.*

*Mellish* for the appellants.

*Newcombe K.C.* and *Drysdale K.C.* for the respondent.