Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Shaw Savill and Albion Company, Limited, v. *The Timaru Harbour Board, from the Supreme Court of New Zealand (Canterbury District); delivered 30th April* 1890.

Present:

THE LORD CHANCELLOR.
LORD BRAMWELL.
SIR BARNES PEACOCK.
SIR RICHARD COUCH.

[*Delivered by the Lord Chancellor.*]

This is an appeal by a Company carrying on business as shipowners against a judgment of the Court of Appeal of New Zealand, whereby judgment was entered for the Defendants, the Timaru Harbour Board.

The Plaintiff Company owned a vessel called the "Lyttleton," and on 12th June 1886, while under the conduct and management of a person named Storm, the "Lyttleton" was sunk, as was alleged, by want of due care by Storm, who was a licensed pilot, and also was the Deputy Harbour Master of the Harbour of Timaru.

The cause was tried before Mr. Justice Richmond and a special jury, and a verdict was found for the Plaintiffs both for the value of the ship (14,000*l.*) and for the value of the cargo (17,000*l.*). Leave was reserved at the trial to enter a verdict for the Defendants in lieu thereof upon various points of law.

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The majority of the Court of Appeal, on the ground that no sufficient notice of action as required by a local statute had been given by the Plaintiffs, entered judgment for the Defendants, and this appeal is brought against that order of the New Zealand Court of Appeal.

With respect to the questions of fact involved in this appeal, their Lordships are of opinion that no ground has been shown for disturbing the verdict of the jury. They are of opinion that the loss of the vessel was due to the mismanagement and want of skill of the person then acting as pilot, and that the management of the tug did not in any material degree contribute to the catastrophe which happened.

In this view of the facts they are confirmed by the opinion of the Nautical Assessors.

The next question raised on the appeal is the validity of the notice of action, and this in turn depends upon the proof of agency in the person by whom, in fact, the notice of action was given.

That question was a question of fact, and if no arrangement had been arrived at by the parties must have been submitted to the jury. By consent, that question was withdrawn from the consideration of the jury and left for the determination of the Court.

It is not necessary for their Lordships to express any opinion upon this part of the case, inasmuch as the serious and important ground upon which the case was argued depended on the competency, in point of law, of the Timaru Harbour Board as constituted by statute to enter into pilotage contracts, or in their corporate capacity to employ a person as pilot for the conduct and management of a particular vessel.

Now the ambit of the Harbour Board's powers is prescribed by statute. That for their own purposes they might employ a pilot for the

purpose of moving vessels which neglected the orders of the harbour master in his capacity of administering the shipping in and about the harbour, may be true enough. But their sole duty, as constituted by statute, in respect of pilots was to license pilots between whom and themselves the only relation which the law contemplated as existing was that they should be under their supervision and under their jurisdiction for the purpose of being duly licensed; but once licensed the pilot had to make his own bargain with the shipowner, and would incur in that contract of pilotage only his own personal liability for the due performance of his duty. The statute and the rules made under it seem carefully worded so as to exclude the notion that the Harbour Board, in its corporate capacity, is acting as pilot for the vessels frequenting the harbour, and their Lordships are of opinion that what is not permitted to the Harbour Board under the statute is prohibited; they are not therefore authorized to pledge public funds for the purpose of entering into private engagements, and cannot be held responsible for the default of their harbour master, who in fact was acting as pilot for the vessel, not in the view their Lordships take of the facts as harbour master, but as pilot engaged by the parties themselves, and who was only himself personally liable for acting in the capacity of pilot, though he happened to fill the character of deputy harbour master at the same time.

The facts of the case are peculiar in this respect, that the transaction in question was out of the ordinary course of duty in more aspects than one. It would be intelligible that the Harbour Board should with their own tug and harbour master aid vessels in entering or departing from the harbour, having taken care that both their harbour master and the appliances at

his command were sufficient for the purpose of effecting the object desired. In this case the tug boat (by which the Harbour Board were in the habit of assisting vessels as they did) was out of repair; the parties, at their own risk, appear to have employed a steam tug not the property of or habitually under the command of the harbour master. And, when it is remembered that the accident itself happened partly by reason of the inappropriateness of the steam tug employed for the purpose, it is not an unimportant topic for consideration that even the ordinary practice of the Harbour Board, whether authorized or not by law, was not the practice in following which this accident happened, but the error of the pilot in attempting to conduct an operation by a vessel not used by the Harbour Board, and inappropriate for the purposes for which it was selected by the parties now complaining.

Their Lordships, however, are of opinion that, even had the misfortune happened in the use of the steam tug according to the ordinary practice and by the person who, as a matter of fact, was the harbour master, the Harbour Board had no authority to enter into such a contract, as they were not entitled by statute themselves to become pilots, but only to license others for that vocation.

Their Lordships will, therefore, humbly advise Her Majesty that this appeal should be dismissed, and that the judgment of the Court of Appeal of New Zealand should be varied by entering judgment for the Defendants, and that the Appellants pay the costs of the suit and of this appeal.