

## TORONTO ADMIRALTY DISTRICT

1928

Jan. 20.

BETWEEN:—

CANADA ATLANTIC TRANSIT CO..... PLAINTIFFS;

AND

EASTERN STEAMSHIP CO., LTD..... DEFENDANT.

*Shipping—Practice—Admiralty—Appeals—Collision—Both vessels to blame—Separate appeal by both—Rules 164, 168 and 169—Directions as to evidence at trial.*

*Held*, that where a judgment holds both vessels to blame for a collision and where each party is actively claiming against the other for damages, it is open to each to appeal from such judgment by a separate and distinct appeal. In such a case each must serve notice of appeal and give security to the other for costs of his appeal.

2. That rule 164 should be confined to cases where the respondent desires some modification in or enlargement of the judgment against the appellant or some relief against him but is not himself or his ship held to be liable in damages to the appellant.
3. When both claims have been tried together directions as to the evidence taken at trial and as to the costs of typewriting or printing it for the appeal, should be obtained under rules 168 and 169.

Application of plaintiff for permission to bring a separate appeal.

On the 10th day of January, 1928, the Honourable Mr. Justice Hodgins rendered judgment herein, finding the ships of both plaintiff and defendant to blame for a collision which had taken place.

On January 11, 1928, the defendant served a notice of appeal from the said judgment, and on the 18th of January, the plaintiff also served notice of appeal. On the 20th, the defendant moved to have the security furnished by it on appeal approved, when counsel for plaintiff stated that he proposed also to move for a similar order in reference to the appeal taken by the plaintiff. Thereupon the question of the right to separate appeal, and the effect of rule 164 was argued, the defendant contending that under this rule the respondent in an appeal was limited to serving the notice mentioned in said rule. The plaintiff contending that as by the judgment, both were found to blame and liable for part of damages, he should have a separate appeal, as the mere notice under rule 164 might leave him

without remedy, if, after the delay for appealing had lapsed, the defendant-appellant should abandon its appeal.

1928  
CANADA  
ATLANTIC  
TRANSIT Co.  
v.  
EASTERN  
STEAMSHIP  
Co., LTD.

The two motions were heard before the Honourable Mr. Justice Hodgins, at Toronto.

*J. P. Pratt* for plaintiff.

*G. S. Jarvis* for defendant.

The facts are stated above and in the head-note.

HODGINS L.J.A., now (20th January, 1928) delivered judgment (in Chambers).

(The memorandum handed down by the learned judge was very concise and short and is practically given verbatim in the head-note and is therefore not repeated here.)