1957

Apr. 30

May 2

ONTARIO ADMIRALTY DISTRICT

THOMAS A. NEIL .....PLAINTIFF;

AND

NORTHERN SHIPBUILDING & REPAIR CO. LTD. ..... } DEFENDANT.

Shipping—Action for damages allegedly caused plaintiff's schooner by defendant's ship—Defendant a gratuitous bailee—No negligence on part of defendant—Action dismissed.

Plaintiff claims for damages sustained by his schooner the *Heron* which had been purchased by him from an officer of defendant company who had given permission to plaintiff to moor the schooner at defendant's wharf. The damage was caused by another ship the *Magedoma* moored at the same dock at the same time and which by reason of unprecedented high water and terrific wind broke from the dock and shoved the *Heron* against the dock causing the damage complained of.

Held: That defendant was a gratuitous bailee and could only be responsible for damage caused by its negligence.

2. That the *Magedoma* had been reasonably and properly moored and defendant was not negligent in any way.

ACTION for damages.

The action was tried before the Honourable Mr. Justice Barlow, District Judge in Admiralty for the Ontario Admiralty District, at Toronto.

(1) [1905] P. 198.

L. A. Fitzpatrick for plaintiff.

J. W. Thompson, Q. C. for defendant.

BARLOW D. J. A.:—The plaintiff as the owner of the schooner *Heron* claims for damages sustained by the *Heron* when, on the night of Hurricane Hazel on the 15th October, 1954, she was shoved against the dock of the defendant in the harbour at Bronte by the *SS. Magedoma,* which was also docked in the same harbour.

The *Heron* was purchased by the plaintiff from Harry D. Greb, a Vice-President of the defendant Company under a bill of sale dated the 5th day of June, 1954. The *Heron* was the personal property of Greb and had been moored while he owned it, in the harbour at Bronte, at a dock owned by the defendant. I accept the evidence of Greb that after the sale he told the plaintiff that he, the plaintiff, could continue to moor the *Heron* at the same dock. A number of other vessels were moored in the same harbour and at the same dock or nearby, among them the ship *Magedoma.* At no time was any arrangement made by the plaintiff with the defendant company, unless it can be said that the permission of Greb, the Vice-President of the defendant Company to moor the *Heron* there was an arrangement.

The *Heron* continued to be so moored when not in use during the summer of 1954, and no payment therefor was made or requested to be made. The fact that the defendant Company continued to permit the plaintiff to moor the *Heron* at its dock cannot place the defendant in a higher position than a gratuitous bailee. As such the defendant would only be responsible for damage caused by its negligence.

The *Magedoma* was moored some little distance from the *Heron* alongside the bank, with lines from its bow and its stern attached to two blocks of cement partly buried in the earth, each weighing about ten tons. On the night of Hurricane Hazel by reason of the unprecedented high water and terrific wind, the bow of the *Magedoma* pulled the block of cement to which its bow lines were attached, out into the river, and the bow of the *Magedoma* swung around in a 180 degree arc against the *Heron* shoving the *Heron* against the dock and thus causing the damage.

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Barlow D.J.A.

The question is: Was the *Magedoma* reasonably and properly moored? The *Magedoma* had been moored in the position in which she was at the time of Hurricane Hazel for some two years, and had withstood the spring freshets. The evidence of experienced and reputable witnesses satisfies me that the *Magedoma* was reasonably and properly moored, and that the defendant took all such reasonable precautions in her mooring as it would have done with its own goods. This is all that can be required from a bailee for reward, whereas I have already found that the defendant was in no higher position than a gratuitous bailee.

I cannot find that the defendant was negligent in any way.

The action will be dismissed with costs.

Judgment accordingly.