Vancouver 1964 / Oct. 6, 7 / 1965 / Jan. 22

BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN:

BURRARD TERMINALS LIMITED .....PLAINTIFF;

AND

STRAITS TOWING LIMITED .....DEFENDANT.

Shipping—Barge breaking loose from mooring in windstorm—Damage to neighbouring dock—Liability of barge owner—Negligence—Onus of proof—Nuisance.

Defendant moored three barges to an insubstantial mooring in busy Vancouver harbour in close proximity to plaintiff's dock. During a severe windstorm, of which defendant had warning, one of the barges broke loose and damaged plaintiff's dock.

Held, defendant was liable for the damage. The owner of a vessel which goes out of control must prove that it did so without his fault. The evidence here did not establish that the defendant took reasonable care to ensure that the barge was securely moored.

Held also, from the time the barge broke adrift it constituted a nuisance.

Newby v. General Lighterage Co. Ltd. [1955] 1 Lloyd's Rep. 273; *Scott v. London & St. Katherine Docks Co.* (1865) 3 H. & C. 596; *Le-Lievre v. Gould* (1893) 1 Q.B 491; *The Velox* [1955] 1 Lloyd's Rep. 376, applied.

ACTION for damages.

T. P. Cameron for plaintiff.

Robert J. Harvey for defendant.

NORRIS D.J.A.:—This is an action by the plaintiff, the owner of a dock situate on the north shore of Burrard Inlet in North Vancouver, B.C., against the defendant, being the owner and operator of barges and towboats and in particular being at all material times the owner and operator of a barge, *Straits No. 7.*

The facts with reference to the plaintiff's claim are as follows:

On the night of October 12, 1962, the barge, *Straits No. 7,* broke loose from its moorings at Moodyville Scow Grounds, which are situate a short distance to the east of the plaintiff's dock in Vancouver Harbour, during a severe wind storm, and the barge being unattended was driven by the wind and sea against the plaintiff's dock and damaged it.

The plaintiff claims that the damage to the dock was due to the negligence of the defendant as follows:

(a) Despite having received ample warning of the wind storm referred to in Paragraph 3 hereof, the Defendant did not so secure the *Straits No. 7* as to preclude the possibility of the said Barge breaking adrift from its moorings.

(b) Once the said Barge had broken adrift the Defendant failed to recapture it before it had done the damage complained of.

The plaintiff claims in the alternative that:

. . . the Defendant's Barge *Straits No. 7* constituted a nuisance in that having broken adrift from its moorings as aforesaid the Defendant, knowing that the said Scow was adrift in Vancouver Harbour, allowed it to drift unattended so that it struck the Plaintiff's dock and caused damage thereto and despite the fact that the Defendant knew that the said Scow was ranging against the Plaintiff's dock, held by wind and tide, the Defendant allowed it to continue to do so whereby the Plaintiff's dock was further damaged and whereby the Plaintiff suffered loss and was put to expense.

The plaintiff claims damages for the cost of repairing the dock and the rental of a tug "assisting thereat".

In the Statement of Defence the defendant, after general denials, alleges that the defendant did not cause or permit the *Straits No. 7* to break adrift from its moorings, that the mooring facilities at the Moodyville Scow Grounds gave way under the stress of winds allowing the *Straits No. 7* to come clear of her moorings, that the defendant caused the *Straits No. 7* to be recovered as soon as possible under the circumstances, and that any damage to the plaintiff's dock was caused solely by reason of the dilapidated condition thereof.

The defendant further alleges that at all material times the *Straits No. 7* was secured to its moorings at Moodyville Scow Grounds in a proper and seamanlike manner but that on or about midnight of October 12-13, severe and unanticipated gale force winds caused the *Straits No. 7* to come clear of her moorings and to drift down to the Burrard Terminals Docks and that the severe unanticipated gale force winds were of such a nature as to constitute an Act of God for which the defendant is not responsible. Alternatively, the defendant says that neither it nor its servants or agents were guilty of negligence causing or contributing to any loss or damage.

At the trial the Court raised a question as to its jurisdiction to try this action on the footing of the judgment in *The Robert Pow*.[1] Counsel for both parties argued that the Court did have jurisdiction, and the Court decided that the

[1] (1863) Br. & L. 99.

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Court's jurisdiction had in effect been settled as a result of the judgment in *The Zeta*.[1] The grounds on which the Court arrived at this decision are in general those set out in *Anglo-Canadian Timber Products Limited v. Gulf of Georgia Towing Company Limited, et al.*[2]

The facts relating to the damage to the dock by the barge were not disputed on trial nor was there any effort to prove that the dock was in a dilapidated condition.

Counsel for the plaintiff put forward his argument under four headings:

(1) that to escape liability the defendant must prove inevitable accident;

(2) that alternatively the defendant was negligent and is therefore liable;

(3) that the defendant created a nuisance or adopted it, due to which the plaintiff suffered damage and for which the defendant is liable;

(4) that even if the defendant is not liable in tort in the ordinary sense, the judgment in *Rylands v. Fletcher*[3] applies, and that the strict rule in that case is imposed on the defendant under the circumstances.

The argument of counsel for the defendant was based on the broad ground that there was no proof of negligence on the part of the defendant, its servants or agents. He divided his argument into three parts:

(1) that the rule in *Rylands v. Fletcher* does not apply because facts which might support the application of that rule were not pleaded; that it was not in issue on the pleadings that the barge was dangerous, and that in order to succeed on the basis of the rule in *Rylands v. Fletcher* there must be a "dangerous item" which escaped from land.

(2) that the plaintiff had not led any evidence from which the Court could infer that the defendant was negligent. His submission is in short form contained in the following extract from the transcript:

> The plaintiff has proven the incident and the burden is now on the defendant to establish some cause how that could have happened without negligence and if that explanation is given and if from that evidence an inference can be drawn that the defendant was not negligent, then ... the case has to be dismissed because the plaintiff having the burden of proof has not discharged it.

[1] [1893] A.C. 463. [2] (1964) 50 W.W.R. 122. [3] (1868) 3 H.L. 330.

He further submitted that the defendant was not liable for the condition of the mooring because the Scow Grounds were not owned by the defendant but by a towboatmen's association and that there was no evidence to show that the defendant ought to have known that the Scow Grounds were inadequate; that there was no evidence to show that there was any apparent defect in the mooring grounds or that the defendant therefore either knew or should have known that they were inadequate and that such matter was not pleaded.

(3) that the plaintiff was not entitled to rely on nuisance which arose from the very beginning because the pleadings alleged only that the nuisance was constituted by the drifting scow after it had broken adrift; that as to the nuisance created by the scow after it was adrift, the defendant had one of its tugs go to the location of the scow but by reason of the heavy winds was not able to remove it from the dockside.

As to the defence of Act of God or inevitable accident, it is important to bear in mind the following extracts from the transcript:

THE COURT: . . . Now, Mr. Harvey, substantially your defence is that this was an act of God?

MR. HARVEY: No, my lord, substantially my defence, that I will argue, at least, is that we were not negligent. I have little confidence in the defence of a pleading of an act of God. This type of storm has taken place on several occasions previously and I will not be arguing that that is the defence.

THE COURT: What do you argue?

MR. HARVEY: It is in three branches, my lord.

THE COURT: I am not anticipating your argument; you argue just as you see fit.

MR. HARVEY: Yes.

THE COURT: I was just curious because I just wanted to get the act of God—

MR. HARVEY: My lord, it may be of some assistance if I refer you to that point, I refer you to SALMOND on TORTS, the 12th Edition at Page 572, and there is a quotation from Baron Bramwell in a case in 1858 speaking of an extraordinary storm.

THE COURT: What was the case?

MR. HARVEY: *Ruck v. Williams*, my lord, 1858, Volume 157 of the English Reports, at Page 488.

THE COURT: All right.

MR. HARVEY: The learned Baron said:

"We call it extraordinary, but in truth it is not an extraordinary storm which happens once in a century, or in fifty or twenty years; on the contrary, it would be extraordinary if it did not happen. There is a

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French saying that 'there is nothing so certain as that which is unexpected'."

THE COURT: That is right, that is not what I wanted to get clear, I wanted to know whether that was the basis of your argument.

MR. HARVEY: No, my lord, it is not.

THE COURT: Because it seems to me that was the trend of your evidence Anyway, you say you don't argue that?

MR HARVEY: No, I won't argue that, my lord, although I certainly will argue that the winds here had a causative effect on the loss, but that will arise in my argument on negligence, rather than any argument in support of a plea of act of God.

THE COURT: You say substantially that you are not negligent, anyway?

MR HARVEY: That is right, my lord.

THE COURT: Contributing to the accident, now, just so that I may get that clear, you are not arguing inevitable accident or act of God?

MR. HARVEY: No, my lord.

THE COURT: Because there is some distinction?

MR. HARVEY: Although it could be said that inevitable accident is part of my defence, in that I will be arguing that the breaking away was not as the result of any negligence on our part; ergo, this was inevitable accident, so I shouldn't really say with such assurance that inevitable accident is not part of my case

THE COURT: I just want to get this, well, as I understand it, inevitable accident includes the term, it is the broader term, includes the term "Act of God", and it is one of those branches, you see.

MR. HARVEY: In my argument, I will be using inevitable accident in the sense that there was no negligence on our part that contributed to the loss, and perhaps it is unnecessary to plead inevitable accident, as I understand it, if in fact you establish that you were not negligent, but perhaps I am just making my argument confusing if I talk about inevitable accident at this point.

THE COURT: I saw Mr. Cameron shaking his head at something I said; I don't know why, because I think the authorities make it quite clear.

MR. CAMERON: I wouldn't presume to shake my head at what your lordship says.

THE COURT: When you were enunciating the proposition of inevitable accident, you may include in the class that which is an Act of God.

MR. CAMERON: Yes, I am quite sure your lordship is right. Actually, I was really thinking to myself when my friend said he was going to argue no negligence but not inevitable accident, that this is impossible, because in a case like this, if there is no negligence, ergo, it must be inevitable accident.

MR. HARVEY: That is exactly what—

MR. CAMERON: That is why I was shaking my head, my lord, and the term "inevitable accident" is almost unnecessary, it means no negligence.

THE COURT: He doesn't have to show how the accident was caused, he has to show that it was not caused by any negligence which contributed to the casualty. That, I think, is the proper way to put it.

MR. CAMERON: Yes, my lord.

THE COURT: All right.

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MR. HARVEY: My lord, the one real issue that I see in this case is whether or not we were negligent, the Straits Towing Limited was negligent, because if we were, we are liable; if we were not, we are not liable. The answer to that issue will determine the case, I suggest.

THE COURT: The only reason I raised the question was because it is pleaded, you see.

After referring to *The Saint Angus*[1] and *The Merchant Prince*[2] in order to distinguish them, and quoting from *United Motors Service v. Hutson*[3], he then went on:

So, my lord, I say that this case decides that the line of cases as shown by the *Merchant Prince* only applies to a certain type of case, and the *Merchant Prince* rule only applies to the type of case where a ship underway runs into a ship at anchor, and there is an implication of law there from that act that the defendant is liable unless he can prove inevitable accident. Now, this is not the case here in this case at bar, because the rule I see here, the Plaintiff has proven the incident, and the burden is now on the defendant to establish some cause how that could have happened without negligence, and if that explanation is given and if from that evidence an inference can be drawn that the defendant was not negligent, then, my lord, I submit the case has to be dismissed, because the Plaintiff having the burden of proof, has not discharged it; . . .

In my opinion, although the statements may appear to be somewhat contradictory, they constitute a complete abandonment of "Act of God" and "inevitable accident" as positive defences.

He thereafter went on to cite several authorities, relying strongly on the judgment of Coady J. in *McDonald Aviation v. Queen Charlotte Air Lines*[4], affirmed by the Court of Appeal[5]. The decision of the Court of Appeal really turned on the applicability of the doctrine of frustration and Coady J. held that "the circumstances surrounding the occurrence do not disclose facts from which a reasonable inference as to the actual cause can be drawn". This statement is sufficient to distinguish that case from the case at bar as the facts in the two cases are widely different.

In my respectful opinion the law applicable is stated clearly in *Newby v. General Lighterage Company, Ltd.*[6]:

It was conceded in the Court below, and I think rightly conceded, that the burden was on the owners of the barge to prove that it was there without their fault. It needs no words to emphasize that a vehicle or a vessel which is out of control in a public highway is a great danger to other persons using the highway. So great is it that the law holds the owner of it responsible for all damage which it may do unless he can prove that it was quite without his fault that it came to be out of control. The burden on him is not merely a provisional burden of explanation such as arises in

[1] [1938] P. 225. [2] [1892] P. 179. [3] [1937] S.C.R. 294.
[4] [1951] 1 D.L.R. 195. [5] [1952] 2 D.L.R. 291.
[6] [1955] 1 Lloyd's Rep. 273 at 277.

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cases of *res ipsa loquitur*. It is a legal burden to prove that he was not at fault, as in *The Merchant Prince*, [1892] P. 179, and *Southport Corporation v. Esso Petroleum Company, Ltd.*, [1954] 2 Q.B. 182; [1954] 1 Lloyd's Rep. 446. In the recent case of *Smith v. W. G. Marriott & Son, Ltd.*, [1954] 2 Lloyd's Rep. 358, Mr. Justice Ormerod had the case of a drifting barge before him. He said (at p. 360):

> ". . . the burden of proof is on the defendants to satisfy me that they did take reasonable care to ensure that this barge was properly moored and properly secured when it was left by them and that they had taken reasonable precautions to maintain it in that secure position."

I agree with that statement of the law. The legal burden is on the defendants to prove that this barge was adrift without any fault on their part.

In considering the duty to take care, the requirements of that duty must be determined in accordance with the circumstances of each particular case.

In the case at Bar there is no doubt that the barge caused the damage to the wharf and was under the management of the defendant and its servants, being unattended at the time the damage was done. There is no doubt that the accident was such as in the ordinary course of things does not happen if those who have the management use proper care. In the absence of explanation by acceptable evidence on behalf of the defendant this is reasonable evidence of negligence on the part of the defendant sufficient to place a burden on it of showing an absence of negligence on its part: *Scott v. The London and St. Katherine Docks Company*[1]:

> But where the thing is shewn to be under the management of the defendant or his servants, and the accident is such as in the ordinary course of things does not happen if those who have the management use proper care, it affords reasonable evidence, in the absence of explanation by the defendants, that the accident arose from want of care.

See also *The Telesfora DeLarrinaga*[2], Bucknill, J. at p. 96.

The proximity of the mooring to the plaintiff's dock is of importance when considering the duty of care resting upon the defendant and the extent thereof, as the defendant must be taken to have known that an inadequate mooring at the Moodyville Scow Grounds would always constitute a threat to the safety of the Plaintiff's dock. In *LeLievre v. Gould*[3], Lord Esher, M.R. in paraphrasing the decision in *Heaven v. Pender*[4], in my opinion, with respect, put the matter very well indeed when he said:

[1] (1865) 3 H. & C. 596 at 601.
[2] (1939) 65 D.L.R. 95.
[3] [1893] 1 Q.B. 491 at 497.
[4] (1883) 11 Q.B.D. 503.

That case established that, under certain circumstances, one man may owe a duty to another, even though there is no contract between them. If one man is near to another, or is near to the property of another, a duty lies upon him not to do that which may cause a personal injury to that other, or may injure his property. For instance, if a man is driving along a road, it is his duty not to do that which may injure another person whom he meets on the road, or to his horse or his carriage. In the same way it is the duty of a man not to do that which will injure the house of another to which he is near. If a man is driving on Salisbury Plain, and no other person is near him, he is at liberty to drive as fast and as recklessly as he pleases. But, if he sees another carriage coming near to him, immediately a duty arises not to drive in such a way as is likely to cause an injury to that other carriage. So, too, if a man is driving along a street in a town, a similar duty not to drive carelessly arises out of contiguity or neighbourhood.

The severity of the storm as an extraordinary event is not available to the defendant in the circumstances of this case to meet the *prima facie* case of negligence:

(*a*) because of the terms of the abandonment by counsel, already quoted, of the defence of Act of God or inevitable accident; considered together with the following matters:

(*b*) the evidence of Captain Sundstrom, the Master of the *Arctic Straits* who had been engaged on the British Columbia coast for nineteen years on tug boats and as a master for twelve years. It was the *Arctic Straits* which took the *Straits No. 7* to the mooring grounds, and his evidence is as follows:

Q. During the time that you had operated tug boats in the general Vancouver area—well, let's say, in the B.C. area—had you experienced winds as strong as this in the Vancouver Harbour?

A. Yes.

(*c*) because in a maritime operation in Vancouver Harbour such storms may be expected and it is part of the duty of persons mooring barges to moor them in anticipation of such weather.

(*d*) the weather forecast issued at Vancouver on Friday, October 12, 1962.

At 5:00 A.M. Synopsis:

The intense storm centred just west of Vancouver Island is now weakening slowly. Gales buffeted the south coast throughout the night and peak gusts exceeding 70 mph were experienced at Victoria, Comox and Tofino. Winds will slacken slowly this morning and should drop to below gale force by this afternoon. However, another disturbance now intensifying off the California coast is expected to bring rain and gales to the south coast again tonight.

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At 11:00 A.M. Synopsis:

The storm that has lashed the coast for the last twenty-four hours is weakening over northern Vancouver Island. The lull will be very brief however for there is a new storm approaching which promises to be just as vigorous as the last. Gales and rain overnight with a slow decrease in wind on Saturday as the center becomes weaker along the north coast.

At 3:00 P.M. Synopsis:

A new storm is battering the California coast and will move northward to the lower B.C. coast tonight. Strong southeast winds and rain are forecast for coastal waters as the storm approaches. The rain will change to showers and the winds subside slowly on Saturday.

At 7:00 P.M. Synopsis:

An intense storm centre now off the south of the Columbia River is expected to move steadily northward to reach northern Vancouver Island by Saturday afternoon. Strong east to southeast winds will develop over most waters adjacent to Vancouver Island tonight and subside slowly on Saturday. Rain which accompanies the storm will change to showers tomorrow.

At 9:00 P.M. Synopsis:

Rain is spreading over the south half of the province as a new storm moves steadily northward along the Oregon coast. Strong southeast winds can be expected over the lower coast through the night. The centre of the storm is forecast to move to northern Vancouver Island by noon on Saturday. It will likely weaken rapidly thereafter leaving unsettled showery weather over most regions of the province for the weekend.

Gale warnings for Georgia Strait were given throughout the period referred to. In considering this matter the words of Willmer J. in *The Velox*[1] are in point:

I have already stressed that this collision occurred during a period of weather which was wholly exceptional. I have been reminded, and quite properly reminded, that no seaman can be called upon to exercise more than ordinary care; but I think it is necessary to observe that when a seaman is called upon to face wholly exceptional conditions, ordinary care of itself necessarily demands that exceptional precautions may have to be taken.

and at p. 382:

In those circumstances, it seems to me that, although the measures demanded by the situation may be regarded as exceptional, nevertheless they were no more than those required of a seaman of ordinary care and skill, having regard to the exceptional weather conditions prevailing.

and Baron Bramwell's proposition in *Ruck v. Williams*[2] speaking of an "extraordinary storm":

We call it extraordinary, but in truth it is not an extraordinary storm which happens once in a century, or in fifty or twenty years; on the contrary, it would be extraordinary if it did not happen. There is a French

[1] (1955) 1 LL.L.R. 376 at 380. [2] (1958) 3 H. & N. 308 at 318.

saying "that there is nothing so certain as that which is unexpected." In like manner, there is nothing so certain as that something extraordinary will happen now and then.

These words are particularly applicable to people engaged in maritime affairs who, because of their very occupation, should be apprehensive of weather conditions.

The burden on the defendant in this case is infinitely heavier than in the ordinary case because, as Lord Denning said in *Newby v. General Lighterage Company, Ltd., supra:*

> It needs no words to emphasize that a vehicle or a vessel which is out of control in a public highway is a great danger to other persons using the highway. So great is it that the law holds the owner of it responsible for all damage which it may do unless he can prove that it was quite without his fault that it came to be out of control. The burden on him is not merely a provisional burden of explanation such as arises in cases of *res ipsa loquitur*. It is a legal burden to prove that he was not at fault, ...

It is true that the defendant is not an insurer as was indicated by Bucknill, J. in *The Telesfora DeLarrinaga* case, but is "a person who must take ordinary steps to meet the conditions to be anticipated by prudent seamen". For the reasons already stated, the conditions on the night in question were to be anticipated. Considering what was reasonably prudent in the circumstances, it is borne in mind that Exhibit 1 shows that the mooring was in close proximity to the dock of the defendant's and to a succession of docks in the area, that the harbour is restricted in size, that the traffic in the harbour is heavy, that the evidence, including that of Captain Williams, shows that the mooring was insubstantial, being merely a mooring to wooden dolphins and boomsticks. The mooring which Captain Williams gave evidence that he used was of a very different and very much more substantial and permanent kind, consisting of inside and outside buoys connected with logs which were in turn chained to concrete blocks by 2½" chains, the concrete blocks being approximately twelve tons in weight. It does not avail the defendant to argue that even these blocks were dragged into the centre of the harbour by the force of the storm. The actual mooring to the blocks held, whereas Captain Sundstrom, whose evidence I accept, testified that the barge broke adrift because the boomsticks broke, and at least one dolphin pulled out and a wire or wires to the boomsticks or dolphins broke.

The three barges of the defendant were the only barges on the mooring ground. From the evidence it would appear

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that there were some thirty-odd scows moored in the same grounds but these were lighter vessels. The two other barges were secured to the *Straits No. 7* and were not moored independently. The three barges were not manned and there was no means of controlling them if they broke adrift. From the evidence it would appear that the defendant's barges were the only vessels which broke adrift. It would have been a matter of prudent operation when the defendant was using such heavy and cumbersome barges as the three in question, moored as they were moored, to have had available for immediate use a tug or similar vessel to move the barges in case of emergency. Due apparently to the lack of tugs, the defendant did nothing immediately to recover and secure the barges when it had knowledge that they were adrift.

The Moodyville Scow Grounds were checked at 11:40 P.M. at which time it was blowing very hard. No further precautions were taken then or later with regard to the *Straits No. 7* or the other barges. The *Straits No. 7*, adrift and uncontrolled, remained at the plaintiff's dock for some three hours before it was taken away. The evidence is that during those three hours, damage would be done to the dock. The evidence is that the *Straits No. 7* was not removed because of the gale that was blowing.

The barges were moored side by side and I find on the evidence that had they been moored on line ahead, and independently secured, there would have been less likelihood of their breaking adrift. It is not sufficient for the defendant to say, as counsel said, that the barges were tied as barges or scows were customarily secured. It has not been shown that under the circumstances then existing this was the proper and seamanlike thing to do.

Counsel for the defendant argued that the defendant is not liable for the insufficiency or inadequacy of the boomsticks "and so on", or for the condition of the mooring because the mooring ground was owned by another company with which the defendant had an arrangement to moor the barges. I reject this proposition. Under the circumstances it was for the defendant to make sure that the

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mooring was in all respects secure. The evidence is that on a strong gust of wind one of the barges moved, a line broke, a dolphin pulled out and the east end of the barge swung out, as a result of which other lines broke and the three barges swung out. There is no evidence that there was proper or adequate examination of the moorings.

Counsel for the defendant argued that paragraph 4 (*a*) of the Statement of Claim, reading:

> (*a*) Despite having received ample warning of the wind storm referred to in Paragraph 3 hereof, the Defendant did not so secure the *Straits No. 7* as to preclude the possibility of the said Barge breaking adrift from its moorings.

was not a sufficient plea that the defendant knew or should have known that the mooring ground was inadequate. This argument is without foundation and I find that the plea referred to is sufficient.

The defendant has not met the burden of proof to satisfy me that it did take reasonable care to ensure that the barge was properly moored and properly secured and that it had taken reasonable precautions to maintain it in a secure position.

I think that the pleadings are sufficient to allege a claim of nuisance (as alleged in paragraph 5 of the Statement of Claim) and as I read the paragraph it is broad enough to allege liability from the time that the barge broke adrift. It is true that the inception of the nuisance relates back to the way in which the vessel was moored but that does not alter the liability of the defendant in this regard. In this connection I refer to the judgment of Locke J. in *Goodwin Johnson Ltd. v. AT & B No. 28*[1], and in particular what was said by Lord Wright in the *Sedleigh Denfield* case quoted by Locke J. at p. 517.

It is not a defence for the defendant to say that the place from which the nuisance proceeded was a suitable one for the purpose of carrying on the operation and that no other place was available.

I find that the claim of nuisance has been established. In view of my findings that the defendant has not satisfied me in accordance with the principles laid down in *Scott v. The*

[1] [1954] S.C.R. 513 at 516-7.

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London and St. Katherine Docks Company, supra, that it has not been guilty of negligence, and that the nuisance has been established, it is not necessary for me to deal with the argument by counsel for the plaintiff on the principles laid down in *Rylands v. Fletcher, supra,* and I do not do so.

There will be judgment for the plaintiff and a reference to the Registrar to ascertain damages.

Judgment for plaintiff.