NOVA SCOTIA ADMIRALTY DISTRICT.

SIR ROBERT BOAK.....PLAINTIFF 1903

May 23.

AGAINST

THE SHIP "*BADEN*."

*Maritime law—Damage to wharf by ship—Negligence—Liability.*

A ship was moored in her dock with her bow to the east. Her stern, being at the inner end of the dock, was partially protected by the wharf and stores to the south, while the bow and fore-part of the ship, extending eastwardly beyond any such protection, was exposed to the full force of a southeasterly gale. There was an anchor out, with 25 fathoms of chain, on the starboard bow of the ship; but it was not in a position to help the ship from swinging against the wharf in the event of such a gale. A gale from the direction mentioned having sprung up, the master of the ship ran out a small wire rope from the starboard side of the ship's stern to a wharf on the south of her berth; but the evidence showed that this rope had no effect in preventing the collision of the port bow of the ship with the plaintiff's wharf. During the gale this wharf was considerably damaged by the pounding of the ship against it from the force of the wind and waves.

*Held*, that the master of the ship had failed to exercise seamanlike care, forethought and skill in omitting to so place his anchor as to protect his ship from the force of the gale and prevent her colliding with the wharf, and that the damage was attributable to his negligence and not to inevitable accident.

ACTION for damages for injury to the plaintiff's wharf alleged to have arisen from the negligence of the master of the ship.

The facts are stated in the reasons for judgment.

July 17th, 1902.

The case came on for trial, at Halifax, before the Local Judge in Admiralty for the Admiralty District of Nova Scotia.

*H. McInnis* for the plaintiff;

*R. L. Borden, K.C.* and *T. R. Robertson* for the ship.

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MACDONALD (C.J.) L. J., now (May 23rd, 1903) delivered judgment.

The plaintiff is a merchant and wharf owner resident in the Port of Halifax. The *Baden*, a German ship, arrived in the Port of Halifax on the 28th day of May, 1902, with a cargo of salt from Lisbon, consigned to Mr. Whitman, a merchant of Halifax, and was on arrival docked at his wharf, where she discharged a part of her cargo. On the 17th June, the *Baden* was moved by her master from Whitman's wharf to that of the plaintiff, which lies a couple of wharves to the north of Whitman's. She was docked on the south side of the plaintiff's wharf (called the south wharf), having a smaller wharf of the plaintiff, known as the coal wharf, immediately south of her berth; but not entering as far into the waters of the harbour as the wharf at which the *Baden* was moored. The *Baden* was taken from Whitman's wharf to the dock at plaintiff's wharf by a tug, and was moored with her head E. by S. When taking the ship into dock her anchor was lowered with 25 fathoms of chain, that is a distance of 25 fathoms from the bow of the vessel when fastened in her dock. This anchor, as ascertained after the accident, was on a line about a point on the starboard bow of the ship, or on a course E. $\frac{1}{2}$ S. The ship was well and sufficiently fastened to the plaintiff's north and south wharf, or rather to the north and south sides of the same wharf; but had no fastening or lines from the ship to the southward until the evening of the day of the accident, when a wire rope from the starboard side of the ship and near the stern was fastened to the plaintiff's wharf, called the coal wharf, to the south. On the 26th May, in the afternoon, a severe storm from the southeast arose and ended in a heavy gale, blowing with full force on the starboard side of the ship, which by reason, as the

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plaintiff alleged, of insufficient and unseamanlike management on the part of the master and crew of the ship resulted in serious injury to the wharf by the force with which the *Baden* was driven on and against it. The defence on which the defendant relied at the trial was that the loss complained of resulted from inevitable accident and not from the carelessness, negligence, or incompetence of the master and crew of the ship. The negligence relied upon by the plaintiff was the want of care manifested in making no provision against the effects of a south-east wind. The south or rather perhaps the south-east side of the plaintiff's wharf from its situation is much exposed to, and almost entirely unprotected from, winds from that quarter, and while due care appears to have been exercised in securing the fastening of the ship to the wharf on the north side, the necessity of protecting the ship and wharf from the effects of a south-east gale does not appear to have been considered with seamanlike or reasonable care. It will be seen from a careful perusal of the evidence that the *Baden* was moored in her dock with her bow to the east. Her stern being at the inner end of the dock was partially protected by the wharf and stores to the south, while the bow and forepart of the ship extending eastwardly beyond any such protection was exposed to the full force of the south-easterly gale. The only precaution taken by the master to prevent the vessel being impelled with full force against the south dock to which she was fastened on her north side, was a wire rope from the ship's starboard stern to the small coal wharf to the south of her; and this measure of precaution was only taken after the wind had risen to a gale. I think it is quite clear from the evidence that this wire cable could have no effect in preventing the collision of the ship with the wharf. There was nothing to prevent the collision

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of the ship with the wharf especially on the port bow, and practically for the whole length of the ship. The rise and fall of the vessel consequent on the heaving sea, and the force with which under the impulse of such a wind and sea it was thrown against the wharf, indicate, it appears to me, a great want of judgment and skill on the part of the master, which of itself would create a liability on the part of this ship in favour of the plaintiff. But the plaintiff also relies upon the want of seamanlike care, forethought and skill on the part of the master in omitting to use his anchor as he should have done as a means of saving his ship from the effect of the gale and preventing her from pounding on the wharf as she did. It will be seen from the evidence of the experts and by the sketch showing the situation used at the trial, that the position of the anchor when let go was almost in a direct line with the dock, and the ship in the dock, and could not possibly have any effect in keeping the vessel from swinging against the dock under the influence of the gale, while had the anchor been placed at least 4 or 4½ points further south, it would have held the ship from the wharf. As to the negligence and want of skill charged in relation to the placing of the anchor, the defence or excuse of the master is first, that as he was not well acquainted with the wharf and harbour, had never in fact been here before, he left the matter in the hands of the master of the tug, and made no suggestion as to how the ship should be moved; and, secondly, that under the circumstances in proof the loss complained of was the result of inevitable accident. The learned counsel for the defendant cited a number of cases in which a definition of the phrase "inevitable accident" has been given by the courts; but I shall content myself with that given by the author of *Marsden on Collisions at Sea*, who says (1):

(1) 4th ed., p. 8.

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"To constitute inevitable accident it is necessary "that the occurrence should have taken place in such "a manner as not to have been capable of being pre- "vented by ordinary skill and ordinary prudence. "We are not to expect extraordinary skill or extra- "ordinary diligence, but that degree of skill and of dili- "gence which is generally to be found in persons who "discharge their duty" and Dr. Lushington defined "inevitable accident" to be "that which a party charg- "ed with an offence could not possibly prevent by the "exercise of ordinary care, caution and maritime skill."

In the *William Lindsay* (1) the court said: "Now "the master is bound to take all reasonable pre- "cautions to prevent his ship doing damage to "others. It would be going too far to hold his "owners to be responsible because he may have "omitted some possible precaution which the event "suggests he might have resorted to. The rule is "that he must take all such precautions as a man of "ordinary prudence and skill, exercising reasonable "foresight, would use to avert danger in the circum- "stances in which he may happen to be placed."

I do not think the master of the *Baden* can divest himself of responsibility as master of his ship by permitting the master of the tug, which towed his ship into her dock, to select and determine the manner in which the ship shall be secured in her dock. As to the anchor it appears to be quite clear that had it been dropped four or five points further south, or even further, and properly secured with a sufficient length of chain, it would be in the power of the crew of the ship at any time to heave the bow of the ship so far south of and away from the wharf as to make it highly improbable that the injury and loss complained of could have resulted. And apart from

(1) L. R. 5 P. C. at p. 343.

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the opinions of the experts on the trial, it appears to me that a glance at the chart and sketches, put in on the trial, is sufficient to convince one not an expert or seaman, first, that the anchor where it was dropped and left was manifestly useless for any purpose of protection of the wharf in a S. or S. E. gale; and secondly, that if the anchor had been placed four or five or six points further south the injury in all probability would not have happened. It appears to me, therefore, that in this point of the case the master of the *Baden* was clearly chargeable with want of judgment, ordinary care, skill and seamanship. I do not think the master can shelter himself under the excuse that he had never been in the harbour before. It was his duty to inquire and ascertain from his pilot or others whether any and what peculiar conditions of climate or weather existed against which it would be prudent for him to take precautions; and he was long enough in port before the accident happened to make himself informed on all these questions. While as to the exposure of his ship to danger from a southerly gale it is not possible to conceive that a seaman of the most ordinary intelligence would not observe this at a glance. I have for these reasons come to the conclusion that the damage to the plaintiffs was caused by the reason of the want of care and seamanship of the master of the *Baden*, and that the plaintiff is entitled to recover the compensation sought in this action with costs. It was agreed at the trial that if the evidence on the question of the extent of damage is necessary at a later date, the same may be taken before the registrar.

*Judgment accordingly.*

Solicitor for plaintiff: *W. H. Fulton.*

Solicitor for the ship: *H. C. Borden.*