

MACMAHON, J.

SEPTEMBER 19TH, 1902.

## TRIAL.

## MIDLAND NAVIGATION CO. v. DOMINION ELEVATOR CO.

*Ship—Charterparty—Breach—Time—"Load," Meaning of—Measure of Damages.*

Action to recover \$4,950 for alleged breach by defendants of an agreement to furnish the plaintiffs' steamer "Midland Queen" a cargo of grain to be carried from Fort William to Goderich. The defendants denied liability and counter-claimed for \$7,500 damages for alleged breach of agreement to carry the cargo between the two places.

The correspondence forming the contract was carried on by A. F. Read of Montreal, representing plaintiffs, and G. R. Crowe of Winnipeg, representing defendants.

November 22, 1901. Crowe wired Read "to load Midland Queen last trip at Fort William at 4½ cents to discharge at Georgian Bay or Goderich."

November 23. Read wired Crowe: "Playfair (plaintiffs' manager) confirms charter Queen Fort William to Goderich, loading about Dec. 2, weather, ice, permitting, 4½ cents bushel."

November 23. Crowe wired Read: "We confirm Midland Queen 4½ Goderich, load Fort William on or before noon 5th December."

The steamer reached Fort William on the 3rd December, and left at noon on the 5th December, without the cargo. The steamer was obliged to leave, because the insurance would have expired if the return voyage had not then commenced.

There was a dispute as to which party was in default.

C. Robinson, K.C., and F. E. Hodgins, K.C., for plaintiffs.

A. B. Aylesworth, K.C., and C. A. Moss, for defendants.

MACMAHON, J., found upon the evidence that the defendants were in default; that the loading of the cargo could have been commenced at seven o'clock on the evening of the 4th December and the whole or the greater part of the cargo