

Sup. Ct.]

NOTES OF CANADIAN CASES.

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ferred to had been cited on the appeal I think there would have been no reference back.

On appeal, the Master's ruling was affirmed by Ferguson, J., and on re-hearing was varied in part.—See 10 Ont. R. 529.

NOTES OF CANADIAN CASES.

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SUPREME COURT OF CANADA.

Quebec.]

LORD V. DAVIDSON

*Charter party—Deficient cargo—Dead freight—
Demurrage.*

By charter party the appellants agreed to load the respondent's ship at Montreal with a cargo of wheat, maize, peas or rye, "as fast as can be received in fine weather," and ten days' demurrage were agreed on over and above lying days at forty pounds per day. Penalty for non-performance of the agreement was estimated amount of freight. Should ice set in during loading, so as to endanger the ship, master to be at liberty to sail with part cargo, and to have leave to fill up at any open port on the way homeward for ship's benefit.

The ship was ready to receive cargo on the 15th November, 1880, at eleven a.m., and the appellants began loading at two p.m. on the 16th November. After loading a certain quantity of rye in the forward hold, as it would not be safe to load the ship down by the head any further, the captain refused to take any more in the forward hold. No other cargo was ready, as the respondents would not put the rye anywhere except in the forward hold, and they stopped loading. At eight a.m. on the 19th, the loading recommenced, and continued night and day until six a.m. Sunday, the 21st, at which time the vessel sailed in consequence of ice

beginning to set in. When she sailed she was 214½ tons short of a full cargo. The respondent sued appellants because ship had not received full cargo, and claimed 2½ days 15th, 16th and 17th of November, and freight on 214½ tons of cargo not shipped. The appellants contended delay was not due to them, but to ship in not supplying baggers and sewers to bag the grain.

That the time lost on the first week was made up by night work, and that mere delay in loading could not sustain claim for dead freight.

The Superior Court gave judgment for the respondent for the dead freight, but refused to allow demurrage. This judgment was affirmed by the Court of Queen's Bench (appeal side). On appeal

Held (affirming the judgment of the Court below), that as there was evidence that the vessel could have been loaded with a full and complete cargo without night work before she left, had the freighters supplied the cargo as agreed by the charter party, the appellants were liable for damages.

That the demurrage mentioned in the charter referred to, and are over and above the lying days, and have no reference to the loading of the ship.

Appeal dismissed with costs.

Kerr, Q.C., for appellants.

Abbott, Q.C., for respondent.

Quebec.]

COLLIERIE V. LASNIER.

*Patents—Validity of prior patent—Infringement
—Damages—What proper measure.*

In 1877 L., a candle manufacturer, obtained a patent for new and useful improvements in candle making apparatus. In 1879 C., who was also engaged in the same trade obtained a patent for a machine to make candles. L. claimed that C.'s patent was a fraudulent imitation of his patent, and prayed that C. be condemned to pay him \$13,200, as being the amount of profits alleged to have been made realised by C. in making and selling candles with his patented machine, and also \$10,000 damages.