

FIRST DIVISIONAL COURT.

JULY 15TH, 1918.

*GRAIN GROWERS EXPORT CO. v. CANADA STEAMSHIP
LINES LIMITED.

Ship—Carriage of Grain—Damage by Water—Hole Made in Barge by Collision with Dock—Seaworthiness—Due Diligence—Negligence—Peril of Navigation—Water-Carriage of Goods Act, 9 & 10 Edw. VII. ch. 61, secs. 6 and 7 (D.)—Findings of Trial Judge—Appeal.

Appeal by the plaintiffs from the judgment of MIDDLETON, J., 11 O.W.N. 355, dismissing the action with costs.

The appeal was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

J. H. Moss, K.C., and Christopher C. Robinson, for the appellants.

Casey Wood and E. G. McMillan, for the defendants, respondents.

HODGINS, J.A., read a judgment, in which he said that the issues must be determined by the common law as expressed in maritime jurisprudence. At common law the ship-owner is a common carrier, and as such the insurer of the goods he receives, and bound to carry them safely, and he warrants the seaworthiness of his vessel. Seaworthiness is a necessary condition of the carriage. The absence of this prime factor of safety adds to every peril mentioned in sec. 6 of the Water-Carriage of Goods Act, 9 & 10 Edw. VII. ch. 61, namely, those encountered in navigation or caused by mismanagement of the ship or resulting from any latent defect.

The only finding of fact made by the trial Judge was, that there was a hole in the ship's side; and he drew the inference that the hole spoken of in the evidence was the cause of the flooding. The proper conclusion from the evidence was that the defendants' vessel was not seaworthy so far as the plaintiff's cargo of grain was concerned. The onus of shewing seaworthiness is upon the ship-owner, especially when the vessel is found to be leaking badly within 10 or 15 minutes after she leaves the dock. There must be something to account for the rapid rise of the water after leaving the loading berth and before any accident could have happened, and it was not an unreasonable inference that the leakage which had produced the extra foot of water in the first 10 or 15 minutes