

been raised more than a few feet, and before the anchor posts or spuds had been raised, and before any signal was given, the line tightened on the capstan, thereby producing a tremendous strain between the capstan and the kedge anchor. But the dredge and the kedge anchor being immovable, it was inevitable, as many witnesses say, that if the strain continued something must give way; it was only a question what would give way first. The result was, that the spool was violently wrenched from its fastenings, the drift bolts were drawn from the gunwale, a portion of the deck planks was torn out, the spool was thrown against the side of the house part, deeply indenting the dog rod—a brass rod used as a stay—and rebounding went overboard.

Plaintiff was standing in the space between the spool and the capstan, and was struck by the line, breaking his leg.

As originally framed, the statement of claim assumed that the dipper and anchors of the dredge were all up, and that everything was in readiness to move, but that, through the failure of the tug to commence hauling at the proper time, the entire strain of the whole weight of the dredge was cast upon the line, and consequently upon the spool, thereby causing it to give way, and that the spool was improperly and insufficiently fastened, and that the person in charge of the dredge was negligent in not giving the signal to the tug.

The case was tried on a former occasion, and on the answers of the jury judgment was entered for the plaintiff for \$650 damages. Upon appeal by defendants to a Divisional Court the judgment was set aside and a new trial ordered. It was pointed out by the Judges of the Divisional Court that the evidence taken at that trial developed that the most substantial question between the parties had not been tried. It had been made to appear that the spool by reason of the tightening of the line was subject to a pressure or strain which it could never have been intended to stand, and therefore the real question was not whether the spool was insufficiently fastened, but what was the cause and whose fault was it, if any person's, of this enormous strain having been put upon it.

Subsequently the statement of claim was amended, but not so as to bring out very clearly the real issue between the parties.

At the trial before Teetzel, J., a number of questions were submitted to the jury. They found that plaintiff's injury was caused by the negligence of defendants. To the