

The learned trial Judge has found, upon conflicting testimony, that, though unable to say that the "Mount Stephen" was not reasonably and sufficiently moored while the waters of the harbour were undisturbed by storm or the movements of other vessels, she was certainly not sufficiently moored to withstand the strain put upon her by the operations of another ship of the size of the "Kinmount," when the force of water from the wheel of such ship would be cast against her bow.

There is no good reason for not accepting this finding, which is well supported by the testimony—nor the further finding that the officer in charge of the "Mount Stephen" knew of the proximity and movements of the "Kinmount." This danger must have been apparent to the officer, at the time when he was moving the "Mount Stephen" forward, for he saw the "Kinmount" then alongside, and knew that she was there for the purpose of turning. He then had an opportunity, when adjusting the lines of the "Mount Stephen" at her new position at the dock, to have used an additional line or additional lines; or, if he found that he could not sufficiently secure his vessel against the effect of the "Kinmount's" operations, he could have warned her, or at least endeavoured to make those in charge of her aware of the situation; and, if he found himself unable to control the "Kinmount's" movements, and felt that his lines could not withstand the action of her wheel, he should have ordered the leg out of the hatch in which it had been placed.

The learned trial Judge has found that in all these respects there was a failure of duty on the part of those in charge of the "Mount Stephen." It is beyond question that the parting of the lines was due, in part at least, to the disturbance of the waters of the harbour caused by the "Kinmount's" wheel. It is not improbable that, even with another line out, in addition to those used, the breaking of the cable and the parting of the line would have taken place eventually; but it is shewn that, with the additional line, the vessel would in any case have been held to her place at the dock long enough to have enabled the leg to have been easily removed from the hatch.

The evidence amply supports the learned trial Judge's conclusion that, in so far as the injury to the leg is concerned, it was due to the negligence of those in charge of the "Mount Stephen" in failing properly and sufficiently to moor her under the existing circumstances. So far, therefore, as the liability of the defendant Playfair is concerned, the appeal must fail.