

to Montreal, and arrived there May 18th, 1879; the defendant was notified on the 1st May that the vessel was on her way to Montreal; that on her arrival the defendant was further notified of her readiness to receive cargo, but he refused to load. He was further protested on the 22nd and 23rd May that the cattle spaces on the vessel would be let at the best rates obtainable, and that he would be held responsible for any loss which the plaintiff might sustain from his refusal to carry out the contract. But the defendant having persisted in his refusal to load the vessel, the plaintiffs were compelled to look for another cargo, which they obtained on the 28th May. The latter brought them only £1,052 Stg., whereas if the defendant had loaded as agreed, they would have received £1,770 Stg. The action claimed the difference between these sums.

The defendant admitted the charter party, but pleaded several pleas which it is unnecessary to set out, as the court was of opinion that they were wholly unsupported by evidence.

The only plea which gave rise to any difficulty was the fourth. By this plea the defendant said that, according to the agreement which he made with the plaintiffs, the first steamer was to arrive in the Port of Montreal at the opening of navigation, 1879, etc.; that the condition as to arrival of one of the steamers at the opening of navigation within a reasonable time was a condition precedent, and a warranty binding on the plaintiff, which, not being fulfilled, the defendant had a right to throw up the agreement; that the season of navigation for 1879 opened on the 1st of May, vessels from sea having on that day arrived in Port; that the "Cervin" arrived only on the 18th May, when the defendant's object was frustrated.

The answer to this was that the charter party contained no specific time as to the date of departure from London, nor of arrival in Montreal; the vessel was merely "to arrive between the opening of navigation," which was a vague expression, and did not constitute a condition precedent to the contract, but only a stipulation, the non-performance of which would result in a claim for damages; and that the defendant not having asked any damages, nor having offered by his plea to compensate the claim of the plaintiff by any damages re-

sulting from the delay, the plea was no defence to the action.

PER CURIAM. The "Cervin" arrived in the harbour at 1 p.m. on the 18th of May, and the defendant had been notified, in accordance with the charter party, of her departure on the 1st of May. Am I to declare now that because she had not arrived on the 15th, the charter party must be declared absolutely null? I do not think that the law or the facts of the case warrant such a course. It seems evident that the defendant did not intend to carry out his contract, for as far back as the 19th of April he wrote to the plaintiff's agent in these terms: "As already having notified your manager verbally some two months ago, that I would nor could not load any of the steamers chartered from you, as the prohibition act passed in England, and also the prevention of our Canadian Government, in allowing the cattle which I had arranged for in Chicago to load the steamers coming into Canadian ports, it is impossible for me to carry out the contract made with you." This letter was received a few days only before the opening of navigation. The defendant adhered to this resolution, and Mr. Shaw, the plaintiff's agent, says that on the defendant receiving, 1st May, a notice that the vessel was on her way to Montreal, he (the defendant) persisted in his refusal to provide a cargo. If it be true, as the defendant pretends, that he had in the port of Montreal cattle ready to be shipped, and which he says were shipped by another vessel on the 11th May, how is it that he gave the plaintiff no notice of the fact? The defendant apparently thought at one time that, owing to the prohibition put upon the exportation of American cattle, he would be relieved from his contract. It having turned out that the prohibition did not interrupt the cattle trade, the defendant endeavoured to escape by relying on the late arrival of the vessel. But in any case he should, when notified of the departure of the ship on the 1st May, have protested that she could not arrive in time. He did not protest then nor at any subsequent period, and it is only when suit is brought that he raises the objection. On the whole I am of opinion that this plea must be dismissed, and the plaintiff is entitled to judgment.

*Abbott, Tail & Abbotts* for plaintiff.

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