leaning against the storehouse on the wharf, which was done—the axles of the waggon protruding through the boards of the crating and resting upon the flooring of the wharf. The following evening, between 6 and 7, the plaintiffs and their children came to the wharf, which was a usual resort for the townspeople; the plaintiffs' son and two other children climbed on the leaning crated waggon, it fell over on them, and the plaintiffs' son sustained injuries from which he died.

The wharf belonged to the Dominion Government, and was under the control of their wharfinger, and was regulated by an order in council which provided that no goods or material of any kind should be landed or placed upon it unless by permission of the wharfinger and as he might direct.

It was not necessary to consider whether the old maritime rule that consignees are obliged to take delivery of cargoes at the rail of the vessel applied to the case of inland passenger steamers carrying miscellaneous cargoes for private consignees; and it was a matter of common knowledge that local wharfingers do not as a rule handle such freight, but that the men employed on the vessel do so, under the direction of the wharfinger as to location of deposit. In the present case the custom of the port was clearly proved; and this was sufficient to override the rule if otherwise it were in force: Halsbury's Laws of England, vol. 21, p. 267, para. 365; Marzetti v. Smith and Son (1883), 49 L.T.R. 580.

The freight charges on the waggon had been prepaid, and these included the charge for carrying it to the place indicated by the wharfinger. The latter collected from the consignee only the wharfage dues, 25 cents. The wharfinger kept no staff for handling cargoes delivered from vessels. The mere selection of the place of deposit and the indication of it to the mate did not make the men the wharfinger's servants or make him liable for their negligence.

The incident was caused by the crate being left leaning slightly, but too nearly in a perpendicular position. Leaving it in that position, the men were guilty of gross negligence, and thereby created a common nuisance. As left, it was a veritable trap.

The wharf was open to the public, and was a popular resort for rest, recreation, and fresh air.

Reference to Cooke v. Midland Great Western Railway of Ireland, [1909] A.C. 229, 237.

The employees of the defendants having thus been guilty of negligence and having created a nuisance, liability would not terminate with their departure from the premises, but would continue so long as the nuisance was not abated, or until the effects of their negligence ended.