

reduce the number of firemen when confronted with his determination to insist upon his contractual rights and advised of his views as to the requirements of his department. Neither could I find upon the evidence that after his return from Cleveland plaintiff could have done better for himself or in ease of defendants than he has done since 21st March, 1905.

Then again defendants urge that plaintiff, a month before the close of navigation, left employment which he obtained. Upon plaintiff's evidence, the only evidence upon the point—which I fully accept—I find that he was justified in relinquishing that employment when he did.

Finally it is contended by Mr. Nesbitt that because the steamer "Collingwood" was burned on 19th June, 1905, the case must be viewed as if plaintiff's engagement by defendants had been for a period terminating with that day. Though for the purposes of this action it was admitted, after the evidence had been closed, that the steamer was in fact burned, there is no admission as to the cause of the fire, or that its occurrence is not ascribable to any default of defendants, or that had plaintiff been in charge of the engineer's department with a staff of 4 firemen, the steamer would have been destroyed as it was. Not only is no such matter pleaded by defendants—which, perhaps, is not strictly necessary—but there is not anything in evidence bearing upon it, as there might well have been had the pleadings or any evidence offered by defendants indicated that they intended to rely upon it. It would be most unfair to plaintiff to conclude anything against him in this action upon these matters, the onus being on defendants, seeking to set up the destruction of the steamer, at a date subsequent to the breach of contract, in mitigation of damages, at least to prove that that event happened without any default upon their part. Assuming plaintiff's contract to be one in which the continued existence of the "Collingwood" as a steamer should be deemed a condition of the continuance of the obligation of the parties, the distinct breach by defendants, long before the burning of the steamer, and the non-exclusion of default of defendants in connection with such burning, clearly distinguish the present case from *Ellis v. Midland R. W. Co.*, 7 A. R. 464, *Nicholl v. Ashton*, [1901] 2 K. B. 126, *Kell v. Henry*, [1903] 2 K. B. 740, and *Chandler v. Webster*, [1904] 1 K. B. 493,