

ran benches or horses placed there when the scow was being loaded with sand. In the centre of the box on each side there was a door.

The course of unloading appears to have been as follows: When the scow was brought to the dock three timbers were placed from her to the shore across which planks were laid. The benches or horses were first dug out and laid aside, and the holes thus made in the sand filled up. Then the sand was dug away from the door in the side of the box next to the dock and that door taken away. The sand was then removed from the scow by means of scrapers drawn by horses.

It appears that in connection with previous unloadings sand had tumbled off at the sides of the gang-way and gradually formed a bar alongside of the dock, thus making it more difficult to get close to it. The plaintiffs say that the contract between them and the defendants was that they were to bring in the scow to the dock, tie her up and notify the defendants. It thereupon became the duty of the defendants, they say, to unload the sand promptly and with due care, and they were to have a day or two for that purpose. They say that from the time they brought the scow in and notified the defendants, she was to be in charge of the latter until the unloading was complete. The plaintiffs were not in the habit of leaving any one on her to watch her, and did not do so on the occasion in question.

The defendants deny that the scow was to be in their charge or that they were to be responsible for her.

The boat was docked by the plaintiffs at about two or three o'clock in the afternoon on the 5th October, 1911, securely fastened by ropes, and the defendants notified. The defendants did nothing towards the unloading that day. The next morning it was raining, and it continued to rain until along in the afternoon. It seems to have cleared up about two or three o'clock and thereupon the defendants began to prepare to unload. They put down the gangway, dug out the horses and the door, and also dug a trench in the sand along the west side of the box, almost the full length of the box, throwing the sand towards or beyond the centre of the box. They also pulled the boat by means of the lines, with which she had been tied to the dock by the plaintiffs, closer in to the shore.

These operations seem, upon the evidence to have had the effect of causing the boat to list to one side, lower at the south-east corner. The dock ran out into the river from