

of such vessel, the craft or its cargo or the material or thing which caused or formed part of such obstruction, are not sufficient to make good the expenses incurred for the purposes aforesaid and the costs of sale, the amount by which such proceeds fall short of the expenses so defrayed as aforesaid, and costs of sale, or the whole amount of such expenses, if there is nothing to be sold as aforesaid, shall be recoverable with costs by the Crown from the owner or owners of the vessel, craft or other thing which caused such obstruction or impediment—and the sum so recovered shall form part of the consolidated revenue fund of Canada."

Does this amendment make the defendants statutorily liable upon the statement of facts set forth in the declaration? What, too, is their position in regard to a common law liability?

*Non-allegation of negligence.*

The imperial "Harbors, Docks and Piers Clauses Act, 1847," being 10 and 11 Victoria, ch. 27, by its 74th section, enacts that the owner of any vessel or float of timber shall be answerable to the undertakers for any damage done by such vessel, or by any person employed about the same, to the harbor, dock or pier, or the quays or works connected therewith.

It was held in *Dennis v. Tovell*, L. R., 8 Q. B. 10, that the owner of a vessel driven against a pier by stress of weather, was liable, whether the loss was caused by negligence or by inevitable accident. This case was overruled by the *River Wear Commissioners v. Adamson*. (1 Q. B. D. 546; 2 App. Cas. 743.) In this case the defendant's vessel was driven ashore in a storm. A rising tide dashed her against plaintiff's pier, causing the damage complained of. The Court of Appeal held the owners not liable, and the House of Lords affirmed the decision.

Lord Cairns, L. C., considered section 74 to relate to procedure only, and to be solely intended to give an action against the owner of a ship whenever damage was caused by it, owing to the fault of the persons in charge, whether these were his servants or not; saving his recourse against the persons really to blame.

Lords Hatherly and Blackburn were of opinion that the section covered even damages caused by the act of God, or inevitable accident, but considered the case one of such extraordinary hardship as to justify a secondary interpretation.