

Held, that the defendant having admitted that his vessels were moving and the plaintiff's vessel at rest, and that a collision occurred, he must begin on the question of liability for the accident, with a right to reply on the question of the amount of damage, if it should be necessary to go into that question.

Held, also, that negligence must be such as to contribute to the accident, and that as it was daylight at the time and the plaintiff's vessel was admittedly seen by the tug when more than one hundred feet away, and the tow was three hundred feet behind the tug, and, further, since the evidence showed that "The Starling" was properly and securely moored to the dock, the absence of a light did not constitute such negligence on the part of the plaintiff as contributed to the accident, and that therefore they were entitled to recover for the damages arising from the negligent navigation of the tug and her tow to the amount of the actual cost of the repairs, and also a sum (fixed at \$7) for towage to the shipyard.

Held, also, that the cost of survey was not chargeable to the defendants, because reasonable notice was not given to enable them to be present or to be represented thereat.

Held, also, that demurrage should not be allowed, it being shown that "The Starling" was lying at the wharf awaiting commission (she being used as a lighter), and that as soon as a commission was secured the vessel went to work, although repairs were not then completed, and that no actual loss of earnings occurred by reason of the accident.

R. G. Cox for the plaintiffs.

J. G. Fraser for the defendants.

SUPREME COURT OF JUDICATURE FOR ONTARIO.

HIGH COURT OF JUSTICE.

Queen's Bench Division.

Full Court.]

[Dec. 24.]

IN RE TALBOT'S BAIL.

Criminal procedure—Recognizance of bail, form of—Notice to sureties—Estreat—Order of judge—Estreat roll, form of—Signature of clerk of court—Forfeiture of recognizance—Writ of fieri facias and copias, form of—R.S.O., c. 88—R.S.C., cc. 174, 179—Release of bail.

(1) A recognizance of bail is taken in open court by the clerk of the court addressing the parties, being then before him in open court, by name, and stating the substance of the recognizance; and the verbal acknowledgment of the parties so taken is quite sufficient without more.

(2) In this case a recognizance was drawn up which stated that the principal and sureties personally came before the clerk of assize, in open court, and acknowledged, etc.; and also stated that it was taken and acknowledged in