

Moss, C.J.O.— . . . As the case developed at the trial the controversy between the parties was reduced to the question of whether the defendants had performed their part of the contract by having, as it was shewn that they had, before and at the time specified for loading, a sufficient quantity of grain in the elevators at Fort William to have furnished a full cargo if the vessel had come under the spouts, or whether they were bound to go further and provide or secure for the vessel an unimpeded access to the spouts in time to enable her to load there within the time specified, or failing that to load her by some other means within the specified time. And this is the main question for decision on this appeal.

There is a further question, whether, if the defendants are liable at all, the damages awarded ought not to be reduced by the amount of the expense which would have been incurred by the vessel in carrying the cargo to Goderich.

In delivering judgment the learned trial Judge stated that these expenses should be deducted, but in settling the formal judgment the question was referred to him, and he directed that no reduction should be made.

The learned trial Judge found for the plaintiffs and directed judgment to be entered for the plaintiffs for the sum of \$4,590, being the amount of the freight which would have been earned if the vessel had received her cargo.

The main facts are scarcely, if at all, in dispute. Both parties set up and rely upon a contract contained in a number of telegrams and some letters passing between one A. F. Read, of Montreal, who was admittedly acting for the plaintiffs, and one G. R. Crowe, of Winnipeg, with regard to whose position some doubt has been raised, but whom the learned Judge has found to have been acting for the defendant.

Two of the telegrams upon which a great deal of the controversy turns are dated the 23rd November, 1901, and are as follows:—

(1) Read to Crowe: "Playfair confirms charter Queen, Fort William to Goderich, loading about December 2nd, weather, ice, permitting, four and a half cents bushel. Confirm."

(2) Crowe to Read: "We confirm Midland Queen, four and half, Goderich, load Fort William on or before noon 5th December."

Following these was a letter from Read to Crowe, dated 23rd November, stating as follows: "Playfair wires confirming charter to you of steamer Queen to load at Fort William before noon December 5th to Goderich at four and a half cents per bushel. Please say who she is to be loaded account of and to whom captain will apply for grain." This letter,