

come across in the course of the journey. The letting go of the cable after the failure of the anchor to hold must have resulted in the cable sinking, and probably reaching the bottom. That was the direct cause of the nets being taken up by the cable and destroyed, and the letting go of the cable appears to have been wholly unnecessary and a negligent act on the part of the appellant's servants.

There was, I think, ample evidence to warrant a finding in favour of the respondent entitling him to recover, unless, as was contended by counsel for the appellant, the nets were placed where they were set in contravention of the law; and, even if they were unlawfully there, there was evidence to warrant a finding in favour of the respondent.

That they were set in contravention of the law was contended by counsel for the appellant, and in support of his contention sub-secs. 2 and 4 of sec. 47 of the Fisheries Act, R.S.C. 1906 ch. 45, were referred to.

Sub-section 2 and sub-sec. 4 must be read together; and, so reading them, it is plain, I think, that it is lawful to place nets or other fishing apparatus in a river or stream if they do not obstruct the main channel, and if one-third of the course of the river or stream, not being a tidal stream, is always left open, and "no kind of fishing apparatus or material is used or placed therein."

The place where the respondent's nets were set was in a river or stream, and they were not so placed as to contravene the provisions of sub-sec. 4. They were not placed in the westerly channel, which is the main channel, and more than one-third of the course of the river or stream was unobstructed.

It is probable, I think, that the first part of the sub-section was intended to apply to a river or stream which has more channels than one, and what follows, down to the proviso, to a river or stream that has but one channel. However that may be, there was clearly no contravention of sub-sec. 4. But, even if the nets were unlawfully set, the appellant was not justified in wilfully impinging upon or destroying them, and was "bound to use due care and skill in the navigation of his vessel so as not to do it unwittingly for want of these:" *Colchester v. Brooke* (1845), 7 Q.B. 339, 377; *The Swift*, [1901] P. 168.

The man in charge of the tow knew or ought to have known that there were or were likely to be nets set in the eastern channel; he had been instructed to be careful to avoid injuring nets, and yet no precaution whatever was taken to avoid doing