SHIPPING.

Charter-party — Arrival of Ship at Place of Loading— "Load"—Meaning of—Measure of Damages.]—C., representing the defendants, wired R., representing the plaintiffs, "to load Midland Queen last trip at Fort William, at four and one-half cents, to discharge at Georgian Bay or Goderich"; R. wired C.: "Playfair (plaintiffs' manager) confirms charter Queen, Fort William to Goderich, loading about December 2nd (1901), weather, ice, permitting, four and one-half cents bushel"; C. wired R.: "We confirm Midland Queen, four and one-half, Goderich, load Fort William on or before noon fifth December." The steamer reached Fort William on the 3rd of December, and left an hour before noon on the 5th of December, without the cargo. The steamer was obliged to leave, because the insurance would have expired if the return voyage had not then commenced. It appeared that, owing to a blockage of steamers at the elevator wharves, loading could not have been completed by noon of the 5th of December, though it could have been commenced:—

Held, Maclennan, J.A., dissenting, that the defendants, having had before and at the time specified for loading, a sufficient quantity of grain in the elevators, which, upon the evidence, was the place of loading contemplated and agreed upon by both parties, to have furnished a full cargo if the vessel had come under the spouts of the elevators, they had performed their part of the contract and were not bound to 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.

Held, further, that the defendants having been released from their contract to deliver the grain at Goderich, having, later, sold some, if not all, of the grain at prices not shewn to have been less than the original selling price, and the damages being measured by the injury suffered by the cargo being left on the defendants' hands, nominal damages only should be allowed for the plaintiffs' breach of the contract.

Per Maclennan, J.A., dissenting, the true construction of the word "load" in the contract is that the defendants would complete the loading within the time limited therein.

Decision of MacMahon, J., reversed.

Midland Navigation Co. v. *Dominion Elevator Co.*, 516.