

JUDICIAL COMMITTEE OF THE PRIVY COUNCIL.

JULY 29TH, 1912.

PLAYFAIR v. MEAFORD ELEVATOR COMPANY,
LIMITED.MEAFORD ELEVATOR COMPANY, LIMITED v.
MONTREAL TRANSPORTATION COMPANY,
LIMITED.

*Negligence—Ships—Management of—Damage to Grain Elevator—By
Steam Barge—Breaking Moorings—Caused by another Vessel—
Damages—Loss of Profit.*

Plaintiffs were owners of a grain elevator at Meaford. Defendant Playfair was owner of a steam barge "Mount Stephen," and defendants, Montreal Transportation Co., were owners of steam barge "Kinmount." The barge "Mount Stephen" was moored to plaintiffs' dock unloading wheat into plaintiffs' elevator, when barge "Kinmount" in passing "Mount Stephen," to moor bow to bow at the dock, used her propeller, thus throwing a great force of water against bow of "Mount Stephen," causing the "Mount Stephen" to surge rapidly aft, with the result that the marine leg of the elevator at the time in No. 6 hatch of "Mount Stephen," was pulled out of the elevator and so seriously damaged that it could not be repaired during that year's season of navigation. Plaintiffs brought action against both defendants to recover damages for negligence in causing injury to plaintiffs' elevator and for loss of profits.

TEETZEL, J., *held*, 18 O. W. R. 773, that both defendants were guilty of negligence, and that plaintiffs' servants were not guilty of contributory negligence. Judgment for plaintiffs for \$700 for injury to the elevator leg and \$5,000 for loss of profit, with costs.

COURT OF APPEAL, 20 O. W. R. 931, 3 O. W. N. 525, dismissed with costs an appeal by defendant Playfair.

Appeal of Montreal Transportation Co. allowed with costs; Meredith, J.A., dissenting.

PRIVY COUNCIL *held*, that the accident was an unforeseen and fortuitous occurrence and under the circumstances unavoidable.

Appeal of defendant Playfair allowed with costs, that of Meaford Elevator Co. Ltd., dismissed with costs.

Appeal by defendant James Playfair and by plaintiffs Meaford Elevator Co., Ltd., from judgment of Court of Appeal for Ontario, 20 O. W. R. 931; 3 O. W. N. 525, allowing appeal of defendant, Montreal Transportation Co., Ltd., and dismissing the appeal of Playfair from the judgment of TEETZEL, J., 18 O. W. R. 773, holding both defendants liable in damages for injury to plaintiff's grain elevator, alleged to have been caused by the negligence of those in charge of the respective vessels of defendants.

The appeal was heard by THE LORD CHANCELLOR, LORD DUNEDIN, LORD ATKINSON, and LORD MOULTON.