

POLSON IRON WORKS CO. v. LAURIE—MEREDITH, C.J.—MAY 12.

*Sale of Boat—Action for Balance Due—Not Payable till Repairs Completed—Boat Lost before Repairs Completed—Alleged Negligence—Actus Dei—Impossibility of Performance.*]—Action to recover \$880.42 alleged to be balance due the plaintiffs for work done for the defendants. The defendants denied liability on the ground that plaintiffs had allowed the boat known as the Knapp Tubular boat, placed in their care by the defendants for the purpose of making alterations and repairs, to escape and become stranded on the eastern bank of the Bay of Toronto, whereby the defendants had incurred expenses and sustained damages, and they counterclaimed for return of moneys paid the plaintiffs. Judgment: I have already determined that the agreement proposed to by the defendant Laurie and Knapp is proved, and the result is that but for the loss of the boat the plaintiffs would not be entitled to recover the \$500, which was not paid, on account of the \$1,000 agreed to be accepted in settlement of the larger claim made by the plaintiffs, because it was a term of the agreement that the \$500 was not to be paid until the repairs to the boat were completed. I have also found that the claim of the defendants, that the boat was lost through the negligence of the plaintiffs, is unfounded; and the effect of my finding is that the boat was lost through the act of God, the effect of the storm, and it became impossible owing to the condition in which the boat was to do anything to it. That is clear upon the evidence, and the plaintiffs are therefore relieved from the obligation to complete the boat, by reason of the impossibility of performance, and are entitled to recover the \$500. Judgment for plaintiffs for \$500, with costs on the High Court scale. The other claims are disallowed. Counterclaim dismissed, with costs. C. A. Moss, for the plaintiffs. C. H. Porter, for the defendants.

---

WEIR v. WEIR—MASTER IN CHAMBERS—MAY 13.

*Security for Costs—Rule 1198(d)—Costs of Former Proceeding Unpaid—“For the Same Cause.”*]—Motion by the defendant for order for security for costs under Con. Rule 1198(d). The plaintiff took proceedings against the defendant under the Overholding Tenants Act in the District Court of Muskoka. He succeeded at first, but failed on the defendant's appeal to the Divisional Court, and thereby became liable for costs amounting