

could have been put on board before eleven o'clock on the morning of the following day; and that the plaintiffs did all that could be done to carry out the terms of the charter.

He then proceeded to discuss the meaning of the words "load on or before noon 5th December," and referred to *Bowes v. Shand*, 2 App. Cas. 455. . . . He continued:

According to my reading of the contract in this case, the words in their natural sense have a definite meaning, which is, that the vessel was to be *completely* loaded by noon on the 5th December. "To ship" and "to load" are synonymous terms, and each means the completion of putting the cargo on board. See judgment of Lord Selborne in *Grant v. Coverdale*, 9 App. Cas. 475.

There was, however, evidence given on behalf of plaintiffs as to what is the meaning amongst shippers of "to load," that it means that the whole cargo is to be in the vessel at the time stated in the contract. Evidence was given on behalf of the defendants that the contract would be complied with if the charterer had commenced loading at the time named.

There is no provision in the contract for "lay days" and "demurrage days." Where a fixed time is provided in the contract for loading a vessel, it is the duty of the charterer to load within that time, whatever may be the nature of the impediments which prevent him from performing it: *Postlethwaite v. Freeland*, 5 App. Cas. 599; *Abbott on Shipping*, 5th ed., p. 180, 14th ed., pp. 394, 396; *Randall v. Lynch*, 2 Camp. 352; *Budgett v. Binnington*, [1891] 1 Q. B. 35; *Davies v. McVeagh*, 4 Ex. D. 265; *Tapscott v. Balfour*, L. R. 8 C. P. 46; *Pyman v. Dreyfus*, 24 Q. B. D. 152; *Scrutten on Charterparties*, 4th ed., p. 96; *Dahl v. Nelson*, 6 App. Cas. 38. . . .

The defendants are liable to the plaintiffs for not loading this cargo by the time named, and the measure of damages is the amount of freight which would have been earned after deducting the expenses of the vessel: *Smith v. McGuire*, 3 H. & N. 54. The vessel could have taken on board 102,000 bushels, which at 4½ cents per bushel would amount to \$4,590. There will be judgment for plaintiffs for this amount (less the expenses of the vessel from the time it left Fort William until it could have reached Goderich, which can be agreed upon between the parties), together with interest from the 15th December, 1901, and the costs of suit.

The defendants' counterclaim is dismissed with costs.