

FIRST DIVISIONAL COURT.

OCTOBER 27TH, 1920.

SHIPMAN v. MORRELL.

*Ship—Towage—Contract—Navigation—Duty of Master of Tug—
Bad Seamanship—Evidence—Allowances from Contract-price—
Findings of Trial Judge—Appeal—Salvage Services.*

Appeal by the defendant from the judgment of the County Court of the County of Simcoe in favour of the plaintiff for the recovery of \$308 and costs in an action for the value of services rendered to the defendant in towing his barge, and dismissing the defendant's counterclaim.

The appeal was heard by MEREDITH, C.J.O., MAGEE, HODGINS, and FERGUSON, JJ.A.

John Birnie, K.C., for the appellant.

R. McKay, K.C., for the plaintiff, respondent.

HODGINS, J.A., reading the judgment of the Court, said that the findings of the trial Judge were in favour of the respondent throughout; they related to several important points where the evidence of the respondent and appellant were in conflict; and, as the trial Judge had the advantage of seeing and hearing the witnesses, it was not possible to disturb them.

The appellant's barge was not completely seaworthy, as she was leaky above the water-line, and the appellant declined to have steam put in her for the purpose of more easily pumping her out on the journey. His reason was conclusive, namely, that the boiler in her was entirely worn out.

The barge had a crew of two, both experienced lake captains, and one of them, Captain Cook, was consulted with regard to the condition of the barge and the places at which stops should be made on the way from the Sault to Collingwood. The duty of the respondent, as master of the tug, if no directions were given to the tug apart from the general directions at the commencement of the towage, was to take the barge on a safe course to Collingwood, allowing for possible contingencies and a change of weather: The Robert Dixon (1879), 5 P.D. 54, 56.

On the 21st November, 1917, Captain Cook and the respondent discussed the advisability of starting, and agreed to go on. The vessels passed Cabot Head about 2 p.m., making then about 5 miles an hour. At about 3.30 p.m., Captain Cook notified the respondent that the barge was leaking, and asked him to run into Lion Head harbour. It was contended that bad seamanship was