

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of the  
New England and Nova Scotia Steamship  
Company, owners of the Steamer "Chase," and  
Robert Boak the younger (the "Chase"), from  
the Vice-Admiralty Court of Halifax, Nova  
Scotia; delivered 22nd July 1873.*

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Present :

SIR J. W. COLVILLE.

SIR BARNES PEACOCK.

SIR ROBERT PHILLIMORE.

This is an appeal from a judgment of the commissary of the Vice-Admiralty Court of Halifax, Nova Scotia, in a cause of damage brought by the owner of a wharf in the harbour of Halifax, called Boak's Wharf, against a steam vessel called the "Chase."

On the night of the 12th of October 1871, this vessel, which was a screw steamer of 570 tons burden, and it was admitted 150 feet long, broke from her moorings, and did damage to this place called Boak's Wharf, and to sundry other property in the vicinity; and it was agreed in the court below that this case should be what the judge in his sentence calls a test case (the value not being very great) of the principle upon which the other cases of damage inflicted at the same time by the same steamer should be adjudicated.

It appears that this vessel in the morning had arrived, and had been placed in supposed safety—was made fast to the eastern end of the wharf called the Dominion Wharf. The captain had gone ashore, and at the time when he went ashore she

was moored in what is said to be the ordinary way, which he describes as follows. He says, "Between 10 and 11 a.m. she was made fast at the usual berth. We made fast at first with a bow spring from our starboard quarter chock to the southern corner spile on the south Dominion Wharf (this was a  $5\frac{1}{2}$ -in. hawser, single one part), and a bow breast-line hawser to another spile further up the wharf; and then we put out a stern breast-fast to a spile on the north Dominion Wharf, which was  $6\frac{1}{2}$ -in. single, the bow-fast being the same size. These breast-fasts are made with an eye which drops over the spile. We put out one more from the stern chock to the north spile on the north Dominion Wharf, being also single  $6\frac{1}{2}$ -in. line. We had thus four fasts, three of which were  $6\frac{1}{2}$ -in. hawsers, and one of  $5\frac{1}{2}$  in." The vessel had been moored in this way. The captain went on shore and left his mate in charge, the weather at that time giving no indication whatever of the fearful storm which subsequently followed. It appears from the evidence that about half-past two o'clock the falling of the barometer and other symptoms indicated a coming storm. In consequence of that, in the absence of the captain, the mate put out extra fasts, as they are called, "from mid-ships chock to the south spile on the south Dominion Wharf, consisting of a  $5\frac{1}{2}$ -in. hawser three parts, and they then ran three parts more of same size from our starboard forward chock to same spile; both these hawsers were new (Manilla). The wind increasing we carried the bow-fast"—this is a very important part of the case,—"to a spile on the wharf south of the Dominion Wharf, single"—that was to a wharf called Miller's Wharf—"and made fast." The diagrams have been put in which were agreed upon in the court below as faithfully representing

the state of the fastening of this vessel at the time.

Now, the captain returned about 30 minutes past four, and between that and somewhere about half-past five he was alarmed at the state of the weather, and ordered steam to be got up. The vessel broke loose between five and six, and about half-past nine she struck Boak's Wharf and did the damage which has been mentioned.

The contention on the part of the Plaintiff in the court below and the Respondent here was that ordinary care, caution, and maritime skill was not shown by those who had charge of this vessel, and that if proper precautions had been taken this damage could not have ensued.

The judge of the court below in a very careful and elaborate judgment arrived at that conclusion; and in his opinion he was strongly fortified by the nautical assessor, Captain Nicholson, who delivered a written statement of the grounds upon which he formed an opinion in consonance with the judge. There is no dispute in this case at all that previously to the happening of the storm the vessel was properly moored, that is, that previously to the indications of the storm, which took place about half-past two, this vessel was properly moored. The real question is whether, when it became obvious that a gale was impending, proper precautions were taken or not. It has been contended, and in their Lordships' opinion fairly and rightly contended, that those who had the charge of this vessel were not bound to take precautions against an extraordinary gale—against a gale such as this is said to have been, and admitted to have been by all parties, of unexampled violence, and such as nobody could have anticipated. But the question their Lordships have had to consider is not whether they were bound to take precautions against a gale of unexampled violence and of

extraordinary character, but whether the precautions which they did take and the measures which they did adopt were or were not such as a prudent and competent man of nautical science would have taken against an ordinary gale.

The main point in this case is that they depended for the security of the ship upon the fastenings, or fasts, as they are called, which were attached to the south spile, and that they, having removed the fastening from the lower spile, and attached it to the spile on the Miller's Wharf, did not afterwards add an additional fastening to the lower spile, and did not take other measures which I will presently advert to, as pointed out in clear nautical language by Captain Nicholson in his opinion. He says, "The steamer 'Chase' was improperly secured to the Dominion Wharf, inasmuch as only one spile was used, while several were available." Nothing need be said about the word "spile." It may be the word used there. It means post. "If ordinary seaman-like precautions had been taken, I believe there was every chance of the 'Chase' riding the gale out safely. I am of opinion that the hawser which was taken from the starboard bow to a spile on a wharf south of the Dominion"—that is, the one which was attached to Miller's Wharf—"might have been doubled or trebled with great advantage." That is the first fault that he points out, and the second fault is this, "that a heavy spring should have been put on from the starboard quarter to a spile on the north edge of the south pier of the Dominion Wharf," and the third fault is "that the breast-fast from the starboard bow should have been taken to the spile situated further up the wharf." Now, all these are precautions which, in the opinion of the nautical assessor and of the learned judge below, were

precautions which a seaman of ordinary skill and practice would have taken against the occurrence of a gale of ordinary severity.

Their Lordships have consulted the nautical assessors who attend the court to-day, and they are entirely and unanimously of opinion that Captain Nicholson's view, which was adopted by the learned judge in the court below, was the correct view, and that all these precautions which have been enumerated were such as a prudent sailor would have taken in the apprehension of an ordinary gale.

Their Lordships have considered the question raised as to the particular acts of negligence charged in the libel and the omission to charge some of the acts of negligence now relied upon, and they are of opinion that there is nothing in this objection which need affect their judgment.

It is not necessary in their Lordships' opinion to go into what happened after the vessel broke adrift from her moorings; but, if it were, their Lordships would be inclined to agree with the opinion expressed upon this point also, that an error was committed by her captain, when it became apparent that the ship was dragging her anchors, in not veering out more chain, especially as it appears from the evidence that there was abundant chain for that purpose. But it is on the other part of the evidence which has been mentioned, namely, the absence of ordinary precautions against an ordinary gale, that their Lordships have come to the conclusion that it would be wrong to disturb the judgment of the court below, and accordingly, for the reasons which have been stated, their Lordships will humbly advise Her Majesty that the decree of the court below should be affirmed, and that this case must be dismissed, with costs.

