NISI PRIUS COURT: Liabilities of Steam Boats.

Monday, March 21,

Before Mr. Justice Parke.

John Davis and William Davis, v. William Nightingale and others—This was an action brought by the plaintiffs (who are coal merchants) to recover damages from the defendants, (who are Trustees of the Preston Lytham, and Southport Steam Navigation Co.) for injury sustained by a canal boat belonging to the plaintiffs, which it was alleged the defendants had undertaken to tow, by their Steam Vessel, the ***Enterprise***, from Lytham to Glasson Dock, but which, it was further alleged, through the negligence of the defendants, went on shore at Lytham, before being so towed, and was much damaged. The damages were laid at £300.

The Defendants pleaded,—first, that they did not receive the boat for the purpose and in the manner alleged and secondly, that they were not guilty of the grievances stated in the declaration.

Mr. Cresswell and Mr. J. Addison were counsel for the plaintiffs; for the defendants Mr. Alexander and Mr. Segar.

The principal questions at issue were—first, the nature of the contract entered into by the plaintiffs agent and the defendants agent. The second question was whether the defendant's' agent had moored the boat in a safe manner, in a proper place, and taken due and proper care of her. The evidence on both these points was very contradictory,

The evidence on the part of the plaintiffs was to the following effect.

Mr. Gabbutt, agent to the plaintiffs, stated that he entered into a verbal contract, on the 9th of October with Captain Ashburn, defendant's agent, that the latter should tow the boat in question (which was of about 36 tons burden) when she was ready, from Tarleton to Glasson, for the sum of £5. 5s. Defendants' agent said they had an engagement at Liverpool, on the 23rd October, but could take it before that time. On the 21st October, defendants' agent (Ashburn) told him (Mr. Gabutt) that the boat was ready to go to Glasson; upon which witness said it was much wanted, and desired him (Ashburn) to take it before he went to Liverpool. Ashburn replied he would take it if he possibly could, and he hoped to do so. On the 26th October, witness saw one of the defendants, and told him the boat had gone on shore at Lytham and was damaged.

Thomas Draper, a boatman, stated that he took the boat from Tarleton to Lytham, and there on the 21st saw the captain of the steamer, to whom he delivered the boat take to Glasson, and received from him a receipt (produced), as follows:—

"Lytham, 21st October, 1833

Received from Thos. Draper, the flat ***Preston***, in good order, by me, master of the steamer Enterprise of Preston.

Jonah Ashburn, Captain."

Witness, Wm,, Whalley.

A witness spoke to the damage done to the boat, which had broken from her moorings while at Lytham, and had her bottom much injured.

Several witnesses, chiefly fishermen, residing at or near Lytham, stated that they considered the boat to have been fastened in an improper place.--namely with a single rope to the buoy at the entrance of Lytham-pool, which they stated was 60 or 80 yards outside the entrance, and in a strong tideway. They also stated that it was customary when flats were moored that a person should be left on board of them if loaden,—and that they were occasionally visited if light. They did not see any person on board of, or looking after the boat in question, for the few days during which they saw her at the buoy and after she went on shore.

Nicholas Bannister, shipwright, stated that he had repaired the vessel, for which his charge was £134.19s. On a question from the judge, witness stated that the boat was perhaps of £90 more value when the new bottom was put into her, than before she was injured.

On the part or the defendants, the following evidence was adduced:—

Jonah Ashburn stated that he told plaintiff's agent, Mr. Gabbutt, on the 21st of October, that he could not take the boat in question before he went to Liverpool, as he (witness) had to be in Liverpool before the 23rd for a cargo. Plaintiff's agent insisted on witness taking the boat, and witness repeated he could do no such thing. Witness said that he would make her fast in the best manner he could, if trusted with her; and Mr. Gabbuttt replied if he (witness) could not take her round before he went to Liverpool he might so moor her in a safe and proper place. Two young men (clerks) were present in Mr. Gabbutt's office, when this conversation took place. On the same day, witness received the plainiff's, boat at Lytham beach, which he not considering a safe place, removed her, with the assistance of his crew, to the entrance into Lytham-pool, and there fastened her to the buoy moored there, with a strong new rope—the same with which she was towed from Tarleton, and the only rope he received with her. Witness considered that the only place he could safely moor her to, with the rope that belonged to her. Witness received no anchor with the boat. Witness is buoy-master for the Ribble Navigation Co., and considered the place where he moored the boat as safe and secure.

Captain Andrew Scott, long a shipmaster, stared that he knew the coast there well, and considered the buoy off Lytham pool a safe and proper place. Witness had had a brig under his charge fastened to the buoy ten days without sustaining any injury. Witness knew it to be customary for owners of vessels that were to be towed to find their own ropes; and that it was not customary for parties so so mooring small vessels to leave a person on board during either night or day.

Captain Richard Peat, long a ship master, had seen the rope with which the boat was fastened to the buoy. and considered it sufficiently strong to hold a vessel of her size, in any storm. Witness was certain the rope had been cut. Witness considered the buoy off Lytham pool as the safest place about Lytham, for mooring a small vessel.

A number of mariners acquainted with Lytham, stated that in their judgment, the buoy off Lytham pool was a safe and proper place for mooring—particularly with the single rope furnished by the plaintiffs.

Part of the rope (a three inch rope nearly new) was produced by one of the witnesses, as that which was left attached to the buoy after being cut. The remainder of the rope, which was in the custody of the plaintiffs, was not produced.

The learned judge summed up the evidence commenting on the contradictory statements of the plaintiffs' agent and the defendants' agent, as to the terms of the contract. His lordship in the course of his address, expressed it as his opinion that parties towing vessels were to be considered as common carriers, and were bound to provide good and sufficient tackle to tow such vessels, and that if the rope in question was not sufficiently strong, it was the duty of the defendants' agent to have provided another, and also an anchor if that were required.*

The Jury could not agree as to their verdict, and retired for a short time. On their return they gave to verdict for the plaintiffs—damages £90.

Attorneys for the plaintiffs, Messrs. Armstrong; for the defendants, Mr. W. C. Gent.

(The trial commenced about a quarter-past three in the afternoon, and concluded about a quarter past eight.]

*From this decision it would appear that parties engaging to tow vessels are not only to be considered as insurers, but to make good all losses which may arise from the vessel towed not

being provided with proper anchors; and tackle of her own. We believe we are correct in our surmise, that if a vessel going to sea were insured, and were afterwards to be driven on shore and wrecked by reason or having no anchor, as in the case of the boat in question, and by reason of being otherwise unprovided with the usual and sufficient tackle, no damage sustained therefrom, would be made good by the underwriters. -Edit.