

Friday, June 22.

FIRST DIVISION.

[Lord Curriehill, Ordinary.]

BAIRD AND OTHERS v. DEWAR.

Shipping Law—Collision between a Steamer and a Yacht, where the latter left her moorings in a crowded anchorage and crossed the course of the former.

Held that a yacht which lay at her moorings in a bay used as an anchorage on the Clyde, and crowded with shipping, was not bound to wait, before leaving them and setting sail out of the bay, until a steamer which was calling at a pier close by had left it and had passed the place where the yacht was likely to take her course.

Observed (per the Lord President) that there was a recent case where his Lordship had held that a vessel was justified, according to article 19 of the Board of Trade regulations for preventing collisions at sea, under section 25 of the Merchant Shipping Act 1862, in departing from the ordinary rules of the road "in order to avoid immediate danger."

This was an action of damages for collision. A Clyde river steamer had just left Gourrock Pier to proceed up the river towards Greenock, when a yacht, which had left her moorings in the bay during the time that the steamer was lying at the pier, was observed to be about to cross the steamer's bow. The master of the steamer disobeyed the rules of the road, according to which he should have passed under the yacht's stern, and a collision resulted. In an action of damages for loss thereby sustained, at the instance of the yacht owners, the steamboat owner, in defence, founded, *inter alia*, on article 19 of the regulations for preventing collisions at sea, under section 25 of the Merchant Shipping Act 1862, which enacts that "in obeying and construing these rules due regard must be had to all dangers of navigation, and due regard must also be had to any special circumstances which may exist in any particular case rendering a departure from the above rules necessary in order to avoid immediate danger."

The Lord Ordinary, after other findings of fact, found also that in this case the departure from the ordinary rule of navigation was not justified, but that there was contributory negligence on the part of the yacht, because "according to the practice of seamen, and under the circumstances of this case, the pursuers neglected the precaution of remaining by their moorings until the 'Marquis of Lorne' had left the pier and had proceeded so far on her course as to render the chance of collision improbable." The damage was therefore divided by his Lordship's interlocutor between the pursuers and defender.

The pursuers reclaimed.

At advising—

Lord President—[After concurring with the Lord Ordinary in the preliminary findings of fact]—The Lord Ordinary goes on to find that "the pursuers neglected the precaution of remaining by their moorings until the 'Marquis of Lorne' had left the pier," and that there was

therefore joint negligence. He accordingly deals with the case as one of average loss, and that inference is undeniable. But it appears to me that in the relative positions of the vessels, the steamer being at Gourrock pier, and stopping there at a stage on her way, and the yacht lying at her moorings, there was no obligation on the latter to remain there. The time during which a steamer may remain at one place of call is uncertain. It depends on the business she has to do there, and she may be detained by a variety of circumstances. It is certainly a matter of an indefinite kind. I cannot say I can find any law for the position adopted by the Lord Ordinary, that the yacht was bound to wait until the steamer left the pier and had passed the place where the sailing vessel was likely to take her course. She might then have been detained any length of time at her moorings. Another steamer might come up in the interval, and it would be doubtful how long a vessel might thus be kept waiting at her moorings.

[His Lordship further agreed with the Lord Ordinary that on the evidence the case was not one in which the steamer was justified in neglecting the ordinary rules of the road in order "to prevent immediate danger," but added that in a recent jury trial arising out of a collision he had told the jury that he thought these rules had been properly set at nought in the circumstances of the case.]

LORD DEAS, LORD MURE, and LORD SHAND concurred.

Decree was given against the defender for the whole sum of damages as assessed.

Counsel for the Pursuers—Trayner—Maclean. Agent—John Galletly, S.S.C.

Counsel for the Defender—Asher—M'Kechnie. Agents—Campbell & Smith, S.S.C.

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SECOND DIVISION.

STEWART v. COLTNESS IRON COMPANY
AND ANOTHER.

Reparation—Master and Servant.

Where a miner, who had been injured by the fall of a part of the roof of a mine, brought an action of damages against the mining company and their manager, on the ground that the accident had been caused by their failure to supply prop-wood in terms of the special rules framed under the Mines Regulations Act 1872—defenders *assolviend*, in respect) it was proved that there was an ample supply of wood at or near the pit-head, although there was a conflict of evidence whether it had been supplied at the working faces.

Observations (per Lord Justice-Clerk) on the law regarding such a claim.

This was an action of damages by a miner named Stewart against the Coltness Iron Company and Dewar, the manager of the company, for injuries received by him by a fall of the roof at a working