

10217

STATE OF MINNESOTA
IN THE
SUPREME COURT.

OCTOBER TERM, A. D. 1909.

R. C. VINCENT and
LILLIAN M. KELLY,

Plaintiffs & Respondents,

vs.

LAKE ERIE TRANSPORTATION COMPANY,
Defendant and Appellant.

PAPER BOOK.

H. R. SPENCER,
Attorney for Appellant.
Duluth, Minn.

ALFORD & HUNT,
Attorneys for Respondents.
Duluth, Minn.

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STATE OF MINNESOTA

IN THE

1

SUPREME COURT.

OCTOBER TERM, A. D. 1909.

STATE OF MINNESOTA, COUNTY OF ST.
Louis, ss. District Court, Eleventh Judicial
District.

2

R. C. VINCENT and
LILLIAN M. KELLY,

Plaintiffs.

vs.

LAKE ERIE TRANSPORTATION COMPANY,
Defendant.

PAPER BOOK.

3

COMPLAINT.

Plaintiffs complain of defendant and allege:

1. That at all times herein mentioned de-
fendant was and still is a corporation duly or-

ganized and existing under the laws of the state of Ohio.

2. That throughout the year 1905 the plaintiffs were the owners of all that certain real estate
- 4 lying and being in the county of St. Louis, described as follows, to-wit: Lots numbered one, three, five, seven and the south half of lot numbered nine, Bay Front division of Duluth, according to the recorded plat thereof, together with certain warehouses and docks and other improvements situate thereon; that said property lies in the harbor in said city of Duluth and is valuable chiefly by reason of riparian rights, dock, wharf and warehouse facilities incident thereto; that prior to the time hereinbefore mentioned said property was improved by the erection of a dock and
- 5 warehouse thereon for the purpose of receiving freight from boats and vessels engaged in transportation on the Great Lakes and also of receiving freight to be laden upon such boats and vessels at such dock and warehouse; that on or about the 27th day of November, 1905, defendant, by its servants and employees, negligently and carelessly kept a certain steam vessel tied to said wharf on said day and for several days thereafter to and including the 29th day of November, 1905, that during said time said vessel was so negligently tied and kept tied to said wharf by said defendant,
- 6 said vessel violently struck against and beat upon and hammered against said wharf and injured and destroyed a large part of said wharf to the damage of these plaintiffs in the sum of \$1200.00; that said property of these plaintiffs by reason of said neg-

ligent acts of said defendant was damaged and injured to the extent of the sum of \$1200.00.

3. That said sum has not been paid nor any part thereof. 7

Wherefore, plaintiffs demand judgment against the defendant in the sum of \$1200.00 with interest thereon from the 27th day of November, 1905, together with the costs and disbursements of this action.

Dated May 25th, 1908.

ALFORD & HUNT,
Attorneys for Plaintiff,
904 Torrey Bldg., Duluth, Minn.

8

(Duly verified.)

ANSWER.

Title omitted.

Now comes the defendant and for its answer in the above entitled action alleges: 9

1st. That it admits that it is a corporation duly organized and existing under the laws of the State of Ohio.

2nd. That it admits that at the time stated in the complaint plaintiffs were the owners of the

real estate set forth in the complaint and alleges that at the time stated in the complaint the plaintiffs or their lessees were operating said real estate as a general merchandise and storage dock, at which freight was received for storage and shipment, and that the lessees of said dock operated said dock known as the City Dock, for the purpose of receiving freight from lake steamers and storing the same on which said lessees collected a dockage charge from the owners and consignees of freight so discharged on to said City Dock.

3rd. Defendant says that at the time stated in the complaint it was the sole owner of the Steamer S. C. Reynolds. That on or about the 27th day of November, 1905, defendant's said steamer arrived from lower lake ports with a cargo of general merchandise, a portion of which was consigned to said City Dock, owned and operated by plaintiffs or their lessees.

That on the arrival of said vessel at Duluth, plaintiffs or their lessees operating said dock, directed the master, officers and agents of said vessel to come alongside plaintiffs' said dock and there to have discharged the cargo consigned to said dock. That thereupon said vessel was placed alongside plaintiffs' dock at the place and in the manner designated by plaintiffs or their lessees, and having been securely moored thereto in the usual and proper manner, the discharge of cargo from said vessel on to plaintiff's dock began, at about one o'clock p. m. of that date, which cargo plaintiffs or their lessees received and stored in their warehouse located on said dock. That the

discharge of cargo continued and plaintiffs or their lessees continued to receive the same until about ten o'clock p. m. of that date.

That while said vessel was so lying at libellants' dock, discharging cargo as aforesaid, a violent gale of wind arose from the northeast with blinding snow, so thick as wholly to obscure vision. That the wind continued to increase in velocity until it attained the proportions of a hurricane.

13

That by the time the discharge of cargo on to said dock was completed, the wind had attained such velocity and unexpected proportions, the master and crew of said vessel were powerless and wholly unable to remove said vessel from said dock. That they made every effort known to safe and prudent seamanship to remove said vessel from said dock and secure the same in a less exposed situation but were unable to do so.

14

That the master and officers of said vessel endeavored to secure the assistance of tugs to aid said vessel in seeking a safe place to remain during the gale, but the violence of the wind was such and the snow was falling so thick as to render it wholly unsafe for tugs to navigate the harbor, and the masters and managers of all tugs refused to render assistance to said vessel, and the officers and crew of said vessel were unable to obtain aid from any source and said vessel was obliged to remain moored to said dock at the place where plaintiffs or their agents and lessees had placed it, exposed to all the fury of a storm of such violence as had never been known on Lake Superior before.

15

That during the night of November 27th, 1905, said vessel was impinged against said dock and the

officers and crew of said vessel were wholly unable to move it from the position where plaintiffs and their agents or lessees had placed it. That during the night of November 27th, 1905, and the following day said hurricane continued with unabated
16 violence and at the port of Duluth and vicinity eight or ten of the largest vessels navigating the lakes were wrecked and stranded, with great loss of life and property.

That during all this time the master and crew of the steamer Reynolds made every effort possible to get away from said dock and made every effort possible to avoid doing said dock damage, but that it was a physical impossibility to move said vessel or with safety to alter its position at said dock, and it was forced by the unexpected weather conditions to remain alongside said dock until the gale subsided when as speedily as possible it was removed
17 from said dock.

4th. Defendant is informed and believes that the damage sustained by plaintiff's dock, if any was sustained, was of much less extent than stated in the complaint and was due wholly to the rotten and poor condition of said dock, and was due to the sea and current caused by said violent storm and was not due to any want of care on the part of the defendant or those in charge of said steamer.

5th. That every allegation, matter and thing
18 in said complaint contained is hereby denied, except as herein explicitly admitted.

Wherefore defendant asks that plaintiffs take nothing in this action and that defendant has judg-

ment against plaintiffs for their costs and disbursements.

June 3rd, 1908.

H. R. SPENCER,
Defendant's Attorney.

19

(Duly verified.)

MOTION TO STRIKE OUT.

Title omitted.

20

To H. R. Spencer, Esquire,

Attorney for Defendants above named.

Please take notice, that at the Court House, in the City of Duluth, in said County and State, at nine-thirty o'clock a. m., on the 20th day of June 1908, at a special term of said Court then and there to be holden the plaintiffs will apply to said court at said time, or as soon thereafter as counsel can be heard, for an order directing that the several portions of defendants answer, herein specified in the following paragraphs, be stricken out:

21

1. Beginning with the sixth line from the end of page two strike out that portion embraced in the following words:

"That the master and officers of said vessel endeavored to secure the assistance of tugs to aid said vessel in seeking a safe place to remain dur-

ing the gale, but the violence of the wind was such and the snow was falling so thick as to render it wholly unsafe for tugs to navigate the harbor and the masters and managers of all tugs refused to render assistance to said vessel, and the officers and crew of said vessel were unable to obtain aid from any source and said vessel was obliged to remain moored to said dock at the place where plaintiffs or their agents and lessees had placed it exposed to all the fury of a storm of such violence as had never been known on Lake Superior before.”

2. Strike out that portion next following the matter included in paragraph 1, hereof and embraced in the following words: “That during the night of November 27th, 1905, said vessel was impinged against said dock and the officers and crew of said vessel were wholly unable to move it from the position where plaintiffs and their agents or lessees had placed it.”

3. Strike out that portion next following the matter included in paragraph 2, hereof and embraced in the following words: “That during the night of November 27th, 1905, and the following day said hurricane continued with unabated violence and at the port of Duluth and vicinity eight or ten of the largest vessels navigating the lakes were wrecked and stranded with great loss of life and property.”

4. Strike out that portion next following the matter included in paragraph 3, hereof and embraced in the following words: “That during all

this time, the master and crew of the steamer Reynolds made every effort possible to get away from said dock and made every effort possible to avoid doing said dock damage but that it was a physical impossibility to move said vessel, or with safety to alter its position at said dock, and it was forced by the unexpected weather conditions to remain alongside said dock until the gale subsided, when as speedily as possible it was removed from said dock.” 25

That said application will be made as to each of said parts of said answer specified in said respective paragraphs numbered from one to four inclusive and upon the ground that said parts of said answer so specified are and each of them redundant and also irrelevant. 26

Dated June 12th, 1908.

ALFORD & HUNT,
Attorneys for Plaintiffs.

ORDER TO STRIKE OUT.

27

Title omitted.

The application for an order directing that portions of the answer of the defendant herein be stricken out on the ground that said respective portions specified in said application are and each of them is redundant, and also irrelevant, came on

for hearing at a specified term of said court at the Court House in the City of Duluth on the 20th day of June, 1908. Messrs. Alford and Hunt appeared in support of said application, and H. R. Spencer opposed. Now having heard and considered said
28 application in all respects, it is ordered that that portion of said answer found upon the third page thereof immediately following the word "violence" where the same occurs in the eleventh line, counting from the top of said page and continuing to the end of the 13th line be stricken out. That as to the remaining portions of said answer so asked to be stricken out said motion be and the same is hereby denied.

Dated June 23, 1908.

(Signed) HOMER B. DIBELL,

Judge of said Court.

29

REPLY.

(Title omitted.)

The plaintiffs, for their reply to the answer of defendant herein, deny each and every allegation of new matter in said answer contained.

Dated July 2nd, 1908.

30

ALFORD & HUNT,

Attorneys for Plaintiffs,

904 Torrey Bldg., Duluth, Minn.

Duly verified.

STIPULATION TO USE DEPOSITION.

31

(Title omitted.)

It is hereby stipulated by and between counsel for plaintiff and counsel for defendant that the depositions heretofore taken in a case pending in the United States District Court for the District of Minnesota, Fifth Division, wherein R. C. Vincent and Lillian M. Kelly were libellants and the steamer S. C. Reynolds was respondent, may be used at the trial of the foregoing entitled cause as if regularly taken in the same, subject to all objections as to materiality and relevancy; that the same may be used by either party to said cause.

32

August 5th, 1908.

ALFORD & HUNT,
Attorney for Plaintiffs.

H. R. SPENCER,
Attorney for Defendant.

33

TRIAL.

(Title omitted.)

This cause came on to be heard at a regular term of the above named court held in and for the County of St. Louis, at the court house, in the City

of Duluth, Minnesota, on the 14th day of September, A. D. 1908, before the Honorable J. D. Ensign, Judge, and a Jury of Twelve, whereupon the following evidence was taken and proceedings were had, to-wit:

34

APPEARANCES:

For the Plaintiffs: Messrs. Alford & Hunt.

For the Defendant: H. R. Spencer, Esq.

F. H. BIDWELL, being duly sworn as a witness on behalf of plaintiffs, testifies as follows:

DIRECT EXAMINATION.

35

By Mr. Alford:

Q. Your name is F. H. Bidwell?

A. Yes, sir.

Q. Where do you live, Mr. Bidwell?

A. Virginia, Minnesota, at present.

Q. How long have you lived there?

A. About one year.

Q. Where did you live before?

A. Duluth.

Q. How long have you lived in Duluth?

A. I came here in the fall of '86.

36

Q. And lived here continuously from that time until the time you went to Virginia?

A. Yes, sir.

Q. Calling your attention to the year 1905 what was your business at that time?

A. I was manager for the City Dock Company.

Q. And in particular during the months of November and December of that year, were you so employed? 37

A. Yes, sir.

Q. Do you recall the latter part of November, particularly the 27th?

A. I don't remember the exact date. I remember the latter part of November quite well.

Q. Do you recall the fact of the Steamer S. C. Reynolds being tied up at the city dock?

A. Yes, sir.

Q. And you were manager of the dock at that time? 38

A. Manager, yes, sir; I was.

Q. When the Reynolds came there?

A. Yes.

Q. Mr. Bidwell, as nearly as you recollect about what time of the day was it that the Reynolds came there?

A. That she came to the dock?

Q. Yes, sir?

A. Why, it is my recollection that she came to the dock about 5, or between 5 and 6 in the evening and commenced unloading about 7. 39

Q. She had some freight for the dock, did she?

A. Yes, sir.

Q. You say she commenced to unload along about 7?

A. About 7 or little after, I think.

Q. Was the unloading completed that evening?

A. Yes, sir.

Q. According to your best recollection about what time?

40 A. It must have been about 11 o'clock.

Q. Anyway before midnight?

A. Before midnight, yes, sir.

Q. Now, on which side of the dock was she tied?

A. She was at the outer end of the dock, what we usually called the bay side. It would be the south end of the dock.

Q. Along how many sides of the dock could vessels tie?

A. Two.

41 Q. Which side was the other one?

A. It was on what we spoke of as the slip; that was on the west side of the dock.

Q. That side was approached through the slip, was it?

A. Yes.

Q. Then the Reynolds was tied to that side of the dock nearest the canal?

A. Yes.

Q. Let us see. The slip is along the west side I believe you stated?

A. Yes, sir.

42 Q. Did you leave the dock that night?

A. I left the dock shortly after the boat finished unloading.

Q. About what time?

A. Why, I should think perhaps half an hour after that; perhaps longer. I don't know exactly.

Q. And did you return the next day?

43

A. Yes, sir.

Q. About what time, according to your best recollection?

A. It was early the next morning; I think probably along half past 7 or 8. It was a pretty hard job to get down there.

Q. How long did the Reynolds remain there before she left?

A. I don't remember just when she did leave there. She was there all the next day and I think that night.

Q. At any rate all the next day?

44

A. Yes, sir.

Q. You may state the fact as to whether when the Reynolds came there that portion of the dock at which she tied up was in good condition?

A. It was then, yes, sir.

Q. It was in a good state of repair?

A. Yes, sir.

Q. Had been used all that summer and fall by large vessels in taking and receiving freight?

A. It was used nearly every day.

Q. And suitable for that purpose?

45

A. Yes, sir.

Q. Upon your return that next morning in what shape was that portion of the dock?

A. Why, it was badly broken up.

Q. In particular that portion along where the Reynolds had been tied?

A. Yes, sir.

Q. Describe, tell the jury how the Reynolds was breaking it if it was?

A. She was lying at the south end of the dock tied up there and was pounding against the dock and had pounded the end of the dock in there; done a good deal of damage.

Q. Loosened the piling?

A. I don't remember as to the piling particularly. It was the timber work of the dock that I observed more than anything else.

Q. Timber work was torn up?

A. Yes sir.

Q. Did that process continue through the course of that day?

A. Continued during all the time she was lying there.

Q. Continued her pounding?

A. Yes sir.

Q. About how much space along the dock front was stove in by this action?

A. Why, I should say that there was 40 to 50 feet to my best recollection.

Q. And about how far into the dock had the Reynolds broken her way?

A. ' I had reference to the depth in, when I say 40 or 50 feet; and along the face of the dock I should say it was, oh, I should say 50 or 60 feet there too.

Q. You are now making an estimate, I take it?

A. Yes, sir.

Q. Mr. Bidwell, in which direction was the bow of the vessel lying?

A. She was heading east.

Q. That is, toward the canal?

A. No, she was headed toward the lake.

Q. Toward the lake?

A. Yes, sir.

Q. What other property, dock property, if any, was next to the city dock and toward the lake?

A. In an easterly direction?

Q. Yes?

A. The Omaha dock.

Q. Now, state the fact as to whether the bow of the vessel extended to or along side the Omaha as well?

A. She lapped over on to the Omaha dock.

Q. Had her forward lines on the Omaha?

A. I presume so.

Q. Did she break into the Omaha as well?

Mr. Spencer: Defendant objects to the question on the ground it is irrelevant and immaterial as to what damage she did to any other dock, that question not being in litigation.

Objection sustained.

Mr. Alford:

Q. Where was the stern of the Reynolds?

A. Stern, I should judge, must have been out into the slip a little; very nearly so I should think. I didn't notice that.

Q. You didn't notice that to see?

A. No, sir.

Q. Mr. Bidwell, were you out there where she was unloading that night?

A. I was.

Q. And were you out there after she got through unloading?

52 A. Yes, sir; I was.

CROSS EXAMINATION.

By Mr. Spencer:

Q. Major Bidwell, you say this dock at the time in question was being operated by the City Dock Company?

A. Yes, sir.

Q. Was the City Dock Company the lessee of the dock?

53

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination, not serving the trial of any issue involved in this case.

Objection sustained.

Mr. Spencer:

Q. How did the City Dock Company happen to be operating this dock at that time?

54 Plaintiffs make same objection as last above.

Mr. Spencer: He said the City Dock Company was operating this dock. I simply desire to show that it was by permission of the plaintiff in this case.

The Court: I don't remember any such evidence. He said he was the manager of the City Dock, as I understand.

55

Mr. Spencer: I understood him to say that he was operating it.

Mr. Spencer:

.Q State, if you know, who was operating this City Dock at this time?

Mr. Alford: Plaintiffs object to the question on the ground it is incompetent, irrelevant, immaterial and not proper cross examination.

Objection sustained.

56

Mr. Spencer:

Q. What was the nature of the business of the City Dock Company?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination and also as immaterial.

(No ruling.)

Mr. Spencer:

Q. Where is the City Dock situated?

A. City of Duluth, foot of 8th Avenue West. 57

Q. You say you were the manager of this dock at the time in question?

A. I was.

Q. What was this dock used for at that time?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection sustained.

Mr. Spencer:

58 Q. Was this a merchandise dock?

A. Yes, sir.

Q. And steamboats discharged cargo at that dock, merchandise dock?

A. They did.

Q. How many times that summer had the Steamer S. C. Reynolds discharged cargo at that dock?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination and is immaterial.

59 Objection sustained.

Mr. Spencer:

Q. You say that the Steamer Reynolds came to your dock at about 5 o'clock in the afternoon?

A. That is my recollection, yes, sir.

Q. Came to the City Dock? Who directed it where to go?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

60 Objection sustained.

Mr. Spencer:

Q. You say that it came to the dock at about 5 o'clock. Were you there when it came there?

A. Yes, sir.

Q. Did you see where it made fast to your dock?

A. I don't remember that I saw her tie up. I saw her lying there. 61

Q. And what was done after the Reynolds came to the City Dock? What was done by the steamboat Reynolds after she came to your dock?

A. Why, nothing at all as I remember until after supper.

Q. Oh, until after supper?

A. Yes.

Q. Then after supper at about 7 o'clock you say work began in discharging cargo on to your dock? 62

A. Yes, sir.

Q. Who discharged the cargo, do you remember?

A. Why, there was a—

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Question withdrawn.

Mr. Spencer:

Q. Did the City Dock receive the cargo that was being unloaded at that time? 63

A. Did we receive it?

Q. Yes?

A. Yes, sir.

Q. Did you see the captain of the Reynolds there at that time?

A. I don't remember. I don't think I did.

Q. At what time in the evening did the

freight that was consigned to your dock—was it unloaded?

A. What time did they get through?

Q. Yes?

A. As I remember about 11 o'clock.

64 Q. You say the Steamboat Reynolds came to your dock and made fast at the outer end; the outer end of your dock, the City Dock, comes out to the east dock line, does it not, to the navigable water?

A. Yes, sir, it does.

Q. Comes out to the navigable channel of the Duluth Harbor?

A. Well, I suppose it does. I don't know just how the dock line is drawn there but I suppose it does.

65 Q. And on the west side of your dock there is a slip known as the lime kiln slip, is there?

A. Yes, sir.

Q. And the Reynolds was made fast to your dock with her port side next to the dock; that is, the left hand side of the ship was next to your dock?

A. Yes, sir, port side to.

Q. And she was heading out towards the lake?

A. Yes, sir.

Q. Or towards the eastward?

A. Yes, sir.

66 Q. During the evening?

A. Yes, sir.

Q. You remained there until the cargo was all discharged.

A. Yes, sir.

Q. Did you have any conversation with the captain of the steamboat or any of the officers that evening?

67

Mr. Alford: Plaintiffs object to the question.

Mr. Spencer: I withdraw the question.

A. I don't remember anything at all.

Mr. Spencer:

Q. Did you go on board the vessel at any time during the evening?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

68

Objection sustained.

Mr. Spencer:

Q. Where were you during the evening?

A. I was in the warehouse.

Q. In the warehouse all of the time?

A. On the dock; yes, and in the office.

Q. And what time did you go down to the dock the next day?

A. It was quite early in the morning. It was probably half past 7 or 8, some time along there.

Q. You say you had a hard time to get down there?

69

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection overruled.

A. Yes.

Mr. Spencer:

Q. What was it caused you to have a hard time to get down there?

70 Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection overruled, to which ruling plaintiffs duly except.

A. (No answer).

Mr. Spencer:

Q. You say you had a hard time to get down there?

A. Or rather hard to get over to the dock itself.

71 Q. Why was it hard to get over to the dock itself?

A. There was water over the track there and in the road between the Omaha dock and the City dock.

Q. Was it snowing any at the time?

A. It was snowing during the night. I don't think it was in the morning. I don't remember as to that.

Q. Which way was the wind?

A. Northeast.

72 Q. And do you know anything as to the velocity of the wind?

A. What?

Q. What was the velocity of the wind at that time?

A. I don't know the exact velocity. It was blowing pretty hard.

Q. You found your dock somewhat ripped up, didn't you?

A. I did where the boat was lying.

Q. At any other place on that dock?

A. No.

Q. You said something about damage having been done 60 feet in the dock. Do you mean in under the dock?

A. That was right where the boat was lying.

Q. That is, on the face of the dock next to the bay?

A. Yes, sir.

Q. You did not mean 60 feet of damage was done under the dock from the outer end?

A. Yes, I mean that the timbers were pushed in from the face of the dock, pushed back, I should think, I would not say definitely, 60 feet. Perhaps it was not more than 50. They were pushed back in and then a space along the front of the dock I should think of about the same length.

Q. You don't know of your own knowledge that the steamboat pushed that dock in 60 feet there, do you?

A. Well, I saw her doing it part of the time.

Q. Was it 60 feet in under the dock?

A. Sir?

Q. How could you observe that under the dock itself?

A. Well, I could see the boat lying there and pounding up against the dock.

Q. That was against piling, wasn't it, spiles?

A. No. It was right against the timbers of the dock.

Q. Against the timbers of the dock?

73

74

75

A. Of course if she had broken away the face of the dock there she probably got against the piling.

Q. There is a warehouse situated on this dock, is there not?

76 A. Yes, sir.

Q. How near the outer edge of the dock does this warehouse extend?

A. With reference to the bay front, you mean?

Q. With reference to the bay front.

A. Why, I should think probably a space of 8 or 10 feet, something like that; about 10 feet I should judge.

Q. And that is planked over and constitutes a sort of platform, does it?

A. Yes, sir.

77 Q. And that extends around on the west side of the dock, doesn't it, along the slip?

A. If I remember right it was not quite so wide on the west side.

Q. Your dock is provided with clusters of piles for vessels to hitch to, was it?

A. Yes, sir.

Q. Did the vessel make fast to these posts that you had provided for them to hitch to?

A. I presume so.

Q. Well, you know that for a fact, don't you?

78 A. No. I did not observe how she tied up. She tied up in the customary manner.

Q. How wide is this slip you speak of, this lime kiln slip, right immediately west of the City dock?

A. How is that question?

Q. How wide is that slip?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination. 79

Objection sustained.

Mr. Spencer:

Q. When you came down the next morning and had this difficulty in getting to the dock how about the sea, was there any waves breaking over your dock at that time?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection sustained. 80

Mr. Spencer:

Q. Well, what else besides a broken condition of your dock aided, or, rather, retarded your efforts to get out to the dock the next morning; you say you had a hard time?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection overruled.

A. (No answer.) 81

Mr. Spencer:

Q. You said it was a pretty hard time to get down there. What did you mean. What did you mean?

A. What I mean is, when I got down to the Omaha dock there was water in the road and over

the railroad tracks between the Omaha dock and the City dock.

Q. Was that a usual condition of things at that place?

82 A. No, sir; it was not a usual condition of things.

Q. Was the water so high in the bay that it came over the City dock and the Omaha dock adjoining?

A. It did not come over the Omaha dock. It came over the roadway and the railroad track between the two docks.

Q. And that was what made it difficult for you to get down there?

A. Yes. That made it difficult for me to get down there.

83 Q. And were there large drifts of snow there as you came down?

A. I don't remember about the snow. May have been.

Q. And it was snowing and blowing hard from the northeast at that time, wasn't it?

A. It was blowing. I don't think it was snowing at that time when I went down in the morning.

Q. Did the weather increase in severity that morning?

84 Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection sustained.

RE-DIRECT EXAMINATION.

By Mr. Alford:

85

Q. If I understood you correctly, Mr. Bidwell, you were in and out of the dock where the unloading was going on, off and on during the process?

A. I was about the dock, in the warehouse and in the office.

Q. This is the dock at the foot of 8th avenue West in the city?

A. Yes.

Q. And it is the same dock near which or adjacent to which the lime kiln is situated?

86

A. Yes, sir.

Q. Is the lime kiln approached by the same slip?

A. Yes, sir.

Q. To the west. That is, that lays to the west of the dock?

A. Yes. The boats going to the lime kiln went into the slip west of the City dock.

Q. Where does the Omaha lie with reference to the City dock?

A. Just east of it.

Q. Right up along?

87

A. Adjoining it.

Q. Adjoining it?

A. Yes, sir. The fronts of the two docks adjoin. Of course there is a street and two railroad tracks between the two warehouses.

Q. Now, the forward end of the boat, that is, the bow, was attached to the Omaha?

A. To the Omaha?

Q. Yes.

A. I cannot say as to that.

Q. It was lying in that direction?

A. Lying in that direction; yes, sir.

88 Q. And the vessel was lying parallel with the
end of the dock, was it not?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Spencer:

Q. Did you at any time ask the vessel to get
away from your dock?

Mr. Alford: Plaintiffs object to the question
on the ground it is not proper cross examination.

89 Objection sustained, to which ruling defend-
ant duly excepts.

W. H. BREWER, being duly sworn as a witness
on behalf of plaintiffs, testifies as follows:

DIRECT EXAMINATION.

By Mr. Alford:

90 Q. You live in Duluth, Mr. Brewer?

A. Yes, sir.

Q. How long have you lived here?

A. Little over 7 years.

Q. What is your business?

A. I am manager of the City dock just now.

Q. How long have you been at that?

A. Three years.

Q. Calling your attention to the latter part of the year 1905, months of November and December, what was your business then? 91

A. I was helping Mr. Bidwell at the City dock at that time.

Q. Do you recall the time that the S. C. Reynolds tied up there in the latter part of November?

A. Yes, sir.

Q. And about what date was it, if you remember?

A. About the 26th or seventh.

Q. State about what time of day it was that she came there, if you remember? 92

A. I cannot say exactly when it was; some time between 5 and 7.

Q. She had cargo for the dock?

A. Yes, sir.

Q. Was that cargo unloaded that evening?

A. Yes, sir.

Q. About what time was the unloading completed?

A. I think between half past 10 and 11.

Q. Were you there during the process of unloading? 93

A. Yes, sir.

Q. At what time did you leave the dock that night?

A. About 11 o'clock.

Q. Then the unloading was completed before you left?

A. Yes, sir.

Q. On which side of the dock was the Reynolds tied?

A. On the south side; bay side.

Q. That is the part commonly designated as
94 the end?

A. Yes, sir.

Q. The outer end toward the bay?

A. Yes, sir.

Q. In which direction was the bow of the vessel?

A. To the east.

Q. That is, toward the lake?

A. Yes, sir.

Q. And she laid along parallel with the end of the dock, did she?

A. Yes, sir.

95 Q. I will ask you whether you were out there at any time during the progress of the unloading?

A. Out where?

Q. Outside along where the unloading was going on?

A. I was within 50 feet of the boat.

Q. Did you come back to the dock the next day?

A. Yes, sir.

Q. About what time?

A. I did not get there until about half past
10.

96 Q. Mr. Brewer, what was the nature of the cargo that the Reynolds was unloading there?

A. General merchandise.

Q. How long did the Reynolds remain there at the City dock altogether?

A. She was there all of the next day and, I believe, all of the next night.

Q. In what shape was the dock after the Reynolds left? 97

A. The part we called the open dock was very badly battered up; timbers broken and planking all torn up.

Q. That was along side where the Reynolds had been tied?

A. Yes, sir.

Q. Was it so broken up before she tied up there?

A. No, sir.

Q. Did the boat pound the dock?

A. To the best of my knowledge, yes, sir. 98

Q. Did you see its action the next day?

A. Both that night and the next day.

Q. Both that night and the next day. Can you tell the jury about what her action was so they can get an idea?

A. Well, as each big wave would come through the canal it would practically pick the boat up and just hurl her right against the dock that way; drove the timbers, and crowded over the piling, and drive the timbers right back in, you know; break them right up. That is the best description I could give of it. 99

Q. How was the forward end of the boat, the bow, situated? Where was it?

A. Well, the very peak, I think, was overlapping the Omaha dock.

CROSS EXAMINATION.

By Mr. Spencer:

100 Q. You are at present the manager of the City dock, are you?

A. Yes, sir.

Q. And what was your relation to that dock at the time in question, on the 27th and 28th days of November, 1905?

A. Simply as an employe of Jesse Norton.

Q. This vessel you say was made fast to the outer end of the City dock?

A. Yes, sir.

Q. Who made it fast?

A. The boat crew, I presume.

Q. You don't know, do you?

101 A. I did not see them.

Q. Was that the usual place for unloading freight at your dock?

A. Yes, sir.

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection overruled.

Mr. Spencer:

102 Q. The vessel was made fast to the posts that were provided for that purpose, was it?

A. I believe so.

Q. And how was it made fast? How was it fastened?

A. Lines run out from the side of the boat and fastened to the piles.

Q. Were the forward lines run out to posts that were provided for that purpose?

A. I cannot answer positively on the forward lines. 103

Q. And what about the stern lines?

A. The stern lines were on her clumps, piles.

Q. Did you observe whether the forward end had lines out or not?

A. They were out.

Q. And it had cargo that was consigned to your dock that afternoon and evening that it came up there, did it?

A. Yes, sir.

Q. And did you receive it?

A. Yes, sir.

Q. And store it away in your warehouse? 104

A. Yes, sir.

Q. The vessel had been doing that all summer, had it, that year?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection sustained.

Mr. Spencer:

Q. You say you got down there about 10 or 10:30 o'clock, after the cargo was discharged? 105

A. Yes, sir.

Q. And why were you so late in getting down there that morning?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection overruled.

A. Very heavy storm.

Mr. Spencer:

Q. A very hard storm; something out of the usual order of things?

106 Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection sustained.

Mr. Spencer:

Q. You say it was a very heavy storm. In what way did that prevent you from getting down to your dock earlier?

A. Stopped the street cars from Lakeside.

Q. You resided at Lakeside at that time, did you?

107 A. Yes, sir.

Q. And was there anything of the condition of the dock that prevented you from getting down there after you reached the bayside?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection overruled.

A. Nothing to prevent my eventually getting there, although after some trouble.

Mr. Spencer:

108 Q. You said something about the condition of the dock or the condition of the dock prevented your getting on to it?

A. It caused me a good deal of trouble getting on to it.

Q. In what respect?

A. Well, the usual way is to go down the road between the Omaha and the City dock. That was covered with water; could not go that way. The only other way was to go around the Omaha dock and cross the open dock. The open dock, as I stated, was all knocked to pieces and I had to climb over anything I could to get there. 109

Q. The whole dock for its entire length was pretty well wrecked, was it?

A. No, sir. Just as I said before, practically the open dock.

Q. The outer end?

A. Yes, sir.

Q. And how far ashore would that extend? 110

A. Oh, between 40 and 60 feet, anyway.

Q. There is a railroad extending between the City dock and the Omaha dock, is there? Was there at that time?

A. Down to within 80 feet of the water.

Q. Found that pretty well torn up, did you?

A. Yes, sir.

Q. And you spoke about the waves rolling in from the canal beating up against the dock and vessel. Did they wash over the dock?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination. 111

Objection overruled.

A. I don't think the waves themselves came over the dock.

Mr. Spencer:

Q. Go on, and can you give any illustration as to how high the waves were that came rolling through the canal?

112 Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection overruled.

A. I cannot answer that because I could not see the waves from the canal. I can answer it in another way.

Mr. Spencer:

Q. Well, answer it in any way you can?

113 A. About 9:30 of that evening Mr. Bidwell called my attention—

Mr. Alford: That is objected to.

Mr. Spencer:

Q. Never mind that. Coming up to the morning when you came down there at half past ten what was the wave action at that time?

A. It was throwing the boat very strong.

Q. Give an illustration to the jury showing how high the waves were, if you can?

114 Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection overruled.

A. Well, I don't know as I could say how high the waves would throw the boat. I know it

was harder than I had ever seen a boat at that point before.

Mr. Spencer: 115

Q. And how long an experience had you had there before that time?

A. I had been there off and on four years.

Q. Had you ever known such a sea as that beating up against your dock?

A. No, sir.

Q. It was an unusual occurrence, was it?

A. Yes, sir.

Q. How high did these seas raise the side of the vessel up in front of the dock?

A. That is what I say. That would be pretty hard to tell. 116

Q. Can you give any idea of how much of a rise and how much of a depression there was in the action on the vessel?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection overruled.

A. I don't know as I can tell you how high, in height, only that it was an extraordinary play for a vessel to make at a dock. 117

Mr. Spencer:

Q. And at that time did the waves and water flood your dock, your warehouse?

A. In what way, coming over the front of the dock, do you mean?

Q. Coming over the front of the dock and over the floor of your warehouse?

A. It came through the floor underneath.

Q. Ordinarily how high does that dock stand above the water?

A. Oh, the floor of that dock I think is over 6 feet.

118 Q. And it is built on piling driven down into the earth, is it?

A. Yes, sir.

Q. And is the warehouse situated on the piling or on a solid foundation?

A. On piling.

Q. And the water underneath had risen up to such an extent that it flooded the floor of your warehouse; is that true?

A. Only in spots.

Q. Had that situation ever occurred before during your experience?

119 A. Not to my knowledge. I don't remember of it.

Q. And to the warehouse itself, was any damage done to that by the action of the waves?

A. I don't think so; no.

Q. Was any damage done to the piling underneath the warehouse?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection sustained.

120

RE-DIRECT EXAMINATION.

By Mr. Alford:

Q. Mr. Brewer, this water action was by reason of a swell, was it not; or am I wrong?

A. The water action on the boat, you mean?

Q. By which the boat was moved, lifted?

A. Yes, heavy waves.

Q. That swell or big wave lifted the boat, did it? 121

A. Yes, sir.

Q. And then would let it fall so that it fell against the dock?

A. Yes, sir.

Q. That is what you mean by throwing it against the dock?

A. Yes, sir.

The Court:

Q. The Reynolds was a steamboat, was it?

A. Yes, sir.

122

Mr. Alford:

Q. If I understood you correctly you say that your delay the next morning was in part on account of this breaking up of the dock?

A. Yes, sir.

RE-CROSS EXAMINATION.

By Mr. Spencer:

Q. When you came down the next morning and saw these waves dashing the ship against the outer end of this dock, how did the seas strike this vessel, broadside or how? 123

A. Well, I should— As I remember it would be rather quartering.

Q. Quartering?

A. Yes.

Q. That is, they would strike—

A. Strike on the outer side of the bow.

Q. That would be the starboard bow of the vessel, was it?

A. I believe that is what they call it.

Q. On the right hand forward end of it?

124 A. Yes, sir.

Q. Waves did not break exactly at right angles to the ship?

A. No.

Q. But came in at an angle we will say striking the forward corner of the vessel?

A. That is my remembrance.

Q. The forward bow?

A. Yes, sir.

Q. Forward right hand bow?

A. (No answer).

125 Q. And how much off of a line directly ahead would you say these seas came in?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection overruled.

The Court: You are referring, now, Mr. Spencer, to the waves that lifted the boat?

Mr. Spencer: Yes, sir.

126 A. I can only tell you in one way. Here is your dock line; your canal is off there; your waves are coming in about like that (illustrating).

Q. At an angle of about half way then between the bow of the ship and the side of the ship at right angles; an angle of about 45 degrees?

A. Not any over that.

Q. And that had the effect of throwing the vessel against the outer end of the dock, didn't it?

A. Yes, sir, her bow.

Q. And at that time how was her bow fastened, if you know? 127

A. By ropes to the piling.

Q. Did not break away?

A. No, sir.

RE-DIRECT EXAMINATION.

128

By Mr. Alford:

Q. Mr. Brewer, had any of the spiles been loosened to which the boat had been attached, or do you remember?

A. I don't remember positively.

Q. I will ask you this: Will you state the fact as to whether the Reynolds was held up flush with the side of the dock or was her attachment a loose one?

A. Oh, she was held as tight as she could be.

Q. Then is it a fact that the forward action of a wave was that of lifting the boat?

A. Certainly.

Q. And then as the force of the wave subsided it simply let the boat fall?

A. Yes, sir.

129

Q. It fell against the dock?

A. (No answer).

The Court:

Q. Lifting and pushing?

A. Lifting and pushing; pushed it right in; yes, sir.

Mr. Alford:

Q. And then as the boat fell it sagged back and tightened the lines?

130 A. Well, you understand, if a boat on a level sea is tied, tied here, when it lifts it those lines are bound to crowd it in. When it goes below that point also. When it gets down to that point it will be flush and when the waves push it still further it crowds it in, underneath here.

R. C. VINCENT, being duly sworn as a witness on behalf of plaintiffs, testifies as follows:

DIRECT EXAMINATION.

By Mr. Alford:

131 Q. Your name is R. C. Vincent?

A. Yes, sir.

Q. Where do you live, Mr. Vincent?

A. 527 West Third street.

Q. That is in the city of Duluth?

A. Yes, sir, city of Duluth.

Q. How long have you lived in the city of Duluth?

A. 25 years.

Q. You are one of the plaintiffs in this case?

A. Yes, sir.

Q. What has been your business here?

132 A. I have been in the lumber business here; always have.

Q. You are the R. C. Vincent who was for many years associated with Mr. Hubbard in the firm of Hubbard & Vincent?

A. Yes, sir.

Q. What is your business now?

A. Well, I have no particular business, particularly. I am plaintiff in this case, I might say, against the Liability Insurance Company. That is my business now at the present time. 133

Q. You have retired from the lumber business?

A. Yes, sir.

Q. Calling your attention to the year 1905, that is, the month of November and December, do you recall that time?

A. Yes, sir.

Q. And do you recall the fact of the Reynolds, S. C. Reynolds, having tied up to your dock? 134

A. Yes, sir.

Q. How soon after the Reynolds had gone were you down there?

A. I think it was the second day. The Reynolds when I got down there was gone. That was the second day after the storm had subsided when I went down.

Q. Did you then see the ragged condition of the dock?

A. I did.

Q. Will you tell the jury in what shape you saw it there? 135

A. Well, the base of the dock for about 60 feet was badly broken in. It was broken up, you might say, into kindling wood. The vessel had been pounding against it there I guess for about 48 hours and what it did not break in the line of timbers it broke off the piling below and shoved them in. The whole dock front there is one mass

of piling, pieces all tied together with timbers on top, and when the boat struck the outside it consequently had to jar the whole business in under the dock and all over for 200 feet, I presume. The dock, I think, is 215 feet long, or the building proper.

Q. What about the condition of the planking?

A. Well, the planking was all torn up, or not at all; it was mostly torn up; had been loosened by the boat pounding against it.

Q. Some of it actually broken, the timbers?

A. Well, yes, broken and torn up. Wasn't much of it there. It was drifted away and pounded in all directions.

Q. You saw pieces of it floating?

A. I don't know as I seen any of it floating, but it was not there. It had gone somewheres, the most of it.

Q. Mr. Vincent, what was the condition of that dock before the Reynolds came there at that place?

A. It was in good shape, first-class. I had that spring had the whole front of it rebuilt over, new piling driven wherever they was needed and cap pieces put on top and then a streak along the front where vessels ran up. I think they call it the whale streak. I think that is the proper name to call it. It drops about a foot from the top of the piling down.

Q. Kind of a fender?

A. Fender, yes. Proper name it is called a whale streak.

Q. Were the timbers sound?

A. They was used that spring. I think the dimensions was about 8 or 9 by 14 inches, 40 feet long. Western timber, western fir.

Q. Western fir?

139

A. Yes, sir.

Q. Mr. Vincent, did you have that dock restored to its original condition?

A. I did.

Q. That is, after this breaking up, battering down of the dock by the Steamer Reynolds, did you have it restored then to its condition immediately before?

A. Not at that time; until the next spring.

Q. The next spring you had it restored?

A. Some time in March or April is my recollection of it now. It might have been a little later than that.

140

Q. Well, this work that you then had consisted in, as I understand you, simply in the restoration of the dock to its previous condition?

A. Yes, sir.

Q. Whom did you employ, if anybody, to do that work of restoration?

A. Whitney Brothers of West Superior.

Q. And did they so restore the dock?

A. They did.

Q. Will you kindly tell the jury the fact as to whether any of the damage done by the Reynolds was not entirely restored at that time?

141

A. There was some of it that was not restored, although I don't think— I have no idea of it myself. The man that done the work claimed that he did not make a good job of it.

Mr. Spencer: Never mind what anybody claimed. Defendant moves the answer be stricken out in regard to that.

Motion granted.

142 Mr. Alford:

Calling your attention to the roof, what did you find, if anything, that was not—

A. I found the next rain after that storm there that the roof leaked badly and I had to have it fixed.

Q. Had completely been racked—

A. Yes, sir, racked from end to end.

143 At this time court takes a recess until 2 o'clock p. m. same day, Monday, September 14th, A. D. 1908, at which time proceedings were resumed as follows:

Q. Mr. Vincent, I show you a paper marked plaintiffs' Exhibit A, ask you if you recognize that paper?

A. Yes, sir.

Q. And say what it is?

A. That is a bill of Whitney Brothers for repairing the dock, for labor and material furnished.

144 Q. Repairing it in connection with this illustration that you have referred to heretofore?

A. Yes, sir.

Q. That paper also is a receipt for the payment of the money?

A. Yes, sir. That is Whitney Brothers' receipt, too.

Q. I also show you paper marked plaintiffs' Exhibit B. You may look at that paper and state if you recognize it? 145

A. I do.

Q. Is that your signature?

A. That is my signature, yes, sir.

Q. What is that?

A. That is the check in payment of that bill.

Q. Same bill as Exhibit A?

A. Yes, sir.

Q. Was that check paid?

A. It was.

Mr. Alford: Plaintiffs offer in evidence plaintiffs' Exhibits A and B. 146

Mr. Spencer: Defendant objects to the evidence for the reason that there is no evidence to show that the payment mentioned in Exhibits A and B were confined exclusively to the repairs of damages occasioned by the steamboat Reynolds; it includes a large amount of other stuff as it appears there.

Mr. Spencer: You offer that in proof of damages? 147

Mr. Alford: Yes, if the Court please. Our theory is, if the Court please, this is an injury to a building, structure on the real estate and in that case the cost of restoration is the measure of the damages.

Mr. Alford:

Q. Mr. Vincent, I will ask you to tell this jury the fact as to whether the payment of money referred to these Exhibits A and B related wholly to the restoration of the dock from the damage to it by the Steamer Reynolds, which has been referred to?

Mr. Spencer: Defendant makes the same objection as last before and that that is not evidence of the measure of damages. That is no evidence of reasonable value of making repairs to the dock. It may have been altogether too much or may have been altogether too little. I make the same objection as I did before.

Mr. Alford: If the Court will allow me to excuse this witness I will offer another deposition in evidence and will recall this witness.

The Court: You may do so.

Mr. Alford: I offer in evidence the deposition of O. S. Olson.

Mr. Alford (reading):

O. S. OLSON, a witness on behalf of libelants, called and being first duly sworn, on oath deposes and says:

DIRECT EXAMINATION.

Mr. Alford:

Q. Your name is O. S. Olson?

A. O. S. Olson.

Q. Where do you live?

A. West Superior.

Q. What is your business?

151

A. Foreman for Whitney Brothers.

Q. And your work consists of what?

A. Carpenter work.

Q. Who are Whitney Brothers?

A. Contractors and builders, Superior.

Q. State the fact as to whether it is part of their business to build and repair docks about the harbor here?

A. Yes, sir.

Q. How long have you been in their employ?

A. Since 1906, the last part of March or first of April, 1906; it was early in the spring when I started there.

152

Q. Calling your attention to the early part of the summer last, did you have anything to do with a certain dock at Duluth known as the City dock?

A. Yes, sir.

Q. That was in the nature of repairs?

A. Yes, sir.

Q. State in a general way the extent to which you were to make those repairs?

Mr. Spencer: Defendant objects to the question for the reason that the evidence of repairs—he asked to what extent the repairs were made there; that extent may have included a considerable more damage than this steamboat inflicted, if it inflicted any; and the inquiry it seems to me should be kept entirely within the examination of the question as to the repair of the damages oc-

153

casioned by this vessel. That question is so broad that it would include repairs to the entire length of the dock.

154 The Court: The question is: What was the damage done to the dock. That inquires for the expense that was put upon the dock. It is subject to the same objection that the bill would be.

Mr. Alford: I take it, if the Court please, that if it should appear that there was other damage done and other work done, anyway any other work done, and we should fail to distinguish what work was given simply to the restoration from this damage and from the other work, then we would be certainly at fault.

155 The Court: What was the damage done to the dock. The witness, Mr. Vincent, has described what the damage appeared to be. I suppose you show that this foreman repaired all the damage was made on the dock?

Mr. Alford: I think so. That is the purpose of the testimony.

The Court: All of the injury to the dock?

Mr. Alford: That is correct.

156 The Court: I think I will hear this testimony and then determine.

To which ruling defendant duly excepts.

The Court: I do not feel myself bound by the permission that I now give. You may go on. I will

hear the testimony and then determine whether it is admissible upon that question of damages.

Mr. Spencer: Defendant objects to the question further on the ground he is not asked the question as to what repairs he did make but the question is to what extent were you to make the repairs, not the extent that he did make them. 157

The Court: You may go on.

Mr. Alford (reading):

Q. State in a general way the extent to which you were to make those repairs as regards the restoration of the dock?

A. We repaired the top and put it all in shape the way it was. 158

Q. You found the dock in a damaged condition?

A. Yes, sir.

Q. Now state which side, if it was the side, upon which those repairs were made?

A. If this building is facing that way, it was on the south side.

Q. That is, the side out towards the bay?

A. Towards the bay—or—yes, towards the bay.

Q. Not adjacent to either of the slips or upon either of the slips? 159

A. As far as I know the bay runs that way and the slips run this way (indicating), slips run east and west and the bay north and south, as near as I can place it.

Q. As I understand you the work you did was on the bay side?

A. On the bay side.

Q. Is it a fact—you can state whether it is a fact as to whether you did replace any timbers that were broken with new timbers?

A. We did, with new timbers.

160 Q. And that included some piling?

A. Yes, sir.

Q. And planking?

A. Yes, sir.

Q. Fenders?

A. Fenders and caps.

Q. If I understand you, your work consisted then in a restoration of the dock?

A. Yes, sir.

Q. From the damaged condition in which you found it—is that a fact?

A. That is a fact.

161 Q. State, if you can, Mr. Olson, when this work was done with reference to the date as near as you can?

A. Some time in June, I think.

Q. 1906?

A. 1906.

Q. State the fact as to whether in your judgment some further work than was actually done should have been done in order to complete the restoration?

Mr. Alford: That question was withdrawn.

162

Mr. Alford (reading):

Q. You say you are a carpenter?

A. Yes.

Q. How long have you been in that business?

A. In that business off and on for ten years.

Q. Part of your business to engage in the construction and repair of docks in that time?

A. Yes, sir.

163

Q. Now, calling your attention to the City dock, state the fact as to whether you found one of the bents in a damaged condition that was not repaired entirely?

A. We found one bent there, the last bent about the middle of the dock, there should have been a new timber in to put it in good shape.

Q. That was not replaced?

A. That was not replaced.

Q. Now state, if you can, what, approximately, that would have cost, to replace that timber?

164

Mr. Spencer: Defendant objects to the question on the ground there is no evidence in this man's testimony or anybody else's that that was a part of the damage complained of.

Objection sustained, to which ruling plaintiffs duly excepts.

Mr. Alford (reading):

Q. Are you able to form a judgment as to what it would cost to replace that timber, Mr. Olson?

165

Defendant makes same objection as last above.

Objection sustained, to which ruling plaintiffs duly except.

Mr. Alford: I offer to show by this testimony

that it would have cost in the neighborhood of \$75 to replace that timber.

166 Mr. Spencer: Defendant objects to the offer on the ground it is irrelevant and immaterial; it is not shown that this was part of the damage complained of.

Objection sustained, to which ruling plaintiffs duly except.

Mr. Alford (reading):

Q. The question as I asked it, Mr. Olson, is whether you are able to form a judgment as to what it would cost; that would call for an answer "Yes" or "No"?

167 Mr. Spencer: Defendants make same objection as before. And I renew my objection as to that inquiry.

Objection sustained, to which ruling plaintiffs duly except.

Mr. Alford (reading):

Q. You are able to form that judgment?

A. Yes; that is what I would put it at if I was going to put a bid on it myself.

Q. As I understand you, your work consisted in simply restoring the dock?

A. Yes, sir.

168 Mr. Spencer: Defendant objects to the question.

Objection overruled.

Mr. Spencer: Defendant moves to strike out all of the evidence of this witness for the reason that it is not shown that he is a competent and qualified witness to testify as to what the reasonable value of the repairs made was; and also for the further reason that these repairs that were made were made some 6 months or may be a year afterwards and the time of the repairs is so remote from the actual time that any damages that were inflicted were inflicted that a thousand ships may run against it in the meantime; and for the further reason that the repairs that this man said he made are not tied up or connected in any way by his testimony, at least with the fact of the actual damages that were inflicted by this ship, if any were; or, in other words, it is not shown that the work that this man did was directed to the repairs inflicted by this steamboat. And I move to strike out the whole of his evidence for that reason. 169 170

The Court: I don't think I have admitted any evidence that I ought to have excluded. I will let the evidence stand. It don't seem to me as of very much value as it stands there.

To which ruling defendant duly excepts.

Mr. Alford: Plaintiffs offer in evidence the deposition of Mr. George Vincent. 171

Mr. Alford (reading):

INTERROGATORIES TO BE PROPOUNDED
BY LIBELLANTS.

172

First Interrogatory: State your full name.

To the first interrogatory the witness deposes and says: George E. Vincent.

Second Interrogatory: Where did you reside during the year 1905 and until the fall of 1906?

To the second interrogatory the witness deposes and says: Duluth, Minnesota.

173

Third Interrogatory: Were you at the time familiar with the property known as the City dock?

To the third interrogatory the witness deposes and says: Yes.

Fourth Interrogatory: What, if anything, did you have to do with it?

To the fourth interrogatory the witness deposes and says: I was agent for the owners in looking after the property generally. If repairs were needed I looked after that. It was part of my work to see that the dock was kept in good shape.

174

Fifth Interrogatory: Did you, at the time it was done, know of the Steamer S. C. Reynolds having tied up there in the latter part of November, 1905?

To the fifth interrogatory the witness deposes and says: Yes.

Sixth Interrogatory: Describe, if you can, the condition of the dock at the place the Reynolds tied up before she went there.

175

Mr. Spencer: Defendant objects to the interrogatory. He does not state there that he knows of his own knowledge where the Reynolds lay or that he saw her there.

Mr. Alford: He certainly does, Mr. Spencer.

Mr. Spencer: I don't understand it that way. At least he does not say that he saw it or anything more than heard of it.

Mr. Alford: He said he is familiar with the property known as the City dock at the time.

176

Mr. Spencer: Just read what he says.

Mr. Alford: This is the beginning of the third interrogatory. "Were you at that time familiar with the property known as the City dock? Yes."

The Court: Is that the one your motion is in relation to?

Mr. Spencer: No, later on.

Mr. Alford (reading):

177

"What, if anything, did you have to do with it?"

Mr. Spencer: To do with what?

Mr. Alford: City dock is what was referred to in the preceding question. Answer: I was agent

for the owners in looking after the property generally. If repairs were needed I looked after that. It was part of my work to see that the dock was kept in good shape. Did you at the time it was done know of the Steamer S. C. Reynolds having
178 tied up there in the latter part of November, 1905."

Mr. Spencer: I object to that for the reason the question is indefinite. "At the time you did it." At the time you did what? That is not sufficiently intelligible at least to me to know what counsel means nor does it appear to me to convey sufficient information for a witness to answer. The question is: At the time you did it did you know of the Reynolds having been tied up there? Now, what does he mean by that?

179 The Court: If there is any uncertainty in relation to it that would have been developed on cross examination. When he asked the witness if he knows that at the time that he does know, if he answers that he does.

Objection overruled.

Mr. Spencer: I would like to have you read that question once more.

180 Mr. Alford (reading): "Did you at the time it was done know of the Steamer S. C. Reynolds having tied up there in the latter part of November, 1905?"

Mr. Spencer: Now, what is meant there, at the time it was done, the time the repairs were made or at the time the damage was done?

The Court: The time the steamer was tied up there is the question.

Mr. Spencer: Possibly that is what it means. 181

Mr. Alford: The answer is "Yes."

Mr. Alford (reading):

"Describe, if you can, the condition of the dock at the place the Reynolds tied up before she went there?" To the sixth interrogatory the witness deposes and says: It was in good shape. All that part at and anywhere near where the Reynolds was tied had been thoroughly overhauled the spring before. All bad or defective piles and other timbers had been replaced with new. That was done across the entire face of the dock. 182

Seventh Interrogatory: Did you go to the dock at the time the Reynolds was there?

To the seventh interrogatory the witness deposes and says: Yes.

Eighth Interrogatory: If you have answered the seventh interrogatory in the affirmative, describe what you saw.

To the eighth interrogatory the witness deposes and says: I saw her pounding the dock. A swell would come up, lift her up and throw her over against the dock, and as she would come down her weight would fall upon the edge of the dock. Every time this happened she would smash the dock and break it up more or less. She had her lines on all the snubbing posts, both along the face and over on the slip side of the dock. They were 183

about all either loosened or pulled out. Some were broken.

Ninth Interrogatory: Did you examine the dock after the Reynolds left?

184 To the ninth interrogator the witness deposes and says: Yes.

Tenth Interrogatory: If your answer to the ninth interrogator is "Yes," describe the condition of the dock at the point where the Reynolds was tied, stating the time you made such examination.

185 To the tenth interrogatory the witness deposes and says: I examined the wreck part within a day or two after it happened. Besides the damage to the snubbing posts, she broke up the dock where she lay long side for about twenty feet in. The piling was loosened. A good many were broken. The capping and other timbers were broken considerably. The platform was torn up. The roof was sprung out of shape. The building itself was sprung there, so that a door opposite would not open.

Eleventh Interrogatory: State whether you acted for the libellants in procuring the repair of the dock.

186 To the eleventh interrogatory, the witness deposes and says: None except the snubbing posts I have mentioned. But the Reynolds had her lines on them, and where the building and roof were sprung. That was near where some piling, partly supporting the building, were torn out.

(There is no Twelfth Interrogatory.)

To the twelfth interrogatory the witness deposes and says: Yes.

Thirteenth Interrogatory: If to the interrogatory last above, you testify that you did so act for libellants, tell what person or concern you endeavored to get to do the work. 187

To the thirteenth interrogatory the witness deposes and says: I saw every concern I knew of engaged in that sort of work. There was MacLeod & Smith, Napoleon Grignon, Whitney Bros. of Superior and also a party MacLeod & Smith referred me to. I don't recall his name.

188

R. C. VINCENT, direct examination of, resumed:

By Mr. Alford:

Q. Mr. Vincent, do you recall the exact amount you paid for the work, of having this dock restored from the damage that has been referred to here?

A. My recollection of it is 900—

Mr. Spencer: Defendant moves to strike out the answer of the witness on the ground it is not responsive. 189

Motion granted.

Mr. Alford:

Q. Do you remember the exact amount, Mr. Vincent?

A. Well, within a few dollars.

The Court:

Q. Do you remember? Answer the question
Yes or No.

A. Yes.

190 Mr. Alford:

Q. You may state what it was.

Mr. Spencer: Defendant objects to the question for the reason that what he paid for it is not a measure of damages. It may have been three or four times what it was worth.

Objection sustained, to which ruling plaintiffs duly except.

Mr. Alford:

191 Q. You may state the fact, Mr. Vincent, as to whether this work that Whitney Brothers did related exclusively to the restoration of the dock from the damage done by the Reynolds?

Mr. Spencer: Defendant objects to the question for the reason that it is not shown that this witness knows exactly what the damage done by the Steamer Reynolds was. It is not shown that he saw the Reynolds when it was there, that he knows what damage the Reynolds did.

The Court: He saw it two days after.

192 Mr. Spencer: I am not sure that the witness says that he saw the Reynolds there at all.

The Court: He says he did not see the Reynolds there but he says that he was there two days after and examined the condition of the dock.

Mr. Spencer: So far as he knows there may have been other vessels collided with that and so far as he knows or his evidence has up to this time shown, he does not know what damage the Reynolds did. He was not there. He did not see it. 193

The Court: It has been shown what the Reynolds did. He was there two days after in the morning. Whether it was two days after the Reynolds left or not I am not sure.

The Witness: The same day the Reynolds left I was there. They told me at the dock she left that day. I did not see her, though.

Q. (Question repeated by reporter): "You may state the fact, Mr. Vincent, as to whether this work that Whitney Brothers did related exclusively to the restoration of the dock from the damage done by the Reynolds?" 194

A. It did.

Mr. Alford:

Q. Now, Mr. Vincent, can you state the amount that was paid for this work of restoration?

Mr. Spencer: Defendant objects to the question for the reason before stated several times.

Objection sustained. 195

Mr. Alford:

Q. What was the damage to the dock, Mr. Vincent?

Mr. Spencer: Defendant objects to the question for the reason that it is not shown that this

witness has any competency to testify as to that question as to what damage was done. It is not shown he did any repair to that or knew what was necessary to be done or anything of that sort. He simply is the owner.

196

The Court: An owner has a right to testify to value whether he has any experience or not. Whether that would apply to this is problematical but it is possible that this witness, who has been a lumberman nearly all his life, may qualify as an expert.

Mr. Spencer: My objection is that up to the present time that it does not appear that he is qualified.

197

The Court: I am not sure that it is necessary that he should. But I assume for the present that it is.

Mr. Alford: The Court sustains that objection?

The Court: I have not, no, but I suggest to counsel that he show the competency of this witness. I don't know as he is competent.

Mr. Alford:

198 Q. Do you know the amount of damage done to this dock by the Steamer Reynolds?

A. I do.

Q. You may state what it was?

Mr. Spencer: Defendant objects to the question for the same reason stated before.

The Court: The objection is to his competency. I have not held yet whether the rule in relation to value will be applicable here. I have not held in relation to that. I suggest that you examine him as to his competency to estimate the damage. 199

Mr. Alford:

Q. What has been your business, Mr. Vincent, since you have been in Duluth?

A. Well, principally lumber business and sawmill business.

Q. Are you familiar with the values of lumber, timber?

A. I am.

Q. And have you been? 200

A. Yes, sir.

Q. Have you also been familiar with the process of determining the value of such work as this; that is, such as the restoration of the City dock would require?

A. Yes, sir. I was active 40 years ago. With 40 years' experience I could make an estimate of that and tell within a few dollars of what it would cost as well as today. A man with my experience, with 40 years in the lumber business—

Q. You have answered the question, Mr. Vincent. And did you determine the amount of damage which was done to the City dock? 201

A. I did.

Q. Now, you may state the amount of damage done to the City dock by the Reynolds?

A. \$1,000.

202 Mr. Spencer: Defendant objects to the question for the reason that it seems to me doubtful whether the witness has shown his competency to testify to this. It is not shown that he knew the reasonable value of the labor entering into it nor the scientific skill required to make the repairs, et cetera.

The Court:

Q. You examined the dock after it was injured, Mr. Vincent?

A. Yes, sir.

Q. Thoroughly?

A. Yes, sir.

Q. Above and below?

A. All over it, where it was—

203 Q. You stated you knew the price of timber, you knew the price of labor?

A. Yes, sir, price of driving piles.

Q. And the price of piles?

A. Yes, sir.

The Court: He may answer. He did answer, I think, \$1,000.

Mr. Alford:

Q. Now, Mr. Vincent, state, if you can, the amount you paid Whitney Brothers for their work in restoring the dock in so far as they did it?

204 Mr. Spencer: Defendant objects to the question for the reason it is irrelevant and immaterial.

Mr. Alford: Plaintiff's offer to show by this witness that he paid Whitney Brothers for the work they did the sum of \$932.09.

Mr. Spencer: Defendant objects to the offer.

Objection sustained, to which ruling plaintiffs
duly except. 205

Mr. Alford:

Q. Now, Mr. Vincent, do you know the value
of the property, City dock property, before the in-
jury was done?

A. Yes, sir.

Q. State what it was, if you can?

Mr. Spencer: Defendant objects to the ques-
tion for the reason that it is irrelevant and im-
material as to what that dock property was worth.
The only legitimate subject of inquiry is, what
damage is done and what it would cost to make
the repairs. 206

The Court: I don't know what counsel's idea
is in asking the question. There is no question here
as to the value of the property.

Mr. Alford: The purpose is to show the value
before and after.

The Court: Well, that is another means of ar-
riving at the same result that you have now ar-
rived at. Mr. Vincent swears the damages were
a thousand dollars. If it was worth \$50,000 before
and it was worth \$49,000 afterwards you have the
same damages, a thousand dollars. 207

Objection sustained.

Mr. Alford: Plaintiffs offer to show by this
witness that prior to this injury to the dock by the

Steamer Reynolds the property was worth \$23,000.

Mr. Spencer: Defendant objects to the offer.

Objection sustained.

308

Mr. Alford: Plaintiffs offer to show by this witness that prior to the injury to the dock by the S. C. Reynolds the property was worth \$23,000 and that afterwards it was worth \$22,000.

The Court: That would arrive at just what the Court has allowed you to ask and the witness to answer, the damage of a thousand dollars. And the objection is sustained. It is mere repetition.

To which ruling plaintiffs duly excepts.

209

CROSS EXAMINATION.

By Mr. Spencer:

Q. You say, Mr. Vincent, you did not see the Reynolds lying at the dock?

A. I did not.

Q. Not any of the time while she was there?

A. No, sir.

Q. You did not see the Reynolds inflict any damages to the dock, did you?

A. No, sir.

210

Q. Who was operating the dock at the time?

A. Jesse Norton, or the City Dock company.

Q. For what purposes was it being used?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection sustained.

Mr. Spencer:

Q. You say the vessel pounded against the dock for 48 hours. You don't know that of your— 211

Mr. Alford: That is objected to.

A. I think my statement was that I—

Mr. Alford: Just a moment, Mr. Vincent.

The Court: I was not aware the witness so testified.

Mr. Spencer: He said the vessel pounded against the dock for about 48 hours.

212

Mr. Spencer:

Q. You don't know that of your own knowledge, do you?

A. No. I did not testify to that, either.

Q. What did you say?

A. I said I was there about 48 hours after the vessel had pounded the dock. That was about 48 hours.

Q. After the vessel had pounded the dock?

A. Yes, sir, but I did not see her.

Q. I understood you to say the vessel pounded the dock 48 hours. You don't know whether the vessel pounded it for one hour, do you? 213

A. I did not testify to anything of the kind.

Q. Of your own knowledge you don't know whether the vessel pounded against the dock one hour, do you?

A. No, sir.

Mr. Alford: I object to that.

(No ruling.)

Mr. Spencer:

214 Q. You don't know of your own knowledge that the vessel ever touched that dock, do you?

A. Not of my own knowledge, no.

Q. You had the damage that you found there after the Reynolds had left, you found that damage to this dock, estimated— you had that property examined by Mr. Grignon, did you?

A. Not myself. I think my son did.

Q. He was acting as your agent, was he?

A. Yes, sir.

Q. Do you know what Mr. Grignon's estimate was for making the repairs to your dock?

215 A. No, I do not.

Q. Never was told?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross examination.

Objection sustained.

Plaintiffs rest.

216 Mr. Spencer: Defendant moves to dismiss this case at this time for the reason that the plaintiffs have not made out a case and have not shown what the reasonable value of the damages—what the reasonable value of making these repairs was

and for the further reason he has not shown any neglect or want of care or any default in doing what ought to have been done on the part of this steamboat. The evidence shows that this dock was there being operated as a merchandise dock; that this vessel had freight to deliver to it, which it received, and that while it was there this great storm arose. Now, there is nothing up to the present time to show that this steamer was in default of anything. The mere happening of events is not sufficient to fix liability on this steamboat. It was rightfully where it was. There is no evidence to show that they were ever asked to go away or that their attention was ever called to any injuries that it might inflict or that it was in any way guilty of the sins of omission or commission in any way. All of which, it appears to me, must be done; some showing at least must be made before the case can be maintained and particularly as to the matter of damages. No proper share of damages has been shown here up to the present time and there is no evidence shown of what the actual damages done were.

Motion denied, to which ruling defendant duly excepts.

T. C. HERRICK, being duly sworn as a witness on behalf of defendant, testifies as follows:

DIRECT EXAMINATION.

220 By Mr. Spencer:

Q. What is your name, Captain?

A. T. C. Herrick.

Q. What is your occupation?

A. I have been a marine man.

Q. You are a sailor by occupation?

A. Yes, sir.

Q. How long, Captain, have you led a seafaring life?

A. All my lifetime.

Q. And how old are you at the present time?

A. 60 years old.

221 Q. What character and class of vessels have you sailed heretofore?

A. All classes.

Q. In what capacities have you sailed the ships?

A. From cabin boy up to master.

Q. On what waters has your experience as a seagoing man been confined?

A. The Great Lakes principally.

Q. In the year 1905, November, 1905, were you a regularly licensed officer?

A. Yes, sir.

222 Q. Licensed by the United States government.

A. Yes, sir.

Q. To what class of ships was your license confined?

A. My license was unlimited.

Q. Extending over all the waters of the Great Lakes?

223

A. Yes, sir.

Q. What do you mean by your license being unlimited?

A. There is no limit on them. I could take any ship on the lakes.

Q. No matter how large or how small?

A. No.

Q. And in November of 1905 what ship were you master of?

A. S. C. Reynolds.

Q. The steamer S. C. Reynolds. How long had you been sailing the steamer S. C. Reynolds prior to the 27th and 28th of November, 1905?

224

A. I went in the Reynolds about 5 years.

Q. You have been in the Reynolds for five years?

A. Prior to that time. Five or six years.

Q. What class of steamships had you been sailing prior to the time you went into the Reynolds?

A. Same class.

Q. Same class of steamboats?

A. Yes, sir.

Q. And how many years have you been a licensed master of steam vessels?

225

A. I have got my 25th issue.

Q. That would continue over a period of how many years?

A. Well, the last three has been for five years.

Q. Well, for how many years?

A. 30, 35 or 40 years I have had a license.

Q. And how long have you been freighting to Duluth?

A. Off and on 10 or 15 years.

Q. What size ship is the steamer S. C.

226 Reynolds?

A. She is—her tonnage is 1,104.

Q. 1,104 tons?

A. Yes, sir.

Q. And how long is the ship?

A. She is bigger than that. She is 1,604.

Q. What is the length of the Steamer Reynolds?

A. She is 255 feet keel.

Q. 1,604 gross tons?

A. Net tons. She is 1,800 gross, little over.

Q. Now, what is the length of the Reynolds
227 over all?

A. About 268.

Q. 268 feet long?

A. Yes, sir.

Q. And what is her beam, her width?

A. 40 feet.

Q. 40 feet wide?

A. Yes, sir.

Q. Of what material is the ship constructed?

A. Steel.

Q. Steel vessel?

A. Yes, sir.

228 Q. Provided with water bottom?

A. Yes, sir.

Q. Do you remember the occasion of the big storm that occurred in Duluth on the 27th and 28th of November, 1905?

A. Yes, sir.

Q. When did the Reynolds reach port on that occasion, port of Duluth?

A. Why, I think it was the morning of the 27th. 229

Q. The morning of the 27th?

A. Yes, sir.

Q. In what line of steamships was the Reynolds being operated that season?

A. She was chartered by the Anchor Line.

Q. She was operated by the Anchor Line people?

A. Yes, sir; under charter.

Q. You carried freight to Duluth all of the season of 1905? 230

A. Yes, sir.

Q. For that company?

A. Yes, sir.

Q. And at their dock in the city of Duluth was freight delivered by your vessel during the season of 1905?

A. Well, we delivered freight to almost all the railroad docks and the City dock.

Q. And on the occasion in question did the Reynolds go to the City dock at any time on the 27th of November?

A. Yes, sir. 231

Q. Where did you go to that dock?

A. I had freight to put off there. I was ordered there.

Q. You had freight consigned to that dock?

A. Yes, sir.

Q. And having freight consigned to that dock you went to deliver it, did you?

A. Yes, sir.

Q. Where was the vessel placed at the dock?

A. We landed on the face of the dock.

Q. Who placed it there?

A. The freightmen told me where they wanted the freight and I put the boat there.

Q. Did you make fast your vessel to any portion of the dock? Whereabouts on the dock did you tie up, along side the side of the dock or at the outer end?

A. On the face of the dock, on the bay side.

Q. Where would the face of the dock be with respect to the harbor?

A. It would be on the west side—not the west side; south side.

Q. The harbor end of the dock?

A. I was heading about east, pretty near east and west.

Q. That would be across the outer end of the dock?

A. Yes, sir.

Q. Which side of your vessel was placed next to the dock?

A. Port side.

Q. When you speak of the port side of the ship what do you mean, the right hand side or the left hand side as you are facing the bows?

A. This is the port side.

Q. The left hand side of your ship then is the port side?

A. Yes, sir.

Q. And the right hand side is called what?

A. Starboard side.

Q. And the head end of your ship is called what?

A. Bow or forward end.

Q. The hind end is called what?

235

A. After end.

Q. Your vessel was placed, you say, by the freightmen at the outer end of the dock, the port side next to the dock?

A. Yes, sir.

Q. What was then done?

A. Putting off freight.

Q. What time did your vessel reach the City Dock on that occasion?

A. Well, I think it is about 5 o'clock.

Q. At 5 o'clock?

236

A. We worked a little while before supper.

Q. And how was your vessel made fast?

A. Made fast to spiles on the dock.

Q. And in the way that you usually do?

A. Yes, sir.

Q. Was this outer end of the dock the usual place at that City Dock where cargoes were received by the dock?

A. Well, sometimes we put them in the slip. I have been in the slip on the west side.

Q. Yes, but have you also delivered it at other times, cargo, to this same location?

237

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Objection sustained.

Mr. Spencer:

Q. What were the weather conditions at the

time you went to the dock about 5 o'clock, captain?

A. Conditions were all right. I went there alone without any assistance and—

238 Q. I hand you defendant's exhibit 1 which is a chart of the harbor of Duluth made by the United States engineers. I would like to have you designate, captain, whereabouts the City Dock is located. Here is the Duluth canal?

A. The dock is right in here some place.

(The point indicated by the witness is marked "X" by the reporter.)

Mr. Spencer: Defendant offers in evidence defendant's exhibit 1 at this time.

238 Defendant's exhibit 1 is received in evidence without objection.

Mr. Alford: Do you intend to follow this up, Mr. Spencer, with some testimony from which the jury can understand just where the City Dock was?

Mr. Spencer: Yes.

Mr. Alford: The jury cannot understand anything from this. With that understanding I have no objection.

240 Mr. Spencer:

Q. You say your cargo was begun to be discharged from the vessel about 5 o'clock p. m. Was there anything at that time, captain, to in-

dicating any danger or any unusual conditions as to the weather?

A. Nothing unusual.

Q. And how long did the discharging of cargo continue? 241

A. Why, I think it was about 10:30 or 10:45, somewhere along there.

Q. How much freight did you have to deliver at that place?

A. I could not tell you exactly the amount.

Q. Oh, approximately. I do not care within a pound or two. Had enough to keep the dock people busy, did you, from the time you went there until you left?

A. Yes, sir; very busy. About an hour before supper and then after supper until 10:30, 10:45. 242

Q. How many men constituted your crew at that time.

A. My crew?

Q. Yes. How many did you have on board the vessel?

A. 22, my crew; that is, all told.

Q. What was the regular number of crew required by you to be carried?

Mr. Alford: Plaintiffs object to the question on the ground it is incompetent; also as irrelevant and immaterial. 243

Mr. Spencer: I want to show this ship was well officered, well manned and well kept.

Objection overruled.

Mr. Spencer:

Q. That was the regular crew that your ship was required to carry?

A. Yes, sir.

244 Q. How many licensed officers did you have aboard?

A. There was two pilots besides myself and two engineers, licensed men.

Q. And your first and second mates were licensed officers?

A. Yes, sir.

Q. And the engineers were licensed officers?

A. Yes.

Q. Now, what were the weather conditions at half past ten after your freight had been discharged at this dock?

245 A. Conditions were very bad at half past 10.

Q. You say they were very bad. In what way were the weather conditions bad?

A. The wind freshened up. I think it began to freshen up about 8 o'clock in the evening.

Q. How, very much?

A. Very strong, yes, sir.

Q. And which way was that from?

A. Why, about east-northeast.

Q. And how did that strike your vessel?

A. Struck me on the bluff of the bow.

Q. On which bow?

246 A. Starboard bow.

Q. Was it snowing any?

A. Snowing very hard.

Q. I mean at half past 10 that night?

A. Yes.

Q. And what efforts did you make to leave the dock after your freight was consigned?

A. I sent the mate to the telephone for tugs. Got a reply back that they would not send any. 247

Mr. Alford: Plaintiffs object to the answer on the ground it is not responsive and move it be stricken out.

Motion granted.

Mr. Spencer:

Q. What efforts did you make to get away from the dock after your cargo was discharged there?

A. I could not make any efforts. I could not get no assistance. 248

Q. Was it necessary for you to have assistance to get away from the dock?

A. Yes, sir.

Q. Why could you not get away from the dock alone; you went there alone?

A. It was blowing too hard, blowing right on to the dock.

Q. What rate of speed in your judgment was the wind blowing at half past 10 o'clock that night?

A. Oh, it must have been blowing 50 or 60 mile an hour then. 249

Q. And what about the darkness of the night, was it a dark or a light night?

A. A very, very blustery and snow.

Q. How thick did the snow fall?

A. Very thick.

Q. Did it obstruct the atmosphere?

A. Very much, yes, sir; could not see anything.

Q. What about the sea?

A. The sea began to make and undertow coming into the piers. That was coming in there along
250 before they got the freight off.

Q. Did you give any signals for tugs?

A. Yes, sir.

Q. Are there regular signals recognized in the harbor of Duluth when vessels require assistance?

A. Yes, sir.

Q. Are there a set of signals which are recognized by tugmen for such purposes?

A. Yes, sir.

Q. What signals, if any, did you give for a tug?

251 A. Four whistles.

Q. Did you sound any signals for assistance that night?

A. Two or three different times.

Q. Two or three different times?

A. Yes, sir.

Q. And at what time in the night?

A. Well, from 11 o'clock—from 10:45 until 1 o'clock in the morning. I tried to get a tug and I could not do it.

Q. How far were you from the tug office at that time?

252 A. Just across the slip. You could see the light in the tug office.

Q. Within about how many feet—How many feet distant were you from the tug office?

A. Oh, it could not have been—

Q. Oh, approximately?

A. May be three or 400 feet.

Q. Were there tugs in the harbor at that time
whose business it was to tow vessels and render
them assistance? 253

A. Yes, sir.

Q. What concern operated that line of tugs?

Mr. Alford: Plaintiffs object to the question
on the ground it is immaterial.

Objection overruled.

A. Union Tow and Wrecking Company.

Mr. Spencer:

Q. Did they have steam tugs employed for the
exclusive purpose of towing vessels? 254

A. Yes, sir.

Q. Go on and state all the efforts you made
to get assistance to enable you to get away from
that dock at half past 10 or thereafter?

A. I sent the mate to the telephone in the
first place. Then I kept blowing the whistle.

Q. Did you—

A. Tug signals.

Q. Did any tug make its appearance to ren-
der you assistance? 255

A. They come down to the corner of the dock
opposite me and hollered they would not come up
to us.

M. Alford: Plaintiffs object to the answer
on the ground it is irrelevant and immaterial and
hearsay and ask that it be stricken out.

Motion granted.

Q. (Question repeated by reporter): "Did any tug make its appearance to render you assistance?"

256

A. No.

Mr. Spencer:

Q. What other effort did you make to obtain assistance other than by telephoning for a tug and also blowing signals for it?

A. I had no other way; could not get there myself and it was the only way I could call a tug was by signals.

257

Q. In your judgment would it have been a prudent thing for you to have attempted to move your ship without assistance on that occasion during the night of November 27th?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Objection overruled, to which ruling plaintiffs duly except.

A. No, it would not have been a prudent thing.

Mr. Spencer:

Q. How long did this gale of wind continue, Captain?

258

A. I think I was there on the 28th until about 2 o'clock on the 29th before I got assistance and got away from the dock.

Q. You were there all of the 28th, were you?

A. Yes, sir.

Q. And until the afternoon of the 29th. Did you make any effort on the 28th to obtain tugs?

A. Yes, sir.

259

Q. Did this wind continue?

A. Yes, sir.

Q. During the 28th what was the violence of the wind?

A. It was very, very strong; in the neighborhood of 70 miles an hour.

Q. And from what direction?

A. From the northeast, east-northeast.

Q. And was it accompanied with heavy snow?

A. Yes, sir; occasional snow squalls, juries.

Q. State, Captain, if you had made any attempt to move your ship on the evening of the 27th of November what, in your judgment, would have been the probable result?

260

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Mr. Spencer:

Q. Taking into consideration the wind and weather and blackness of the night?

(No ruling.)

261

A. In the first place I could not get away from the dock. If I let go my lines and she had got away from the dock, why, she would have been all off as quick as that (illustrating by a snap of the fingers).

Q. What do you mean by "would have been all off as quick as that?"

A. The wind was blowing strong so we could not do anything with her. She would be like a feather. My bow was light and I would have to run on my quarter.

262 Q. Would it have been a prudent thing so far as the safety of your ship is concerned and the lives of your crew to have allowed your ship to get away from the dock without assistance during the night of the 27th?

A. No.

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial and move the answer be stricken out.

Objection overruled and motion denied.

Mr. Spencer:

263 Q. What efforts had you made to get away from the dock during this following day, November 28th?

A. It was about as severe the next day as it was the night before.

Q. And what efforts did you make to get away from the dock at that time?

A. I could not get away. I could not make any effort until I got assistance.

Q. Did you make any effort to get assistance on the 28th?

264 A. All the time.

Q. What did those efforts consist of?

A. Blowing my signals for tugs.

Q. And did the storm continue all of the 28th?

A. Yes, sir.

Q. With heavy snow?

A. Well, yes; occasionally let up a little.

Q. And did it continue through the night of the 28th? 265

A. Yes, sir.

Q. And what time did you finally succeed in getting away from the dock?

A. I think it was about between 1 and 3 o'clock.

Q. Of what day?

A. 29th, I guess.

Q. How did you finally succeed in getting away from the dock?

A. Tug come and pulled me away; the wind moderated. 266

Q. What can you say as to the height of the seas that came across the bay at that time where you were lying after half past 10 o'clock of November 27th?

A. Well, that is pretty hard thing to estimate, the height of them seas.

Q. Well, was it an unusual sea?

A. No, not an unusual sea with the wind northeast, no.

Q. What was it that prevented you then from leaving the dock, the wind or the sea?

A. The wind and sea both. 267

Q. Was the wind an unusual wind?

A. Very unusual, yes, sir.

Q. And how long did that storm continue with the violence that you have already stated?

A. Continued all night of the 27th.

Q. What about the following day?

A. Following day was just the same.

Q. And when did it begin to abate?

A. About noon of the 29th, a little before noon it began to abate.

Q. What is that?

A. It began to abate just a little before noon,
268 so I got away there just after dinner, 2 or 3 o'clock.

Q. Illustrate to the jury, if you can, the violence of this storm. Did you ever know anything equal to that in all your experience, Captain?

Mr. Alford: Plaintiff object to the question on the ground it is incompetent, irrelevant and immaterial.

The Court: Well, was it unusual, uncommon? Whether he had experienced such a storm as that, I don't know as that would make any difference,
269 but speaking from his experience he can state the extent of the storm.

Mr. Spencer: That is the idea I wish to bring out.

Mr. Spencer:

Q. Speaking from your experience go on and state something as to the—

A. It was the most severe storm I ever saw or ever experienced.

Q. Go on and state something of the visible
270 effects that this storm produced.

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Mr. Spencer: It is quite material for this rea-

son: The defense in this case is that it was an inevitable accident; that this ship was placed at this dock by the owner of the dock, placed at a place where it had a right to be and that a gale from the northeast arose; that the whole north shore of Lake Superior and Duluth harbor was strewn with wrecks— 271

The Court: We won't go into that. That was heard by one of the members of this court and stricken from your answer, an allegation of that kind.

Mr. Spencer: That allegation was stricken but that would not prevent evidence being introduced to show what the severity of the gale was. 272

The Court: You can show that. You have shown it.

Q. (Question repeated by reporter): "Go on and state something of the visible effects that this storm produced?"

The Court: That is proper if confined to that dock and boat. If you are reaching outside of that the objection is sustained.

Mr. Spencer: 273

Q. State what the visible effects in that immediate locality were?

A. One thing it was impossible to look to the northward. I could not see 10 feet, could not look to northward; just glance occasionally.

Q. Why not?

A. On account of the snow and the hail and

storm, severity of the wind and elements and snow.

Q. Well, after the snow had subsided so that the surrounding situation became visible what did you see as to the effects of the storm in that immediate locality?

274

Mr. Alford: Plaintiffs object to the question on the ground it is incompetent, irrelevant and immaterial.

The Court: So far as the dock and his boat are concerned.

Mr. Spencer: I have not limited it to that.

The Court: I think I will limit it to that.

Mr. Spencer:

275

Q. I will ask you, Captain, what the effect of that storm was in the Duluth harbor at that time in the immediate vicinity of Duluth?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained, to which ruling defendant duly excepts.

Mr. Spencer: I desire to show by this witness—

Mr. Alford: I object to the counsel stating.

276

The Court: Submit your offer in writing, if there is objection to it.

Mr. Spencer: I desire to show by this witness that the gale in question was the most severe

known in the history of Lake Superior navigation. That the effect of the storm in the Duluth harbor in the immediate vicinity of Duluth was extremely disastrous. That at least a dozen of the larger ships were wrecked in the immediate vicinity of Duluth and a large number of lives were lost. That the storm amounted in its proportion to a hurricane and that this situation prevailed all of the time that this vessel lay at this dock. 277

Mr. Alford: Plaintiffs make same objection as before.

Objection sustained.

The Court: You may show everything about the storm. We won't go into the effects of it outside. 278

Mr. Spencer:

Q. What was the visible effects of the storm, Captain, so far as your ship and this dock were concerned?

A. It was a very severe storm.

Mr. Alford: Plaintiffs object to that on the ground it is not responsive to the question and move the answer be stricken out. 279

Motion granted.

Q. (Question repeated by reporter): "What was the visible effects of the storm, Captain, so far as your ship and this dock were concerned?"

A. What was the effects of the storm?

Mr. Spencer:

Q. Yes.

A. The effects was— I was there and could not get away. That is about all I can say.

Q. Did you notice any effect that the sea had
280 on this City dock?

A. Yes, sir.

Q. What effect did it have on the City dock?

A. Why, rolled up under the dock and washed plank, washed the top of the dock off.

Q. What efforts did you make to avoid doing any damage to the dock or to your ship?

A. All efforts that I could possibly at the time.

Q. Go on and state to the jury what you did?

A. I could not get away and I had to hang on.

Q. Could not get away and you had to hang
281 on. How did you hang on?

A. With my lines. Used up my lines hanging on there.

Q. Did you put out any more lines than you usually put out?

A. Oh, yes.

Q. What sort of lines did you put out? What kind of lines did you have out, Captain?

A. I had all the way from 2-inch up to 7-inch lines.

Q. You used lines 7 inches in diameter?

A. Yes, sir. Not generally for working lines.
282 I have them, though.

Q. Well, but on this occasion you had—What kind of lines were they, hawsers or steel lines, manilla lines or what?

A. Manilla lines.

Q. And the largest one you had out was how large in diameter?

A. 7 inches.

Q. Seven inches through it. And where did you have that out, forward or aft or amidships? 283

A. I had that out amidships, leading both ways, both forward and aft.

Q. Your ship was attached to this City dock then?

A. Yes, sir.

Q. By some lines that were 7 inches in diameter?

A. Yes, sir.

Q. And what effect did it have on your lines?

A. Chafed them up and broke them. I kept my crew busy all night long replacing them as fast as they would part. 284

Q. Could you get out on to the dock after your freight was discharged?

A. Yes. My watchman got out there. He had to get out there and get lines. My watchman got out there with their rubber boots on.

Q. And how was your ship fastened forward? How was the forward part of your ship fastened?

A. With manilla lines.

Q. And what was it fastened to?

A. Spiles on the dock.

Q. And was that the usual place? Was those placed there for the purpose of attaching ships to them? 285

A. That is what they were put there for.

Q. And how was it attached to the dock? How was the bow part of your ship attached to the dock?

A. Same way, with lines and spiles on the dock.

Q. And were any of those lines broken during the night?

A. Yes, sir.

286 Q. What caused them to break?

A. The surge and reaction of the undertow.

Q. What effect did this 70-mile gale have upon your ship as to its lying quiet or not at its mooring place?

A. It would not lie quiet. It was blowing us right on to the dock with the undertow coming in; she could not get away.

287 Q. At the time you went to that dock to discharge cargo consigned to it was there anything in the weather condition or the situation of the dock or the weather conditions which gave you an indication of any danger arising to your ship or to the dock?

A. Not at all.

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Objection overruled.

Mr. Spencer:

Q. And when did it first become apparent to you, Captain, that the wind was reaching such a stage as to make it difficult or dangerous to move?

288 A. About 10 o'clock, quarter to 10, somewhere around that.

Q. And what effort did you make to obtain assistance?

A. Sent the mate to the 'phone.

Mr. Spencer: That answer may be stricken out.

Mr. Spencer:

289

Q. Had you made any other arrangements earlier in the evening for assistance, for tug to come to you?

A. No, I had not made any arrangements.

Q. What is the custom as to tugs responding to signals for assistance when ships in the harbor sound signals for them?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

The Court: He has stated that the signal was four whistles. 290

Mr. Spencer: I wish to show that it is customary for tugs ordinarily to respond and come to vessels when they whistle for them.

Objection overruled.

A. They answer with the same signal.

Mr. Spencer:

Q. And when you blow for assistance do tugs ordinarily come to your aid?

291

A. Yes, sir.

Q. In the harbor of Duluth?

A. Yes, sir.

Q. How was the Reynolds at that time, loaded or light?

A. She was comparatively light.

Q. Did you have any cargo in it?

A. About 200 tons.

Q. And where was that situated?

A. On deck.

Q. You say your ship was provided with water bottom?

292 A. Yes, sir.

Q. Go on and state what efforts you took to continue to ride out the storm there?

A. I filled my water bottoms.

Q. What effect did that have?

A. Not very much. My water bottoms are small. They are only about 5 feet deep, carry maybe 200 tons of water.

Q. Did the fact that your ship was light, that it had a very small amount of cargo in it, add anything to the difficulties of handling it?

A. Yes, most decidedly so.

293 Q. Which is handled more easily in a wind, a vessel flying light, having her sides high out of the water, or one that is loaded down?

A. One that is loaded down.

Q. And did the fact that your vessel was light with little or no cargo in it have any influence on your determination to remain there and not attempt to get away?

A. Yes, sir.

294 Q. Did that fact make it— Would it have made it any more difficult to have handled your ship had you attempted to leave the dock before you did?

A. Yes, sir.

Q. And what additional effect would that have, the effect that it was light and not loaded?

A. The wind would have more pressure, more

leverage on your boat and blow her around when she is up above water than it would when she is below. If my boat had gone 14 or 16 feet, something like that, it is a whole lot of difference with the wind blowing whether she is down 14 feet or only 6. 295

Q. It was your judgment, then, Captain, was it, as a navigator, that it would have been imprudent at any time during the night of the 27th after your cargo was discharged to have attempted to move your ship?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

The Court: The objection is sustained because it is a repetition. 296

Mr. Spencer:

Q. What time in the day of the 29th did this gale begin to subside?

A. Along about noon, somewheres around there. The wind moderated along about 11 o'clock, something like that. It takes a little while for the sea to run down after the wind moderates.

Q. Did you leave the dock as soon as you could obtain assistance?

A. Just as soon as I got assistance, yes, sir. 297

Q. Was there any possible means, Captain, known to navigators that would have enabled you to get away from that dock any sooner than you did?

A. No, sir, I don't think there is.

CROSS EXAMINATION.

By Mr. Alford:

298 Q. Captain, were you on duty throughout that night?

A. Yes, sir.

Q. On what part of the ship were you stationed?

A. What do you mean, all night? I was in all parts.

Q. And did you get off and on?

A. No, sir. Off and on the dock, you mean?

Q. Yes.

A. No, sir.

Q. You remained on board throughout the night?

299 A. Yes, sir.

Q. Was that true as to the next day and until you left?

A. Until I left there and got over in Superior I never left the ship, never got off of her deck.

Q. Captain, are there two doorways for the receipt of freight at the outer end of the dock?

A. The City dock?

Q. Yes.

A. Two? Yes. There is two, anyhow. I don't know but there is three. I am not sure about that. But there is two.

300 Q. How many were working during the unloading process?

A. I could not tell you that. That is a little out of my line, freight business. I was not looking after the freight. I was looking after the ship.

Q. Can you tell the jury how the stern of the Reynolds was situated with reference to the westerly side of the dock; that is, as to whether it passed it to the west? 301

A. If it did it was a very little. We had our lines on the— got good leads on our lines at the stern end. I oversee that myself.

Q. If your stern passed the end it was very little?

A. I think perhaps may be a little.

Q. Did you have your lines than attached to all of the hitching posts along the end of the dock?

A. Every post we could see, get a hold of.

Q. And is that true as to some of the hitching posts along the slip as well? 302

A. Perhaps so; get a lead by the slip; might have went by a couple of spiles, perhaps.

Q. After the unloading process was completed did you shift the vessel forward somewhat?

A. No, sir. After unloading?

Q. Yes.

A. No, no. My dear man I would have been only too glad to have got out of there.

Q. How is that?

A. I shifted at supper time.

Q. Oh, at supper time?

A. Yes. 303

Q. Then the position in which you placed the boat during the supper interval was the one at which you kept it throughout the time it was tied to the City dock?

A. Yes, sir.

Mr. Spencer :

Q. You mean to say you shifted the Reynolds after it came to dock?

304 A. Yes, sir. We came there and worked about an hour before supper and when they knocked off at supper we shifted one gangway ahead or one door, whatever they call it. That was done by steam capstans.

Mr. Alford :

Q. How far forward was the vessel moved?

A. Oh, probably 40 feet, something like that. Just a gangway.

Q. Then in testifying that the stern of the vessel passed the west side, west edge of the dock very little, if any, were you referring to this last position or to the first one?

305 A. The first one.

Q. To the first position?

A. Yes.

Q. Well, now, then how was the stern then after you had shifted the vessel?

A. Her stern was a little inside of the corner of the dock.

Q. Little to the east of that edge?

A. To the east, yes.

The Court :

Q. What?

306 A. East, yes, sir—to the west; west.

Mr. Alford :

Q. You think it was still to the west?

A. No, east; east. I was right in the first place.

Q. Is that toward the lake?

A. Toward the lake, yes, sir.

The Court: Now, are you talking about the 307
bow or the stern?

Mr. Alford: The stern, if the Court please.

The Court:

Q. Towards the lake?

A. The stern was to the west.

Mr. Spencer: How was the stern as to the lime
kiln slip? That is what they are trying to get at.

Q. Now, Captain, did the bow of your boat 308
lap over along the front of the Omaha dock some?

A. Yes, sir.

Q. You also had it attached to the spiles of
the Omaha, did you?

A. Yes, sir.

Q. In the course of that night, Captain, after
you had completed your unloading and the follow-
ing day, is it a fact that from time to time your
lines parted, some of them?

A. They chafed and wore off.

Q. Well, did they part?

A. Yes. We did not let them part. We 309
changed them. They chafed and wore off, yes, sir.

Q. And when you saw a line that was not
likely to continue to do its work you replaced it
with another line, did you?

A. Yes, sir.

Q. That was for the purpose of holding your
boat there securely?

A. Yes, sir.

Q. Well, did the lines part, some of them?

310 A. They chafed off. Now, there is a difference between chafing off and parting. Which do you want, chafing off or parting? Which do you want, chafing off or parting?

Q. What is the difference?

A. One chafes off and the other is parted.

Q. Breaks?

A. Breaks, yes, sir. Our lines chafed; did not part, because the wind was blowing us right on the dock; no strain particularly on the line. It was just chafed, wear and tear.

Q. When it became apparent that a common line would no longer do its work you replaced with another good line, did you?

A. Yes, sir.

311 Q. And that was for the purpose of holding your vessel securely to the dock?

A. Yes, sir.

Q. Was it a fact, too, Captain that you found in the course of the night that you had to shift your lines from some of the spiles to others because the spiles became loosened?

A. Not that night, no, sir.

Q. Did you the next day?

A. Yes.

312 Q. And was that done for the purpose of making your vessel secure to the dock, holding it there, too?

A. That is what it was done for.

Q. How is that?

A. Yes, sir.

Q. Captain, supposing your lines had parted

or became detached for some purpose, isn't it a fact that the wind would have driven your vessel sternward gradually?

A. Well, I don't know. It is hard to tell what the wind would have done that night. 313

Q. The wind was striking you slightly to the right?

A. Right oblique.

Q. Obliquely?

A. Yes, sir.

Q. If your lines had parted the wind would have gradually forced you astern, wouldn't it?

A. There would have been something happened if the lines had given way.

Q. Well, wouldn't that have happened for one thing? 314

A. Perhaps it would.

Q. And you testified to that, didn't you, at the time your deposition was taken, that that is what would have happened?

A. If the lines had parted something would have happened, sure.

Q. One thing that would have happened, the vessel would have worked sternward under the influence of that wind; that is what you testified, didn't you, before?

A. I have forgotten about the other testimony. 315

Q. Well, wouldn't that have happened for one thing?

A. Perhaps it would.

Q. Captain, was there a swell?

A. An undertow, yes, sir.

Q. An undertow?

A. That is what we call it, yes, sir.

Q. Are they one and the same thing?

A. Well, yes; about the same thing. It is a swell coming in—

316 Q. Now, your replacement of these lines that wore away, what is the word you used? Chafed; that was for the purpose of holding your vessel securely to the dock wasn't it?

A. Yes, sir.

Q. So now, it is not your purpose to tell this jury that it was physically impossible to get away from that dock, is it?

A. Yes, sir, physically impossible for me to get away from that dock without assistance.

Q. Without assistance?

A. Yes.

317 Q. Well, isn't it a fact that your purpose in holding the vessel to the dock was for your own safety?

A. We generally look out for ourselves; yes, sir.

Q. It was really primarily for your own safety, wasn't it; isn't that true?

A. Not for my own safety, the safety of my ship.

Q. Well, your vessel, yes?

A. Yes.

Q. That was the purpose?

A. Yes.

318 Q. Well, if the lines had parted would your vessel have capsized?

A. No.

Q. It would have gone away from the dock, wouldn't it?

A. I don't know whether it would or not.

Q. You don't know whether it would have gone away from the dock or not?

A. It probably would have worked away in time after doing a lot of damage. 319

Q. You have answered the question. You have answered the question. Captain, referring to the unloading of your boat. Now, those men were stevedores, weren't they?

A. Yes, sir.

Q. And so far as you know they had no connection with the dock, had they?

A. I don't know anything about that.

Q. You don't know that they were in the employ of the City dock? 320

A. I don't know whether they were employed by the City dock or who they were employed by.

Q. Well, as a matter of fact, didn't you make the arrangements with these stevedores to unload your boat?

A. No, sir.

Q. You did not make that?

A. No, sir.

Q. Well, are you sure that some of your crew did not?

A. Yes, sir.

Q. Did I understand you to say that the sea began to make before the unloading was completed? 321

A. I don't think I said that.

Q. Well, did it?

A. Not so much. About 10 o'clock the sea commenced to make.

Q. About 10 o'clock?

A. Yes.

Q. Well, now was that before you had completed the unloading or after?

A. Sir?

322 Q. Was that before or after you had completed the unloading?

A. That was before we completed. We completed about 10:30 or 10:45, somewhere in that neighborhood.

Q. Captain, at what time did you fill the water bottom?

A. Filled them early in the evening right after supper; first job the watchman done that came on after supper.

323 Q. How much water did the vessel draw with the amount of freight that you had on, after you completed the unloading?

A. Well, I could not say exactly but she would not draw over 4 or 5 feet; would not draw over 4 feet forward. When I left the dock I did not have only a couple of hundred tons of freight on her.

Q. Now, do you mean that that was the quantity of water she drew with her water bottoms empty or full?

A. With them full.

Q. With her water bottoms full she would draw how much forward?

324 A. What do you mean, without any freight?

Q. No, with the amount of freight you had on?

A. Oh, about 4 feet.

Q. Then you mean to say that after you had

finished this unloading she was drawing about 4 feet forward?

A. I think so, somewheres around there. I am not sure about that. I did not look at the marks. I did not have time to look at any marks that night. 325

Q. How much did she draw aft?

A. She never draws less than 11.

Q. How is that?

A. Never draws any less than 11.

Q. Well, in her condition how much was she drawing?

A. I have just forgotten now. I don't know just what amount of fuel I had on. It is quite a while ago. I cannot recall it. 326

Q. You have been with your boat in the slip to the west of the City dock?

A. Yes.

Q. Do you know how wide that slip is?

A. I do not.

Q. You don't know the condition of the water just across the slip opposite the outer end of the City dock, do you; did not then?

A. Why, yes; I think I do, or did at that time.

Q. Well, didn't you know what the depth of the water was? 327

A. No, I do not. There was a lot of spiles there, though, an old warehouse or dock.

Q. Well, up to how close to the edge of the—the westerly edge of the slip did that condition prevail?

A. Just a narrow slip.

Q. Well, up to how close to the westerly edge of that slip were those spiles?

A. A hundred feet. That is giving you a good wide berth. No, it was not a hundred feet.

Q. You think they were a hundred feet?

328 A. No, I don't think so. Somewheres around there. Just a narrow slip.

Q. Had you examined that locality and ascertained the location of any spiles?

A. Yes, sir. You could see them.

Q. What?

A. You could see them. They were visible.

Q. They were visible?

A. Yes, sir.

Q. Well, do you know how far they were from the westerly edge of the slip? Do you know?

329 A. I don't know, no, how far they are. That is just a narrow slip there.

Q. You got your boat away on the 29th if I understood you correctly?

A. I think so.

Q. What time was it?

A. About 2 or 3 o'clock in the afternoon; somewheres around there.

Q. And when you did go you waited until you got a tug, did you?

A. Yes, sir.

330 Q. Now, Captain, didn't you testify at the time your deposition was taken that if those lines had all been parted that the vessel would have gone away from the dock?

A. I don't know as I did.

Q. Well, do you know whether you did or not?

A. I don't think I did.

Q. Well, as a matter of fact it would have gone, wouldn't it?

A. After a time.

331

Q. You had more than the usual number of lines in use that night, hadn't you?

A. Yes, yes, sir.

Q. And you had lines of unusual strength in use also in holding the boat, didn't you?

A. Yes.

Q. Were those lines for the purpose of keeping the boat from going forward or back, or either way?

A. Keep her from going any way; to hold it there.

332

Q. To keep her from going any direction; it was to hold there, was it?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Spencer:

Q. Was there any means, Captain, of holding your vessel in position other than with these lines that were out on the dock?

A. No, sir.

Q. Did you ever receive warning from the dock people to leave your situation at their dock at any time during the time you were there?

333

A. No, sir.

Mr. Alford: Plaintiffs object to the question as immaterial and move the the answer be stricken out.

Objection overruled and motion denied.

Mr. Spencer:

334 Q. Could you see the lighthouse, the light from the lighthouse during the night of the 27th as you lay there?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper re-direct examination and also immaterial.

The Court: It is not proper re-direct. He has a right to recall him if he desires.

Objection overruled.

A. Could not see the light; no, sir.

Mr. Spencer:

335 Q. What prevented?

A. Snow; storm.

Q. How many feet could you see any object during the night of the 27th after half past 10 o'clock or after 10 o'clock?

A. During the severity of the storm you could not see 10 feet looking to the northward; could not look to the northward at all.

Q. Did it blow steadily that way all the while, or did it come in gusts?

A. Come in gusts and squalls.

336 Q. What is known as a blizzard?

A. Blizzard, yes, sir.

Q. Your attention has been called, Captain, on your cross examination to the condition of the harbor immediately astern of you to the west of

you where your ship was lying. What was the condition of the bottom of the harbor there?

A. It is very foul, all full of spiles and old dock timber, I guess, and everything has gone out but a few spiles sticking up there. 337

Q. If you had attempted to move and had gone on there what would have been the probable effect on your ship?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper re-direct examination and also as immaterial.

Objection overruled, to which ruling plaintiffs duly except.

A. Probably carried away my rudder and my wheel, probably sunken my ship on them low spiles. 338

Q. Were there any other vessels at anchor out on the bay?

A. Yes, sir.

Q. If you had time to move without assistance that night or during the prevalence of this gale could you see the location of these ships at anchor so as to have enabled you to avoid them?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial. 339

Objection sustained.

RE-CROSS EXAMINATION.

By Mr. Alford :

340 Q. Captain, if I understood you correctly you say the fact that your boat was light influenced you in determining to stay where you did?

A. It influenced me because I could not get away.

JOHN A. McMILLAN, being duly sworn as a witness on behalf of defendant, testifies as follows:

DIRECT EXAMINATION.

341

By Mr. Spencer :

Q. How old are you, Mr. McMillan?

A. 36.

Q. And what was your occupation on the 27th and 28th days of November, 1905?

A. Night dispatcher at the tug office.

Q. What tug office do you have reference to?

A. The Union Towing & Wrecking Company.

Q. Where was the tug office of the Union Towing and Wrecking Company located at that time?

342 A. On the N. P. dock, foot of 7th Avenue West.

Q. At which end of the N. P. dock?

A. Outer end.

Q. At the extreme outer end toward the bay?

A. Yes, sir.

Q. And where was your tug office located with respect to the outer end of the City dock?

343

A. Why, it was just across the slip.

Q. Approximately how many feet was the outer end of the City dock from your tug office?

A. Three or 400 feet, I should judge.

Q. Do you remember the occasion of the big storm that occurred in Duluth on the 27th and 28th of November, 1905?

A. Yes, sir.

Q. What time did you come on duty on the evening of the 27th?

A. Why, 7 o'clock I was supposed to be on duty; around 7 o'clock; 6:30 or 7.

344

Q. And were you there about that time that evening?

A. I was there until the next morning at 7 o'clock.

Q. You say you were the night dispatcher or day dispatcher?

A. Night dispatcher.

Q. And on the evening of the 27th were you on duty?

A. Yes, sir.

Q. Do you remember the location of the Steamer Reynolds during the night of the 27th?

345

A. Yes, sir.

Q. Where was it lying?

A. On the face of the dock, City dock.

Q. Which way was it heading?

A. Heading toward the piers.

Q. Heading toward the—

A. Tug office.

Q. Tug office. Do you remember hearing any signals from the vessel that evening, that night?

A. Yes, sir.

Q. How many times did they blow signals for tugs?

346 A. I don't remember.

Q. What sort of signals were given?

A. Four whistles, the usual signal for a tug.

Q. What does that mean when a ship in the harbor blows a signal of four blasts of its whistle?

A. They want a tug.

Q. And ordinarily what do the harbor towing tugs do?

A. If there is a tug to respond they respond with a long and short whistle.

Q. And they usually go to the assistance of the vessel, do they?

347 A. Yes.

Q. How many tugs did your company have, how many vessel towing tugs did the company that you were employed by have on that occasion?

A. I don't remember.

Q. They have a large number of tugs, haven't they, ordinarily?

A. They have enough usually to take care of the work.

Q. About how many did they have in commission at that time?

348 A. I could not say. I should judge 7 anyway, 6 or 7.

Q. What was done by you at the time Reynolds blew signals for a tug, to render her assistance?

A. Why, the conditions were such that I called up the manager of the company.

Mr. Alford: That is objected to.

349

(No ruling.)

Q. You need not go into the conversation you had with the manager of the tug line. What were your duties as night dispatcher of the tug office?

A. I kept the record of all the boats in and out and sent tugs to the assistance of boats that whistled or tugs that captain or master telephoned for.

Q. Did you receive any telephone message that night for assistance for the Reynolds?

350

A. Yes, sir.

Q. How many times?

A. Why early in the evening I believe the mate told me he would need tugs about 10 or half past 10 and at that time he called up again and I told him I could not send him tugs.

Q. What time did he call up again?

A. I should judge about half past 10.

Q. Why couldn't you send your tugs?

A. Why, the weather conditions did not warrant it. We figured we could not ship him.

351

Q. What were the weather conditions at that time?

A. Snowing and blowing hard from the northeast.

Q. Could you give the jury any idea of the severity of that storm?

A. Why, I don't know. It was a bad storm.

I know it was blowing and snowing very hard and quite a sea running that time of night.

Q. You say it was snowing. How much did the snow obstruct the vision?

A. Well, greatly. It piled up on the tug office windows that night.

Q. Well, for one who was outside could you see any distance through the night or storm?

A. No, sir.

Q. And the darkness?

A. No, sir.

Q. And the sea running. Could you give the jury some idea as to how high the sea was in front of your office.

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

353 Objection overruled.

A. I don't know just how to describe the height of seas. That night they did run over the tug office dock.

Mr. Spencer:

Q. How high is the tug office dock from the ordinary sea level, bay level?

A. Well, sometimes the water is higher than other times. I can't just tell.

Q. Yes, but the ordinary water level, how high is the tug office dock from the bay?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection overruled.

A. Why, I should judge 10 feet.

Q. And on that night the sea you say was over the outer end of the N. P. dock?

355

A. Yes, sir.

Q. What effect did it have upon the City dock?

A. I don't know. Could not say.

Q. Could you see the location of the Reynolds from the office?

A. Not during the snow, the heavy snow.

Q. Could you give the jury some idea as to the violence of the gale, how high the wind was?

A. Why, no, I can't tell just what the velocity of the wind was. It was blowing very, very hard I know.

356

Q. How long had you been employed in the capacity of dispatcher at the tug office at Duluth?

A. About 6 years.

Q. During that length of time you have witnessed some storms and gales here, have you?

A. Yes, sir.

Q. During the six years that you have been employed there did you ever know of a gale of the severity that prevailed that night?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

357

Objection overruled, to which ruling plaintiffs duly except.

A. No, sir.

Mr. Spencer:

Q. How long have you lived in Duluth, Mr. McMillan?

A. Eighteen years.

Q. Did you ever know a gale of that violence during the last 18 years that you were living in Duluth?

358 Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection overruled, to which ruling plaintiffs duly except.

A. No, sir.

Mr. Spencer:

359 Q. I will ask you if it would have been possible or a prudent thing for the master of the— for a ship situated as the Reynolds was at that time, taking into consideration the velocity of the wind, the night, the storm and the darkness, to have moved without assistance?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained.

Mr. Spencer:

Q. When did you leave the dock office?

A. Next morning.

Q. About what time?

A. Seven o'clock.

360 Q. And how was the storm at that time?

A. It was still bad, blowing hard.

Q. Did it increase during the day?

A. Yes, sir. Well, I was off duty during the day.

Q. And when it came daylight on the morning of the 28th could you see the City Dock from the office?

A. Yes. I believe it had stopped snowing some, as near as I can remember. 261

Q. And could you see what effect the sea had on that dock as it beat against it?

A. I didn't notice particularly, I don't believe.

Q. Did you notice the sea washing up under the dock?

A. The seas were running over the dock, yes.

Q. The sea had been washing right over the City Dock?

A. It had been washing over the tug office dock. I suppose they went over the City Dock. 262

Mr. Alford:

Q. You could not see the City Dock?

A. Yes. I believe I could. But I don't remember whether I noticed particularly whether the seas were running over the City Dock. I know they were running over our dock. Naturally they would run over the City Dock.

Mr. Spencer:

Q. The City Dock was exposed to the same force of the gale that your dock was? 263

A. Same position.

Q. And when did you get back to duty again?

A. Seven o'clock that evening.

Q. Evening of the 28th?

A. Yes, sir.

Q. And how was the gale at that time?

A. The gale was still bad.

Q. When was the tug finally sent, or tugs finally sent to the assistance of the Reynolds?

A. I don't know. I was not on watch. They went in the daytime. I was not on watch.

364 Q. I will ask if in your judgment it was a prudent or safe thing to send out tugs to the assistance of the Reynolds at any time after the signals were given for it on the evening of the 27th?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial and on the further ground the witness has not qualified himself to answer.

Objection sustained.

365

CROSS-EXAMINATION.

By Mr. Alford:

Q. Where were you in the course of that night, Mr. McMillan?

A. In the tug office.

Q. Your duty was inside?

A. Not altogether. If I got an order for a tug it was my duty to go out and call the crew and send them.

366 Q. Well, did you go out and call any crews and send them that night?

A. Not after the storm had reached a certain velocity.

Q. Well, at what time was that that you ceased going out to see?

A. I believe it was 9:30 or 10 o'clock; about 9:30 or 10, as near as I can remember.

Q. After that time you did not go out?

367

A. No, sir.

Q. You remained inside?

A. Inside the tug office?

Q. Yes.

A. Yes, sir, as near as I can remember.

Q. You say that the snow was adhering to the windows of the tug office?

A. Yes. But we had one window that the pane opened out so we could look out.

Q. In which direction?

A. That was facing—about facing the east.

Q. So that your information as to after 9:30 or possibly 10 is not gathered from anything that you observed outside, from being outside?

368

A. No. My duties were inside.

Q. Well, the next day it was possible to see, wasn't it?

A. I was not on duty.

Q. You were not on duty the next day?

A. I slept the next day.

RE-DIRECT EXAMINATION.

369

By Mr. Spencer:

Q. Did the tugs under your control the night of the 27th do any towing about the harbor shifting vessels from one place to another?

A. I believe not, as near as I can remember; I do not believe we moved a thing.

Q. Give the jury some idea how far you

could see over the bay during the night of the 27th after 10 o'clock; could you see the lighthouse?

A. No, sir.

Q. Could not see the lights?

A. No, sir.

370 Q. You could not see the Reynolds from where you looked?

A. Not when it was snowing hardest and blowing.

Q. How far could you see—

A. I could not see the water from the tug office window.

Q. And how far is the water from your tug office windows?

A. About 12 or 15 feet.

RE-CROSS-EXAMINATION.

371

By Mr. Alford:

Q. The tug office is on the second floor of that building there, is it not?

A. Yes, sir.

Q. Well, were you trying to see the Reynolds that night?

A. Not that I remember of.

Q. As a matter of fact you were not looking in that direction, were you?

A. Oh, yes. I looked out often. It is part of my duty to watch.

372

Q. I mean, in the direction in which the Reynolds lay, toward the City Dock?

A. I don't remember.

Q. You don't remember whether you did or

A. (No answer).

Q. Do you remember the fact as to whether a vessel came in through the canal that night and went into one of the slips? 373

A. Yes, sir.

Q. There was such a vessel?

A. Yes, sir.

Q. What vessel was that?

A. The Arizona.

Q. Did you send a tug to aid her?

A. No, sir.

Q. She came in under her own steam?

A. Yes, sir.

Q. And went into the slip? Which slip did she go into if you know? 374

A. N. P. four.

RE-RE-DIRECT EXAMINATION.

By Mr. Spencer:

Q. Where is N. P. number four situated?

A. It is to the east of the tug office.

Q. And about what time did that Arizona come in?

A. About somewhere around midnight, I believe.

Mr. Alford: 375

Q. There were some vessels that came in the next day, too, wasn't there?

A. I don't know. I was not on duty.

At this time court is adjourned until 9 o'clock a. m. Wednesday morning, September 16th, A. D.

1908, at which time court met pursuant to adjournment, when proceedings were resumed as follows:

376

D. A. CHRISTIE, being duly sworn as a witness on behalf of defendant, testifies as follows:

DIRECT EXAMINATION.

By Mr. Spencer:

Q. Mr. Christie, where do you reside?

A. In Duluth.

Q. What is your age?

A. My age; 62.

377 Q. How long have you been a resident of the city of Duluth?

A. Well, it is over 28 years.

Q. And what is your occupation?

A. I am agent of the Anchor Line.

Q. Agent of the Anchor Line of steamers?

A. Yes, sir.

Q. How many vessels does the Anchor Line operate?

A. Oh, 16 or 17. I cannot say exactly.

Q. How long have you been the agent at Duluth of the Anchor Line steamers?

A. Since '92.

378 Q. Are you acquainted with the Steamer S. C. Reynolds?

A. Yes, sir.

Q. Did the Reynolds in November of 1905 compose a part of your fleet?

A. Yes, sir; under charter.

Q. During the season of 1905 where did your line unload its freight principally?

A. Do you mean Duluth? 379

Q. For the city of Duluth, yes, sir?

A. At the City Dock.

Q. What was the business of the City Dock at that time?

A. Oh, they received west bound delivery of the boats.

Q. During the season of 1905 at what part of the City Dock did the City Dock people receive cargoes?

A. They have got a slip and they have got the face of the dock. They received it at both places. 380

Q. At both places?

A. Yes, sir.

Q. And who determined the matter as to which side of the dock freight should be unloaded?

A. The City Dock people.

Q. Where is the City Dock situated in the Duluth harbor we will say with respect to the Northern Pacific Dock?

A. Well, it is west of the Northern Pacific.

Q. Approximately about how far west?

A. Oh, I shouldn't—I should judge 1500 feet probably. 381

Q. And what slip is beyond to the westward of the City Dock?

A. The lime kiln.

Q. That is known as the lime kiln slip?

A. Yes, sir.

Q. And what slip is beyond to the eastward?

A. The Omaha.

Q. And then right to the eastward of the Omaha is known as what?

A. The Northern Pacific.

382 Q. And where is the tug office?

A. The tug office is between the Omaha and Northern Pacific slips.

Q. At the extreme end of the Northern Pacific slip?

A. Yes, sir.

Q. And the City Dock would be on the— extends out to the line of navigability, does it?

A. Yes, sir.

Q. East dock line?

A. Yes, sir.

383 Q. And would be about in line with what avenue of the city?

A. That is, running north and south?

Q. Yes. What avenue if extended would come down to the City Dock?

A. About Seventh.

Q. Seventh Avenue West?

A. Yes, sir.

Q. Were you in the city of Duluth on the 27th and 28th of November, 1905?

A. Yes, sir.

Q. Do you remember the great storm we had here at that time?

384 A. Yes, sir.

Q. Go on and state to the jury if you will something as to the character of that storm?

A. Well, it was the heaviest that I had seen in my experience here.

Mr. Alford: Plaintiffs object to that on the ground it is incompetent, irrelevant and immaterial and no foundation laid.

385

Objection over-ruled.

Mr. Spencer:

Q. Was the storm heavy enough to interfere with the moving of vessels about the harbor any?

A. Yes, sir.

Q. Go on and state to what extent shipping was interfered with?

A. Well, there was a severe snow storm—

Mr. Alford: Plaintiffs object to the question on the ground it is incompetent, irrelevant and immaterial.

386

The Court: You may state the extent of the storm and the waves, et cetera; we won't go into any other disasters.

Mr. Spencer: I was not inquiring in regard to any other disasters. My inquiry was as to whether the violence of the wind interfered with shipping.

The Court: He may describe that.

A. There was a very severe snow storm during the prevalence of this storm and the seas were so high that vessels could not move or did not move during the prevalence of the storm until it began to lull.

387

Mr. Spencer:

Q. Do you know who placed—who directed

where the Reynolds should go on the occasion when it had freight for delivery at the City Dock at the time in question?

A. No, sir, I do not. I suppose it was the City Dock people.

388

Mr. Alford: Plaintiffs move that what the witness supposed be stricken out.

Motion granted.

CROSS-EXAMINATION.

By Mr. Alford:

Q. Captain, what is your particular business in connection with the Anchor Line?

389 A. Oh, I do everything connected with that as far as an agent's duties occur.

Q. Your office is in the Palladio Building on Superior street?

A. Yes, sir.

Q. It is not at the docks?

A. No, sir.

Q. And in regard to the placing or handling of vessels and handling them at the dock you have nothing to do with that, do you, personally?

A. No, sir.

390 Q. And any information that you have as to what is done in a given case you simply get from other parties, don't you?

A. Yes, sir.

Q. Did you see the Reynolds on the occasion in question?

A. On that same day?

Q. Yes?

A. Same day and night?

Q. Yes?

A. No, sir.

391

Q. You were not down there?

A. I was not down there. I saw her the day after.

Q. The unloading of a vessel is handled by stevedores, isn't it?

A. Yes, sir.

Q. You don't know of your own knowledge by whom they are employed?

A. Oh, yes, I do. Generally Conklin is the head stevedore. He is the contractor.

Q. And does that by contract?

392

A. We have a contract with him.

Q. So these stevedores were under a contract with the Anchor Line?

A. Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Spencer:

Q. You say you saw the Reynolds the day after. Was she still lying at that dock?

A. Oh, no.

393

CHARLES P. BERKELMANN, being duly sworn
as a witness on behalf of defendant, testifies
as follows:

394

DIRECT EXAMINATION.

By Mr. Spencer:

Q. Where do you reside, Mr. Berkelmann?

A. In Duluth.

Q. How old are you?

A. 34.

Q. And what is your employment at the
present time?

A. Foreman of the City Dock.

Q. How long have you lived in Duluth?

395 A. Oh, about 24 years.

Q. What was your employment on the 27th
and 28th days of November, 1908?

A. Checker for the Anchor Line.

Q. Do you remember the occasion of the big
storm in Duluth on the 27th or 28th of November,
1905?

A. I do.

Q. Are you acquainted with the Steamer S.
C. Reynolds?

A. Yes, sir.

396 Q. Do you remember the incident of the
Reynolds coming to the City Dock on the after-
noon or evening of November 27th, 1905?

A. I do.

Q. For what purpose did the Reynolds come
to the City Dock at that time?

A. To discharge freight.

Q. Did the City Dock people receive it?

A. Yes.

Q. Whereabouts was the vessel stationed when freight discharging began? 397

A. Face of the dock.

Q. That would be the extreme outer end?

A. Outer end, yes, sir, bay side.

Q. Who directed the vessel to make fast at that particular point, if you know?

A. City Dock people.

Mr. Alford: Plaintiffs object to the question on the ground it is indefinite and not responsive to the question and moves the answer be stricken out. 398

The Court: It is very indefinite. The person, if you know. It requires for some person, if you know. Do you know?

A. I do.

Q. (Question repeated by reporter): "Who directed the vessel to make fast at that particular point, if you know?"

Mr. Spencer:

Q. Who of the City Dock people? 399

Mr. Alford: Plaintiffs object to the question on the ground that it is immaterial.

Objection overruled, to which ruling plaintiffs duly except.

A. Mr. Bidwell.

Mr. Spencer:

Q. Was he the manager of the dock at that time?

A. He was.

Q. And who delivered his orders to those in charge of the Reynolds at that time to make fast?

A. I did.

Q. In what way was the Reynolds made fast to the outer end of the Dock?

A. In the usual way, to the spiles of the dock.

Q. Did it have lines out forward and aft?

A. It did.

Q. Do you remember the occasion of that big storm?

A. I do.

Q. Where were you on the night of November 27th?

A. Part of the time on the boat and part of the time at the dock or on the dock.

Q. Do you remember of hearing any signals by the steamboat on the evening of the 28th for assistance of the tug after cargo was discharged?

A. Yes, sir, I did.

Q. How many times have you a recollection of it, that the steamboat whistled for tugs to assist her?

A. Three times that I know of.

Q. What were the weather conditions after 10 o'clock, after the cargo was discharged that night?

A. It was very bad.

Q. What direction was the wind from?

A. Northeast.

Q. Give the jury some idea, if you can, as to the severity of this storm that night?

A. Well, I went home about 10:30, quarter to eleven. I could not hardly get home, it was so bad. 403

Q. Which way was it blowing from?

A. Northeast.

Q. Was there any snow accompanying it?

A. A lot of it.

Q. How much did the snow obstruct the atmosphere?

A. Well, you could not hardly see 10 feet ahead of you.

Q. And can you give any idea as to the velocity of the wind on that occasion?

A. No, I haven't any idea. It was very strong. 404

Q. You say you have lived in Duluth for 27 years?

A. Twenty-four.

Q. During your residence in Duluth have you ever known of a storm of the severity that that storm was on the night of the 27th and the day following?

A. I did not.

Q. Did the severity of the storm interfere any with the movement of the shipping about the harbor that night? 405

A. It did.

Q. And the following day?

A. Yes, sir.

Q. To what extent was the movement of shipping about the Duluth harbor suspended?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Objection overruled.

A. (No answer).

406

Mr. Spencer:

Q. To what extent was the movement about of shipping about Duluth harbor suspended?

A. There wasn't any of the boats moving at all.

CROSS-EXAMINATION.

By Mr. Alford:

Q. If I understood you you were then in the employ of the Anchor Line?

407

A. I was.

Q. That is, as a checker?

A. Yes, sir.

Q. You gave your testimony in a deposition once before in this matter, didn't you?

A. I did.

Q. Did you testify on that occasion you did not remember who gave you orders as to the placing of the boats?

A. I have been thinking it over since though.

Q. You did say then that you did not know who gave you directions, didn't you?

408

A. I don't remember what I said.

PETER GRIGNON, being duly sworn as a witness on behalf of defendant, testifies as follows: 409

DIRECT EXAMINATION.

By Mr. Spencer:

Q. Where do you live, Mr. Grignon?

A. 2631 West Third street.

Q. What is your age?

A. 35.

Q. How long have you lived in Duluth?

A. 26 years.

Q. What is your occupation? 410

A. Shipbuilder and contractor.

Q. What species of work do you do as a contractor?

A. Repair boats and docks and so forth.

Q. What experience have you had in the repair of docks?

A. Considerable experience.

Q. Over how many years does that experience extend?

A. About 10 years.

Q. The repairing of docks that you have done has been principally around the harbor of Duluth, has it? 411

A. Yes, sir.

Q. And Superior?

A. Yes, sir.

Q. Do you remember the big storm that occurred here on November 27th and 28th, 1905?

A. Yes, sir.

Q. And are you familiar with the City Dock?

A. Yes, sir.

Q. Were you familiar with the City Dock before that storm?

412 A. Yes, sir.

Q. I will ask you if you made any examination of the face of that dock shortly after the big storm of 1905?

A. Yes, sir.

Q. At whose request did you make such an examination?

A. Request of the Anchor Line Steamboats.

Q. And who else?

A. Mr. Christie.

Q. And who else besides them?

413 A. Why, I did not make an examination for nobody else besides them.

Q. And has your experience in the matter of repairing docks been such that it enabled you to determine the amount of money that it would cost to repair that dock along its face?

A. Yes.

Mr. Alford: Plaintiffs object to the question on the ground it is not proper rebuttal.

Objection sustained.

Mr. Spencer:

414 Q. What was the reasonable value of repairing that dock?

Plaintiffs make same objection as last above.

Objection sustained.

Q. What condition did you find that dock in?

A. I found it in a damaged condition.

Q. To what extent?

415

A. The extent that I found the City Dock was damaged to the extent of \$400.

Mr. Alford: Plaintiffs object to the answer on the ground it is not responsive to the question; and also object to the question.

The Court: It may be stricken out.

Mr. Spencer:

Q. To what extent did you find the City Dock damaged?

416

Mr. Alford: That is objected to.

(No ruling).

Mr. Spencer:

Q. What was the physical condition of the dock there? How many piles were damaged, if any?

A. There was about 7 or 8 spiles that were bent over; three or four broken.

Q. Did you observe the dock after the repairs had been made to it?

A. No, sir, no more than seen the repairs as I was passing by. 417

Q. I asked you what the reasonable value of making the repairs to the face of that dock that were made, was?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained.

Mr. Spencer:

Q. What was the damage to the dock, Mr. Grignon?

418 Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial and also on the further ground that no sufficient foundation has been laid.

The Court: You can cross-examine him if you desire to know whether he is an expert.

Objection overruled.

A. To the extent in value?

Q. Yes, sir.

A. \$400.

419

Mr. Spencer:

Q. Where was you at the time of that storm, Mr. Grignon?

A. During the storm?

Q. Yes.

A. In the evening of the storm I was at home and the following day I was at my works.

Q. How long did you say you have resided in the City of Duluth?

A. Twenty-six years.

420 Q. During your residence in the City of Duluth your business has been largely among ships and shipping, has it?

A. Yes, sir.

Q. And are you a shipbuilder?

A. Yes.

Q. And during the time you have resided in Duluth have you ever known of a storm of the severity of the one of November 27th and 28th, 1905? 421

A. No, sir.

Q. Was there anything that especially attracted your attention to the severity of the storm on that occasion?

A. I should judge that night the velocity of the wind was about as high as we have ever had it and the snow was severe.

Q. And on the evening of the 27th how hard did it snow? Can you give some idea to the jury?

A. Well, my idea is that the snow was so thick you could not hardly see ahead of you and could not hardly walk through it. 422

Q. Over what period did that storm continue?

A. Period of 3 days before it let up.

Q. And did it continue during the day of the 28th with equal severity?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Alford:

Q. Did the snow continue throughout the 28th? 423

A. No, sir; not throughout the 28th.

Q. What is that?

A. No, sir; it did not continue throughout the 28th.

Q. The snow part of the storm subsided?

A. Yes, sir.

Q. You made your examination at the request of the Anchor Line people?

A. Yes, sir.

Q. Just when did you make that?

424 A. Well, I could not state as to the date but it was some time after the storm.

Q. Well, how long after the storm?

A. Oh, possibly 3 weeks; two weeks.

RE-DIRECT EXAMINATION.

By Mr. Spencer:

Q. Would you have been willing at that time to have made the repairs for the amount which you have named?

Mr. Alford: Plaintiffs object to the question.

425

Objection sustained.

Mr. Spencer: Mr. Alford, when I introduced in evidence the plat, or rather the chart, of the harbor, you made some remark about following that up with some other evidence and I did not quite clearly—

Mr. Alford: It is not intelligible.

Mr. Spencer: Defendant offers in evidence the deposition of Charles M. Van Gorder.

426

Mr. Spencer (Reading):

427

CHARLES M. VAN GORDER, a witness on behalf of Claimants, called and being first duly sworn, on oath deposes and says:

DIRECT EXAMINATION.

By Mr. Spencer:

Q. How old are you?

A. Fifty years.

Q. Where do you reside?

A. Marine City, Michigan.

Q. What is your occupation?

428

A. Seaman.

Q. How long have you led a seafaring life?

A. Ever since I was eighteen years old.

Q. In what class of vessels have you sailed?

A. Well, I have sailed in schooners, as we understand it, steamboats little and big.

Q. What position have you occupied on steam vessels?

A. Second mater, first mate and master.

Q. On what vessel were you employed on the 27th of November, 1905?

429

A. S. C. Reynolds.

Q. What position did you occupy on the Steamer S. C. Reynolds?

A. Second mate.

Q. Do you remember the occasion of the Reynolds discharging cargo at the City Dock in Duluth on November 27th, 1905?

A. Yes, sir.

Q. About what time in the day did the vessel reach the dock?

A. I should judge about five o'clock in the evening.

430 Q. How long had you been sailing on the Reynolds?

A. The whole season previous to that.

Q. Your vessel had been operating in the Anchor Line that fall?

A. All the fall, yes, sir, from the middle of the season.

Q. Had the vessel ever discharged cargo at that dock before?

A. Yes, sir.

Q. Was that the customary place for the Anchor Line to discharge?

431 A. Consigned to that dock, yes, sir.

Q. How many different cargoes had you discharged at that dock prior to that time?

A. I couldn't recollect that.

Q. More than one?

A. Yes, sir.

Q. How many, about?

A. Practically every time we brought in a cargo we had some for there.

Q. What was the usual place for your vessel to be made fast?

432 A. Front of the dock.

Q. To what place was the Reynolds made fast this particular time?

A. Front of the dock.

Q. Any different situation than ordinary?

A. No, sir, not as I understand the question; we have unloaded some in the slip.

Q. But on this particular occasion you unloaded at the outer end of the dock? 433

A. Yes, sir.

Q. Do you know who directed you to do that?

A. The people that have charge of the freight; I can't say who they were.

Q. The dock people?

A. No, sir; the Anchor Line, the agent I suppose, the checker as we call him.

Q. Someone on the dock engaged in the receiving of the cargo?

A. Yes, sir.

Q. You don't know who it was? 434

A. We called him Louie; that is all I know.

Q. What were the weather conditions at five o'clock when you went to the dock?

A. They were not bad.

Q. Did you make the landing alone or did you have a tug?

A. I think we came there alone.

Q. How long did they discharge freight?

A. We got through at ten thirty that night.

Q. Who received the cargo as it was being unloaded from the boat, the dock people, or who?

A. Before we shifted the freight was put inside the freight house; after we shifted it was put on the dock alongside the freight house. 435

Q. What were the weather conditions at the time the cargo was all off?

A. Snowing hard and blowing fresh.

Q. What direction was the wind?

A. About northeast.

Q. How was the sea?

A. Well, there was quite a swell running in there, enough so it made it pretty difficult to keep a gang plank out there to work on.

436 Q. What effort did the steamer make to get away from the dock that night?

A. Blowed the whistle signals for a tug; also sent the mate to the 'phone to get a tug.

Q. Were you the man?

A. No, sir.

Q. I thought you were the mate?

A. I was second mate.

Q. You were second mate at that time?

A. Yes.

Q. Where is the mate now?

437 A. I couldn't say; he is going mate on a new boat, whatever it is.

Q. What was the mate's name?

A. George Burnham.

Q. How many times did the ship blow for assistance—for a tug?

A. Well, they certainly blowed twice anyhow; I thought they blew more; blowed several times.

Q. Any tug come to her aid?

A. No, sir.

Q. How long did the ship remain at that particular dock?

438 A. Till next afternoon about four o'clock we got away.

Q. Why didn't you leave sooner?

A. In my judgment it would have been impossible to have done it.

Q. What direction did the wind come from?

A. In a general direction from the north-east, a little to the east of north as it struck us on the starboard bow. 439

Q. Give us some idea of the storm?

A. Commenced snowing about eight o'clock in the evening, snowed and blowed so hard it was with considerable exercise on our part we kept the men working there till the freight was unloaded.

Q. How many miles an hour was the wind blowing?

A. Fifty to sixty miles an hour.

Q. Continue all night?

A. Oh, yes, increased. 440

Q. Next day how about the storm; did it continue?

A. Yes, sir.

Q. In your judgment was it necessary for the vessel to have some assistance in order to get away from the dock?

A. In my judgment, yes, sir.

Q. What is your opinion as to whether it would have been possible with safety to the ship or surrounding property for the vessel to have gotten away from the dock that night without a tug, or have attempted to get away? 441

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection overruled, to which ruling plaintiffs duly except.

Mr. Spencer (Reading) :

442 A. The line of the dock as it runs there right astern probably has been an old dock there some day, all driven full of spiles and is shoal water there, in fact, there was shoal water twenty-five or thirty feet astern of our boat; in my judgment as a seamen if we had slackened our lines the least bit we would have been in the bank there before we could have done anything, would have broken our rudder or wheel probably.

Q. There were no other tugs in the harbor, any vessel towing tugs, other than the Great Lakes' tugs?

A. Not to my knowledge.

443 Q. Is there any device known to seamanship which could have been done—anything that could have been done—to get the ship away from the dock after half past ten that night sooner than she did get away?

A. Only to obtain assistance.

Mr. Alford: Plaintiffs object to the answer on the ground it is not responsive to the question.

Objection over-ruled.

Mr. Spencer (Reading) :

Q. What effect did the wind and sea have upon the ship?

444 A. Caused her to range back and forward in front of the dock and made it difficult to hold her there.

Q. How much of a sea was running from the canal?

A. Quite a swell runs in there—the worst I

ever seen in my experience trading to Duluth and I traded here before there was any elevators here.

Q. Did you ever know of as severe a storm as that one was—as disastrous a storm? 445

A. Not around Duluth here, no, sir.

Q. What was the effect upon the shipping here at the head of the lakes?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained, to which ruling defendant duly excepts.

Mr. Spencer (Reading):

Q. Can you state some of the effects? 446

A. There was the Elwood came in and sunk when they got inside the harbor—they said she struck the pier; that is not from my personal knowledge; I know she sunk after she got inside a large inside kept blowing whistles for a tug and next morning her stern was up on the bank by the B. & O. dock; the Mataafa next morning when you could see;—there was a time during the night you couldn't see the lights of the pier at all,—next afternoon about two o'clock the Mataafa struck the pier and swung round and went on the beach; we also learned the England was ashore 447 between the two entrances and the Crescent City at Lakewood and other disasters on the north shore, the Corey on Gull Island, the Lafayette and Edenborn, also the Spencer and consort and the Manilla in tow of the Lafayette.

Q. These disasters all occurred during that night or the following day?

A. Yes, sir.

Q. What effect did the sea have on that dock if you noticed?

448 Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection over-ruled, to which ruling plaintiffs duly except.

Mr. Spencer (Reading):

A. I think it had all the effect on the dock.

Q. Describe what you saw there?

449 A. Between the two docks, the Omaha dock and the town dock,—Between the two docks there is a filled dock comes down probably within thirty feet of the face of the dock; there are railroad tracks in there and the action of the waves under the dock parted its connection with the shore or the filled part of the dock and tore up the planking that was on the dock; I think that is where the most damage to the dock came, the sea running under there.

Q. Washing it out underneath?

A. Yes, sir, enough so that quite a few pipes that were stored there went down into the river and they made an effort next day to remove some of them,—washed the track, went the track all double with the cars standing on it.

450 Q. Were the seas big enough so they washed over the dock any?

A. Oh, yes, some, that is, the comb of the sea.

Q. What was the temperature?

A. Freezing, blinding snow storm the worst feature.

Q. Would it have been safe in the darkness of that night and snow storm, would it have been safe for you to go ahead on your engine and work into the bay? 451

Mr. Alford: Plaintiffs object to the question on the ground it is incompetent, irrelevant and immaterial.

Objection over-ruled.

Mr. Spencer (Reading):

A. Not in my judgment, no, sir.

Q. What danger would the ship have incurred if it had been possible for you to get away from the dock? 452

Plaintiffs make same objection as last above.

Same ruling.

Mr. Spencer (Reading):

A. Couldn't see any place to go; I don't know where we would have went.

Mr. Alford: Plaintiffs object to the answer on the ground it is not responsive.

(No ruling).

Mr. Spencer (Reading): 453

Q. Could you see from one end of your vessel to the other?

A. Oh, yes, but you couldn't see the light-house flash, only once in a while you could notice where it was and that is about all.

Mr. Alford: Plaintiffs move that all other "Oh, yes" be stricken out.

Motion granted.

Mr. Spencer (Reading):

454 Q. Was your vessel taken away from that dock as soon as it was safe to do so; could it have moved sooner.

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection over-ruled, to which ruling plaintiffs duly except.

Mr. Spencer (Reading):

A. Not in my judgment, no, sir.

455 Q. What assistance did you have when it was moved?

A. The tug Carrington, I should judge about four o'clock next day; we got over the Northern dock about supper time.

Q. Could you have gotten a tug before that?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection over-ruled, to which ruling plaintiffs duly except.

Mr. Spencer (Reading):

456 A. As far as my knowledge goes I think every effort was made to get tugs as soon as it was possible to get them.

Q. Were your men all aboard that night—your crew?

A. Yes.

Q. Were they ready and able to do anything good seamanship required.

457

A. All pretty husky lads.

Q. Was any damage done to the dock by the vessel not occasioned by the storm?

A. No, sir.

Mr. Spencer: Defendant offers in evidence the cross-examination of Mr. Van Gorder.

Mr. Spencer (Reading):

CROSS-EXAMINATION.

458

Mr. Alford:

Q. Your idea is then that the vessel itself really had nothing to do with injuring the dock?

A. You wish my opinion on that?

Q. Just answer the question?

A. I think if the boat had not been there the dock would have been damaged worse than it was.

Q. You think the vessel was a protection to the dock?

A. I think so, yes, sir.

Q. You disagree with the captain?

459

A. I don't disagree; my opinion was if the vessel had not been there it would have damaged the dock worse.

Q. The bending of those railroad irons you spoke about was not attributable in any way to the vessel?

A. No, sir.

Q. How many times during that season had the Reynolds unloaded freight at the City Dock?

A. That would be impossible for me to answer, but we came practically to that dock every time we came to Duluth.

460 Q. How many trips did you make that season?

A. I couldn't say without referring to the log; in August we commenced I think, working for the Anchor Line people.

Q. Did you make a trip once a month?

A. Yes, sir, twice a month.

Q. How many trips did you make in August?

A. I couldn't say.

Q. Any in August?

A. I couldn't say.

461 Q. You don't know that you began in August?

A. I am only just quoting from memory.

Q. Make any trips to the dock in September?

A. Well, I can't swear to that either.

Q. You don't know then that your unloading of freight at the City Dock began before October?

A. Well, that would be hard for me to answer; I know we landed freight at that dock I think practically every time we came to Duluth.

Q. You did at one or more times unload freight in the slip?

462 A. Yes, sir, I think we went in there once.

Q. You don't know the relation of the people who designated the place for you to tie up to the City Dock?

A. No, sir.

Q. Is this a fact, that you would go into the

slip to unload when some other vessel was unloading at the face of the dock?

A. Well, in my capacity aboard the boat we go wherever they want the freight; if they want it in the slip we go there; if they want it on the face of the dock we go there. 463

Q. That is, the Anchor Line people?

A. They look after that, yes, sir.

Q. If I understood you correctly you called for a tug as soon as you unloaded?

A. Yes, I remember that very distinctly because I generally had to do that part.

Q. At that time in your judgment it would have been safe to leave the dock with the aid of a tug?

A. I can't answer that way; I had instructions from the captain to blow for a tug and I done it. 464

Q. What time was that?

A. Round ten thirty.

Q. You called for a tug twice?

A. I blew two different times to my certain knowledge and I think more; I can swear to two times.

Q. You called for a tug about ten thirty and none came and then you called again, is that right?

A. I don't understand your question. 465

Q. You say you called twice?

A. I blew the regular tug signals for assistance two different times.

Q. The first time none came?

A. No, sir.

Q. And then how long did you wait for another one?

A. Didn't leave me wait very long before I was ordered to do it gain, ten minutes, probably fifteen.

Q. And you blew again?

A. Yes, sir.

466 Q. Do you know whether you blew again the third time?

A. Well, no, I would not wish to swear to that. I am positive about two times, two different times.

Q. In what direction was the ship headed as she lay at the dock?

A. Dock runs about northeast to northerly direction.

Q. And the wind was from the northeast?

467 A. Wind was about northeast by east, more to the east a little; as we lay at the dock the wind came over the starboard bow.

Q. What would be the difference in the direction from which the wind came and the direction in which the boat pointed?

A. About two points.

Q. Then if the lines of the vessel had parted or loosened in any way she would have drifted astern?

A. Yes, sir.

468 Q. That would have taken her across the slip you think into—so she would have grounded on the opposite side of the dock?

A. She certainly would, yes sir.

Q. Did you keep the machinery running at any time during the time you tied up there?

A. Well, I couldn't say as to that; that was

not under my supervision at all; I was doing other work and I stayed by it.

Q. You succeeded in unloading all the freight there? 469

A. Yes, sir.

Q. Although you had some difficulty in keeping the gang plank in place at the landing?

A. Yes, sir.

Q. At the time you completed your unloading the sea was not such as you couldn't unload?

A. Well, we did unload.

RE-DIRECT EXAMINATION.

Mr. Spencer:

470

Q. How near the tug office was the city dock where you were then lying?

A. You want just my estimate of it?

Q. Yes?

A. Eight hundred feet.

Q. That was the place where the tugs usually lay?

A. Yes.

Q. Were there any other vessels made fast to the City Dock that night?

A. Not to the City Dock.

471

Q. What other vessel was in the vicinity of yours?

A. The Milwaukee lay at the Omaha dock on the slip.

Q. Did you hear her blowing any signals of distress?

A. No, sir.

CHARLES M. VAN GORDER, recalled for further cross-examination, testifies as follows:

472 Mr. Spencer:

Q. What is the draught of the Reynolds?

A. About eleven and a half feet aft and about three feet forward.

Mr. Alford:

Q. What was her draught laden?

A. Package freight business we seldom draw over fourteen feet aft with the after compartments full; about nine to ten feet forward.

RE-DIRECT EXAMINATION.

473

Mr. Spencer:

Q. You say when light the Reynolds draws something over eleven feet?

A. Well, without any water in her three feet forward and eleven and a half aft.

Q. What was the condition of the ship's water bottoms on the night in question?

A. They were full and we had ten feet of water in the fore peak; we had to pump it in.

Q. All the water bottoms were full to their full capacity?

474

A. Yes.

Q. What was that for?

A. To keep down in the water so we could hold her.

Q. Was there anything that could have been

done in good seamanship to make her more secure than you did do?

Mr. Alford: Plaintiffs object to the question 475
on the ground it is immaterial.

Objection sustained.

Mr. Spencer (Reading):

Q. How much undischarged cargo was there?

A. In the neighborhood of two hundred tons.

Q. And the water bottoms all full to their full capacity?

A. Yes.

RE-CROSS-EXAMINATION.

476

Mr. Alford:

Q. Was that a part of your duty to attend to filling the water bottoms?

A. Yes, sir.

Q. And you are testifying from actual knowledge of it?

A. Yes, sir, personal knowledge of it.

Q. How much water does she draw forward when the water bottom is full?

A. We can put her down to about five feet with water in the fore peak when she is light without cargo. 477

Q. And how much water will she draw aft?

A. She will draw about twelve and a half to thirteen feet.

Q. Also when filled?

A. Yes, sir, when filled; she has got to have considerable fuel on.

Q. Does the fact that she is stationary or moving cut any figure as to the amount of water she draws?

A. No, sir.

478 Q. Why did you speak of fuel; is that on account of the location of the fuel?

A. Yes, sir.

Q. Where is the fuel located?

A. Aft.

Q. If your water bottom is full and two hundred tons of freight on her, standing at the dock as she was at that time, how much water did she draw forward?

A. She drew about five and a half feet because the cargo was mostly aft; she was very light forward.

479 Q. How much was she drawing aft?

A. She was drawing about thirteen feet six; that is the record on the log book.

Q. If I understand you she would draw when light about five feet of water forward?

A. With the water bottoms full and the fore peak full.

Q. And the amount she will draw aft will depend on the amount of fuel?

A. Yes, to a large extent.

Q. The fuel being stored aft?

A. Yes.

480 Q. In what part of the vessel was the cargo that still remained, that two hundred tons?

A. It was aft in her because we worked number three and four gangway at the Great Northern and some of it was on deck yet, some

pipe iron and some in the after hold; there was none in forward, of the cargo.

481

GEORGE H. VROMAN, being duly sworn as a witness on behalf of defendant, testifies as follows:

DIRECT EXAMINATION.

By Mr. Spencer:

Q. What is your name?

A. George H. Vroman.

482

Q. How old are you, Captain?

A. 52.

Q. Where do you reside?

A. Duluth, Minnesota.

Q. And what is your occupation?

A. Manager of the Union Towing and Wrecking Company.

Q. How long have you resided in Duluth.

A. Five years.

Q. And where did you reside prior to coming to Duluth?

A. Buffalo, New York.

483

Q. What was your business while in Buffalo, New York?

A. Manager of the Hanlan-Johnson Tug Line.

Q. What is the business of the Union Towing and Wrecking Company at Duluth?

A. General wrecking and towing business.

Q. To what species of towing is your company especially directed?

A. All harbor towing.

Q. Including vessel towing?

A. Vessel towing, yes, sir.

484 Q. How long have you led a seafaring life, Captain?

A. 35 years.

Q. In what species of vessels have you sailed?

A. Tug boats and steamboats.

Q. Are you now a licensed officer for steam vessels?

A. Yes, sir.

Q. You were the manager of a line of tugs at Buffalo for how many years?

A. Two years.

485 Q. And prior to that what species of vessel work were you engaged in?

A. Sailing and steamboat.

Q. What class of steamboats have you sailed?

A. 3,000 ton boats.

Q. You sailed as master?

A. Yes, sir.

Q. On what waters has your experience as a sailor been, if you remember?

A. The Great Lakes.

486 Q. And in addition to the sailing of large steamships on the Great Lakes, have you ever been in command of vessel towing tugs?

A. Yes, sir. The principal part of my life was that.

Q. That has been the principal part of your business, tug captain?

A. Yes, sir.

Q. Active and practical management of towing vessels?

487

A. Yes, sir.

Q. Whereabouts is the office of the Union Towing and Wrecking Company of Duluth located, Captain?

A. Foot of 7th Avenue West.

Q. And how near the bay front?

A. How?

Q. How near the harbor?

A. Close to the edge of the dock at the foot of the street.

Q. Your tug office is located at the extreme outer end of what is known as the Northern Pacific dock?

488

A. Yes, sir.

Q. And that Northern Pacific dock runs down in the continuation of what avenue of the city?

A. 7th Avenue West.

Q. And how close to the extreme outer end of the dock is your tug office located and was it located on the 27th and 28th of November, 1905?

A. Why, about 15 or 18 feet.

Q. And how high above the level of the bay is the dock where your office is situated?

489

Mr. Alford: The level of the bay changes from time to time, doesn't it, fluctuates?

A. Oh, yes.

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Mr. Spencer: I say the ordinary level.

Mr. Alford: I renew the objection upon the same grounds.

Objection over-ruled.

490

A. I should judge between 5 and 6 feet from the natural stage of water to the top of the dock.

Mr. Spencer:

Q. How high is the office, the office that you occupied, above the level of the dock?

A. The lower floor is about 8 or 9 inches above the top of the dock; the upper floor would be about 9 feet.

Q. I will ask you, Captain, if you were familiar with the Steamer S. C. Reynolds?

491

A. Yes, sir.

Q. Do you remember the great storm that took place on Duluth Harbor on the 27th and 28th of November, 1905?

A. I do, yes, sir.

Q. Where were you at that time?

A. I was at the office in the afternoon of the 27th.

Q. And where were you on the 28th of November?

A. At the office.

492

Q. I will ask you if you know where the Steamer S. C. Reynolds was situated on the evening of November 27th?

A. Yes, sir. She layed to the City Dock.

Q. Whereabouts on the City Dock?

A. I think it is 9th Avenue West.

Q. At the outer end of the dock or along side?

A. On the outer end of the dock.

Q. I will ask you, Captain, what the state of the weather was on the evening of the 27th of November? 493

A. An unusual storm from the northeast.

Q. What can you say as to the velocity of the wind at that time; what was it as nearly as you are able to estimate?

A. Why, somewhere from 50 to 70 miles an hour. It reached 73 miles an hour at one time.

Q. And was there any snow?

A. Yes.

Q. And to what extent did the snow interfere with seeing on the night of the 27th? 494

A. Oh, you could not look to northward at all; could not see any lights or anything.

Q. Did the storm interfere any with the movements of vessels about the Duluth Harbor on the night of the 27th?

A. Yes, sir.

Q. To what extent did it interfere with the movements of shipping about the harbor at Duluth?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial. 495

Objection over-ruled.

A. I did not move any boats.

Mr. Alford: Plaintiffs object to the answer on the ground it is not responsive to the question.

Objection over-ruled.

Mr. Spencer:

Q. Were vessels moved from dock to dock so far as you know that night?

496 A. No, sir; we did not do any.

Mr. Alford: Plaintiffs move the answer be stricken out.

Motion granted.

Mr. Spencer:

Q. Why did your tug line not move any vessels about the harbor that night?

Plaintiffs make same objection as last above; and it is irrelevant and immaterial.

497 Objection over-ruled.

A. We did not care to take the risk. I gave orders not to move anything.

Q. In your judgment as a seafaring man, Captain, could vessels like the Reynolds situated as the Reynolds was that night have been moved with safety to itself or safety to your tugs about the Duluth harbor?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant, immaterial and incompetent.

498

Objection over-ruled.

A. I would not let go of a tug that night.

Mr. Alford: Plaintiffs object to the answer

on the ground it is not responsive and moves that it be stricken out.

Motion granted.

499

Mr Spencer:

Q. I will ask you if in your judgment it would have been a safe or prudent thing to do? You can answer by Yes or No, if you will?

Plaintiffs make same objection as last above.

Objection over-ruled.

A. No, sir, I don't think it would. I know it would not.

Q. I will ask you, Captain, if in your judgment as a seafaring man it would have been a physical possibility with safety to the ship for the Steamer S. C. Reynolds situated as it was at the outer end of the City Dock, with the storm prevailing as you have described, to have moved that evening without the aid of tugs? 500

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial; also as incompetent, indefinite; the question is very much involved.

Objection over-ruled, to which ruling plaintiffs duly except. 501

A. Well, the chances were a hundred to one of serious damage.

Mr. Alford: By Yes or No.

A. No.

Mr. Spencer:

502 Q. When was the Reynolds finally removed from that position at the outer end of the City Dock, if you know?

A. Somewhere from 3:30 to 4:30 of the afternoon of the 28th.

Q. The Captain of the vessel has testified that to the best of his recollection it was the 29th. Have you anything definite to fix that date in your mind?

A. Why, I have our records at the office, yes, but I did not bring them with me.

Q. Have you anything else besides your records, not having them here?

503 A. Why, yes. I remember after the Mataafa was wrecked and the Ellwood, it was the same day, same afternoon.

Q. That this occurred?

A. Yes, sir.

Q. You think it was the 28th?

A. 28th, yes, sir.

Q. I will ask you, Captain, if the Steamer Reynolds made any efforts on that day, the 28th, to obtain assistance from the tug line?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

504 Objection over-ruled.

A. He blew for tugs.

Mr. Spencer:

Q. And why didn't you send them to him before half past 4?

505

A. On account of the storm. The sea was too big.

Q. Could you give some idea as to the height of the waves or the severity of the storm during the 28th?

A. The sea was rolling over the top of the dock at our office. There was 4 or 5 inches on the lower floor. We were staying on the upper floor.

Q. Did the waves run as high as the upper story of your building?

A. Spray come to the upper windows.

506

Q. Did you render assistance to the Reynolds as soon as it was practically possible on that day?

A. Yes, sir.

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial and move the answer be stricken out.

Motion denied.

Mr. Spencer:

Q. I will ask you, Captain, if ordinarily the outer end of the City Dock is a safe place for ships to lie in the Duluth harbor for ordinary occasions?

507

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained.

Mr. Spencer:

508 Q. I will ask you, Captain, if in your experience extending over 25 or 30 years, as you have said, you have experienced either about Lake Superior, Duluth or anywhere on the chain of Great Lakes a storm of equal violence with the one in question?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection over-ruled.

A. No, I did not.

CROSS-EXAMINATION.

By Mr. Alford:

509 Q. Captain, were you on duty throughout the night of November 27th and eighth that year?

A. Oh, yes. I was not on the entire night, no. I went home about 6:30.

Q. And you did not return to the dock that night?

A. No.

Q. So that your testimony as to anything occurring at the dock or in the harbor after you went home is simply from what you heard, isn't it?

510 A. I was in touch with our office until the telephone service was out.

Q. Not from your own observation?

A. Not from my own observation during that night.

Q. Or from your own observation after 6 o'clock?

A. The severity of the storm was under my own observation during the whole night. 511

Q. As to anything that occurred at the dock?

A. Yes, up to the time the telephone service gave out I was in communication.

Q. Just a moment. Now, just kindly get the questions. I say, that in so far as anything at the dock was concerned after six you got simply from somebody else?

A. Got it from my night dispatcher.

Q. Not from your own observation at all, personal observation?

A. Yes. 512

Q. Now, did I understand you to say that at one time the velocity of the wind attained 73 miles an hour?

A. That is what I believe on the morning of the 28th.

Q. Oh, that was on the morning of the 28th?

A. Yes, sir.

Q. And not in the course of the night preceding?

A. The storm gradually increased—

Q. Just a moment. It was not during the course of the night preceding? 513

A. I could not say what the velocity of it was. It was an extraordinary gale of wind all night.

Q. Just what time did it attain that velocity, Captain?

A. Couldn't say; some time during the forenoon.

Q. You were the manager of the Union Towing and Wrecking Company?

A. Yes, sir.

Q. Your Company tows vessels for the Lake Erie Transportation Company?

514 A. Yes, sir.

Q. And vessels of the Anchor Line?

A. Yes, sir.

Q. Now, you look after the safety of your own tugs, don't you?

A. Yes.

Q. And in determining whether in a given case you will send them out you are governed by the question as to whether or not it will be safe for the tug, aren't you?

A. Well, that is never taken into consideration a great deal; it is the amount of damage.

515 Q. You risk the tugs, do you?

A. It is the damage they may do to the property that you take in tow that we consider.

Q. You do not consider then the question of the safety of the tug at all?

A. Oh, of course we consider that.

Q. Then you say that you do consider the safety of the tug?

A. Why, sure.

Q. In determining whether you will send it out or not?

A. Sure.

516 Q. And you did so on this night of the 27th of November, didn't you?

A. Yes.

Q. And that was the real thing that governed you in deciding not to send them out?

A. The safety of the tug?

Q. Yes, primarily? That is, primarily?

A. It was the damage they might do in trying to shift boats. 517

Q. Then as far as the safety of the tug is concerned you would have been willing to send them out, would you; you would have been willing to risk the tug?

A. No. If the weather conditions were so we could, yes.

Q. At that time you—

A. Did not care to risk anything, would not take any chances whatever at that time. We were simply there to render assistance to whatever boat was in distress and coming in; that was my orders to the night dispatcher, to render what assistance he could to incoming boats. 518

Q. Have you anything to say now in answer to that question?

A. No. Nothing more.

RE-DIRECT EXAMINATION.

By Mr. Spencer:

Q. It is in evidence in this case that the Reynolds was lying at the outer end of the City Dock, comparatively light, with only a small amount of cargo, perhaps a couple of hundred of tons. I will ask you if the fact that the vessel was light would add anything to the difficulty of handling it in such a storm as prevailed during the time in question. 519

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection over-ruled.

520 A. It is harder to handle a light vessel that it is a loaded one in a gale of wind.

Mr. Spencer:

Q. Why is it harder?

A. They catch more wind and of course in a seaway in the harbor the lines is liable to let go.

Q. And what do you mean by the lines are liable to let go?

A. The lines are liable to; a light boat will jump more than a loaded one will.

Q. And that adds to the peril and difficulty of handling them?

A. Yes, sir.

521 The Court:

Q. You say a light vessel would jump more?

A. Yes, sir.

Q. And a light vessel would impinge upon the dock every jump that it made, would it?

A. Of course it is hard on a dock, a vessel laying alongside of it, I should think.

RE-CROSS-EXAMINATION.

By Mr. Alford:

522 Q. Captain, did you see the Reynolds pounding the dock there yourself?

A. I saw her there all day, yes, sir.

Q. And she was pounding the dock then, was she?

A. Yes, sir, she was pounding the dock.

523

FRED BENSON, being duly sworn as a witness
on behalf of defendant, testifies as follows:

DIRECT EXAMINATION.

By Mr. Spencer:

Q. What is your name?

A. Fred Benson.

Q. How old are you, Captain?

A. 54 years old.

Q. Where do you reside?

524

A. 2531 Park Point.

Q. Duluth?

A. Duluth, yes.

Q. What is your occupation?

A. I follow the water.

Q. You are a sailor by occupation?

A. Yes, sir.

Q. Are you a licensed master of steam vessels?

A. Yes, sir.

Q. How long have you led a seafaring life, Captain?

525

A. About 35 years.

Q. What character of vessel have you sailed during that time?

A. Usually tug boats.

Q. And what vessel are you now employed on?

A. Steamer Walter Vale.

Q. In what capacity are you employed on the Walter Vale?

A. Mate.

Q. Are you familiar with the harbor of Duluth and Superior?

526 A. Yes, sir.

Q. Have you ever operated tugs upon these waters?

A. Yes, sir.

Q. How long have you been as master sailing steam tugs, towing tugs, upon the harbor of Duluth and Superior and vicinity?

A. I commenced work here in 1888 and have been here since practically all the time.

Q. Principally what class of towing have you been engaged in during the last 15 or 20 years here?

527 A. Why, I am engaged in what is commonly called vessel towing; all kinds of towing in fact.

Q. What, in addition to your service as master of steam tugs, on what other classes—what other vessels have you sailed on on the Great Lakes?

A. All classes of vessels on the Lakes.

Q. In what various capacities?

A. All capacities, from deck hand to—

Q. What vessel were you in command of on the 27th and 28th days of November, 1905, at the time of the big storm at Duluth?

528 A. That is the time the Mataafa was wrecked here?

Q. Yes?

A. I was in the B. B. Inman.

Q. What kind of a tug is the tug B. B. Inman so far as size, power and capacity is concerned?

A. She is a big tug; she is a first class tug.

Q. Do you remember the occasion of the big storm that occurred at Duluth? 529

A. I certainly do.

Q. In November of 1905?

A. Yes, sir.

Q. Where were you personally on the evening of November 27th, 1905?

A. The evening of the 27th; that is the evening before the storm? It was our tug's night off.

Q. And where were you personally?

A. I was on the tug. We have nights off in rotation. Our tug was off that night.

Q. What you mean by having a night off, your tug was not in active— 530

A. No, she was not in active operation.

Q. Where was your tug lying?

A. She was lying in what is called the Northern Pacific slip, number 4.

Q. And where is that with respect to the tug office of the Union Towing and Wrecking Company?

A. It is in the first slip to the eastward towards the canal from the tug office, the slip where the Patterson Boat House is, where the Boat Club used to be. 531

Q. Where Patterson's Boat House is?

A. Patterson's Boat House is in the slip, yes, sir.

Q. The tugs of the Union Towing and Wrecking Company at that time were engaged more particularly in what class of towing?

A. Vessel towing principally.

Q. About how many tugs did they have in commission on the 27th and 28th day of November?

532 A. I think they had six. I am not positive about that.

Q. You say you remember the storm that occurred there. Tell the jury something as to the character and severity of that, if you will?

A. There isn't much to tell—

Mr. Alford: Plaintiffs object to the question on the ground it is too indefinite.

Objection over-ruled.

533 A. Why, it was an unusually severe storm. In fact, it was the most severe storm I have ever experienced either in Duluth or anywhere. There was damage done here—

Mr. Alford: Just a moment. The question is answered:

Mr. Spencer:

Q. What direction was the wind from?

A. About northeast.

Q. And can you give an estimate as to its velocity?

534 A. I could not from my own observation. I understood that the wind was about—

Mr. Alford: Just a moment. Plaintiffs ask that what the witness understood be stricken out.

(No ruling).

A. Very high velocity.

Mr. Spencer:

Q. I am speaking of the evening of the 27th. 535

What was it on the evening of the 27th?

A. When we went in the slip?

Q. Yes?

A. There was a light breeze from the north-east, not very strong.

Q. But later in the evening along about 10 or 11 o'clock in the evening?

A. The wind increased.

Q. What was the velocity of the wind the following day, the 27th?

A. Very high velocity; extremely high. 536

Q. And the evening of the 27th was there any snow?

A. Snowed hard; heavy snow storm. After about 9 o'clock I think it commenced to snow 8 or 9 o'clock.

Q. How thickly was the atmosphere obscured with snow?

A. Very thick. You could not see any distance.

Q. Are you familiar with the Steamer S. C. Reynolds?

A. Yes, sir. 537

Q. Do you know where the Reynolds was lying on the evening of the 27th?

A. Yes, sir.

Q. Whereabouts?

A. Lying on the bay front of the City Dock.

Q. Do you know when the Reynolds was finally removed from that dock?

A. Yes, sir.

Q. When was that?

A. That was the afternoon of the next day, the 28th.

Q. And who removed it?

538 A. I did.

Q. It is in evidence in this case, Captain, that the Steamer Reynolds was lying at the outer end of the City Dock with her port side next to the dock and comparatively light. I will ask you, Captain, as a practical seaman whether in your opinion it would have been possible with safety to the Steamer for that vessel to have moved itself during the night of the 27th without assistance, taking into consideration all of the weather conditions prevailing?

539 Mr. Alford: Plaintiffs object to the question on the ground it is not a proper hypothetical question, omits some facts in evidence; and also on the ground it is irrelevant and immaterial and incompetent.

(No ruling).

A. Why, I think it would have been impossible to remove her with any element of safety whatever.

Mr. Spencer:

540 Q. To what extent did the severity of the storm interfere with navigation in the harbor of Duluth at that time, during the night of the 27th and the day of the 28th?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained.

541

Mr. Spencer:

Q. Do you know?

A. Yes, sir, I know.

Q. To what extent.

Plaintiffs make same objection as last above.

Objection over-ruled.

A. Navigation was tied up entirely in the harbor. Nothing moving excepting such as came in out of the lake.

542

CROSS-EXAMINATION.

By Mr. Alford:

Q. Your tug was in the N. P. slip number 4, I believe during the night of the 27th and 28th?

A. During the night of the 27th, yes, sir.

Q. What time did you go in there?

A. We went in about 6 o'clock.

Q. Captain, do you remember whether any vessel came in through the canal in the course of that night?

543

A. Yes. There was one came in.

Q. That was the Arizona?

A. Yes, sir.

Q. She came in under her own steam?

A. Yes, sir.

Q. And into what slip did she go?

A. I am not certain. I think she came into number 4 slip.

Q. In the same slip in which you were lying?

A. I think so, yes.

Q. Captain, from which direction was the
544 wind?

A. Why, about northeast, general direction.

Q. If the lines of that boat Reynolds had permitted she would gradually have worked sternward under the force of the wind, wouldn't she?

A. She would.

Q. So that it was the lines of the vessel that held her in place, was it not?

A. It was.

Q. That held her to the dock?

A. Yes.

545

RE-DIRECT EXAMINATION.

By Mr. Spencer:

Q. You say your tug was lying in the Northern Pacific slip. That is a little to the eastward of where the Reynolds was lying?

A. I did not quite understand the question.

Q. I say, the Northern Pacific slip is a little to the eastward of the City Dock?

A. Yes.

Q. And did you go to bed during the night
546 of the 27th?

A. Was I abed?

Q. Yes?

A. Why, a short time in the first part of the evening.

Q. What were you doing during most of the night of the 27th?

A. Trying to keep the tug from getting broken up in the slip there. 547

Q. Why was it necessary for you to make those efforts?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained.

Mr. Spencer:

Q. State to the jury something as to the height of the waves that were coming over the bay at that time? 548

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial, irrelevant and incompetent. This witness has already testified he cannot tell from his own knowledge.

Mr. Spencer: Oh, no, he has not.

The Court:

Q. You was in that slip all the time?

A. No, I was not.

Q. Where was you?

A. I came out of the slip about 3 o'clock in the morning and went up into what we call number 2 slip. That is up where Napoleon's shipyard is. We could not lay in the N. P. slip any longer. 549

The Court: You may answer.

A. Why, the waves in the harbor were going

over the top of the dock, something I never saw before.

Mr. Spencer:

550 Q. Why did you leave the slip in which your tug was lying along about 3 o'clock in the morning?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Objection sustained.

Mr. Spencer:

Q. Where did you go to?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Objection sustained.

551

Mr. Spencer:

Q. It is in evidence in this case, Captain, as I have already stated that the Steamer Reynolds was light on that occasion, with a very small amount of cargo aboard; she was practically light. I will ask you if in the actual handling of vessels in a heavy wind, if the fact of its being loaded or light makes any difference as to the safety with which they can be handled?

552 Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Objection over-ruled.

A. Handle a loaded vessel with much more safety than you can a light vessel.

Mr. Spencer:

Q. Just answer the question by Yes or No. Does the fact of its being loaded or light make a difference in the handling? 553

A. Yes.

Q. Which can be handled with greater ease and safety, a loaded vessel in a heavy wind or one that is light with high sides out?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Objection over-ruled.

A. A loaded vessel.

554

The Court:

Q. A light vessel under such a wave would be lifted higher and have a greater distance to fall than a loaded vessel, wouldn't it, by the waves?

A. I don't know as I could say that, Judge, but the wind, the greater effect, I think. Of course there is much more of the boat out of water.

Q. That is, they would rise and fall with the waves, would they?

A. They would, yes, sir.

Q. The other Captain that was here spoke of it as jumping? 555

A. Well, we refer to it in that way, as a usual thing.

Q. And every jump would be against the material to which it was fastened?

A. It would depend on the direction of the wind largely.

Q. Well, with the wind as it was that night?

A. Yes. Well, the wind was very nearly ahead as she lay. I don't know as the wind would drive it on to the dock very much but of course the lines would have a tendency to pull her toward the dock.

556 Q. Was the wind ahead or on the quarter?

A. The wind was very nearly ahead; slightly on her starboard bow where she lay.

RE-CROSS-EXAMINATION.

By Mr. Alford:

Q. You say the lines would tend to pull her on to the dock?

A. I said so.

Q. Did you see her pounding the dock?

557 A. I could not say that I saw her pounding the dock. I saw her laying there at the dock but of course I was out in the harbor. A boat intervened between me and the dock always.

Q. You moved your tug you say about 4 o'clock?

A. 3 or 4 o'clock. 3 o'clock, I think it was when I came out of the slip.

Q. That was the morning of the 28th?

A. Morning of the 28th, after 12 o'clock.

558 RE-RE-DIRECT EXAMINATION.

By Mr. Spencer:

Q. Would it have been possible with safety to the Reynolds to have moved her at that time that you moved your tug?

Mr. Alford: That is objected to.

The Court: You have asked the question
once. It has been answered. 559

Mr. Spencer: Defendant offers in evidence
the deposition of Frank Rhoda.

Mr. Spencer (Reading):

FRANK RHODA, a witness on behalf of the
Claimants, called and being first duly sworn,
testifies as follows: 560

DIRECT EXAMINATION.

By Mr. Spencer:

Q. How old are you?

A. Thirty-four.

Q. Where do you live?

A. Perrysburg, Ohio.

Q. What is your business?

A. Seaman.

Q. How long have you led a seafaring life?

A. Thirteen years. 561

Q. In what positions have you sailed?

A. Lookout man, watchman, wheel man.

Q. What vessel were you employed on on the
27th of November, 1905?

A. The S. C. Reynolds.

Q. What position did you occupy?

A. Wheelsman.

Q. How long had you been wheelsman on the Reynolds?

A. Three seasons.

Q. Pretty fair idea how the Reynolds handles?

562 A. Yes, sir.

Q. You remember the occasion of the big storm that occurred at Duluth at that time?

A. Yes, sir.

Q. You remember the Reynolds coming to the City Dock about five o'clock in the afternoon of the 27th?

A. Yes, sir.

Q. Do you remember discharging freight during the early evening there?

A. Yes, sir.

563 Q. What were the weather conditions that night about ten thirty when the freight was discharged?

A. Blowing, snowing very hard.

Q. I ask you what, if any, effect did the sea have on that City Dock, did you notice?

A. Yes, sir; the sea was running over the dock and you couldn't stand out on the dock; you couldn't get out without boots.

Q. What effect did that have on the construction of the dock?

564 Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial; and also as indefinite.

(No ruling).

Mr. Spencer (Reading) :

A. It was tearing up the plank there.

Mr. Alford: Plaintiffs object to the answer 565
on the ground it is not responsive and move it be
stricken out.

Objection over-ruled, and motion denied to
which ruling plaintiffs duly except.

Mr. Spencer (Reading) :

Q. You could see that?

A. Yes, you would have to jump across places
where the sea washed openings in the dock.

Q. Do you remember tug signals being blown
by the Reynolds? 566

A. Yes, sir.

Q. How many were sounded during the night
of November 27th?

A. I thought it was three.

Q. And the tug office was near by there?

A. Yes, just across—

Q. Were there any other vessels towing ships
in the harbor except the Great Lakes tugs that
you know of?

A. No, sir.

Q. What was the fact as to whether any tugs
came or not? 567

A. None came.

Q. In your judgment was there any need of
assistance in getting away from the dock that
night?

Mr. Alford: Plaintiffs object to the question
on the ground it is irrelevant and immaterial.

Objection over-ruled.

Mr. Spencer (Reading) :

A. Yes, sir, it was necessary.

568 Q. Taking into consideration the force and direction of the sea at that time was it possible for the vessel to have gotten away from that dock by her own machinery without assistance?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection over-ruled.

Mr. Spencer (Reading) :

A. No, sir.

Q. Why not?

569 A. Because the wind was blowing hard and holding her on—couldn't get away.

Q. What in your judgment would have been the probable effect if you had attempted to get away from the dock without a tug?

Plaintiffs make same objection as last above.

Objection over-ruled.

Mr. Spencer (Reading) :

A. It was impossible.

Mr. Alford: Plaintiffs move the answer be stricken out.

570

Motion granted.

Mr. Spencer (Reading) :

Q. Did you ever know as serious a storm at the head of Lake Superior as that was?

Plaintiffs make same objection as last above.

Objection sustained.

571

Mr. Spencer (Reading):

Q. How about the velocity of the wind; did it increase any during the night?

A. Oh, yes.

Q. What about the next day; how long did it continue?

A. All that afternoon it was blowing pretty hard, all through the night up to noon it was blowing seventy or seventy-two miles an hour.

Q. After that it moderated?

A. Some, not much; kept going down.

Q. What time in the afternoon did you succeed in getting away finally? 572

A. I think between four and five o'clock; we were there about twenty-four hours altogether I think.

Q. State some of the effects of that storm here on the dock as far as you observed? Just state what you saw?

A. The swell coming in there and the undertow was washing up over the dock and washed the piles out underneath—made it unsafe to walk there—working on the dock and passing a line you would not know whether you would get away. 573

Q. That continued all night and the next day?

A. Yes, sir.

CROSS-EXAMINATION.

Mr. Alford:

Q. When was the velocity at its highest?

574 A. I think about eleven o'clock next day along in the morning I should judge.

Q. It continued to grow up to that point?

A. Yes, sir, I think so and again in the afternoon; it kind of went down gradually.

Q. You got away from that dock about four o'clock?

A. The 28th. Between four and five.

Q. Was there considerable of a swell there?

A. Yes, sir.

Q. The vessel was light?

A. No, sir, she was not.

575 Q. She was not light?

A. No, sir, we had freight on us yet.

Q. You heard the captain testify a little while ago?

A. Yes, sir.

Q. Was he wrong about that?

A. She was not light—

Q. That was his testimony?

A. No, sir, I don't think it was; he said she had a couple of hundred tons of freight.

Q. Compared with her capacity she stood high out of the water?

576 A. Oh, yes, sir, if that is what you mean.

Q. Her motion was affected by that swell?

A. Yes, sir.

Q. Considerable?

A. Yes, by the wind and swell.

Q. Isn't it a fact that at times she would be lifted up—raised—and then come down?

A. Yes, riding the sea a little.

Q. And would come against the dock when she came down. 577

A. No, sir, she would not.

Q. She didn't touch the dock?

A. Oh, yes, she would catch the dock occasionally but the sea was not coming abeam of her—ahead and a little on the starboard bow.

Q. And the wind was two points further to the northeast than the boat was?

A. I should judge she was heading out north-northeast.

Q. And the wind was— 578

A. Pretty close to northeast.

Q. Isn't it a fact that wind tended to crowd her against the dock?

A. Yes, it would more or less.

Q. As I understand you then—is it your idea to testify that the boat didn't have anything to do with tearing up that dock at all?

A. Oh, no, I didn't say that.

Q. Is it your idea she did have something to do with it?

A. Probably had something to do with it, but as I said, the sea— 579

Q. Helped a little?

A. Yes, considerable, because when the boat would not be touching the dock you would see the plank flying out from the dock.

Q. You would not undertake to testify as to what loosened the plank in the first instance?

A. No, sir.

- Q. You think there were three tug signals?
A. I thought there was, yes, sir.
Q. When did the vessel leave the harbor finally on that trip?
A. On the 29th of November.
580 Q. What time?
A. Thirtieth of November morning; I think we worked on her all night.
Q. Taking on cargo?
A. Yes, sir.
Q. Where did she go when she left the City Dock?
A. I think she went to the Northern dock.
Q. Where, from there?
A. I think we loaded some flour and feed over there and came down here; I don't just know the names of these docks—came down here and
581 worked all night, worked all night till the morning.
Q. Is this correct—that you got your returning cargo as soon as possible and left the harbor?
A. Yes, sir, right along after that.
Q. How long have you been on the Reynolds?
A. Three years—three seasons.
Q. Were you ever on her before that time?
A. Yes, sir.
Q. Once before that?
A. Yes, sir.
Q. How long ago was that?
582 A. I was in her in '98 and '99—no—yes, in the years '98 and '99 and 1900.
Q. Ever on her before that?
A. No, sir.
Q. How long have you known of her?

A. I have known of her ever since she was new.

Q. When was that?

583

A. 1890 I think she came out.

Q. Wooden vessel?

A. No, sir.

Q. Steel?

A. Yes, sir.

Q. She is not one of the biggest vessels on the lakes?

A. No, sir.

584

FRANK RHODA, recalled for further cross-examination, testified as follows:

Mr. Alford:

Q. During what part of the night after finishing the unloading of the Reynolds at the City Dock were you on duty?

A. During the whole night.

Q. Do you recall the fact of another vessel coming through the canal that night and going into one of the slips between the city dock and the canal?

585

A. No, sir, I didn't notice it.

Q. Do you remember the fact whether or not a vessel came in during that night through the canal?

A. In the afternoon?

Q. In the night?

A. Not that I know of in the night.

Q. You are familiar with the Reynolds; you know it is a steel built vessel?

A. Yes, sir.

Q. Steel structure?

A. Yes, sir.

586 Q. How many water compartments has it?

A. Two.

Q. What is the capacity of those water compartments?

A. Well, I don't know—the tonnage, you mean?

Q. Yes?

A. I can't tell that.

Q. Do you know how much it is possible to lower the boat by filling the water compartments?

A. More than the natural draft?

Q. Yes?

587 A. Probably put her down two feet.

Q. It would be possible to lower her two feet; is that an estimate?

A. Yes, I have not noticed particularly; I have nothing to do with that figuring.

Q. Where were you stationed during the night?

A. At the City Dock.

Q. I mean where were you stationed?

A. Up and round on the deck, handling lines.

Q. You were busy?

588 A. Yes, most of the time; had to be around anyway.

Q. So that a vessel might have come into the canal without you noticing it?

A. Yes, might have.

Mr. Spencer: Defendant offers in evidence the deposition of George Coleman.

589

Mr. Spencer (Reading):

GEORGE COLEMAN, a witness on behalf of Claimants, called and, being first duly sworn, on oath deposes and says:

DIRECT EXAMINATION.

Mr. Spencer:

590

Q. Where do you live?

A. Hamburg, Pennsylvania.

Q. How old are you?

A. Thirty-five.

Q. What is your occupation?

A. Seaman.

Q. How long have you led a seafaring life?

A. Ten years.

Q. On the lakes?

A. Yes, sir.

Q. What positions have you occupied during that time?

591

A. Watchman, wheelsman, deck hand.

Q. What vessel were you in on the 27th of November, 1905?

A. The S. C. Reynolds.

Q. What position did you occupy on the Steamer S. C. Reynolds?

A. Watchman.

Q. Do you remember the occasion of the great storm that occurred at Duluth at that time?

A. Yes, sir.

Q. Do you remember the occasion of the S. C. Reynolds discharging cargo at the City Dock at that time?

592 A. Yes, sir.

Q. What position did she have at that dock?

A. Laying on the face of the dock.

Q. Her port side next to the dock?

A. Yes, sir.

Q. And about what time in the evening was the freight finally discharged that was consigned to that dock?

A. About ten o'clock.

Q. What were the weather conditions at that time?

593 A. Starting to blow at that time.

Q. How much wind was there on at that time?

A. I don't remember just at that time—blowing pretty hard.

Q. What direction?

A. Northeast.

Q. Do you remember any attempt having been made to get a tug?

A. Yes, we blowed for a tug about three times.

Q. Did any tug come?

594 A. No, sir.

Q. What other efforts did the vessel make to get away from the dock?

A. Blowing for a tug.

Q. When did a tug finally come?

A. A tug came on the following night I think.

Q. Afternoon or night?

595

A. Yes, sir.

Q. Was there any necessity for a tug to come that night of the 27th, could the vessel have got away safely without having a tug?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection over-ruled.

Mr. Spencer (Reading):

A. I don't know; it was blowing pretty hard at that time too; not as hard as before, but still some.

596

Q. I mean at half past ten on November 27th, after the cargo was off, was there any need of a tug's assistance to get away?

A. Yes, sir.

Q. In your judgment would it have been possible for the vessel to have got away under her own steam?

A. No, sir.

CROSS-EXAMINATION.

597

Mr. Alford:

Q. You remember there were three calls for a tug?

A. Yes, sir.

Q. About how much of an interval were these calls apart?

A. I don't remember; about three or four hours I think; I think there was two hours between the first and the second and it was along in the afternoon when the other one was blown; I don't remember about that.

598

RE-DIRECT EXAMINATION.

Mr. Spencer:

Q. Did you notice any effect these seas coming in there had upon the dock?

A. The seas rolling in on the dock kind of moved the planks up.

Mr. Alford:

Q. You don't know what loosened the planks in the first instance?

599

A. I don't know, no.

Mr. Spencer: Defendant offers in evidence the deposition of John Dunn.

Mr. Spencer (Reading):

JOHN DUNN, a witness on behalf of Claimants, called and, being first duly sworn, on oath deposes and says:

600

DIRECT EXAMINATION.

Mr. Spencer:

Q. How old are you?

A. Thirty-nine.

Q. Where do you reside?

A. Toledo, Ohio.

Q. What is your occupation?

A. Watchman.

Q. A sailor?

A. Yes, seaman.

Q. How long have you led a seafaring life?

A. Seventeen or eighteen years.

Q. In what various positions?

A. Lookout man and watchman on the Great Lakes.

Q. In what classes of vessels have you sailed?

A. Iron vessels and wooden vessels.

Q. What vessel were you in on November 27th, 1905?

A. S. C. Reynolds.

Q. In what capacity?

A. Lookout man.

Q. Do you remember the occasion of the vessel coming to the City Dock on that day?

A. Yes, sir.

Q. You remember the discharging of the cargo that night?

A. Yes.

Q. What time was that concluded?

A. About ten o'clock.

Q. May have been after that?

A. Yes, may have been.

Q. What were the weather conditions when she completed discharging?

A. Blowing hard, snowing, snowing very hard, made it rather thick.

Q. How dark was it; give us an illustration?

A. It was dark through the snow storm.

601

602

603

Q. Could you see the tug office from where you were?

A. No, sir, I didn't see it.

Q. What effect did the snow have as far as seeing to any extent was concerned?

604 A. So you couldn't see very far; shut off the sight of the lights at any distance.

Q. What efforts were made to obtain assistance to the vessel to get away?

A. Blowing for tugs.

Q. Were there tugs in the harbor whose business it was to render assistance?

A. Yes, sir.

Q. Did any come that night?

A. No, sir.

Q. When did one finally reach the Reynolds?

A. Sometime next afternoon.

605 Q. How many times did the steamer blow for a tug?

A. Twice that I know of.

Q. Was there a sea coming through across the harbor at that time?

A. Yes, sir, rather big sea.

Q. What effect did that have on the dock?

A. The sea struck under the dock, loosened the boards and spiles and drove the plank of the dock upward.

Q. What was the weather like, cold or warm?

A. Rather cold.

606 Q. Ice formed there next day?

A. Yes, I think it did some; it was slippery on the dock.

Q. In your judgment could the Reynolds have gotten away from the dock without a tug?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection over-ruled.

607

Mr. Spencer (Reading):

A. No, sir, I don't think the wind and sea—taking a chance of doing great damage to the vessel and crew, striking a rocky bottom and old stumps and piles which I noticed particularly was close astern of the vessel.

Q. If the lines had been loosened at all what would have been the effect in your judgment?

The vessel would have been blown on rocks and these spiles on the bottom.

608

CROSS-EXAMINATION.

Mr. Alford:

Q. You don't know whether there were any rocks astern of the vessel?

A. I understand there is.

Q. You don't know there are?

A. Yes, seems to me I have seen them there, not at the time this happened but last winter.

Q. You wish to testify to that now?

A. I would not swear there are, no.

609

Q. Are you undertaking to say what you have been told since about that?

A. Well, yes.

Q. You know nothing about that of your own knowledge?

A. No, sir, not of my own knowledge.

Q. And you didn't know at the time?

A. No, sir.

Q. How far were the spiles from the stern of the vessel?

A. Very close.

Q. Across the slip?

610 A. Yes.

Q. On the other side of the slip; there is a slip to the west of the dock?

A. Yes, sir.

Q. You say you saw the water washing under the dock and you noticed it lift the planking?

A. Yes.

Q. When did you notice that?

A. When I was on watch.

Q. What time?

A. Next morning, next forenoon.

611 Q. You would not undertake to say the vessel had nothing to do with loosening the dock?

A. I couldn't hardly say as to that.

Q. As far as your testimony goes now it may have had something to do with loosening that dock?

A. Well, possibly it had.

Q. Were you on duty that night?

A. No, sir.

Q. When did you go on duty?

A. Six o'clock in the evening.

Q. How long were you on?

A. Till midnight.

612 Q. Then you were off—

A. Till six in the morning.

Mr. Spencer: Defendant offers in evidence the deposition of George Coleman, recalled for further cross-examination, as follows:

613

Mr. Spencer (Reading) :

GEORGE COLEMAN, recalled for further cross-examination, testifies as follows:

Mr. Alford:

Q. During what part of the night after the Reynolds had finished unloading at the City Dock were you on duty?

A. All night I was on watch.

Q. Do you remember the fact of another vessel coming into the canal that night and going into one of the slips between the City Dock and the canal?

614

A. No, I might have seen it.

Q. And not remember it?

A. Yes.

Q. Do you know how much it was possible to lower the Reynolds by filling her water bottom?

A. No, I do not; she has thirty-six inches of a water bottom.

Q. Where did your duties engage you that night?

A. Round deck, watching round the deck on the boat.

615

Q. It became necessary for you to get off and on occasionally?

A. Yes, when the lines were parted or something like that, or slipped off.

Q. You would replace them?

A. Yes, sir.

Q. As a matter of fact did they slip off sometimes?

A. They parted sometimes, some of them.

Q. So another vessel might have come in and you would not have notice it?

616 A. Yes.

Q. That would be possible?

A. Yes.

Q. How much water does the Reynolds draw when light?

A. About four feet.

Q. Aft?

A. Forward.

Mr. Spencer:

Q. How much aft?

A. Indeed I don't know; I can't tell you that.

617 Mr. Alford:

Q. How much did she draw when loaded?

A. Generally draws about fifteen forward and sixteen feet aft, that is, package freight; when she is carrying grain she draws more, as high as seventeen feet.

Q. That is, the cargo is heavier?

A. Yes; when she is light she is about four feet forward; the water would put her down, I suppose about a couple of feet; the water does not put her down much because she has not much of a water bottom.

618

W. E. HOY, being duly sworn as a witness on 619
behalf of defendant, testifies as follows:

DIRECT EXAMINATION.

By Mr. Spencer:

Q. What is your name, Captain?

A. W. E. Hoy.

Q. Where do you reside?

A. In Duluth.

Q. How long have you lived in Duluth?

A. 15 years.

Q. What is your occupation?

A. Tug Captain.

620

Q. How long have you led a seafaring life?

A. Oh, about 24 years.

Q. In what various capacities have you sailed?

A. Wheelsman, watchman, before the mast on a vessel and as master of tugs and master of tugs.

Q. What do you mean by being before the mast?

A. That is a sailor.

Q. On what kind of vessels?

A. Sailing vessels.

Q. Sailing vessels?

A. Yes, sir.

Q. On what waters has your experience as a sailor been principally confined?

A. Lake Superior.

Q. And are you a regularly licensed officer

621

of the United Statse as a master of steam vessels?

A. Yes, sir.

Q. How long have you been a licensed officer of the government?

622

A. Since '93.

Q. And during that time you have been in command of vessels, towing tugs?

A. Yes, sir, most of the time.

Q. You are familiar with the Duluth and Superior harbor?

A. Yes, sir.

Q. Have you been engaged as master of steam tugs around the Duluth and Superior Harbor?

A. Yes, sir.

Q. Towing vessels?

623

A. Yes, sir.

Q. During a period of how many years has your experience continued around Duluth Harbor as master of steam tugs?

A. Ten years.

Q. And by whom are you employed at the present time?

A. Sir?

Q. Are you engaged in that business at the present time?

A. Yes, sir.

Q. By whom are you now employed?

624

A. Union Towing and Wrecking Company.

Q. That operates a line of towing tugs in Duluth Harbor?

A. Yes, sir.

Q. Did they operate a number of tugs for towing vessels on November, 1905?

A. Yes, sir.

Q. Are you familiar with the Steamer S. C. Reynolds? 625

A. Yes, sir.

Q. I will ask you, Captain, if you remember the big storm that occurred in Duluth on November 27th and 28th, 1905?

A. Yes, sir.

Q. What tug were you in command of at that time?

A. The Record.

Q. The Tug Record?

A. Yes, sir.

Q. Where were you during the night of the 27th? 626

A. We were laying at different docks.

Q. Were you doing any towing that night?

A. Well, we were looking for it; that is, we come in front of the office and could not get to the dock, come in front of the office and if they had an order for us we would take the order.

Q. Why couldn't you get up to the dock?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial. 627

Objection sustained.

Mr. Spencer:

Q. What was the direction of the wind at that time?

A. Northeast.

Q. And how hard was it blowing after ten

o'clock, we will say, on the 27th, or after half past ten?

A. On the 27th?

Q. Yes?

A. I should judge it was blowing a gale.

628 Q. And how long did that continue?

A. Continued until the afternoon of the 28th.

Q. Were vessels shifting around from one dock to another any during the night of the 27th or the day of the 28th?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Objection over-ruled.

629 A. Not around the harbor, the face of the harbor.

Mr. Spencer:

Q. To what extent did the gale then prevailing interfere with the navigation of vessels on the harbor during the night of the 27th and day of the 28th, if you know?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

Objection sustained.

630 Mr. Spencer:

Q. Do you know where the Steamer S. C. Reynolds was on that occasion?

A. Yes, sir.

Q. It is in evidence in this case that she was

lying at the outer end of the city dock, her port side next to the dock.

Q. Did the snow conditions have anything to do with the difficulty of navigating on the night of the 27th? 631

A. Yes, sir.

Q. And did the wind conditions have something to do with making it dangerous?

A. Yes, sir.

Q. I will ask you if you heard any signals for a tug given by the Steamer S. C. Reynolds while she was tied to that dock, on the night of the 27th?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial. 632

Objection over-ruled.

A. I didn't hear any on the night of the 27th.

Mr. Spencer:

Q. Did you hear some the succeeding day?

A. Yes, sir.

Q. How frequently did she blow for assistance?

A. Oh, she blowed several times.

Q. It is in evidence that the vessel was lying there comparatively light. I will ask you, Captain, taking into consideration the weather conditions that were prevailing and after 10 o'clock on the 27th and up to the afternoon until 4 or half past of the 28th, I will ask you, Captain, if in your judgment as a seafaring man and a practical navigator, whether the Reynolds could without 633

assistance and with safety to herself or other property, have been moved.

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

634 Objection over-ruled.

A. No, sir.

Mr. Spencer:

Q. Why not?

Plaintiffs make same objection as last above.

Objection over-ruled.

A. The conditions of the weather was not so that anything could move in the line of a steam-boat, in my estimation.

635 Q. During your whole experience as a seafaring man and more particularly since you have been a resident of this part of the world, did you ever know of a storm of that extreme violence that prevailed during the night of the 27th and the day of the 28th, of 1905?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection over-ruled, to which ruling plaintiffs duly except.

636 A. No, sir, in all my experience I never seen such a storm.

Mr. Spencer:

Q. What effect, if you observe, did the waves

or sea, the water of the harbor, have upon the City Dock?

Mr. Alford: Plaintiffs object to the question 637
on the ground it is immaterial.

The Court:

Q. Do you know?

Mr. Spencer:

Q. Did you observe what the effect of the
sea on the City Dock on the 28th?

Mr. Alford: Plaintiffs object to the question
on the ground it is irrelevant and immaterial; also
as calling for a conclusion of the witness.

638

Objection over-ruled.

A. Yes, sir.

Mr. Spencer:

Q. What effect did it have on the dock?
What did you see?

Plaintiffs make same objection as last above.

Objection over-ruled.

A. I saw the seas were washing over the dock 639
from 2 to 3 feet.

Q. And what appearance did the City Dock
present at that time?

A. Well, she presented the appearance of the
seas washing over the Dock.

Q. What can you say as to the temperature
of the weather at that time? .

A. It was cold.

Q. Water was freezing?

A. Yes, sir.

Q. During the night of the 27th was the water freezing cold?

640 A. It was freezing.

Q. Was the dock covered with ice the following day?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Alford:

Q. Just where were you in the course of the night, Captain?

A. Of the night?

641 Q. Yes; the 27th and 28th?

A. Well, we would come to a dock where we could lay up the river and as close to a telephone as we could and we would call up our office—

The Court:

Q. Where was you?

A. Well, Garfield Avenue for a while; at different docks; down to Old Town for a while.

Mr. Alford:

Q. You moved about from dock to dock in the course of the night?

642 A. Yes, sir.

Q. Now, you noticed you say water washing over the City Dock?

A. Yes, sir.

Q. When did you notice that?

A. Noticed that the 28th.

Q. Well, was it constantly submerged or would that washing occur when a wave would rise? 643

A. When a wave would rise.

Q. The wave would break over the dock?

A. Yes, sir.

Q. Did you see the Reynolds lying there?

A. Yes, sir.

Q. Did you notice how the Reynolds had battered down the dock?

A. No, sir, I did not notice.

Q. Didn't pay any attention to that?

A. No, sir.

Q. Now, you were looking out for tows that night, were you? 644

A. We never looked out for tows.

Q. Oh, you do not look out for tows?

A. No, sir.

Q. You only tow as you get orders to do so?

A. Yes, sir.

Q. But you kept yourself in position to do towing if occasion called for it, did you?

A. I tried to get as close to a telephone as I could.

Q. And you were keeping yourself in readiness to take towing if occasion should call for it, did you? 645

A. Yes, sir.

Q. I suppose the Reynolds was tied up there to the dock, wasn't she?

A. Yes, sir.

Q. And held there by her lines?

A. Yes, sir.

The Court:

Q. Where was you when you saw the water washing over the dock on the 28th?

A. I was trying to get orders from our office.

Q. Where was you?

646 A. Right in front of our office in the bay.

Q. And did you notice anything about the condition of the dock, whether it was then broken down or not?

A. No, sir, I didn't notice.

Mr. Alford:

Q. How far is your office from the City Dock?

647 A. It would be about 300 feet. That may be a little excess but I know the slip is 120 feet and it is probably 120 feet from the end of the dock to our office. That would be 240 feet. That would probably be a little closer.

Q. Northern Pacific Dock was between you and the City Dock, wasn't it?

A. No, sir. They are in line.

Q. Yes. They are in line. But which was nearer to where your office was, the City Dock or Northern Pacific?

A. Northern Pacific.

Q. And then which was nearer the City Dock or the Omaha?

648 A. The Omaha; well, we call it all the slip, the Omaha slip.

Q. I may have misled you there, Captain. The Omaha was between you and the City Dock, wasn't it?

A. Yes, sir; it is only one dock, you know.

Q. Wasn't the Reynolds also attached to the Omaha Dock at her bow?

A. I believe she was.

Q. Then do you still say that you could see the City Dock from that office?

A. Yes, sir.

Q. The vessel and the Omaha did not obstruct your vision?

A. No, sir. You can see right clean through almost to the lime kiln slip when there is a steamboat lying there; you can see the seas wash right through between the dock and the steamboat on top of the dock.

Mr. Spencer: Defendant offers in evidence deposition of C. C. Balfour.

Mr. Spencer (Reading):

C. C. BALFOUR, a witness on behalf of Claimants, called and, being first duly sworn, on oath deposes and says:

DIRECT EXAMINATION.

Mr. Spencer:

Q. What is your name?

A. C. C. Balfour.

Q. Where do you reside?

A. Detroit.

Q. How old are you?

A. Forty-seven.

Q. What is your occupation?

A. Master of a steam vessel.

Q. How long have you led a seafaring life?

A. Thirty-two years.

Q. What ship were you in command of on the 27th of November, 1905?

652 A. The Bransford.

Q. Do you recollect the great storm on Lake Superior at that time?

A. Very well, yes, sir.

Q. Whereabouts were you at the time of that storm?

A. I got every bit of it; when it struck me I was about ten miles northwest of Caribou Island coming this way; it struck me there with a regular snowstorm, blinding blizzard.

653 Mr. Alford: Plaintiffs move that portion be stricken out as not responsive: "It struck me there with a regular snow storm, blinding blizzard."

Motion granted.

Mr. Spencer (Reading):

Q. What port were you coming to?

A. Duluth.

Q. When did you get to Duluth?

A. Got here Wednesday at nine o'clock.

654 Q. I ask you, Captain, to state in your own language as to the character and violence of that storm; did you ever experience anything equal to that?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained.

Mr. Spencer (Reading):

Q. What ships have you sailed in? 655

A. Pretty good ships, the Tice—the Sibley, Charles Elder, five years, Steamer Venue, Frank Peavey, George Peavey, one year, Bransford two years, the Henry B. Smith one year.

Q. How large is the Bransford?

A. Seven thousand tons.

Q. Is she one of the largest?

A. There are larger now.

Q. What steamer are you in now?

A. The Henry B. Smith, a ten thousand ton steamer.

Q. One of the largest and finest on the Great Lakes? 656

A. Yes.

Q. It is in evidence, Captain,—are you familiar with the Steamer S. C. Reynolds?

A. Yes, know her very well.

Q. It is in evidence in this case that sometime during the afternoon of November 27th, 1905, the Steamer S. C. Reynolds was tied up to the outer end of the City Dock, port side to, discharging package freight; that the discharge of freight continued that afternoon and up to half past ten that night; it is in evidence that a severe northeast gale prevailed at that time, with blinding snow and heavy sea running through the canal, with a force of wind from sixty to seventy miles an hour; it is in evidence that about half past ten o'clock P. M. when the cargo was discharged the master of the Reynolds signalled for a tug, that he 657

signalled a number of times but no tug responded; it is also in evidence that a tug was telephoned for but no assistance came; I will ask you, Captain—this was at the City Dock in the harbor of Duluth—in that situation whether in your judgment as a practical mariner it would have been
658 safe or prudent or even a possibility for the master of the Reynolds thus situated as she was to have moved his ship from the end of that dock without assistance?

Mr. Alford: Plaintiffs object to the question on the ground it is not a proper hypothetical question. It omits a great deal of material matter. The witness has not been qualified in so far as showing any knowledge of the City Dock its location or as to the condition of the storm in the harbor. The witness has not testified as to any
659 familiarity with the City Dock itself, its location or conditions there or the condition of the storm in the harbor, and that data is omitted from the hypothetical question. It is only a fragmentary portion of the situation, if anything.

Objection over-ruled, to which ruling plaintiffs duly except.

Mr. Spencer (Reading):

A. I consider it would have been an utter impossibility to move without tugs; he couldn't have
660 done it if the wind was as it was with me.

Q. With a wind sixty or seventy miles an hour?

A. No, sir, I should not consider it so; I

should not consider it so with my ship if it was me.

Q. Are you familiar with the location of the City Dock? 661

A. Yes.

Q. What dangers, Captain, if any, would there be with a ship in that sort of weather, at that time of night, in that kind of storm and that location, state what dangers were present?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial and also as indefinite.

(No ruling).

Mr. Spencer (Reading): 662

A. I think that letting go of that dock and trying to shift there would be a great danger of getting cross ways on the dock with the sea running through these piers here; if they had been I guess she would beat all to pieces and be a total loss probably, simply pounded the whole side out of her.

CROSS-EXAMINATION.

Mr. Alford:

Q. Where did that storm strike you? 663

Mr. Alford: Plaintiffs object to the question.

Objection sustained.

Mr. Spencer (Reading):

Q. And you arrived at Duluth on the morning of the 29th?

A. Yes, sir.

Q. Wednesday morning?

A. Yes.

Q. And your experience with the storm was on Lake Superior entirely?

664 A. Yes, sir.

Q. And you have no personal knowledge as to the conditions in the harbor during that time?

A. No, sir, nothing here; only judging from the number of wrecks laying round the piers when we came in.

Mr. Alford: Plaintiffs move beginning with the word "only" that the answer be stricken out on the ground it is not responsive to the question.

Motion granted.

665 Mr. Spencer (Reading):

Q. You don't know where these wrecks occurred?

A. No, sir.

Q. For all you know they might have occurred in the lake and been towed in?

Mr. Alford: Plaintiffs object to all that portion of the testimony relating to wrecks, as not proper.

Objection sustained.

666 Mr. Spencer (Reading):

Q. You say, Captain, you are familiar with the Reynolds?

A. Yes, sir.

Q. How old a vessel is that?

A. I couldn't say—ten years or better.

Q. Know anything about the sort of machinery she has?

A. No, sir, I do not.

667

Q. Know anything about her equipment?

A. No, sir, I have been in company of her ever since she was built but not on board of her, only the outside appearance, that is all.

Q. When you say it would have been unsafe or impossible for the Reynolds to get away from the dock you mean without assistance?

A. Yes, sir.

Q. You think she could have got away with the aid of a tug?

A. I think she might have with the aid of a tug.

668

Q. In your judgment, Captain, would the amount of cargo on the vessel have anything to do with her ability to get away?

A. Yes, a great deal to do with it.

Q. Would the power of her machinery have anything to do with it?

A. Yes, sir, it would.

Q. If she had a very powerful engine her ability to get away and take care of herself would be better than if she had a light engine?

A. Certainly would, yes, sir.

669

Q. And you say you don't know what the capacity of her machinery was?

A. No, sir, I don't.

Q. And your answer to the question of the Senator assumes that the wind was blowing about seventy miles an hour?

A. It was more than that, with us.

Q. Assumes it was the same right here; your answer is based upon the assumption that the conditions here were the same as where you were?

A. Yes, sir.

670 Q. You would not undertake to say just at what velocity of the wind that vessel would become unmanageable, not knowing her machinery capacity?

A. I know I would not have attempted to leave with the Bransford and she has I guess more power than three-fourths of the boats in the lake.

Mr. Alford: Plaintiffs move that be stricken out on the ground it is not responsive.

Motion granted.

Mr. Spencer (Reading):

671 Q. And with the same conditions prevailing out on the lake where you were?

A. Yes.

Q. You would expect the conditions in the harbor to be safer than they were on the lake?

A. Harbor protected, but you know as well as I do that Duluth is not much of a harbor with the wind off the lake right here.

Q. Is it any safer than the lake is?

A. Oh, yes, certainly.

672 RE-DIRECT EXAMINATION.

Mr. Spencer:

Q. Assuming the conditions I stated in my hypothetical question to you, I ask in your judgment as a mariner would it have been safe and

prudent for a ship situated as the Reynolds was to move without assistance with the wind blowing from the northeast?

673

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

The Court: It is a mere repetition.

Mr. Spencer (Reading):

Q. Assuming the facts in my first hypothetical question to you captain, would you consider it safe or prudent for a vessel situated as the Reynolds was to move with the wind only fifty miles an hour without assistance?

A. No, sir.

674

RE-CROSS-EXAMINATION.

Mr. Alford:

Q. You do not understate to say you know exactly what the condition of the Reynolds was?

A. No, I don't know anything at all about her; I was in the middle of Lake Superior.

At this time court takes a recess until 2 o'clock P. M. same day, Wednesday, September 16th, A. D. 1908, at which time proceedings were resumed as follows:

675

Mr. Spencer: Defendant offers in evidence Defendant's Exhibit 2, being sketch of the situation involved in this case.

Defendant's Exhibit 2 is received in evidence without objection.

EDWARD F. ENGLAND, being duly sworn as a witness on behalf of defendant, testifies as follows:

676

DIRECT EXAMINATION.

By Mr. Spencer:

Q. Where do you reside, Captain?

A. 2818 West 2nd Street.

Q. Duluth, Minnesota?

A. Yes, sir.

Q. How long have you resided in Duluth?

A. 31 years.

Q. How old are you?

A. 41 years.

677 Q. What is your occupation?

A. Captain.

Q. Captain of steam vessels?

A. Yes, sir.

Q. How long have you led a seafaring life, Captain?

A. Since '88.

Q. What character of vessels have you sailed? Are you now a licensed master of steam vessels, regularly licensed by the United States' officials?

A. Yes, sir.

678 Q. And what character of steam vessels have you commanded during the last few years?

A. Tug boats and steam barges.

Q. What vessel are you now in command of?

A. The J. L. Williams.

Q. Tug J. L. Williams?

A. Yes, sir.

Q. What tug were you in command of, if any, on the 27th and 28th day of November, 1905? 679

A. The America.

Q. The steam tug America?

A. Yes, sir.

Q. And where was the tug America at that time?

A. At the Duluth, Missabe ore docks.

Q. And how far is that from the City Dock at Duluth?

A. Oh, about a mile, mile and a half or two miles.

Q. And you have been the master of towing tugs during how many years? 680

A. Ten or twelve years.

Q. On what waters?

A. Waters of Lake Superior.

Q. And how much of your time has been devoted to towing vessels on the Duluth and Superior harbor, if any?

A. Ten or eleven years, I should judge.

Q. And do you remember the occasion of the big storm which prevailed in Duluth on November 27th and 28th of 1905?

A. Yes, sir. 681

Q. And you were running your tug at that time up at the Duluth, Missabe and Northern?

A. Yes, sir.

Q. Did you ever know as violent a storm as that one was?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

The Court: What was the character of the storm? Your question was leading.

682

Mr. Spencer:

Q. What direction was the wind blowing from that day?

A. Northeast.

Q. Can you give an idea of the velocity of it?

A. Oh, I should judge 50 or 60 miles an hour, anyway.

Q. And during the night of the 27th was there any snow?

A. Yes, sir.

683

Q. Did the thickness or prevalence of the snow add anything to the difficulties of navigating in Duluth Harbor that night?

A. It would.

Q. And would a storm from the northeast with wind 50 or 60 miles an hour, as you say, interfere to any extent with navigating in Duluth Harbor?

A. It would in certain places.

Q. I will ask you if you are familiar with the Steamer S. C. Reynolds?

A. Yes, sir.

684

Q. It is in evidence that on the evening of November 27th the Steamer S. C. Reynolds was lying at the outer end of the City Dock at Duluth; that she was practically light and that the discharge of cargo was completed about half past ten o'clock P. M. of that night and that effort was

made to obtain a tug for her removal and that no tug came and that she lay there during that night and a considerable portion of the next day. I will ask you if you are familiar with the location of the City Dock, Duluth? 685

A. Yes, sir.

Q. I will ask you, Captain, as a practical navigator, if in your judgment it would have been prudent with safety to the Steamer Reynolds to have attempted to move under her own power without assistance during the prevalence of that gale?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial; also as incompetent and no sufficient foundation laid. 685

Objection over-ruled.

A. It would not.

Mr. Spencer:

Q. It is also in evidence that the Steamer was comparatively light at that time. The fact of the Steamer being light, would that add materially to the difficulty of navigating it in so high a storm?

Plaintiffs make same objection as before. 687

Same ruling.

A. I would add an objection to moving the boat.

Q. Captain, I show you this sketch (Defendant's Exhibit 2) which is a rude one and I

will ask you if that in a rough way substantially represents the Duluth Harbor, the Duluth canal, the location of the City Dock as indicated there?

A. With the exception of a little more cut off of the pier there it does.

688 Q. Otherwise it is substantially correct?

A. Yes, sir.

Q. The tug office at the outer end of the Northern Pacific Dock marked "tug office;" that is substantially—

A. Yes, sir.

Q. Did you see the Reynolds as she was lying there on that occasion?

A. No, sir, I did not.

CROSS-EXAMINATION.

689

By Mr. Alford:

Q. Your experience has run, you say, over some 10 or 12 years?

A. Yes, sir.

Q. And that has consisted in handling steam tugs and barges?

A. Yes, sir.

Q. That, is, in sailing steam tugs and barges?

A. Yes, sir.

690 Q. You never sailed a vessel like the Reynolds, of the same tonnage?

A. Well, in that capacity, yes; not just the same as the Reynolds, I think.

Q. Not just the same as the Reynolds?

A. Not just the same as the Reynolds, no, sir.

Q. Is that a barge?

A. Yes, sir.

Q. And it is only from that experience that
you have had that you are able to form the judgment that you have expressed here? 691

A. The experience of sailing.

Mr. Spencer: Defendant offers in evidence
the deposition of George W. Johnson.

Mr. Spencer (Reading):

GEORGE W. JOHNSON, a witness on behalf of 692
Claimants, called and, being first duly
sworn, on oath deposes and says:

DIRECT EXAMINATION.

Mr. Spencer:

Q. Where do you reside?

A. My home is here in Duluth now.

Q. How old are you?

A. Thirty-one.

Q. What is your occupation?

A. Dispatcher here. 693

Q. At what place?

A. Duluth, Minnesota.

Q. What kind?

A. Tug dispatcher.

Q. What do your duties consist of?

A. Take orders from vessels and send tugs
to them.

Q. What was your business on the 27th and 28th of November, 1905?

A. Tug dispatcher here in this office.

Q. Do you remember the great storm that prevailed over the port of Duluth at that time?

694 A. Yes, sir.

Q. Do you remember the incident of the Steamer Reynolds being on the bay end of the City Dock at that time?

A. Yes, sir.

Q. I will ask you, Mr. Johnson, to state what, if any, signals you heard or what, if any, attempt was made by the Steamer that afternoon to obtain tug assistance?

A. He blew that forenoon.

Q. What day was that?

695 A. The 28th, in the forenoon; came to work seven o'clock that morning and he blew I don't remember just how many times, but several times I should judge.

Q. What time did you go off duty the 27th?

A. Seven o'clock in the evening.

Q. Who succeeded you?

A. John McMillan, the night dispatcher.

Q. What can you say as to the character of the storm that prevailed that night, the 27th and 28th?

696 A. There was an awful swell in the harbor; we didn't attempt to do any towing; the sea broke on our dock and several came up to the windows here— The tugs couldn't lay anywhere near the dock; they had to stay up at the end of the N. P. No. 2 there to get smooth water.

Q. The tug office where you are employed is where?

A. Right at the extreme end of the N. P. dock. 697

Q. About how high above the ordinary water level is the planking of the dock?

A. I don't know exactly, never measured it.

Q. Ten feet?

A. Yes, all of that.

Q. The swells coming through the canal were so great they broke over the outer end of the dock?

A. Yes, right across the dock; broke up to our office door way.

Q. What, if any, observations did you make as to the effect of the sea upon the City Dock? 698

A. I couldn't see the dock right in front; we can see the corner of the Omaha dock; the sea went right up on the Omaha dock and rolled right across.

Mr. Alford: Plaintiffs move that all after "the Omaha dock" be stricken out on the ground it is not responsive to the question.

Motion denied.

Mr. Spencer (Reading):

A. I seen the sea break right over the end of the Omaha dock. 699

Mr. Alford: That is not responsive to the question. I ask that it be stricken out.

Motion granted.

Mr. Spencer (Reading) :

A. To the freight house doors, right along in by the slip there.

Q. Of the dock?

700 A. The Omaha dock; the shed, you can see it right across there.

Q. Where is the Omaha dock with respect to the City Dock?

A. Right next to it.

Q. How high above the water level is the Omaha dock?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Mr. Spencer: I will withdraw that.

Mr. Spencer (Reading) :

701 Q. And the City Dock?

A. Just about the same—all about the same height.

CROSS-EXAMINATION.

Mr. Alford:

Q. The Omaha dock is between your dock and the City Dock, isn't it?

A. There is a slip separates our dock from the Omaha dock.

702 Q. There is a slip first, then the Omaha dock and then another slip?

A. No.

Q. A place for a slip?

A. Yes.

Q. A space of the same width as the slip next to your dock?

A. Yes, sir.

Q. And the City Dock is beyond that?

703

A. Yes, sir.

Q. You can't see the City Dock?

A. Yes, I could see it, but what I mean by that the Reynolds was tied right up to the dock.

Q. She obstructed your view?

A. To a certain extent, yes; if the steamboat was not there I could see the front of it—the front of the City Dock and see the sea break upon it.

Q. She was pounding the dock?

A. She raised and fell just as if she was outside in a heavy sea.

704

Q. She would strike the dock?

A. She would come up against the dock every time—every swell.

Q. Your observation began about seven o'clock?

A. I got here at seven o'clock in the morning.

Q. You know nothing of the conditions that prevailed during the night?

A. No, sir.

Mr. Spencer: Defendant offers in evidence the deposition of Frank Laframboise.

705

Mr. Spencer (Reading) :

706 **FRANK LAFRAMBOISE**, a witness on behalf
of Claimants called and, being first duly
sworn, on oath, deposes and says :

DIRECT EXAMINATION.

Mr. Spencer :

Q. How old are you?

A. Forty-two.

Q. Where do you reside?

A. Amherstberg, Canada.

Q. What is your occupation?

A. Sailor, mariner.

Q. How long have you been a sailor?

707 A. Been one since I was twenty years old.

Q. In what capacity have you sailed?

A. Wheelsman, watchman, second mate and
mate; have been captain of tug boats.

Q. What position do you now occupy?

A. Mate on the Lake Shore.

Q. What sized vessel is she?

A. Three hundred and sixty-six feet, fifty
feet beam.

Q. What position do you have on your ves-
sel?

A. Mate.

708 Q. The principal part of your experience as
a mariner has been on the Great Lakes?

A. Yes, sir.

Q. You are familiar with the harbor of Du-
luth?

A. Pretty well.

Q. You know the location of the City Dock in Duluth?

A. Yes, sir.

709

Q. Are you familiar with the Steamer S. C. Reynolds in a general way?

A. That little wooden boat?

Q. No, steamboat, sailed in the Anchor Line freight business the management I think is in Toledo?

A. I recall the name.

Q. Steel boat, three hundred to three hundred and fifty feet long, forty-eight to fifty feet beam—the Reynolds?

A. Oh, the Reynolds, I know her; yes, I know the Reynolds.

710

Q. It is in evidence that on the afternoon of the 27th of November, 1905, the Steamer S. C. Reynolds lay at the outer end of the City Dock, in the City of Duluth, Minnesota, discharging freight and lay port side to the dock; about half past ten on the night of the 27th of November her cargo was finally discharged leaving the vessel pretty light, with little or any cargo; it is in evidence at that time the wind was northeast steadily increasing and at that time had reached a velocity of fifty to seventy miles an hour, a heavy sea rolling through the canal, blinding snow storm prevailing; the master of the steamer blew several times for a tug and telephoned for a tug for assistance and no tug responded; it is in evidence that the wind was such that the manager of the vessel towing tugs had given orders to the tugs that none should

711

venture to do any transferring of vessels; the evidence is that the Steamer lay at that dock during the night of the 27th and until late in the afternoon of the 28th; I ask you if, in your judgment as a mariner, it would have been practicable or safe there for the master of the Steamer lying in that position to have attempted to move without assistance by tugs; taking in consideration the position of the steamer, the velocity of the wind, the blackness of the night and all elements that I have stated?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial, incompetent and not a proper hypothetical question.

Objection over-ruled.

713 Mr. Spencer (Reading):

A. For my opinion, if I had been sailing that boat I would certainly never have moved her; I think it would not have been a safe thing to do even if he had a tug.

Mr. Alford: Plaintiffs move the answer be stricken out.

The Court: The first sentence may be stricken out.

Mr. Spencer (Reading):

714 Q. Taking the facts as stated in my question, do you think it would be a safe and prudent thing for the master of a steamer to shift or attempt to shift his vessel?

Plaintiffs make same objection as last above.

Same ruling.

715

Mr. Spencer (Reading) :

A. No, sir, I would never have moved her.

Q. You say you would not have moved her; do you think it would have been safe for anyone to move her?

A. No, sir.

Q. Give your reasons for saying it would not have been safe or prudent to have moved the vessel?

Plaintiffs make same objection as last before.

Same ruling.

716

Mr. Spencer (Reading) :

A. The wind would have blowed her up on the beach; they couldn't have handled her; she would have blown clear round on the beach; she would not have had power to hold herself up.

CROSS-EXAMINATION.

Mr. Alford :

Q. At what velocity of wind would the vessel have become unmanageable? 717

A. Depends on what power she had but the Reynolds certainly has not got the power.

Q. The manageability of the vessel depends on the power?

A. Size and power I suppose.

Q. Ever been employed on the Reynolds?

A. No, sir.

Q. Do you know as a matter of fact what power her machinery has?

A. I do not.

718 Q. Where were you, in the harbor, at the time of the storm?

A. No, sir, I was not; I was on Lake Michigan.

Mr. Spencer: Defendant offers in evidence deposition of Duncan Buie.

Mr. Spencer (Reading):

719 **DUNCAN BUIE**, a witness on behalf of Claimants, called and being first duly sworn, on oath, deposes and says:

DIRECT EXAMINATION.

Mr. Spencer:

Q. Where do you reside?

A. Buffalo.

Q. What is your occupation?

A. Sailor.

Q. What is your age?

A. Fifty-seven.

720 Q. How long have you led a seafaring life?

A. Forty-two or forty-three years.

Q. How much of that on the Great Lakes?

A. All the time.

Q. What various positions have you served in?

A. From boy on board of vessels to captain of steamboats.

Q. How long have you been master of steam vessels? 721

A. Twenty-eight years.

Q. What vessel are you now in command of?

A. Steamer Lake Shore.

Q. How large a vessel is the Lake Shore?

A. About 6,000 tons carrying capacity.

Q. What is her length?

A. Three hundred and eighty feet.

Q. Her beam?

A. Fifty feet.

Q. What vessel were you in command of on the 27th day of November, 1905? 722

A. Lake Shore.

Q. Where was the Lake Shore and where were you on the 27th of November, 1905?

A. The Lake Shore was lying in elevator D Slip at Duluth, Minnesota.

Q. You remember the great storm that prevailed at the harbor of Duluth at that time?

A. Yes, sir.

Q. What can you say as to the severity of that storm?

A. My impression is it was the most severe gale of wind I ever knew on the lakes. 723

Q. In your own words give a little illustration of the visible effects of that storm to enable The Court to know something of its severity?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained.

Mr. Spencer (Reading):

Q. What kind of cables did you have on your ship?

724 Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained, to which ruling defendant duly excepts.

Mr. Spencer (Reading):

Q. Are you familiar with the Steamer S. C. Reynolds?

A. Have known her by sight for years; never been on board her.

725 Q. Are you familiar with the location of the City Dock here in Duluth?

A. Yes, I know where it is.

726 Q. It is in evidence in this case that the Steamer S. C. Reynolds on the afternoon of November 27th, 1905, was lying at the outer end of the City Dock port of Duluth, port side next the dock; that she went to this dock about five o'clock P. M. of that day; her cargo was discharged and it is in evidence that the cargo was discharged at half past ten P. M. that evening; that the ship was then practically light, with the exception perhaps, of a couple of hundred tons of cargo still remaining in the after part of the vessel; it is in evidence that the wind at that time was blowing from fifty to seventy miles an hour from the northeast, with a blinding snow storm and that after the discharge of the cargo the master or officers

of the Reynolds signalled for a tug a number of times and also telephoned for a tug a number of times but no tug appeared; it is in evidence that this signalling for a tug was for the purpose of enabling the vessel to get away from the dock if possible; I ask you, Captain, from your experience as a navigator, handling steam ships, whether in your opinion it would have been safe or a practicable thing or even possible for a steamer lying in the position of the Reynolds, considering the velocity of the wind, the blackness of the night, the fact that she was practically light, with a heavy sea, under all the conditions that were present at that time, whether it would have been practicable or impossible for a steamer so situated to have left that dock without the assistance of a tug or tugs? 727 728

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial, not a proper hypothetical question. It does not show the position of the Reynolds at the dock; very meager description of the vessel.

Objection overruled, to which plaintiffs duly except.

Mr. Spencer (reading):

A. I don't think, under the conditions that existed at the time, the violence of the gale and the boat, as I understand it, to be light, personally, I think it would have been very risky to move the boat without the assistance of a tug; I think that is all right; I think it would have been risky to move a boat flying light with her bow up in the air, to 729

move the boat; as Captain I would not do it if I could get out of it.

730 Mr. Spencer: Mr. Alford's next statement is to strike out the answer on the ground it is not responsive.

The Court: That last statement may be stricken out. I think the other is responsive.

Mr. Alford: I will ask to have it stricken out.

Mr. Spencer (reading):

Q. Did you ever experience so severe a gale on Lake Superior during your experience as a navigator?

731 Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant.

Objection overruled.

Mr. Spencer (reading):

A. No, I am not aware I ever experienced such a severe gale.

Q. Where was the barge Antrim located during that blow?

Mr. Alford: Plaintiffs object to the question on the ground it is immaterial.

732 Objection sustained.

Mr. Spencer (reading):

CROSS EXAMINATION.

733

Mr. Alford:

Q. In what slip was your boat?

A. Elevator D slip; between the elevators and the Ohio Central coal dock.

Q. On the Duluth side?

A. Yes.

Q. In which direction was your boat headed?

A. Boat was headed west, headed inland.

Mr. Alford: That cross examination was in reference to the testimony that was excluded. I object to it.

734

The Court: Then there is no necessity of reading it.

Mr. Spencer: Defendant offers in evidence the deposition of George Z. Zanger.

Mr. Spencer (reading):

GEORGE Z. ZANGER, a witness on behalf of claimants, called and being first duly sworn, testified as follows:

735

DIRECT EXAMINATION.

Mr. Spencer:

Q. How old are you?

A. Forty-nine.

- Q. Where do you reside?
A. Sandusky, Ohio.
Q. What is your occupation?
A. Chief engineer.
Q. Marine engineer?
736 A. Yes, sir.
Q. How long have you been a marine engineer?
A. Since 1880.
Q. What class of boats?
A. Most all kinds.
Q. What vessel are you now on?
A. Steamer Lake Shore.
Q. How large a ship is the Lake Shore?
A. She carries six thousand tons—registered tonnage thirty-eight hundred and seventy.
Q. What vessel were you on on the 27th of
737 November, 1905?
A. Lake Shore.
Q. Where was the Lake Shore during November 27th and 28th?
A. In Duluth harbor, Elevator D slip.
Q. Was she loaded or light?
A. Loaded with flax.
Q. Do you remember the bi storm that prevailed in Duluth at that time?
A. Yes, sir.
Q. You are familiar with the Steamer S. C.
738 Reynolds?
A. Yes, sir.
Q. Know where the City dock is in Duluth?
A. Yes, sir.
Q. Just west of the tug office?

A. Yes, sir.

Q. Go on and state some of the effects that the storm had on your vessel, if any?

739

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained.

Mr. Spencer (reading):

Q. It is in evidence in this case that on the afternoon of the 27th of November, 1905, the Steamer Reynolds made fast at the outer end of the City dock port side to; she remained there discharging cargo until half past ten of that day, P. M., when the Captain and officers attempted to obtain a tug but were unsuccessful; it is in evidence that they signalled for one but none came to their aid; it is in evidence that the wind was from the northeast blowing at from fifty to seventy miles an hour; that the atmosphere was thickly obscured by snow; that the vessel was practically light with the exception of a couple of hundred tons; that a heavy sea was running through the canal and across the harbor to where the Reynolds lay; I ask you whether, from the experience you have had with steam vessels, whether in your judgment it would have been a safe or prudent thing for the officers of that vessel to get away from that dock without the aid of tugs?

740

741

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant, immaterial and incompetent. He was only an engineer.

Objection sustained, to which ruling defendant duly excepts.

Mr. Spencer: Defendant offers in evidence the deposition of John K. McKenzie.

742 Mr. Spencer (reading):

JOHN K. McKENZIE, a witness on behalf of claimant, called and, being first duly sworn, on oath deposes and says:

DIRECT EXAMINATION.

Mr. Spencer:

Q. Where do you live?

A. 3215 West Fourth Street.

Q. How old are you?

A. Fifty-two.

743 Q. What is your occupation?

A. Pile driving and bridging and dock work.

Q. How long have you been in the business?

A. Been in it for twenty-two years.

Q. Principally in Duluth?

A. Duluth for twenty-two years.

Q. Do you remember making an examination of the City dock in connection with Mr. Grignon—Mr. Peter Grignon—some time after the big storm of November, 1905?

A. Yes, sir.

744 Q. And were you familiar with the city dock, had you seen it before?

A. I had passed over it but never took much notice of it.

Q. Did you examine it at that time to see what was necessary to put it in good condition?

A. Yes, I was looking after the pile driving.

Q. Had you ever made repairs on docks around Duluth similar to what that required at that time? 745

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection over-ruled.

Mr. Spencer (Reading):

A. Yes.

Q. What, in your judgment, was it worth to put that dock—to make the repairs on that dock, necessary to put it back in its former condition, in the condition in which it was before this particular damage was done to it? 746

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained.

T. C. HERRICK, recalled as a witness on behalf of defendant, testifies as follows:

DIRECT EXAMINATION. 747

By Mr. Spencer:

Q. Captain, I hand you a sketch marked Defendant's Exhibit 2 and I will ask you if that substantially represents the harbor of Duluth we will say from the canal up to the lime kiln slip; substantially?

A. About correct.

Q. And I call your attention to the figure marked "Reynolds" lying in front of the space marked "City Dock" and "Omaha Dock." I will ask you if that substantially represents the position your ship was in at the City Dock on the night of November 27th and November 28th, 1905?

A. Yes, sir, it does.

Q. Captain, I hand you a small lead model here. I was going to ask you to place that small lead model on the chart there showing about the position your ship was in but if that blackened space represents in—

A. That blackened space is about as near correct as you can get it. It lapped a little over the Omaha.

Q. Captain, in your direct examination you said, at least I understood you to say, that you remained at the City Dock until November 29th. Now, is that true?

A. That was a mistake. November 28th.

Q. You only lay there one night and part of the next day?

A. One night and part of the next day.

Q. I may be mistaken about it but my recollection is you said the 29th. And if you did say that I want to have the exact truth appear. I will ask you, Captain, if up to the time you completed cargo there was any reason on your part to apprehend danger there to your ship or to the dock?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial.

Objection sustained.

Mr. Spencer:

Q. I will ask you, Captain, if up to the time 751
the cargo was removed from your vessel if any
damage had been done to that dock by your vessel?

Mr. Alford: Plaintiffs object to the question
on the ground it is irrelevant and immaterial.

Objection over-ruled, to which ruling plain-
tiffs duly except.

A. No damage done, no.

The Court:

Q. When you said the wind was east-north- 752
east you meant by that it was in an easterly direc-
tion from true northeast?

A. About two points.

Q. About two points east of northeast?

A. That would be about straight in the piers.

Q. That is what you mean by it, that it was
east of northeast?

A. Yes; east of northeast.

CROSS-EXAMINATION.

753

By Mr. Alford:

Q. How much is a point?

A. About 11 degrees.

Q. Calling your attention to Defendant's
Exhibit 2. Captain, what was the length of the
Reynolds over all?

A. About 268 over all.

Q. Do you know the width of the City Dock in front?

A. I do not, no, sir.

Q. Did the stern of the Reynolds stand out a little further than the bow did from the face of
754 the dock?

A. You mean past the corner of the dock?

Q. No; out towards the center of the harbor.

Mr. Spencer: Were both ends of the ship the same distance from the dock; is that the idea?

Mr. Alford: That is it exactly.

A. Yes, supposed to be; laying right broad side.

Mr. Alford:

755 Q. Well, you say it was supposed to be. What do you mean by that. Do you know whether it was?

A. As near as I can explain it, yes.

Q. How many lines were on the dock from the Reynolds?

A. Couldn't answer that question. I could not tell you exactly.

Q. Well, have you any recollection as to how many there were?

A. Seven or eight or eight or nine; I could not tell you; might have been ten.

756 Q. You had a line wherever you could get one?

A. Had a line wherever I could get one, yes, sir.

Q. Now, looking toward the top of that map

(Defendant's Exhibit 2) and calling your attention to the markings to the left of what is designated as lime kiln slip, there is no dock there, is there? 757

A. There was none there at that time.

Mr. Spencer: I think that is true. I simply roughly drew that there.

(The witness continuing): There has been an old dock. There is a lot of spiles there; that is where the obstructions was.

Mr. Alford:

Q. That then is not intended to indicate a dock structure there? 758

A. It had been a dock structure.

Q. At that time, at the time the Reynolds was there?

A. There is no dock there.

Q. Now, that answers the question. You don't know anything about the depth of the water west of that lime kiln slip, do you?

A. No, sir.

Q. You don't know just how wide the lime kiln slip is there, do you?

A. No, sir, don't know the exact width.

Q. And you don't know how far from the westerly edge of that slip those spiles that you speak of are there? 759

A. I could not say exactly.

Q. You don't know just how far they are from the westerly edge of the slip, do you?

A. I don't know, no. I could not only guess at it.

Defendant rests.

Mr. Alford: Plaintiffs offer in evidence the deposition of H. W. Richardson.

760

Mr. Alford (Reading):

HERBERT W. RICHARDSON, a witness on behalf of Libellants, in rebuttal, called and being first duly sworn, on oath deposes and says:

DIRECT EXAMINATION.

Mr. Alford:

761

Q. You name is—

A. Herbert W. Richardson.

Q. You live in Duluth?

A. Yes, sir.

Q. What is your occupation?

A. In charge of the United States Weather Bureau.

Q. How long have been in charge of the United States Weather Bureau?

A. This station, nine years.

762 Q. I show you two papers, one marked Exhibit C and the other marked Exhibit D; referring to Exhibit C, will you state what that is?

A. A copy of our official records for November 27th, 1905—official weather records.

Q. Made by you?

A. Yes, sir.

Mr. Alford: Plaintiffs offer in evidence
Plaintiffs' Exhibit C.

Plaintiffs' Exhibit C is received in evidence 763
without objection, of which following is a copy:

764

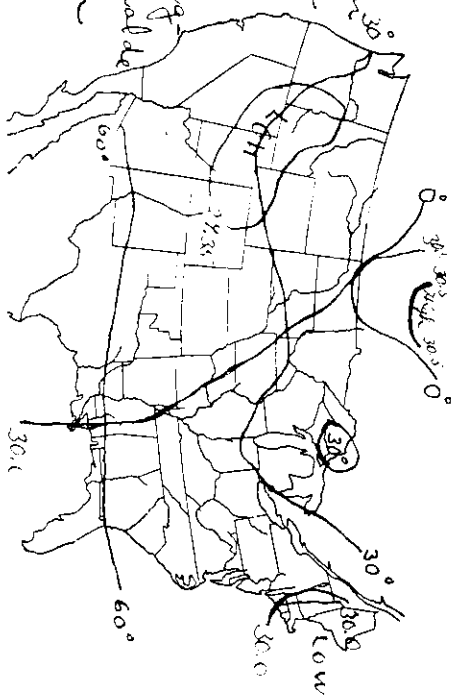
765

(Station) Sturtevant Mass

(Date) November 27, 1905

[illegible]

Storm 111 warning ordered 10 ant
during the afternoon and evening
the official in charged warned all
vessels to remain in port as the
storm threatened to be very dang
erous. There were, however, several
parties out in the afternoon
mostly large "rafts"



Mr. Alford (Reading):

Q. And referring to Exhibit D, state what that is?

A. The same statement as the other; made by myself and is the official record of our office for that day, covering weather conditions at that time. 769

Q. Made by you?

A. Yes, sir, that is, the record was made by me—the record there.

Mr. Alford: Plaintiffs offer in evidence Plaintiffs' Exhibit D.

Plaintiffs' Exhibit D is received in evidence without objection, of which following is a copy: 770

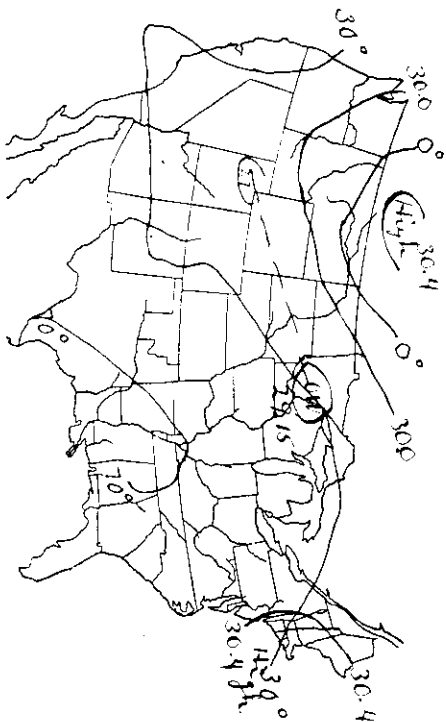
(Station)

Stark - Allen

(Date)

Dec 28, 1903

NOTES



Mr. Alford (Reading):

Q. Referring to Exhibit C, the figures above the third line from the top and in the second space, counting from the left hand margin, are the times of day? 775

A. Yes.

Q. Referring to the same Exhibit C, on the same column and above the tenth line, counting from the top, do the figures represent the distance in miles?

A. The actual number of miles recorded each hour.

Q. Is that true as to each succeeding column?

A. Yes, sir. 776

Q. Did you get any warning on the twenty-seventh as to the approaching storm?

Mr. Spencer: Defendant objects to the question on the ground it is irrelevant and immaterial unless it is shown that it was brought to the attention of the Captain.

Objection over-ruled, to which ruling defendant duly excepts.

Mr. Alford (Reading):

A. Yes, sir, 777

Q. State what you did?

A. The warnings were ordered—storm north-east warnings were ordered at ten o'clock in the morning and were displayed at all points at the head of the lakes; in the afternoon we issued a special warning for the vessels to remain in port

as the storm would be of a very dangerous character.

Q. What time was that?

778 A. I don't exactly remember; about the middle of the afternoon if I remember right; probably about three o'clock.

Q. Was that warning published in the evening paper?

A. Yes, sir.

Cross-examination (Read by Mr. Spencer as follows) :

Q. Was there anything unusual in the manifestations of that storm when it arrived?

A. Yes, sir.

779 Q. Were there any unusual results attendant upon that storm?

A. Yes.

Q. Go on and state some of them?

Mr. Alford: Plaintiffs object to the question on the ground it is irrelevant and immaterial and also as not proper cross-examination.

Objection sustained.

Mr. Spencer (Reading) :

780 Q. Was so severe a storm ever known in the vicinity of Duluth since the establishment of the weather bureau here?

Plaintiffs make same objection as last above.

Objection over-ruled.

A. The most severe we have any record of, especially as regards continuity.

781

ALEXANDER McDOUGAL, being duly sworn
as a witness on behalf of plaintiffs in rebuttal,
testifies as follows:

DIRECT EXAMINATION.

By Mr. Alford:

Q. Your name is Alexander McDougal?

A. Yes, sir.

Q. Where do you live, Captain?

A. At present on First Street, Tenth Avenue

782

East.

Q. That is in Duluth?

A. Duluth, yes, sir.

Q. How long have you lived in Duluth?

A. 37 years, yes, sir.

Q. In the course of your lifetime have you
been a seaman?

A. Yes, sir, about 21 years.

Q. Will you state in what capacities you
have served as a seaman?

A. Well, from deckhand to the Captain of
the best boats coming to this port.

783

Q. How long did you act as captain?

A. 12 years running to the port here.

Q. Was that experience on the Great Lakes?

A. Right here, yes, sir, on the Great Lakes.

Q. Wholly so; altogether in the lake country.
Passenger; I crossed the Atlantic in the meantime.

Q. In that time, Captain, did you also have experience as Captain in handling large steam vessels in and about Duluth Harbor?

A. Yes, sir.

Q. And also in times of violent storm?

784 A. Yes, sir.

Q. Are you familiar with what is known as the City Dock here in Duluth?

A. Yes, sir.

Q. And also its surrounding waters?

A. Yes, sir.

Q. Do you know the Steamer S. C. Reynolds?

A. Yes, I know her pretty well.

Q. Captain, have you also had experience in stevedoring?

A. Yes, sir.

Q. Where?

785 A. In Duluth here.

Q. Did that work include the handling of large vessels in unloading them?

A. Yes, sir.

Q. For the benefit of the jury will you state in what stevedoring consists?

Mr. Spencer: Defendant objects to the question on the ground it is irrelevant and immaterial. It is wholly irrelevant to the issues in this case.

The Court: It is not rebuttal.

786 Mr. Spencer: And is not rebuttal.

Mr. Alford: I am qualifying the witness as an expert.

Objection over-ruled.

A. Loading and unloading of cargo from the vessel on to the dock or from the dock on to the vessel.

787

Mr. Alford:

Q. Captain McDougal, according to the evidence here the S. C. Reynolds is a steam steel built vessel about 268 feet over-all, has a 40 foot beam, 1604 net tonnage; a water bottom holding about 200 tons of water; on the afternoon of November 27th, 1905, about 5 o'clock she tied up at the outer end of the City Dock for the purpose of unloading freight; she finished unloading the cargo she had for that dock about 10:30 P. M. of that day; she still had about 200 tons of cargo left on board; she then tried to get a tug to aid her in shifting to some other place but was not able to get one; she was lying along side the face of the dock headed toward the lake; from 10 o'clock until 11 P. M.—she got through at 10:30—from 10 o'clock to eleven P. M. the wind blew 53 miles; it blew 53 miles during the hour; its highest velocity during the hour was at 10:13 when it was blowing at the rate of 54 miles per hour; from 11 to 12 it blew 57 miles; attaining a rate of 62 miles per hour at 11:58; the wind was from the northeast accompanied with snow; water bottoms were full; the night was dark; and in the course of the night members of the crew passed from the boat to the dock and returned off and on; in that situation, Captain, will you state whether in your opinion as a seaman it would have been possible after she had unloaded to warp the Reynolds around into the slip just west of the dock?

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790 Mr. Spencer: Defendant objects to the question for the reason the question as propounded does not contain all the material elements as shown by the evidence to have existed at that time. It simply says that snow was falling; does not show how much the atmosphere was obscured; does not show the presence of a sea sufficiently high to be rolling over the ends of the dock; and does not take into consideration the fact that the vessel was placed there at the dock by the dock people themselves; snow falling so thick objects could not be seen at a distance of 400 feet anyway or less than that.

The Court: To the windward.

791 Mr. Spencer: To the windward, yes. And the evidence is that the snow was pelting down so hard that you could not face it at all.

The Court: The snow was falling. The wind would determine that, wouldn't you? Snow was falling so it was difficult to see to the windward farther than a hundred feet.

Mr. Spencer: About a hundred feet or even as far as that.

792 The Court: And the sea was rolling over the dock. You may add those to your question.

Mr. Alford: I am perfectly willing to add those.

A. I would rather answer that question that the vessel had no right to lay there—

Mr. Spencer: Defendant moves to strike out the answer of the witness. He is volunteering something that he has not been asked to testify. It is not in response to the question asked. I would like to have it stricken out.

793

Motion granted.

Q. (Question repeated by reporter as follows): 'Captain McDougal, according to the evidence here the S. C. Reynolds is a steam steel built vessel about 268 feet over-all, has a 40 feet beam, 1604 net tonnage; a water bottom holding about 200 tons of water; on the afternoon of November 27th, 1905, about 5 o'clock she tied up at the outer end of the City Dock for the purpose of unloading freight she finished unloading the cargo she had for that dock about 10:30 P. M. of that day; she still had about 200 tons of cargo left on board; she then tried to get a tug to aid her in shifting to some other place but was not able to get one; she was lying along side the face of the dock headed toward the lake; from 10 o'clock until 11 P. M.—she got through at 10:30—from 10 o'clock to eleven P. M. the wind blew 53 miles; it blew 53 miles during the hour; its highest velocity during the hour was at 10:13 when it was blowing at the rate of 54 miles per hour; from 11 to 12 it blew 57 miles; attaining a rate of 62 miles per hour at 11:58; the wind was from the northeast accompanied with snow; water bottoms were full; the night was dark; and in the course of the night members of the crew passed from the boat to the deck and returned off and on; the snow was falling

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Adm. Mc Dougall
27 Nov 1905

so it was difficult to see to the windward further than a hundred feet, about a hundred feet, or even as far as that; the sea was rolling over the dock; the vessel was placed there at the dock by the dock people themselves; in that situation, Captain, will
796 you state whether in your opinion as a seaman it would have been possible after she had unloaded to warp the Reynolds around into the slip just west of the dock?

A. Yes, sir.

Mr. Alford:

Q. There is a soft bank on the west side of that slip, isn't there, Captain?

A. Yes, sir.

Q. The tugs lay up there and have for a good while?

797 A. Yes, sir.

Q. Could the crew have warped that boat around without getting into that bank?

Mr. Spencer: Defendant objects to the question on the ground it is irrelevant and immaterial. I object to this for the reason that no proper foundation has been laid as to the Captain's qualifications to testify to matters which he has not seen and in regard to that matters of that sort where he was not—

798 The Court:

Q. Do you know the water there, Captain?

A. Yes, sir, very well; as well as you do this office here.

Q. How?

A. As well as you do this office here. It is all plain before my eyes now.

Mr. Alford:

Q. Could the crew have warped that boat around without getting into that bank?

A. Yes, sir, easily.

Q. Will you explain to the jury what is meant by warping?

A. If they had taken the line out of the after end of the boat which must have lapped across the corner of the dock, as follows (illustrating). For instance, the boat laid on that end, a line put out on this end and a pile here; and that would naturally turn the boat in that position. The wind would take her and blow her around in there, west. If this line should break all that could happen her, she would go on to the bank.

Q. When you refer to this line you refer to a—

A. Spring line.

Q. Attached to the after end of the boat?

A. Attached to the after end of the boat from here to some piling on that side of the dock.

Q. Of that slip side?

A. This is the face. This is next to the corner. Here is the slip. This is the slip side. And she was laying there when the storm come. If they had just backed up like that a piece the bow would naturally blow out itself and all they had to do was check it with the line from there and she would come right into that slip. The force of the wind on that part might carry her off there a piece. The only danger would occur would be

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*She says that
the ship was there
harbour side*

she might break that line and go over on to this bank, which is a soft bank.

Q. Captain, is that end of the dock much exposed to northeast wind, seas coming through the canal?

802 A. The front of the dock, sir?

Q. Yes?

A. Perfectly in the wake of the storm as it comes through the canal.

Q. Badly exposed place?

A. Yes, sir; most exposed of any dock in the harbor.

Q. Supposing the Reynolds had gone there on that soft bank for some reason. Would that have placed her in serious danger?

803 Mr. Spencer: Defendant objects to the question. It assumes a condition of facts that never existed.

Objection over-ruled.

A. No, sir.

Mr. Alford:

804 Q. Captain, according to the evidence here, on the day the Reynolds tied up, from 12 o'clock to one in the afternoon the wind blew 25 miles; from one to two, 26 miles; from two to three, 28 miles; from three to four, 29 miles; from four to five, 32 miles; from six to seven, 40 miles; from seven to eight, 44 miles; from eight to nine, 43 miles; from nine to ten, 48 miles; from ten to eleven, 53 miles; that was the velocity of the wind and its rate of increase from hour to hour up to 11

o'clock that night. Now, having in mind these facts and also the other facts referred to since taking your testimony here, was it in your opinion careful seamanship to keep the Reynolds tied there to the outer end of the City Dock until the unloading was completed at half past ten?

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Mr. Spencer: Defendant objects to the question for the reason that that is a question for this jury to pass upon and not Captain McDougal.

Objection over-ruled, to which ruling defendant duly excepts.

A. I think it was not good judgment to lay there in the increase of that storm, particularly in a port where the information was easy got to him and the view from there to the signal station so close; good judgment would have got him into the slip where I think it was possible to unload as well as on the fact of the dock.

806

Mr. Alford:

Q. In your opinion with these signs and warnings did careful seamanship require the master of the boat to seek a place of shelter without delaying to complete the unloading?

Mr. Spencer: Defendant objects to the question for the reasons last above stated.

807

Objection over-ruled, to which ruling defendant duly excepts.

A. Yes, sir.

Reuben Callum Jr.

Mr. Alford:

Q. Did good seamanship require him in your opinion to seek a safer mooring before the storm attained the violence it did?

A. Yes, sir.

808 Q. It is also in evidence that after unloading the Reynolds called for a tug to aid her in shifting and was unable to get one because of the storm. Assuming that to be true and also the other facts I have already mentioned, in your opinion would a reasonable careful seaman have delayed until the unloading was done before he called for a tug?

Mr. Spencer: Defendant objects to the question for the reason that it asks the witness to assume the province of the jury.

809 Objection over-ruled, to which ruling defendant duly excepts.

A. I think it was proper to move the boat before the tug would come or without the tug, if he could not get her.

Mr. Alford:

Q. Should he have tried to get a tug, if necessary, before that?

A. He should have tried if he needed a tug. I do not see the need of a tug for this movement.

810 Q. The boat remained at the same place next day until about half past four and on the 28th, that is the next day, the wind continued, at times its velocity increased to about 70 miles. In view of all the surrounding facts that have been referred to in taking your testimony here would it

in your opinion when daylight came have been possible to warp that boat around into the slip?

A. Yes, sir.

Q. Was it careful seamanship not to do so? 811

Defendant makes same objection as last before.

Same ruling and exception.

A. If the boat was pounding herself against the dock it was cruel to leave her there to do so.

Q. And did good seamanship require that she should be warped around?

A. Yes, sir.

Q. Does careful seamanship require the master of a vessel to look out for the weather signals and reports of the United States Weather station when at hand? 812

Defendant makes same objection at last before.

The Court: I do not know what you mean by reports.

Mr. Alford: Witness Richardson testified in his deposition that he issued a special warning. Perhaps I should say warning instead of report. 813

Objection over-ruled, to which ruling defendant duly excepts.

Mr. Spencer: Defendant objects to the question for the further reason it is not shown what sort of reports were given, up to the present time, nor what was done by the weather bureau.

Objection over-ruled, to which ruling defendant duly excepts.

814 A. I think it is not compulsory that he should but it is customary for them to do so for their own judgment.

Mr. Alford:

Q. Would a reasonably careful seaman always look out for signs of approaching storm?

Mr. Spencer: Defendant objects to the question for the reason that it is assuming the province of the jury for this witness to answer this question.

Objection over-ruled, to which ruling defendant duly excepts.

815 A. Yes, sir.

Mr. Alford:

Q. Is that particularly true late in the fall of the year in this port?

A. Yes, sir.

CROSS-EXAMINATION.

By Mr. Spencer:

Q. How old are you, Captain?

A. 62; nearly 63.

816 Q. How many years has it been since you were actively engaged in sailing on the Great Lakes as steamboat captain?

A. I have not been active as Captain for 25 years or so.

Q. And how long had you served as mate

before that; how long has it been since you were actively engaged serving as mate on steamboats?

A. 12 years previous to that.

Q. That would make 37 years ago you were sailing as mate. You say you came up all the way along the various stages of seamanship from, what was the lowest? 817

A. Deckhand.

Q. From deckhand. Well, how long ago was it that you sailed the Great Lakes as a deckhand, Captain?

A. Commenced in '61.

Q. That would something like 45 or 50 years ago; 45 years ago. And since that time your business has been very largely ashore, hasn't it, Captain? 818

A. Mostly connected with shipping all the time.

Q. Well, answer my question?

A. It is on shore most of the time, yes, sir.

Q. Are you acquainted with Captain Herrick, the Captain of the Reynolds?

A. I don't know him.

Q. You don't know him?

A. No.

Q. Captain, who, in your opinion is better qualified to judge as to the proper thing to do, Captain Herrick who was aboard of his ship at the time and knew the velocity and weather conditions, or you at this present moment sitting in an easy chair here before the jury; who is better able to judge as to the proper thing to do, you or the master of that ship? 819

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross-examination.

Objection over-ruled.

820 A. Well, it would depend on his experience and on mine somewhat. I am not enough acquainted with him to form a judgment as—judgment against mine.

Q. It is in evidence that Captain Herrick has been sailing the Great Lakes all his life for the last 35 years at least.

The Court: I think I will not allow that to be pursued.

Mr. Spencer:

821 Q. If he is a man of experience equal to your own isn't it true that the man who was present and saw the surrounding conditions would be in better condition to judge than the man who was not there?

Mr. Alford: Plaintiffs object to the question on the ground it is not proper cross-examination.

Objection sustained.

Mr. Spencer:

Q. Where were you, Captain, at the time of this great storm?

822 A. I was not in town that day.

Q. You have no personal knowledge of any of the situations or conditions of things at Duluth at that time?

A. I have seen storms—

Q. Just answer the question. (Question repeated by reporter): "You have no personal knowledge of any of the situations or conditions of things at Duluth at that time?" 823

A. I have had it well represented to me and explained to me in various ways and by different people.

Mr. Spencer:

Q. Yes. But will you please answer the question I asked you. (Question repeated by reporter): "You have no personal knowledge of any of the situations or conditions of things at Duluth at that time?"

A. No, sir. 824

Mr. Spencer:

Q. And all the knowledge you have of what occurred at that time is what has been told you?

A. (No answer).

Q. What was the last ship that you were in command of, Captain?

A. Steamer Hiawatha.

Q. That was a wooden vessel at that time, wasn't it, Captain?

A. Yes, sir, the largest on the Lakes.

Q. The largest on the Lakes at that time. What was her length? 825

A. She was about the size of the Reynolds.

Q. What was her length?

A. About 250, I think, something.

Q. She was a wooden vessel, was she?

A. Yes, sir.

Q. And how long ago was that. You have already stated?

A. '82.

Q. 25 years ago. You think it would have been a very easy matter with the wind blowing as witnesses who were present there say, from 50 to 60 or 70 miles an hour, to have simply let out your
826 forward line and let the wind take it around, do you?

A. Yes, sir.

Q. It would have been a very easy matter when you got it around into the slip, you would simply have backed up and made it fast to the dock, would you?

A. I would have tried to, yes, sir.

827 **R. C. VINCENT**, called as a witness on behalf of plaintiffs in rebuttal, testifies as follows:

DIRECT EXAMINATION.

By Mr. Alford:

Q. Mr. Vincent, was any part of your dock battered down except where the Reynolds lay?

A. It was not.

Q. Were some of the timbers broken?

Mr. Spencer: Defendant objects to the question for the reason it is not proper rebuttal.

828 Mr. Alford: If The Court please, the testimony of some of the defendant's witnesses is to the purport that the injury to the dock was a result simply of wave action. Now, if it should be found that some of the timbers were broken that would

tend to corroborate the evidence of the plaintiffs that it was done by some object pounding.

Objection over-ruled, to which ruling defendant duly excepts. 829

A. Yes, badly broken.

Mr. Alford:

Q. Did the owners have to repair the damage done?

Mr. Spencer: Defendant objects to the question for the reason that it is not proper rebuttal. He went into that in his direct examination.

Objection sustained. 830

No cross-examination.

Mr. Alford: Plaintiffs offer in evidence a part of the evidence of Captain Herrick taken on deposition, by way of impeachment.

The Court: Is the foundation laid for it?

Mr. Alford: Yes. He was asked whether he did not state, on his direct examination, substantially, that it was not impossible to get the boat away from the dock, physically impossible. 831

Mr. Alford (Reading):

"Question: -If I remember your former examination correctly"—

Mr. Alford: This is the question I wish to offer.

832 "Question: Captain, if I remember your former examination correctly you stated that if your boat had been free from the dock that she would not have capsized in your judgment? Answer: No, she would not have capsized.

"Question: Any danger of that? Answer: No.

"Question: You kept her primarily moored at the dock to save her from injury? Answer: To save the boat from sinking. I couldn't tell what would happen.

833 "Question: She might have sunk? Answer: If she had gone into the spiles or grounded any way I would have lost my rudder, probably, and punched a hole in her.

"Question: Something of that kind? Answer: To do the least damage possible both for myself and others too.

"Question: Then it is not your meaning that it was physically impossible to get away from the dock? Answer: If the lines had been gone she would have went astern into those spiles.

"Question: If not moored in some way she would have gone astern? Answer: Yes, sir."

834 Plaintiffs rest in rebuttal.

Mr. Spencer: Defendant moves The Court to direct a verdict for the defendant for the reason that no neglect whatever has been shown on the part of the master or officers or those in charge of the Steamer Reynolds. The evidence shows that the ship was placed where she was placed by the dock people; that it was their business to receive cargo from the ship; that they invited it to be present and to make fast to their premises; and that the captain in response to that order made fast where he did. There is no evidence to show that the Captain was guilty of any neglect after he made fast to the dock. He was not a trespasser. He was there by right. The ship was not a trespasser on the premises of the plaintiffs. He was there at their instance and at their request where it had a right to be and the evidence very clearly discloses the fact that this hurricane was unprecedented in the navigation of the Great Lakes. Nothing like it was ever known. That it was the act of God. That there was a vis major as the books put in, present on that occasion. That the forces of Nature burst forth with such fury that no man could foresee it nor guard against it after it had arisen. Defendant asks that the Court direct a verdict for the further reason that the weather conditions were just as apparent to the dock people before the ship went there and after the ship made fast there as they were to the Captain himself. The evidence shows that the attention of the Captain was not called to the fact by the dock operators that it was dangerous to lie there and that it was not dangerous to lie

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there until about the time the cargo was finished being unloaded; and he made every effort possible to withdraw. And there is no evidence to the contrary except what Captain McDougal said here. And Defendant asks the Court to direct a verdict
838 for the reason that there is no evidence of any neglect on the part of the steamboat people that would warrant a verdict even if one should be returned; that the Court would be justified in setting it aside.

Motion denied, to which ruling defendant duly excepts.

At this time court is adjourned until 9 o'clock a. m. next day, Thursday, September 17th, A. D. 1908, at which time court met pursuant to ad-
839 journment when proceedings were resumed as follows:

PLAINTIFFS' REQUESTS TO CHARGE.

1. If you find that plaintiffs' dock was damaged by the action of defendant's vessel, the
840 burden of proof is upon the defendant to prove that such action causing the damage was the result of inevitable accident. Given.

2. I instruct you as a matter of law that an inevitable accident produced by a cause or causes

over which human agency can exercise no control. No human agency actively contributes to the accident. It is unavoidable by human agency. Given in Garchy.

841

3. If you find that plaintiffs' dock was damaged by the action of defendant's vessel, your verdict will be for the plaintiffs and you will assess the amount of damage done to the dock by the vessel. Not given.

4. If you find that the crew of the Steamer Reynolds by the use of lines were actively instrumental in holding the vessel alongside the dock, and that while so held the vessel damaged the dock, you are instructed that such damage was not an inevitable accident. Not given.

842

5. If you find that the crew of the vessel were actively instrumental in holding the vessel alongside the dock and that while so held she damaged the dock your verdict will be for the plaintiffs and you will assess the amount of damage done to the dock. Not given.

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DEFENDANT'S REQUESTS TO CHARGE.

1. It is claimed by the defendant that the damages done plaintiffs' dock are the result of an inevitable accident. The Court instructs you that as applied to cases where vessels are concerned,

an inevitable accident is an accident occurring where a vessel is pursuing a lawful vocation in a lawful manner, using the proper precautions against danger, and accident occurs. In such case the loss must rest where it falls. Refused.

844

2. The Court instructs you that the Steamer Reynolds owned by the defendant was lawfully at plaintiffs' dock and engaged in a lawful business and it was the duty of the persons operating plaintiffs' dock to furnish a safe place at its dock for vessels to lay while said dock was receiving cargo consigned to it and that if plaintiffs' or their agents operating said dock permitted said steamer to remain at said dock until weather conditions rendered it unsafe or impossible for the vessel to be moved no recovery can be had.

845 Refused.

3. The Court instructs you that if you shall determine from the evidence that the master and crew of the Steamer Reynolds endeavored by every means consistent with due care and caution and a proper display of nautical skill to move said steamer from plaintiffs' dock after delivery of the goods consigned to the City dock no recovery can be had. Given.

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4. The Court instructs you that if you shall find from the evidence that the damages to the plaintiffs' dock was the result of a storm so unusual and so severe that human foresight could not have foreseen or anticipated its severity, and that the master and crew of said vessel made such efforts to move said vessel as a reasonably prudent

mariner could or would do, but was prevented by the severity of the storm from moving said vessel no recovery can be had and your verdict should be for the defendant. Refused.

847

5. The Court instructs you that when safe navigation is rendered impossible from causes which no human foresight can prevent, when the forces of nature bursts forth in unforeseen and uncontrollable fury, so that man is helpless and the stoutest ship and the wisest mariner are at the mercy of winds and waves and disaster occurs it is an inevitable accident and the loss if any resulting therefrom must rest where it falls. Refused.

848

6. The Court instructs you that by inevitable accident it is not meant one which it was absolutely a physical impossibility to have prevented, the most that is meant is an occurrence which could not have been avoided by that providence and foresight which careful men would exercise under the circumstances. Refused.

7. The Court instructs you that in making fast to docks for the discharge of cargo, vessels are required to provide only against ordinary contingencies such as may reasonably be anticipated. They are not required to take precautions to resist forces not reasonably to be expected. Refused.

849

8. The Court instructs you that where inevitable accident is shown the loss must remain where it falls, on the principle that no one should be held to be in fault, for results from causes over

which human agency can exercise no control. Given.

850 9. The Court instructs you that if at the time the Steamer Reynolds was placed at plaintiffs' dock by plaintiffs, the operator of said dock, the weather conditions were such as to render it unsafe for said vessel to discharge its cargo, such weather conditions were as apparent to the operator of said dock as to those in charge of said steamer, and if plaintiffs' agents failed to warn said vessel to move after danger became apparent, no recovery can be had in such case. Refused.

851 10. The Court instructs you that in the operation of merchandise docks at Duluth extending to navigable waters, to which vessels are invited to discharge cargoes such docks are subject to the usual wear and tear of vessels moored to their sides, and recovery cannot be had for damages inflicted to such docks by vessels invited to moor by them, resulting from causes over which said vessels have no control. Refused.

852 11. The Court instructs you that the defendant's vessel having been invited to make fast to plaintiffs' dock for the purpose of discharging cargo, and a storm of such severity having arisen as to make it dangerous to said vessel and to other property to shift its position, the officers and crew of said vessel were not required to move it if by so doing there was great danger of damaging said vessel, or if there was great danger of doing damage to other property. Refused.

12. The Court instructs you that if performance of a duty imposed by law is prevented by the act of God no liability attaches for damages immediately resulting therefrom. Given. 853

13. The Court instructs you that if you shall find from the evidence that the master of the Reynolds did all that was reasonably and practically possible to move his vessel after danger became apparent, consistent with prudent seamanship and a reasonable regard for the safety of his own ship and the lives of those aboard of it, and employed all known means which a prudent navigator could reasonable be required to employ, and was prevented by the severity of the storm from moving his ship your verdict should be for the defendant. Refused. 854

14. The Court instructs you that the master of the Reynolds was not required by law to put his own vessel in jeopardy or expose it to great danger. Even if by remaining at the dock where he was placed damage would be done this dock. Refused.

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CHARGE

Gentlemen of the Jury:

The plaintiffs claim that they are owners of the City Dock situated in City of Duluth. That is not denied on the trial. That the dock was

for the receiving of freight and that boats and vessels came to the dock and delivered freight to it that was consigned to it. That on the 27th day of November the defendant by its servants and employes negligently and carelessly kept a
856 certain steam vessel tied to said wharf on said day and thereafter to and including the 29th day of November.

The evidence is that it was until the 28th day of November. A mistake has been made on both sides.

That during the said time said vessel was so negligently tied and kept tied to said wharf by said defendant, that said vessel struck violently and beat upon and hammered against said wharf and injured and destroyed a large part of said
857 wharf, to the damage of these plaintiffs in the sum of \$1200. That said property of these plaintiffs by reason of said negligent acts was damaged to the extent of \$1200.

The defendant in its answer admits that it was the owner of a vessel running on the Great Lakes and that it came into the harbor of Duluth and that it had goods consigned to the City Dock: that it went to the City dock on the afternoon of the 27th day of November, 1905, and while it was discharging the goods so consigned to the City dock a violent storm arose and by the time the
858 goods were discharged that it was unable to leave the said dock and was obliged to remain at said dock during the gale: and that it was wholly unsafe for it to leave the said dock: and that during the night, November 27th, said vessel impinged

against said dock and the officers and crew of said vessel were unable to move it, and defendant claims it is not liable for any damages done to the dock because it was the result of inevitable accident, or the act of God in sending the storm upon them. All of which is denied by the plaintiffs and the question that you have to answer: Was the defendant negligent in allowing its boat to remain at the City dock from five o'clock of the 27th day of November until three or four o'clock on the 28th; and if the defendant was negligent, were the plaintiffs damaged by reason of such negligence: and if so in what amount? 859

These are the questions that you have to determine in this case from the evidence. 860

The questions that you have to determine arising on the answer in this case are: Was the damage done to the dock the result of accident or as has been termed by counsel, inevitable accident; which means substantially the same thing. Was this damage caused by the act of God? These are the questions that you have to answer by your verdict.

The defendant is a corporation. It can act only by its servants and agents and the captain of the Steamer Reynolds in command of that steamer, was acting for and on behalf of the defendant. And if Captain Herrick, the captain of the Reynolds, was negligent, then his negligence was the negligence of the defendant. And if the defendant was negligent and that negligence caused the plaintiffs damage, then the defendant is liable. 861

862 Negligence is the failure to exercise ordinary care. It is the doing of something which under the same circumstances a man of ordinary care and prudence would not do or, it is the omission to do something which under the same circumstances a man of ordinary care and prudence would do.

You see, it is the ordinary man, not the most careful man, but the man of ordinary care and prudence is the test.

This is the usual definition of negligence but there is a definition that seems to me more applicable to a case like this than the definition that I have given you, and I ask you careful attention to it.

863 It is the failure to observe for the interest of another person that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person is injured. It is the failure to observe for the interest of another person that degree of care, precaution and vigilance which the circumstances justly demand, whereby such other person is injured.

Just a moment as to the relation of these parties.

864 The Steamer Reynolds was a carrier on the Great Lakes. It carried goods consigned to the City dock. It was the duty of the Steamer Reynolds as a carrier of goods to deliver those goods to the consignee. The duty of the consignee was to receive the goods so properly consigned to it. When the steamer delivered the goods to the consignee and the consignee received them,

the duty of the carrier and consignee in relation to each other was closed; at an end.

The Steamer Reynolds had a right to go to that dock to deliver the goods consigned to the City dock. It had a right to remain there until those goods were delivered. It went there for that purpose and that purpose only and when that purpose was accomplished it had no further legal right to remain. It was its duty to leave that dock as soon as it could. 865

That I apprehend comprehends the legal relation between the City dock and this steamer. There was a license for it to go there for a certain purpose. When that purpose was accomplished the license ceased and it had no longer any legal right there. The people in charge of the City dock had no duty to perform towards the steamer, no duty to perform in relation to the storm, in relation to the management of the steamer in any way. 866

Now, with this introduction we come to the grave question in this case: was the defendant negligent? Did its agents and servants exercise that care and caution in the management and control of its ship that a man of ordinary care and prudence would have exercised under the same circumstances. 867

If it did exercise such care and caution that was all the law required of it and the plaintiff cannot recover. But if it was negligent and that negligence caused damage to the plaintiff, then the defendant is liable for that damage.

The law imposes upon every person and cor-

poration in the enjoyment of its own property the duty so to use it as not to injure the property of another. That is the duty that is imposed upon you, upon myself, upon every person, so to use our own property as not to injure the property
868 of another.

The storm that was experienced on the 27th and 28th of November, 1905, has been shown to be one of very great severity. The evidence of the defendant is that if the boat had been cast loose from that dock that the ship would have been lost, been wrecked, broken to pieces.

Was the defendant negligent in not warping said ship into the slip on the west side of that dock? That is claimed by the plaintiffs. It is denied by the defendant. You are to look at all
869 of the evidence and determine whether that was negligence on the part of the defendant. Could it have been done? And in determining that, I ask your attention to the evidence in relation to the warping of that ship into that slip. Take all of the evidence upon that question, all of the facts and circumstances of the case into consideration; the location of the ship and the dock; the storm, the direction of the wind, its force; the waves; their direction and force; where they struck the boat; and their effect upon the boat in case this warping should have been tried. Look at
870 all the facts and determine whether the captain of the Reynolds was negligent in not endeavoring to warp his boat into that west slip.

It is claimed on the part of the plaintiffs that he was negligent in not observing the storm earlier

than he did and its rapid increase, and taken precautions to have gotten away from that dock before the time that he did. Look at all of the evidence in relation to the storm and its rise; and you have before you in evidence the increase of the wind from hour to hour. Was the captain of the Steamer Reynolds negligent in not observing the increase in the storm and leaving the dock before it became so severe?

871

It is also claimed to be negligence on the part of the defendant that the weather office and the weather signals which were ordered and which were flying to the breeze, were not observed. You will look at all the facts in relation to that. There is no contradiction that signal warnings were flying from the weather office but what those warnings were is not shown. Was there any negligence in not giving heed (you have the time) when these were ordered? And from what time they were flying and weather or not they were visible from where this boat lay. Take all these facts into consideration and determine whether in the particulars named this defendant through its agents and servants was negligent.

872

The ship remained tied to that dock. The evidence on the part of the defendant is that if it had left that dock it would have been lost, wrecked, destroyed; that it remained there and was saved.

873

The defendant had no right to save its ship at the expense of the plaintiffs and if it was so saved—that is, in saving its ship—if it was so saved and damage was done to the defendant by

*Clearer than
this not a case of
a rescue*

reason of its laying at the dock and being saved, and the defendant was negligent, then the defendant should be liable for that damage.

874 Upon the question of the damages you have the evidence. It is in very small space. Was that dock injured? Was it injured by the boat and the waves? If it was injured by the waves alone and the boat did not add to its injury then the plaintiffs cannot recover here. But if the boat caused the injury to the dock and you find that the defendant was negligent then the plaintiffs can recover whatever damages were sustained.

875 I call your attention to the evidence in relation to the motion of the boat as it was tied to the dock. The defendant says that it impinged upon the dock. The plaintiffs claim that it pounded the dock until it broke the timbers. You have the evidence of the damage if you come to that question, gentlemen.

I should have called your attention to the defense here as to inevitable accident.

Inevitable accident, or accident, is described as an accident produced by cause or causes over which human agency can exercise no control. And no liability attaches where the injury results from what is termed pure and inevitable accident.

876 Negligence can never consistently be predicated on purely accidental grounds; but merely calling the act which resulted in an injury, an accident will not avoid liability for the result of negligence. The fact that at the very moment of the accident the injury could not have been

prevented will not relieve the defendant from liability if it was brought about by his negligence.

No human agency actively contributes to an accident. It is unavoidable by human agency. And I do not know that I can say anything more to you in relation to inevitable accident. 877

An accident within the rule which I have read to you is that which happened without fault of anyone, without one's oversight or instigation. Was this inevitable accident or was it injury without control by human agency?

An injury caused by the act of God or a superior agency without the fault of defendant will not impose any liability on the defendant. An act of God is defined as an inevitable accident without the intervention of man or his control. 878

You are to determine from all of the evidence in the case whether this was inevitable accident or the act of God alone. Look at all the evidence, look at the evidence of what was done and what was omitted to be done on the part of the defendant. If you find that plaintiffs' dock was damaged by the action of defendant's vessel the burden of proof is upon the defendant to prove that such action causing the damage was the result of inevitable accident. And if you find that the plaintiffs' dock was damaged by the defendant's vessel through the negligence of its captain or crew your verdict will be for the plaintiffs and you will assess the amount of damage done to the dock by the vessel. 879

The Court instructs you that if you shall determine from the evidence that the master and

crew of the Steamer Reynolds endeavored by every means consistent with due care and caution and a proper display of nautical skill to move said steamer from said plaintiffs' dock at, before or after the discharge of the goods, there can be had
880 no recovery.

I have already said to you that if this defendant was not negligent that the plaintiffs cannot recover. You are to determine from the evidence whether the defendant was negligent and I ask your attention to all of the evidence upon that point.

I am requested on the part of the defendant to give you the following in charge:

The Court instructs you that where inevitable accident is shown the loss must remain where it falls, on the principle that no one should be held
881 to be in fault from results from causes over which human agency can exercise no control.

The Court instructs you that if performance of a duty imposed by law is prevented by the act of God no liability attaches for damages resulting immediately therefrom.

I ask your attention to all of the evidence that has been given to you. What was done? How was the ship saved? Was it by tying it to that dock with lines and remaining there with a determination to remain there? Was it possible
882 that it should be moved? Was there any negligence on the part of the master of the vessel? Take all the facts into consideration.

You are the exclusive judges of the facts in this case. The facts are given to you by the

evidence in the case and upon your recollection of those facts you must base your verdict.

You are also judges of the credibility of the witnesses and the weight of their testimony. You are to determine which of the witnesses you will give credit to and which you will not. 883

If you find a verdict for the plaintiffs your verdict will be: We the jury in the above entitled action find a verdict in favor of the plaintiffs and assess their damages at the sum of blank dollars.

If you find a verdict for the defendant your verdict will be: We the jury in the above entitled action find a verdict in favor of the defendant.

Which ever of these blanks expresses your finding in the case you will use, have it signed by your foreman and if court is in session you will come into court and deliver your verdict in open court; if court should not be in session when you have agreed upon your verdict you will seal up your verdict, deliver it to your foreman and all come with your foreman into court at the next session of the Court: 884

Mr. Spencer: I desire to note an exception to the refusal of the Court to charge defendant's request number 1. 885

I desire to note an exception to the refusal of the Court to charge defendant's request number 2.

I desire to note an exception to the refusal of the Court to charge defendant's request number 4.

I desire to note an exception to the refusal of the Court to charge defendant's request number 5.

I desire to note an exception to the refusal of the Court to charge defendant's request number 6.

I desire to note an exception to the refusal of the Court to charge defendant's request number 7.

886 I desire to note an exception to the refusal of the Court to charge defendant's request number 9.

I desire to note an exception to the refusal of the Court to charge defendant's request number 10.

I desire to note an exception to the refusal of the Court to charge defendant's request number 11.

I desire to note an exception to the refusal of the Court to charge defendant's request number 13.

I desire to note an exception to the refusal of the Court to charge defendant's request number 14.

887 Defendant also excepts to the charge of the Court to the effect that on delivery of the goods to the City dock all relations of steamer and dock people ceased.

Defendant also excepts to the charge of the Court that the steamer had no legal right to remain at the dock after the discharge of the cargo.

Defendant also excepts to the charge of the Court wherein the Court said, the City dock people had no duty to perform toward the steamer.

888 Defendant excepts to the charge of the Court wherein the Court said that the defendant had no right at the expense of the plaintiffs—that if defendant's vessel was saved at the expense of injury to the dock the defendant would be liable.

CERTIFICATE OF SETTLED CASE.

889

I hereby certify that the foregoing is a correct statement of the proceedings had on the trial of the above entitled cause and of the rulings of the Court and exceptions of council including all the evidence taken at the trial, the charge of the Court and exceptions taken thereto, the requests to charge and the rulings of the Court and the exceptions thereto, and that the foregoing "case" is hereby settled and allowed and directed to be filed as a part of the records of this cause. Errors hereafter found may be corrected on application of either party. Original exhibits may be certified upon request of either party.

890

March 20th, 1909.

J. D. ENSIGN,
Judge.

VERDICT.

Title omitted.

We, the jury, in the above entitled cause, find a verdict in favor of the plaintiffs, and assess their damages at the sum of five hundred dollars and no cents. (\$500.00).

891

(Signed) E. D. BARKER,
Foreman.

Dated Duluth, Minn., this 17th day of September,
1908.

MOTION FOR JUDGMENT OR NEW TRIAL.

892 Title omitted.

Now comes the said defendant and upon the "case" settled by the Court upon the 20th day of March, 1909, and upon all the records and files in said cause, moves for judgment to be entered in favor of the defendant, notwithstanding the verdict of the jury rendered in said action.

If the Court refuses to grant defendant's motion for judgment notwithstanding the verdict, then the defendant moves that the verdict rendered in said action be set aside and vacated and a new trial granted for the following causes:

893 First. That the verdict is not justified by the evidence and is contrary to law.

Second. For errors in law occurring at the trial and excepted to by the defendant.

March 20th, 1909.

H. R. SPENCER,
Attorney for Defendant.

894

ORDER DENYING MOTION.

895

Title omitted.

The Court having heard and considered defendant's motion for judgment notwithstanding the verdict in the above entitled action, it is hereby ordered,

First, That said motion be and the same is hereby in all things denied.

Second, The Court having duly heard and considered defendant's motion for a new trial in the above entitled cause, it is ordered that said motion be and the same is hereby in all things denied.

896

By the Court.

May 4th, 1909.

J. D. ENSIGN,
Judge.

NOTICE OF APPEAL.

Title omitted.

897

To the above named plaintiffs, Alford and Hunt, their attorneys, and J. P. Johnson, clerk of the above named Court:

Please take notice that the above named defendants appeal to the Supreme Court of the State of Minnesota from the order of the above named

District Court filed in the above entitled action upon the 5th day of May, 1909, wherein the Court denied the defendant's motion for judgment in said action, notwithstanding the verdict, and wherein the Court denied defendant's motion for
898 a new trial, and from the whole of said order.

May 24th, 1909.

H. R. SPENCER,
Attorney for Defendant.

Due service of the within notice admitted this 27th day of May, 1909.

ALFORD & HUNT,
Attorneys for Plaintiffs.

J. P. JOHNSON,
Clerk.

899

By V. A. DASH,
Deputy.

STIPULATION.

Title omitted.

900 It is hereby stipulated by and between counsel for plaintiffs and counsel for defendant in the matter of the appeal of the defendant in the above entitled cause, that an appeal bond for costs and a supersedeas bond is hereby waived, and the Court may enter its order staying execution therein

pending an appeal to the Supreme Court of the
State of Minnesota.

ALFORD & HUNT,
Attorneys for Plaintiffs.

901

H. R. SPENCER,
Attorneys for Defendant.

On filing the above stipulation, it is hereby
ordered that execution is the above entitled cause
be stayed until further order of this Court.

HOMER B. DIBELL,
Judge.

902

Hand-drawn map of the Lake Superior coastline near Duluth, Minnesota. The map shows the shoreline with various docks, slips, and landmarks. Key features include:

- Water Bodies:** Lake Superior (top), Duluth, Minn. (left), Munich, Pa. (right).
- Canal:** A narrow waterway labeled "Canal" runs along the shore.
- Docks and Slips:**
 - Lake Ave slip
 - K.P. Dock
 - N.P. slip
 - Bureau
 - M.A. or K. or W. slip
 - Boat
 - N.P. slip
 - K.P. Dock
 - Munich, Pa.
 - City Dock
 - Lime Run slip
 - Duluth
- Landmarks:**
 - St. Ignace (marked with a cross)
 - St. Mary's (marked with a cross)
 - St. Joseph's (marked with a cross)
 - St. Ann's (marked with a cross)
 - St. Francis (marked with a cross)
 - St. Vincent (marked with a cross)
 - St. Elizabeth (marked with a cross)
 - St. Anthony (marked with a cross)
 - St. Charles (marked with a cross)
 - St. John (marked with a cross)
 - St. Peter (marked with a cross)
 - St. Paul (marked with a cross)
 - St. Andrew (marked with a cross)
 - St. George (marked with a cross)
 - St. Mark (marked with a cross)
 - St. Luke (marked with a cross)
 - St. Philip (marked with a cross)
 - St. James (marked with a cross)
 - St. Matthew (marked with a cross)
 - St. Thomas (marked with a cross)
 - St. Peter (marked with a cross)
 - St. Paul (marked with a cross)
 - St. Andrew (marked with a cross)
 - St. George (marked with a cross)
 - St. Mark (marked with a cross)
 - St. Luke (marked with a cross)
 - St. Philip (marked with a cross)
 - St. James (marked with a cross)
 - St. Matthew (marked with a cross)
 - St. Thomas (marked with a cross)
- Compass Rose:** Located in the upper left, showing North (N), South (S), East (E), and West (W).

17

1

A hand-drawn map of a lake area. The lake is represented by several horizontal lines. On the left side, there is a vertical line labeled 'Lakes Ave slip'. On the right side, there is a vertical line labeled 'Lan an'. In the center of the lake, there is a small island or point labeled 'Lan an'. Above the lake, there is a small sketch of a boat with an arrow pointing towards it, and some other markings.

N. P. Dorek

A.P. Singh

Back.

MAV 040421-514

over

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mod JN

July 28

omaha, Neb

On the day,

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