BRITISH COLUMBIA ADMIRALTY DISTRICT

1955
Oct. 12

BETWEEN:

WILLIAM ROBERTSON .....PLAINTIFF;

AND

THE OWNERS OF THE SHIP *MAPLE PRINCE* and OLAF NELSON .....} DEFENDANTS.

Shipping—Costs of application for limitation of liability.
Held: That costs of an application for limitation of liability follow the event.

MOTION for costs.

The motion was heard before the Honourable Mr. Justice Sidney Smith, District Judge in Admiralty for the British Columbia Admiralty District, at Vancouver.

C. C. I. Merritt for plaintiff.

W. D. C. Tuck for defendant.

SIDNEY SMITH D.J.A. now (October 12, 1955) delivered the following judgment:

In this case I found the owners of the defendant ship *Maple Prince* responsible in damages to the plaintiff and upon subsequent argument decided that they were entitled to limit their liability under the provisions of the Canada Shipping Act. The present application concerns the costs of the "limitation" argument.

Section 131 of the Admiralty Rules reads:

In general costs shall follow the event; but the Judge may in any case make such order as to the costs as to him shall seem fit.

The "event" here is that the defendants have succeeded on the issue of limitation of liability. Is there any reason why I should think "fit" to deprive them of costs?

There seem to be no Canadian decisions expressly in point but the plaintiff directs me to this statement in Roscoe's Admiralty Practice, 5th Ed. p. 249:

The costs in actions of limitation of liability are in the discretion of the Court, but it is an invariable rule of practice for the Court to exercise its discretion by condemning the plaintiffs in the costs of the proceedings

1955

ROBERTSON
v.
Maple Prince et al.

Smith D.J.A.

other than costs incurred by reason of the defendants having raised unreasonably issues on which they have failed, or costs occasioned by a dispute between rival claimants to the fund in Court.

Marsden, Mayers and other text-book writers are to the same effect and are based on the same authorities. The passage refers to subsequent actions brought by ship owners to limit their liability. Here the issue was raised by counterclaim, so that the defendant owners become plaintiffs by counterclaim. *The Sonny Boy* (1).

I reserve the statement for future consideration. Here the circumstances preclude the application of the rule. I said in the concluding words of my judgment on "limitation of liability":

> There is no submission that the owners of the tug contributed to the collision by their "actual fault or privity". Their servants were responsible.

I remain of this opinion. I say nothing about the owners of the barges. They were not parties to the suit. But, even had they been so, and could be carried into this controversy, I think the improper placing of the white light was negligence of the servants, not "fault or privity" of the owners.

Defendants will have the costs of the argument and this application.

Judgment accordingly.