ONTARIO ADMIRALTY DISTRICT

1961
April 10, 11
12, 13

1962
July 26

BETWEEN:

CANADIAN BRINE LIMITED .....PLAINTIFF;

AND

THE SHIP *SCOTT MISENER* AND HER OWNERS ..... } DEFENDANT.

Shipping—Damage to pipeline caused by negligence of defendant ship—Interest allowed as part of damages.

The action is brought to recover damages suffered by the plaintiff which serviced, repaired and maintained a portion of a pipeline running from Windsor, Ontario to Detroit, Michigan under the Detroit River. The pipeline was damaged by one of the flukes of an anchor of the defendant ship. The defendants admitted that the anchor fouled a portion of the pipeline in the vicinity of the place of anchorage but contend that such fouling was without negligence and that the ship was forced to anchor where it did due to weather conditions and the visibility at the time and also that it was necessary to use both bow and stern anchors due to a heavy down current and ice conditions. The plaintiff pleads negligence, trespass and nuisance.

The Court found that the captain of the defendant ship anchored it without any care or regard to any signs which might be available to him which would indicate that he was anchoring in an area where he might do serious damage, and without regard to the rights of others in that area. It was also negligence on the part of the officers of the defendant ship to direct that the anchor be raised and lowered until the obstruction which it had picked up fell off.

Held: That the plaintiff is entitled to recover the cost of replacing the pipeline but not that incurred by steps taken to anchor it securely to the bottom of the river by means of concrete weights.

2. That there is a discretion in a Court of Admiralty to award interest whether the rights dealt with arose *ex contractu* or *ex delicto* and such interest is not granted as something apart from the damages but as an integral part of them and the negligence exhibited by the master and officers of the defendant ship is so gross in its character to warrant the inclusion of interest as part of the damages to which the plaintiff is entitled.

ACTION by plaintiff to recover from defendants the cost of repairing a pipeline under the Detroit River alleged to have been damaged through negligence of the master and officers of defendant ship.

The action was tried before the Honourable Mr. Justice Wells, District Judge in Admiralty for the Ontario Admiralty District, at Toronto.

Peter Wright, Q.C. and *A. J. Stone* for plaintiff.

1962

CANADIAN BRINE LTD. v. THE SHIP *Scott Misener* AND HER OWNERS

F. O. Gerity, Q.C. and *R. Fraser* for defendants.

The facts and questions of law raised are stated in the reasons for judgment.

WELLS, D.J.A. now (July 26, 1962) delivered the following judgment:

This action arises out of a mishap to a pipeline under the waters of the Detroit River in the vicinity of the City of Windsor running from the plant of the plaintiff to a plant on the Michigan side of the river under the City of Detroit. Under an agreement which was proved before me the plaintiff undertook with another company, American Brine Inc., to service, repair and maintain the American portion of this pipeline and apparently the plaintiff was also either the owner or in possession of the various appurtenances belonging to the pipeline on both sides of the International boundary.

On the morning of December 12, 1958 the defendant ship was anchored in the Detroit River in the vicinity of the pipeline and on attempting to raise its anchor it became clear that one of the flukes of the anchor had in some fashion come in contact with the pipeline and had caught it. In the result by raising and lowering the anchor to free it from the pipeline the line was broken and fell to the river bed of the Detroit River, with the result that very heavy damages were suffered by the plaintiff.

The defendants' chief defence to this claim is that the defendant ship anchored where she did by reason of necessity owing to weather conditions and the visibility and it was necessary to use both bow and stern anchors owing to a heavy down current and ice conditions. The defendants admit that the anchor of the *Scott Misener* fouled a portion of the pipeline cable in the vicinity of the place of anchorage but says that this fouling was without negligence on its part. The plaintiff pleads negligence, trespass and nuisance and in the result claims very heavy damages.

In the pleadings it is not entirely clear whether the defendant ship was anchored within the territorial waters of Canada or those of the United States at the time the damage to the pipeline occurred. In paragraph 5 of the statement of defence it is pleaded the plaintiff had no title, right or license of occupation so as to maintain an action

in trespass. The problems raised by this defence are in my opinion, amply answered by the decision of the Court of Appeal in the case of *The Tolton*[1].

The pipeline in question was built under authorization from the American and Canadian Governments after, in the United States at least, public notice had been given of the intention to construct it. The permits covered two pipelines and what is called a recording cable. These were to be buried ten feet below the existing river bed. The purpose of the pipeline was to transmit saline solution or brine from certain salt mines on the Canadian side of the river.

It would appear from the evidence of one Wakefield, who had charge of the construction of this pipeline, that it was laid according to the requirements I have mentioned. He appears to have been a man of great practical experience and according to his evidence, the job was completed according to the permits with a minimum ten foot covering. I have no reason to doubt that evidence. According to his opinion, at the time the line was pulled up out of the water by the fluke of the anchor of the *Scott Misener* the ten foot coverage of silt had not had time to solidify and from the evidence at large the probability would appear to be that because of this the anchor might very well have penetrated down to where the pipeline actually was and became entangled with the pipe itself.

The plaintiff in presenting its case, filed a number of notices which were issued by the marine authorities in both Canada and the United States as to the position of this pipeline. In so far as the Canadian information to mariners was concerned, Mr. Barrick was called and stated that he was the District Marine Agent of the Department of Transport, living at Prescott, Ontario. The area of which he was in charge covered most of Southern Ontario from Beauharnois on the east to Sarnia on the west. He issued Exhibit 21 which was a notice to shipping numbered 125 and was issued on December 19, 1957 which advised that floating equipment was working in the district between the Canadian Brine Co. plant, Ojibway and the Solway Plant on Zug Island laying a pipeline. Masters were requested to reduce speed and exercise caution. He stated that this notice, and a number of others of the same kind, an example of which from United States may be found in Exhibits 17

[1] [1946] P. 135.

1962

CANADIAN BRINE LTD. v. THE SHIP *Scott Misener* AND HER OWNERS

Wells, D.J.A.

and 20, were mimeographed and distributed by mail to all the principal steamship companies. There was no evidence produced which would show that this information in these notices if it was received by the owners of the *Scott Misener*, was ever communicated to the Captain or Third Mate who testified on behalf of the defendants. There was evidence, however, that it in all probability reached the owners of the *Scott Misener* and whether it was distributed or not I cannot say. If it was received by the owners there was a duty on the owners to communicate it to the officers and Masters of the ships that were navigating past the point where this pipeline was laid. Failure to disclose the existence of such a hazard as the pipeline in my view places a very heavy burden on the ship owners. The extent of that burden may be gauged and measured by the reasons of the House of Lords in the case of *The Norman*[1] to which I was referred.

Captain Rafuse, who was in charge of the *Scott Misener* at the time of this mishap, testified that he knew nothing about the pipeline until afterwards. In the year 1958 he had made some 41 trips up and down the Detroit River in the *Scott Misener* but despite two very large and legible signs, one on the American side of the river and one on the Canadian side, he apparently was not aware of the location of the pipeline in question nor did he know anything about it. This I do not believe. On the night that he anchored, visibility was apparently bad; it was hazy, some mist, and snow at dark. Nevertheless, it would appear from the evidence that both these signs were lighted and I can only conclude from Captain Rafuse's evidence that he anchored his ship without any care or regard to any signs which might be available to him which would indicate that he was anchoring in an area where he might do serious damage. His point of view apparently was that he had to clear the mouth of the Rouge River which runs into the Detroit River on the American side and that nothing else mattered. I am not at all satisfied that he had to anchor where he did or that the hazards of proper navigation made it necessary. Nor am I satisfied that he had not heard of the pipeline. His evidence was that at the time of this accident it was the third mate's responsibility to check the notices to mariners and indicate any changes shown by them on the chart. Exhibit 9 which is Chart 41 of the United States Lake Survey Edition of

[1] [1960] 1 Lloyds Rep. 7.

August, 1956, was a chart which was in the pilot house of the *Scott Misener* at the time that these events occurred. On it there is a very accurate line indicating the position of the pipeline drawn from the Detroit plant of the Canadian Salt Company with the word "pipeline" identifying it. Rafuse's evidence was that this was made the day after the accident after his ship got clear of the river and well into Lake Erie. He further stated it was made during one of the third mate's watches on December 12. I am very frank to say that I have very great doubt as to the truthfulness of the evidence of Rafuse in this matter. There is a strong probability that the marking of the chart indicating the pipeline in question, had been made at some time prior to the events with which we are concerned in this action. In cross-examination he was very unsatisfactory. He was asked if he had received the notices to the mariners in 1957 and 1958. He said that he might have missed some. He was shown a number of these notices and he said he might have seen them but could not recall them. I can only assume from the course which his answers took, that he was really indifferent to information such as that concerning the pipeline and at the time that he anchored he did so regardless of its location not from pure necessity but from indifference to anyone else's rights in the area in which he was anchoring. He was only concerned in my opinion, with his own convenience. At the time the actual accident occurred he was apparently advised over the public address system of the ship by the third mate who was supervising the raising of the stern anchor, that it had pulled up a cable. In point of fact it is quite clear from Holliday's and other evidence that what the anchor had pulled up was a portion of the pipeline. That should have been perfectly obvious to the mate. His instructions were to drop the anchor and pull it up again and see if the so-called cable would fall off. On cross-examination he was asked about this evidence and he again became rather vague and said he could not recall exactly what the third mate told him. He then said he thought he used the term "cable" but shortly after the accident after the ship according to his story, had got out to Lake Erie, he or the third mate wrote the word "pipeline" to indicate the position of the line and where it had occurred. Even accepting this somewhat sorry explanation, which I do not, the presence of the word "pipeline" on the

1962

CANADIAN BRINE LTD. v. THE SHIP *Scott Misener* AND HER OWNERS

Wells, D.J.A.

chart is very eloquent in explaining what both Captain Rafuse and Glover, the third mate, thought their anchor had fouled.

One James Holliday was called on behalf of the plaintiff. He was the foreman for the salt company in their Windsor yard and the wells foreman in Windsor. He related how earlier in the morning of the 12th he saw the *Scott Misener* anchored off the power house of the plant and at that time he said no other vessels were in the vicinity; he related how earlier in the morning he had gone to the power house to relieve the man on duty and somewhere between 10.00 and 10.15 he heard a loud bang or clang. Shortly afterwards there was a second one and he went down to the basement where the various instruments governing the flow in the pipelines were situate and while he was there there was a third bang or clang and the recording meter measuring the flow to Detroit suddenly showed a large increased flow. He also related how when he first came on duty around 7.30 a.m. he had checked the signs on the Canadian side and even as late as 8.30 a.m. the lights were still on. The *Scott Misener* was at this time according to his estimate, approximately in the centre of the river.

Another employee of the plaintiff company, one Garvey, was called and he related having seen the *Scott Misener* anchored in the river and he could see the anchor chain but at the time he was looking, no anchor. He apparently was quite convinced at the time that the stern anchor of the ship had caught the pipe line. He also places the time of the mishap at around 10.15 and he later described the *Scott Misener's* actions in sailing away.

Another employee of the plaintiff company, one Gwilt, was also called. He apparently thought there was good visibility by 10 o'clock that morning and he also saw the stern anchor of the *Scott Misener* being pulled up and lowered. The evidence of these men coincided in part with that of captain Rafuse in that they saw the *Scott Misener* anchored in the river. They saw the stern anchor of the ship pulled up and down a number of times just prior to the time that the pipeline was broken. Some of them saw the *Scott Misener* sail down the river. They all appeared to agree that the accident happened somewhere between 10 to 10.15 a.m. It is I think, very significant as I have already said, that the witness Gwilt remembered that there was

good visibility as far as the other shore of the river from the Canadian side. There were, of course, two large signs—one on the American side of the river and one on the Canadian side warning of the presence of the pipeline and the danger attached thereto. About the time the *Scott Misener* was prepared to ship its stern anchor all the officers had to do was look out and they would have seen the signs which they admitted seeing a few minutes later. If these signs were not as seen by the Captain and the third mate of the *Scott Misener* and if at that time they did not realize the dangerous location in which they had chosen to anchor, in my opinion there was very little excuse for not doing so and they should have realized it. Once the fluke of the anchor broke the water with either the pipeline or cable attached to it, it should have been more than ever apparent that they were in trouble and to me it seems negligence amounting to almost complete recklessness to have directed the anchor be pulled up and down until the obstruction disappeared. For that action the Commanding Officers of the *Scott Misener* must take full responsibility.

Glover, the third mate of the *Scott Misener* also testified to considerable fog on the night before the accident but said that from 8 a.m. on, the river was safe to navigate. He was directly in charge of the hoisting of the stern anchor. He also said that one fluke was caught in a cable. He apparently advised the Captain and was told to lower the anchor to see if what was on it would come off. He apparently pulled it up and lowered it three times before it came up clear. According to his evidence he did not notice the sign about the pipeline until after this. Again, I very much doubt the truth of the evidence. In my view, no reliance should be placed on the evidence of either Rafuse or Glover.

To recapitulate:— In my opinion, from 8 o'clock on the morning of 12th December only, the notices indicating the position of the pipeline were clearly in full view of the officers of the *Scott Misener*. If they had not realized it earlier because of the weather conditions the night before at that time they should have realized it then. If they had not known of the approximate location of the pipeline it was because they paid no attention to their instructions in that respect and if the instructions in regard to the position of the pipeline were not passed on to them by the

1962

CANADIAN BRINE LTD. v. THE SHIP *Scott Misener* AND HER OWNERS

Wells, D.J.A.

owners of the *Scott Misener,* that in my opinion does not relieve the shipping company because there was clearly a duty on it to transmit information as to the hazard of the pipeline being present at the bottom of the river. Finally, when the fluke of the anchor did bring the pipeline up it should have been perfectly apparent to everyone that they were not dealing with a cable but also with a part of the pipeline. Despite that, the Master of the *Scott Misener* directed that the anchor be raised and lowered until the obstruction fell off and in doing so he undoubtedly fractured the pipeline. This action of his I can only characterize as the reckless disregard of the rights of other users of the river amounting, in my opinion, to negligence of a very gross character.

In discussing his actions, reference may be made to the judgment of Earle C.J. in the old case of *Telegraph Company v. Dickson*[1]. While he was dealing with the subject of pleadings his observations in the reasons he gave are very pertinent to the issues with which I am dealing. Captain Rafuse's action in then sailing off I can only characterize as evidence of a reckless disregard of the rights of others.

Under the circumstances the plaintiff should succeed. The plaintiff's testimony is that the balance which it should receive for the replace of the pipeline is $386,472.06. When the pipeline was replaced, steps were taken to anchor it securely to the bottom of the river by means of concrete weights and quite obviously what money that the plaintiff chose to spend in this way by way of replacement is not chargeable to the defendants and is not the direct result of the negligence of the Captain and other officers of the *Scott Misener.* The plaintiff should have judgment for this sum.

In argument, counsel for the plaintiff also argued that they were entitled to interest on the cost of replacement of the pipeline limited as I have indicated. Counsel for the defendants argued that in Admiralty cases interest has not been allowed save in collision cases and then only as an allowance forming part of the damages for loss of use. The authorities, however, do not appear to confirm this submission. In the Exchequer Court of Canada in the case of *The Ship Pacifico v. Winslow Marine Ry. and Shipbuilding Co.*[1], Maclean J. dealt with repairs done to a foreign vessel in a

[1] 15 Common Bench Reports 758 at 775, 777.
[2] [1925] Ex. C.R. 32 at 35.

foreign port and where in the circumstances of the case there was a contract to do certain repairs to a vessel and an agreement to pay within thirty days from completion, the Court in giving judgment in the exercise of its equitable jurisdiction allowed interest on such amount from the date when the payment thereof should have been made as agreed. At p. 36 Maclean J. said:

On March 22, the plaintiff rendered an account to the *Pacifico* and owners for the materials supplied and the work performed, in the sum of $12,346.43, upon which the defendant paid on account, the sum of $7,500, on May 15, 1923, leaving a balance of $4,846.43. In the formal judgment the learned trial judge allowed interest at the rate of 5 per cent from April 5, 1923, such date being approximately thirty days subsequent to the completion of the work. The written reasons for judgment of the learned trial judge, is devoted entirely to the question as to whether the plaintiff was entitled to interest, and he there discusses the question quite exhaustively.

The defendant's counsel contended that the rule in force here as to interest, is the same as in England, and that there the rule of the Admiralty Court, since under the Judicature Act it became a division of the High Court of Justice, is the same as in the High Court of Justice, and that there it was not the practice prior to the Judicature Act or since, and both before and since the passing of the statute, 3-4 Wm. 4th, c. 42, to allow interest in cases similar to the one under consideration. He referred to *London, Chatham and Dover Railway v. South Eastern Railway* [1893] 63 L.J. Ch. 93; [1893] A.C. 429, as conclusive of the matter, though I understood him to admit that if this cause had been tried before the Judicature Act, and before the transfer of the Admiralty jurisdiction to the High Court of Justice, that the doctrine of the Admiralty Court as to interest might be applied in this case.

I cannot find any authority for the submission that the Judicature Act has changed the jurisprudence long established by the Court of Admiralty. The Judicature Acts of 1873 and 1875 amalgamated the English Courts and transferred to the High Court of Justice all the jurisdiction which had been exercised by the different courts, so that every judge of the High Court exercises every kind of jurisdiction possessed by that court, but these changes neither conferred new Admiralty jurisdiction, nor did it take away from that jurisdiction. It does not appear to me that the Judicature Act by intendment or otherwise, changed the substantive law as administered in Admiralty Courts, and in no way affected the powers of such courts, and that they retain all the powers they had before that Act. The point in controversy is one of substantive law I think, and not of practice or rule.

This was a case in admiralty where the right to damages arose *ex contractu*. Discussing the matter generally reference may also be made to the decision in the case of *The Joannis Vatis* (No. 2)[1]. The President Sir Henry Duke, in giving judgment made these observations at pp. 223, 224:

I next proceed to determine what sums are due and unpaid under the plaintiffs' judgment and what process of execution is available to the plaintiffs. The claim of the plaintiffs for interest on their judgment debt, as it

[1] [1922] P. 213.

1962

CANADIAN BRINE LTD. v. THE SHIP *Scott Misener* AND HER OWNERS

Wells, D.J.A.

was pressed, is for 5 per cent. On £100,000 since the date of the judgment in the Court of Apepal, which date it bears. Under the ordinary practice of the High Court a judgment debt carries interest from its date at 4 per cent. (1 & 2 Vict. c. 110, s. 17; R.S.C., Order XLII., r. 16). That the plaintiffs' damages had to be assessed before the judgment could be completed by the Court's confirmation of the assessment might—but I do not pause to determine whether it would—have been immaterial in an action in the King's Bench Division. Here two special matters are to be considered. In this jurisdiction a rule exists with regard to interest upon damages which is well established and proper to be taken into account. The registrar and merchants include in their computation of damage by collision interest upon the items of claim from the time of accrual of the damage until the date of the assessment. The practice was discussed and confirmed in *The Kong Magnus* [1891] P. 223, and is in conformity with what was said long since by Lord Stowell in *The Dundee* (1827) 2 Hagg. Adm. 137, 143. The sum so calculated is given not as interest on a debt but as part of the damages. During recent years interest as damages has been reckoned in this way at 5 per cent., which perhaps explains the plaintiffs' demand of a 5 per cent. rate in their claim. Not only is this practice material for consideration as to the date from which interest can be held to run. It is necessary to remember also that—as the plaintiffs concede—the damages payable by the defendants are limited to £100,000. Interest upon items of damage down to the assessment of the loss would have been recovered out of this amount if the total claims had not exceeded £100,000. Really the claim is for damages. There was no allegation of default of payment by the defendants of the £100,000 after that sum had been found to be due, and I have come to the conclusion that the only time in respect of which interest can properly be awarded is the period between the judgment of the Court of Appeal, February 17, 1919, and the judgment of the House of Lords, December 19, 1919. The defendants, by their appeal to the House of Lords, postponed the settlement of the claims of the plaintiffs by 309 days, and they must pay interest on £100,000 at 4 per cent. for that time.

The matter has been more recently discussed in the case of *The Berwickshire*[1]. It is true that this is a case of a collision. The judgment is summarized in the headnote in the following words:

Held, that, as the true principle underlying the award of interest in Admiralty was that, in every pound's worth of damage in respect of which interest was ultimately awarded, the interest accrued potentially from the moment when the damage was suffered until the liability was adjudged and the amount finally ascertained, the plaintiffs were entitled to interest from the date of the collision until the date of the registrar's award.

Lord Merriman in giving judgment at p. 208 said:

As I have already indicated, there can be no doubt that the principle of including in the damages for a collision, at the discretion of the judge, interest on the amount recovered, at a rate, for a period, and whether in respect of the whole or part of the amount recovered, all of which matters are also respectively at the discretion of the judge, was firmly embodied in the Admiralty jurisdiction at a time when the right to award interest by way of damages at common law depended, speaking generally, on the

[1] [1950] P. 204

Statute 3 & 4, Wm. IV, c. 42, ss. 28 and 29, or on the express terms of a contract, or on those imported into mercantile contracts by the custom of merchants, as, for example, on bills of exchange or promissory notes; see the notes to the common indebitatus count for interest, in Bullen and Leake's Precedents of Pleadings (3rd ed.), pp. 51-52.

As to the Admiralty practice, it is unnecessary to multiply authorities. I need only refer to *The Hebe* (1847) 5 Notes of Cases 176, 182, *The Gazelle* (1844) 2 Wm. Rob. 279, 281, per Dr. Lushington in each case; *The Kong Magnus* [1891] P. 223, 226, per Sir Charles Butt; and *The Joannis Vatis* (No. 2) [1922] P. 213, 223, per Sir Henry Duke P. There is also a very clear statement of the principle by Sir Robert Phillimore in *The Northumbria* (1869) L.R. 3 A. & E. 6, 10.

Distinguishing the authorities cited in support of the proposition that the right to award damages depended solely on the Statute 3 & 4 Wm. IV, c. 42, and the proposition that the Admiralty practice was erroneous as being at variance with the common law both before and since the passing of the statute, Sir Robert Phillimore said (1869) L.R. 3 A. & E. 6, 10: "But it appears to me quite a sufficient answer to these authorities to say, that the Admiralty, in the exercise of an equitable jurisdiction, has proceeded upon another and a different principle from that on which the common law authorities appear to be founded. The principle adopted by the Admiralty Court has been that of the civil law, that interest was always due to the obligee when payment was not made, ex mora of the obligor; and that, whether the obligation arose ex contractu or ex delicto."

Discussing the period from which the interest is to be reckoned, Sir Robert Phillimore Ibid. 11, 12 pointed out that the court should be guided by the principle of restituto in integrum, and he referred to the argument that the statutes limiting liability had adversely affected the established principles of the court as follows Ibid. 12: "The question is, how are these principles affected by the statutes which limit the liability of the wrongdoer. In these statutes the legislature introduced a new principle, the object of which was to give some protection to the owner against the wrongdoing of his servant, the master of the vessel. They preserved the principle of restitutio in integrum in cases where, with his actual fault and privity, the damage had been inflicted on the sufferer; but with this exception, they limited his liability to a certain definite sum. In the latter case, therefore, this limited amount took the place of the restituto in integrum; but the principle still remains that the liability to this amount attaches from the time of the collision; and there seems no reason why interest should not accrue on the delay to pay that limited amount, as well as in the case where the amount is unlimited. Indeed, the equity of the thing is the other way, for to refuse this interest would be to diminish still further the natural right of the sufferer to full compensation for the injury which he has sustained. It is to be observed that the sufferer does not, where interest is awarded, obtain interest on the amount of his damage, but on the limited amount, or on his share of the limited amount to which the statute has restricted the liability of the wrongdoer. In the case of a vessel without cargo being sunk, it is clear that the interest would date from the time when the liability attached, that is, from the moment of the collision. Nor, when the case is examined, does it appear that a different rule ought to apply when the vessel carries cargo. Under the rule of restituto in integrum the cargo-carrying vessel did not obtain interest from the date of the collision, because she received it in the shape of freight at the port of delivery; but where the amount of the liability is limited, and

1962

CANADIAN BRINE LTD. v. THE SHIP *Scott Misener* AND HER OWNERS

Wells, D.J.A.

the sufferer does not receive full compensation, the reason which fixes the date of the probable arrival at the port of delivery as the date from which interest shall run does not apply."

It would seem under the authorities of these cases to be clearly established that there is a discretion in a Court of Admiralty to award interest whether the rights being dealt with arose *ex contractu* or *ex delicto*. It is interesting to note that it was Sir Robert Phillimore's judgment in *The Northumbria* case which was relied on by Martin L.J.A. in delivering judgment at trial in the *Winslow Marine Railway and Ship Building Company v. The Ship Pacifico*[1] case, the judgment of which in appeal I have already quoted. The trial judgment was, of course, expressly approved by Maclean J. on appeal. Now in the case at bar it is quite true that no special claim for interest was expressed in the statement of claim but as I understand the equitable jurisdiction vested in the Court of Admiralty it is quite clear interest is not granted as something apart from the damages but as an integral part of them. It is quite clear that the jurisdiction of the Admiralty Court in Canada is as wide as that vested in the Admiralty Division of the High Court in England and indeed sec. 18 of *The Admiralty Act* being ch. 1, R.S.C. 1952 makes that quite clear. It sets the matter out as follows:

> 18. (1) The jurisdiction of the Court on its Admiralty side extends to and shall be exercised in respect of all navigable waters, tidal and non-tidal, whether naturally navigable or artificially made so, and although such waters are within the body of a county or other judicial district, and, generally, such jurisdiction shall, subject to the provisions of this Act, be over the like places, persons, matters and things as the Admiralty jurisdiction now possessed by the High Court of Justice in England, whether existing by virtue of any statute or otherwise, and be exercised by the Court in like manner and to as full an extent as by such High Court.

It therefore becomes a question of whether this is a case in which the exercise of my discretion as to interest should be allowed. In the view I have of the evidence as a whole, the negligence exhibited by the Master and officers of the defendant ship is so gross in its character to warrant in my opinion, the inclusion of interest as part of the damages to which the plaintiffs are entitled.

The plaintiffs, therefore, should have judgment for their damages including interest from December 12, 1958 at the usual rate, i.e. five pre cent. While there was considerable

[1] [1924] Ex. C.R. 90.

evidence adduced at the trial as to the correctness of the figure claimed by the plaintiffs I would not go into any great detail as I deemed the more precise determination of the figure if it was objected to should be determined by way of reference. If the defendants are not satisfied to accept this amount that they then may at their own risk as to further costs, have reference to the Registrar of this Court to determine what the proper cost of the reconstruction of the pipeline properly chargeable to the defendants amounts to. Such intention should be indicated to the plaintiffs within thirty days from the date of this judgment, otherwise the plaintiffs are to have judgment for the sum claimed, interest and costs. If the defendants prefer to proceed with a reference the plaintiffs should have the costs of this action down to this judgment in any event and the costs of the reference I leave to the Registrar to whom the matter is referred.

Judgment accordingly.