

QUEBEC ADMIRALTY DISTRICT

BETWEEN :

CANADA STEAMSHIP LINES LIMITED.. PLAINTIFF;

v.

EMILE CHARLAND LIMITED ET AL. . . . DEFENDANTS.

*Shipping—Collision—Limitation of liability—Merchant Shipping Act—
Canada Shipping Act*

Plaintiff's vessel collided with the lock gates of the Lachine Canal permitting the water to rush through and damage property. Four actions were instituted against Plaintiff and it feared other actions. Plaintiff sued for limitation of liability under the Merchant Shipping Act, 57 & 58 Vict. Ch. 60. The Court found that the accident which occurred was due to the engineer misunderstanding a signal given from the bridge, and held, that the error of the engineer was a case of improper navigation, that the owners could not provide for such an event and that as the collision occurred without actual fault or privity of the owners they were entitled to judgment limiting their liability.

2. That as the Crown was not expressly mentioned in the Act, nor was the Act expressly made applicable to it, the responsibility to the Crown could not be limited by the Court.
3. That the question of limitation of liability was governed by the Merchant Shipping Act, 57 & 58 Vict., Ch. 60, and not by the Canada Shipping Act, since the Colonial Laws Validity Act, 28 & 29 Vict., Ch. 63, had not been abrogated by the British North America Act and the Statute of Westminster, 22 Geo. V, Ch. 4 has no retroactive effect.

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ACTION by plaintiff seeking limitation of its liability to several defendants resulting from a collision of plaintiff's steamship with lock gates of the Lachine Canal.

The action was tried before the Honourable Mr. Justice Demers, at Montreal.

R. C. Holden, K.C., for plaintiff.

J. Arthur Mathewson, K.C., and *A. L. Smith* for defendant Emile Charland Limited.

C. Gordon MacKinnon, K.C., for His Majesty the King.

The facts are stated in the reasons for judgment.

DEMERS L.J.A., now (January 17, 1933), delivered the following judgment:

Plaintiff is the registered owner of the *Rapids Prince*, a British vessel registered at Montreal. On the 2nd of August, 1931, the said vessel, while passing up through the Lachine Canal, collided with the upper gates of Lock No. 2; the said gates were broken away, and the water was so permitted to rush down, and damage to the locks and to property resulted therefrom.

Plaintiff alleges that said collision occurred without actual fault or privity of her owners, and that said losses were caused by reason of the improper navigation of the ship, and it prays that its liabilities should be limited, according to the Merchant Shipping Act of 1894, as extended by the Act of 1900, the latter statute including damages on land.

The contestation has raised one question of fact, two constitutional questions, and two questions of interpretation of statute.

I

The question of fact is this—it is proved that this accident occurred because the engineer misunderstood the signal of the Captain.

It is then a clear case of improper navigation of the ship. The owners could not evidently have provided for such an event.

The Court, having a clear and efficient cause, is not inclined to make conjectures, what would have happened if there had been on deck the lines required by the Canal Regulations. They would not probably have been

employed, seeing the admitted practice, and if employed, would they have prevented the accident? I do not believe it.

Lines are not intended to combat the engine but to keep the ship still. The accident occurred because of improper navigation. This is sure. The rest is conjecture which I consider proper to disregard. (*Canadian Pacific Railway Co. v. SS. Storstad et al*, 14 Aspinal M.C. 530.)

I may add that there were ample lines on the boat which could have been used if the canal authorities had enforced their by-laws.

I, therefore, arrive at the conclusion that the limitation should be allowed.

II

The next question we have to consider is the following: Is the Crown bound by these statutes of limitation, the Crown being not mentioned in any of them?

After looking at the authorities quoted by the Crown, I have come to the conclusion that the Crown is not bound. When the Crown comes in, it is a matter of grace.

I may add to those authorities, the following: (*Attorney-General for New South Wales v. Curator of Intestate Estates*) (1907) A.C. 519; *The Loredano* 1922, P. 209.

The Bankruptcy Acts are similarly for public good; they were on the same footing before 1883 *Rex v. Pixley* (Bunbury Reports, 202); since then, see *In re The Oriental Bank Corporation (No. 2)* 54 L.J. Ch. 327; here our Interpretation Act requires that the Crown should be *expressly* mentioned in the Statute.

Therefore, the responsibility to the Crown cannot be limited by the Court; if it comes to contribution, it is a matter of grace on its part.

Its plea should, therefore, be maintained, with costs, and its rights reserved.

III

Was this question of limitation governed by the Merchant Shipping Act or by the Canada Shipping Act?

The British North America Act of 1867 was a pact between the provinces sanctioned by the Imperial Government; it was never intended to limit the supreme power of the Imperial Government. (Todd, *Parliamentary Govern-*

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ment in the British Colonies, 2nd Ed., p. 240, 242, 243, 244; Lefroy, *Canada's Federal System*, p. 208, 214, 230.)

Up to the Statute of Westminster, 1931, such was the status of Canada. The Statute of Westminster is itself the best evidence of it.

The Colonial Laws Validity Act of 1865, 28 & 29 Vict., Ch. 63, has not been abrogated by the British North America Act. Whatever might have been our laws at the time of Confederation, there seems to be no doubt that the Imperial Government could legislate on similar matters for the Dominions, and that is what it did by the Merchant Shipping Act of 1894.

The Statute of 1865 is very formal:

Any Colonial law which is or shall be in any respect repugnant to the provision of any Act of Parliament extending to the colony to which such law may relate. . . . or having in the colony the force and effect of such Act, shall be read subject to such Act and shall, to the extent of such repugnancy but not otherwise, be and remain absolutely void and inoperative.

By Section 735, our Parliament could modify the Merchant Shipping Act 57 & 58 Vict., Ch. 60 (except as to the third part) in relation to ships registered in Canada, but "any such act or ordinance shall" not take effect until confirmed "by Her Majesty in Council, and after the approval of Her Majesty has been proclaimed."

These conditions never having been fulfilled, it seems to me that the conclusion is that our Statutes were of no effect.

It has been contended that the Statute of Westminster, 22 Geo. V, Ch. 4, has a retroactive effect in this case because it is a declaratory Act. This Statute has not that character.

Craies, *On Statute Law*, 3rd Edition, p. 59 and 90.

The Statute of Westminster has changed the status of the Dominions. It is a new law and it is a law for the future and a Statute has no retroactive effect as to existing rights where it can otherwise be given a reasonable interpretation. The doubt should always be in favour of the then existing rights.

Maxwell's *Interpretation of Statutes*, 6th Edition, p. 381 and 391.

The effect of Section 5 of that Statute in my opinion is that our shipping laws do not need now the approbation of His Majesty to be in force. If we had had only Sections 2 and 3 of the Statute of 1931, our Parliament would have

been obliged to re-adopt the Shipping Act of Canada as to the disposition repugnant to the Laws of England.

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IV

At first sight, it seemed to me that it was not, therefore, importance to decide if the Merchant Shipping Act, as amended in 1900, should be applied, instead of the Canada Shipping Act, since it has been represented to me that the Crown could elect to come in and take its part in the amount to be distributed if it so elected to do, and the question of the applicability of the Merchant Shipping Act, as amended in 1900, instead of our Canada Shipping Act being raised by all parties who did not want the Crown to be collocated on the amount of limitation, I should decide it.

Section 5 stating that the Statute of 1900 should be construed as one with the Merchant Shipping Act, 1894, it must then be construed as one Act. Craies, 3rd Edition, p. 126.

It is alleged that the Imperial Statute of 1900 has not been reproduced in our Statutes. I do not see that it was necessary.

V

Judgment will, therefore, be entered as follows:

That the Plaintiff is entitled to limit its liability to the sum of £8748/16.0 in respect of any loss and damage caused to property, whether on land or on water, whether fixed or movable, by reason of the collision of the *Rapids Prince* with the said lock No. 2 of Lachine Canal of the 2nd of August, 1931, reserving, however, the rights of His Majesty which cannot be effected without his consent, this being a matter of grace in its discretion.

The plaintiff shall give security in the form of valid surety bonds for the amount of the limited liability of £8748/16.0, together with interest from the date of the collision and the taxable costs incurred to date in the actions which have been instituted against the plaintiff in respect of this accident;

That the actions referred to in the Statement of Claim and any other action instituted or pending in this connection, shall be stayed and all other persons having claims

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are restrained from instituting or continuing proceedings against the plaintiff or against the *Rapids Prince*;

That three advertisements (as mentioned in paragraph (c) of the conclusions of the Statement of Claim) shall be published at intervals of not less than one week, in one English and one French newspaper published in Montreal, requiring all persons who have any just claims for loss or damage arising out of the said collision of the *Rapids Prince* with the lock gates, to appear and file them, in this action, within a delay of three months from the last publication of the advertisement, and that any claimants who do not file their claims within the said delay shall be excluded from sharing in the amount of the plaintiff's limited liability;

That the claims filed shall be referred to the Deputy District Registrar for assessment in accordance with paragraph (d) of the conclusions;

That plaintiff shall pay the costs of all contestations (except the costs of enquete).

Judgment accordingly.