
QUEBEC ADMIRALTY DISTRICT

1959
Nov. 27
1960
Jan. 13

BETWEEN:

ANNIE WEISS STERNBERG PLAINTIFF;

AND

HOME LINES INCORPORATED DEFENDANT.

Shipping—Action for damages for personal injuries to passenger—Jurisdiction—Admiralty Act, R.S.C. 1952, c. 1, s. 18(2).

The plaintiff sought to recover damages for injuries suffered by her while a passenger on board ship when an armchair in which she was seated in the ship's library overturned throwing her to the floor.

1960
 STERNBERG
 v.
 HORN LINES
 INC.

On a motion to set aside the writ for want of jurisdiction.

Held: That since the plaintiff's claim as alleged in her statement of claim must be that the damages claimed are damages done by the ship, that is damages of which the vessel was the active cause, and the Court could find no such allegation, the action must be dismissed.

MOTION to dismiss the plaintiff's action for want of jurisdiction.

The motion was heard before the Honourable Mr. Justice Arthur I. Smith, District Judge in Admiralty for the Quebec Admiralty District at Montreal.

Julian G. Gazdik for plaintiff.

Roland G. Chauvin for defendant.

A. I. SMITH, D.J.A. now (January 13, 1960) delivered the following judgment:

The court, seized of defendant's motion for the dismissal of plaintiff's action for want of jurisdiction, having heard the parties by their respective attorneys, examined the proceedings and deliberated:

Plaintiff by her action sues to recover damages which it is alleged she has suffered as the result of an accident which occurred on board the *S.S. Homeric* while she was a passenger on a voyage from Montreal to Southampton.

It is alleged that on or about October 16, 1957, she was seated in an armchair in the ship's library when the said armchair overturned throwing her to the floor and causing her several injuries.

The plaintiff's action is based upon the following allegations of fault and negligence:

3. That the overturning of the chair was due solely to the fault and negligence of the ship's captain and crew for whose acts the ship-owner is responsible in that:

- (a) They failed to attach firmly the chair on which the Plaintiff was seated, to the floor of the ship's library;
- (b) They failed and neglected to provide Plaintiff for safe accommodation and a safe place to stay on the ship;

1960
 STERNBERG
 v.
 HOME LINES
 INC.
 A. I. Smith
 D.J.A.

It is common ground that this Court has jurisdiction to hear and decide this case only if the damage complained of was "done by the ship". (S. 18(2) *Admiralty Act*, R.S.C. 1952, c. 1, s. 22 (iv) *Supreme Court of Judicature (Consolidation) Act, 1925*) (Imp. c. 49, s. 22).

It is well established that in order for damage to have been "done by the ship", within the meaning of the provisions above-quoted, the ship must have been the active cause or "the noxious instrument" of the damage. (*The Vera Cruz*¹; *The Theta*²).

The issue raised by the present motion must be decided solely on the basis and in the light of the allegations of plaintiff's statement of claim which, for the purposes of the motion, must be deemed to be admitted.

To give this Court jurisdiction the plaintiff's claim, as alleged in her statement of claim, must be that the damages claimed are damages done by the ship, that is damages of which the vessel was the active cause.

Applying this test to the plaintiff's statement of claim I find that there is no allegation that the ship or any part thereof did or brought about the plaintiff's alleged injury. The statement of claim is silent as to what caused the chair to overturn and it appears to me to be equally consistent with these allegations and just as probable that it was overturned as the result of some human intervention as it is that the ship or some part of the ship was the active agency which brought about the damage.

The Court in particular was referred by counsel for plaintiff to two cases, namely *Monks v. Arctic Prowler*³, and *Wyman v. The Duart Castle*⁴. Both of these cases accept the test, as to whether or not the Admiralty Court has jurisdiction, laid down in the cases of *The Theta* and *The Vera Cruz*. In each of the cases relied upon by plaintiff the learned Judge came to the conclusion that on the facts of that particular case it appeared that the damage was done by the ship. In my view, however, the holdings in these cases, based upon facts and circumstances which are different from those involved in the present case, do not

¹ (1884) 9 P.D. 96

³ (1953) 32 M.P.R. 220.

² [1894] P. 280.

⁴ (1899) 6 Can. Ex. C.R. 387.

apply since, in my view, it does not appear that the damage claimed for by plaintiff herein was damage of which the ship was the "active cause." *The Nederland*¹; *The Sneyd*²; *The Barge Neosho*³.

1960
 STERNBERG
 v.
 HOME LINES
 INC.
 A. I. Smith
 D.J.A.

I find therefore that the defendant's motion is well-founded.

Accordingly it is maintained and plaintiff's action is dismissed; the whole with costs against plaintiff.

Judgment accordingly.