BRITISH COLUMBIA ADMIRALTY DISTRICT

Vancouver 1964
Sept. 15-17
Oct. 9

BETWEEN:

ANGLO CANADIAN TIMBER PRODUCTS LTD. .....PLAINTIFF;

AND

GULF OF GEORGIA TOWING CO. LTD. and RAYMOND McCULLOUGH .....DEFENDANTS.

Shipping—Barge damaging wharf—Action by wharfinger against barge owner and master—Jurisdiction—Admiralty Act R.S.C. 1952, c. 1—Supreme Court of Judicature Act (U.K.) 1925, c. 49, s. 22(1)(a)(iv).

Plaintiff brought action against the owner and master of a tug boat alleging negligence by them in docking a barge at plaintiff's scow berth without notifying plaintiff that the barge had been damaged in a collision earlier in the same day, as a result of which the barge on being loaded took on water, listed to starboard, and crashed into plaintiff's scow berth, causing damage. The writ was headed "Action for damage by collision". Defendant master moved for dismissal of the action against him on the ground that the Exchequer Court had no jurisdiction.

Held, dismissing the motion, the claim was "for damage done by a ship" as provided by s. 22(1)(*a*)(iv) of the *Supreme Court of Judicature (Consolidation) Act U.K.* 1925, c. 49, which was adopted by s. 18(2) of the *Admiralty Act* R.S.C. 1952, c. 1. *The Zeta* [1893] A.C. 468, per Herschell L C. at 478 and 485 followed; *The Queen v. The Judge of the City of London Court* [1892] 1 Q.B. 273; *The Normandy* [1904] P. 187 distinguished.

D. Shaw for plaintiff.

V. E. Hill for defendant McCullough.

NORRIS D.J.A.:—This is an application made on behalf of the defendant Raymond McCullough, Master of the tug *Grapple* owned by the defendant Gulf of Georgia Towing Co. Ltd., "for an order that the action of Anglo-Canadian Timber Products Ltd. as against Raymond McCullough be dismissed for want of jurisdiction in the Exchequer Court of Canada, the British Columbia Admiralty District, in regard to any and all claims set forth by the Plaintiff in its Statement of Claim herein".

The claims against the defendants are set forth in Paragraphs 4, 5, and 6 of the Statement of Claim as follows:

ANGLO CANADIAN TIMBER PRODUCTS LTD. v. GULF OF GEORGIA TOWING CO. LTD. AND RAYMOND MCCULLOUGH

Norris D.J.A.

4. On or about the 22nd day of December, 1961 whilst a barge "STRAITS 43" which is registered at the Port of Vancouver under No. 198073, being of 540 tons register, was in the exclusive care, custody and control of the Defendants or either of them, their servants, agents or employees, the said Defendants negligently cause the said barge to collide with an object or objects unknown thereby damaging the barge.

5. On the same day as aforesaid the Defendants or either of them, their servants, agents or employees docked the said barge at the Plaintiff's scow berth at 369 Esplanade East aforesaid and failed to advise the Plaintiff Company that the barge had been damaged in collision earlier the same day.

6. Subsequently on or about the 2nd day of January, 1962 and as a further consequence of the negligence of the Defendants or either of them, their servants, agents or employees the barge during the course of the loading took on water and listed over to starboard; the starboard side of the barge then fell away and crashed into the east side of the said scow berth and the barge then drove into the west side of the said scow berth causing further loss and damage.

Counsel for the applicant argues that as the writ is headed "ACTION FOR DAMAGE BY COLLISION" and as the particulars of negligence are appropriate to a collision action this Court has not the jurisdiction to cover the case of a barge striking a dock. He relies particularly on the cases of *The Queen v. The Judge of the City of London Court*[1] and *The Normandy*[2]. Counsel for the applicant submits that "collision" means a collision between ships. The first of these cases is not relevant to the facts in this case because it turned on the question of the jurisdiction of the High Court of Admiralty to entertain an action *in personam* against a pilot in respect of a collision between two ships on the high seas occasioned by his negligence. The second case is to be distinguished on the grounds set forth by Gorell Barnes J. at p. 200 of the report as follows:

> In the present case the difficulty does not arise upon any question as to the jurisdiction of the High Court. It is clear from the terms of the Admiralty Court Act, 1861, and the decisions thereon, that the High Court has Admiralty jurisdiction in respect of this claim as being damage done by a ship: see *The Uhla*, L.R. 2 A. & E. 29, n.; *The Excelsior* (1868) L.R. 2 A. & E. 268; but the question is whether the wording of the Act of 1868 is sufficient to give similar jurisdiction to the county court within the limited amount in such a case.

While the writ is headed "ACTION FOR DAMAGE BY COLLISION" the claim as set forth in the Statement of Claim is sufficient to bring it within the meaning of the words in Sec. 22(1)(*a*)(iv) of the *Supreme Court of*

[1] [1892] 1 Q.B. 273. [2] [1904] P.187.

Judicature (Consolidation) Act, 1925 of the United Kingdom: "(iv) Any claim for damage done by a ship", as that section was adopted *mutatis mutandis* by Sec. 18(2) of the *Admiralty Act* of Canada.

I am satisfied that the words "damage done by a ship" in the subsection referred to are broad enough to include the claim set out in the Statement of Claim herein: See *The Zeta,*[1] Lord Herschell L.C. at p. 478:

> It is enough to say that the proposition that the Act of 1861 applies to damage done by a ship to persons and things other than ships has been well established by many authorities, the correctness of which I see no reason to question.

and at p. 485:

> For the reasons I have stated I have come to the conclusion that it is impossible to maintain the proposition that the word "damage" was, according to the well-understood meaning of the phrase in the Admiralty Court, confined to damage due to collision between two ships.

Most of the cases cited by counsel in support of the application were concerned with the statutory jurisdiction of the County Court in Admiralty and may be distinguished as indicated by Gorrell Barnes J. in *The Normandy, supra.*

The other grounds advanced by counsel in support of the application turned on the first or basic ground referred to. Considered by themselves they do not go to the question of jurisdiction but may be an appropriate subject for consideration at the trial.

The application is dismissed with costs.

[1] [1893] A.C. 468.