

QUEBEC ADMIRALTY DISTRICT

BETWEEN:

DEEP SEA TANKERS LIMITED ..... PLAINTIFF;

AND

SHELL OIL COMPANY ..... ADDED PLAINTIFF;

AND

THE SHIP *TRICAPE* and HER }  
OWNERS, TRITON STEAMSHIP } DEFENDANTS.  
COMPANY LTD. .... }

1955  
June 8  
1956  
Jan. 20

*Shipping—Collision—Motion to have name of party stricken from record  
—Motion dismissed.*

*Held:* That where, after a collision between two vessels, the solicitors acting for the owners of one of the colliding vessels give to the owners of the other vessel an undertaking to appear in any proceedings which may be instituted, the former when an action *in rem* is instituted against their vessel, become defendants in the suit from its inception without it being actually necessary to specifically name them as such.

1956

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TANKERS  
LTD.  
*et al.*  
*v.*  
THE SHIP  
*Tricape*

MOTION to strike out the name of an added defendant.

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

*C. Russell McKenzie, Q.C.* for the motion.

*Jean Brisset, Q.C. contra.*

SMITH D.J.A. now (January 20, 1956) delivered the following judgment:

WHEREAS in the course of the proceedings leading to the hearing on the Reference in this case, the plaintiff added the name of Triton Steamship Company Limited, owners of the *Tricape*;

WHEREAS the defendants moved to have the name of Triton Steamship Company Limited stricken from the record on the ground that these defendants had been added without the permission of the Court and illegally and because such an addition represented an attempt to unlawfully graft an action *in personam* onto an action *in rem*;

WHEREAS this motion was referred to the hearing on the Reference and now must be dealt with;

CONSIDERING that prior to the institution of the present action, and in order to avoid the arrest of the *Tricape*, counsel for the defendant vessel gave an undertaking in the following terms:

Montreal, 30th March, 1948.

Deep Sea Tankers Limited,  
c/o Beauregard, Laurance & Brisset,  
240 St. James Street West,  
Montreal, Que.

Dear Sirs,

*Re: S.S. Tricape and S.S. Paloma Hills—Collision March 1948*

In consideration of your not arresting the S.S. *Tricape* owned by Triton Steamship Company Limited, on their behalf we agree as follows:—

1. To accept service of any legal proceedings you may institute in the Province of Quebec against the S.S. *Tricape* or her owners, for damages occasioned by the above collision;

2. To have an Appearance entered in the said proceedings on behalf of the owners of the S.S. *Tricape*;

3. Upon demand, and whether or not the S.S. *Tricape* shall have been lost, to furnish bail in the said proceedings, by means of a bail bond in the usual form executed by a surety company authorized to furnish such bonds in the Courts of the Province of Quebec, in an amount not exceeding the amount of the damages sustained by the *Paloma Hills*, plus interest and costs, such amount not to exceed in any event the sum of \$50,000; the amount of such bond to be without prejudice to the amount of any final judgment in excess thereof.

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This undertaking will remain in full force and effect for a period of two years from the date of the collision. Smith D.J.A.

Yours very truly,

MONTGOMERY, McMICHAEL, COMMON, HOWARD,  
 FORSYTH & KER

Per: C. Russell McKenzie

CONSIDERING that, having regard to this engagement and on the authority of the holding in the case of the *Dictator* (1), I find that the owners of the *Tricape*, even though not named in the Writ of Summons, were defendants in the present litigation from its inception and that it was actually unnecessary to specifically name them as such;

CONSIDERING that the defendants' motion to strike is unfounded;

DOTH DISMISS same with costs.

*Order accordingly.*