Margrande Compania Naviera, S.A., et al (*Plaintiffs*) *v.* **The Leecliffe Hall's Owners, et al** (*Defendants*)

Noël J.—Montreal, September 11, Ottawa, November 25, 1970.

Admiralty—Shipping—Ship collision—Limitation of liability—Nature of judgment to be rendered—Statutory obligation to remove wreck—Expense of so doing —Whether subject to limitation—Whether ship's crew acting in employment or as salvors—Workmen's compensation paid by shipowner for dead and injured crew—Whether claimable against other shipowner—Workmen's Compensation Act, R.S.Q. 1964, c. 159, secs. 7, 15—Canada Shipping Act, R.S.C. 1952, c. 29, secs. 649, 650, 657; am. 1960-61, c. 32—Entry of judgment in action delayed until other possible claimants advertised for.

The *Apollonia* and the *Leecliffe Hall* collided in the St. Lawrence river in the province of Quebec on September 5, 1964. The *Leecliffe Hall* touched bottom, and on her master's orders was abandoned. Shortly afterwards some of the crew volunteered to return to the ship to assist in salvage operations. While doing so three of them were drowned and one injured when the ship suddenly broke her tow and sank. As required by s. 13 of the *Navigable Waters Protection Act*, R.S.C. 1952, c. 193, the *Leecliffe Hall's* owners had the ship cut down to clear the waterway. The cost was $176,000. The *Apollonia's* damage was agreed at $882,000 and the *Leecliffe Hall's* at $5,371,000. The *Leecliffe Hall's* owner paid $75,331 in compensation to dependents of the crew members who were killed and to the injured crew member under the *Workmen's Compensation Act* R.S.Q. 1964, c. 159.

In an action by the *Leecliffe Hall's* owners, officers and crew against the owner and manager of the *Apollonia* a consent decree was entered holding the two ships equally at fault. The defendants in that action then brought the present action to limit their liability under s. 657 *et seq.* of the *Canada Shipping Act*, R.S.C. 1952, c. 29, as amended 1960-61, c. 32. The amount of the *Leecliffe Hall's* liability as calculated under s. 657 was agreed at $693,333.

Held: 1. The $176,000 spent to cut down the wrecked vessel as required by statute was subject to the limitation on liability under the *Canada Shipping Act* by reason of the amendment by S. of C. 1960-61, c. 32, which added the

words "any rights are infringed" to s. 657(2)(*d*). *Marwell Equipment Ltd v. Vancouver Tug Boat Co.* [1961] S.C.R. 43, distinguished; *The Urka* [1953] 1 Lloyd's Rep. 478, *The Arabert* [1953] *ibid,* referred to; *The Putbus* [1969] Lloyd's Rep. 253, approved.

2. In volunteering to return to the *Leecliffe Hall* after the master's order to abandon ship the crew were continuing their contract of service and not acting as salvors, and the deaths and injuries which they then suffered were thus attributable to the collision of the ships. *The Portreath* [1923] P. 155, approved.

3. The *Leecliffe Hall's* owners were entitled to claim from the *Apollonia's* owner one-half of the $75,331 paid by the former under the Quebec *Workmen's Compensation Act* to the dependents of the crew members killed and the member injured. (*Workmen's Compensation Act* R.S.Q. 1964, c. 159, secs. 7 and 15; *Canada Shipping Act,* R.S.C. 1952, c. 29, secs. 649, 650, discussed.)

4. The claim described in the preceding paragraph was one for "loss of life or personal injury" and not one for "infringement of rights" within the meaning of those respective phrases in s. 657(2)(*e*) and (*f*) of the *Canada Shipping Act,* and accordingly such claim fell to be paid out of the larger fund calculated under para. (*e*) rather than the smaller fund under para. (*f*).

5. The decree to be rendered by a judge of this court under s. 650 of the *Canada Shipping Act* establishing the amount of a shipowner's liability and respecting its distribution amongst several claimants is a final judgment. Accordingly, judgment should not be entered in this action until the proposed decree is duly advertised and other claimants have the opportunity of coming in.

ACTION for limitation of liability.

J. Brisset, Q.C., for plaintiff.

A. S. Hyndman, Q.C., for defendants.

NOËL J.—This action is taken by the owners of the vessel *Apollonia* and all those interested in her, her master, officers and crew and N. J. Goulandris (Agencies) Ltd, managers of the vessel, for the purpose of limiting their liability for damages or infringement of rights resulting from the collision between their vessel and the *Leecliffe Hall* which occurred on September 5, 1964, at about 17:15 hours in the River St. Lawrence to the eastward of Ile-aux-Coudres Passage in the Province of Quebec.

As a result of this collision the *Leecliffe Hall,* the property of one of the defendants herein, struck bottom at 22:05 hours on the same day and in a matter of minutes turned over to port and sank off Pointe-au-Père on the north side of the river; three of her crew who returned to the vessel were trapped and perished with her and one was injured. The *Apollonia* sustained considerable damage but managed to reach a shipyard in Quebec where it was repaired. On April 7, 1970, a consent decree was entered in action No. 916 of the Exchequer Court, Quebec Admiralty District, Division of Montreal, wherein the present plaintiffs were the defendants, and the defendants, Hall Corporation of Canada and the master, officers and crew of

the *Leecliffe Hall* were the plaintiffs, holding the vessels equally to blame for the collision and reserving the right of the plaintiffs herein to limit liability if entitled thereto in accordance with the provisions of the *Canada Shipping Act.*

The matter came before me as though on trial of the present action but as all of the defendants against whom the plaintiffs seek relief have not been served and indeed part of the relief that the plaintiffs are presently seeking is an order for service by advertising on those who are unknown, as hereinafter explained, I am treating the present proceeding as an interlocutory application. However, as counsel for the plaintiffs and counsel for Hall Corporation, who were represented, have debated certain matters that are in contention between them at some length, I propose to state my tentative conclusions on such points. It must be understood, however, that other parties who may come in subsequently, shall be entitled to a full hearing on any such question in which they are interested.

Hall Corporation, the owner of the *Leecliffe Hall* admits the plaintiffs' allegation in the present action that in the discharge of their (Hall Corporation's) obligations under the *Navigable Waters Protection Act* (R.S.C. 1952, c. 193) they were obliged to carry out partial removal of the wreck of their vessel and that this was done at the cost of $176,898.95. Hall Corporation also admits the accuracy of the claims and figures set forth in the statement of claim herein as follows:

(*a*) That of the Defendant, Hall Corporation of Canada, as Owners of the *Leecliffe Hall,* for the balance owing to them on a 50/50 division of liability in pursuance of the adjustment on the principle of single liability to be effected in the action between the two Hulls of the claim of the Plaintiff, Margrande Compania Naviera, S.A., as Owners of the *Apollonia* amounting to and agreed at $882,386.97 and the claim of the said Hall Corporation of Canada composed of the following items all agreed as to amount, but subject to what is stated in paragraphs 22 and 23 hereof, namely:

(i) Hull losses and incidentals:	$ 5,371,430.24
(ii) Compensation paid in discharge of their obligations under the Quebec Workmen's Compensation Act and incidentals:	75,331.57
(iii) Wreck removal expenses and incidentals:	176,898.95

(*b*) That of the Defendant, Bethlehem Steel Corporation for the value of their cargo lost in the said collision agreed at the sum of $263,245.35 U.S. and for which the Plaintiffs are liable for 50% under the Decree referred to in paragraph 13 hereof.

Hall Corporation also admits the limitation tonnage of the *Apollonia* as set forth in the statement of claim herein as follows:

Under the Certificate of Measurement of the *Apollonia* in accordance with the British Method of Tonnage Computation accepted in Canada as equivalent to the method followed under the Canadian Ships Measurement Regulations, the registered tonnage of the Motor Vessel *Apollonia* is 6459.93 tons and the tonnage of the engine room space deducted for the purpose of ascertaining that tonnage is 3240.30 tons, with the result that the tonnage of the Motor Vessel *Apollonia* for the purpose of limitation of liability in pursuance of Article 662 of the *Canada Shipping Act* (as amended by 1961 9/10 Elizabeth II, Statutes of Canada, c. 32) is 9700.23 tons.

Hall Corporation also agrees with the plaintiffs that the theoretical limited liability of the plaintiffs under s. 657 of the *Canada Shipping Act* in respect of any loss or damage to property or any infringement of rights is $693,333.64 (9700 tons × $71,476) with interest at 5% from the date of the collision to the date of the decree or the date the amount of such limited liability is deposited in court, whichever comes later.

The right of the owners of the *Apollonia* to limit their liability is not challenged by Hall Corporation. They have also agreed that the collision should be determined on the basis that both vessels were to blame. The amount of the damages is not in issue between the plaintiffs and Hall Corporation. The plaintiffs have also agreed with Bethlehem Steel Corp. concerning the amount of its cargo claim. It is premature at this point to consider the apportionment of the liability fund. That will come later when all parties have been given an opportunity of coming into the proceedings.

There are, however, between the plaintiffs and Hall Corporation of Canada certain issues which have been the subject of argument at the hearing before me, as I have already indicated. The first one relates to claims resulting from amounts paid by Hall Corporation in respect of those who lost their lives or were injured in the sinking of the *Leecliffe Hall*. The amount involved is $75,331.56. In the first place, there is a difference of opinion as to whether they did so lose their lives or were injured as a direct result of the collision or merely in an attempt to salvage the vessel after the captain and crew had abandoned the ship. The contention is that if these losses of life or injuries were the result of a salvage operation, they would not have resulted from the collision on the basis of a *novus actus interveniens* and, therefore, could not be claimed. The plaintiffs furthermore take the position that even if such losses of life or injuries did result from the collision, and the dependents of those who lost their lives and the injured one have elected to claim compensation under the Quebec *Workmen's Compensation Act* from their employer, Hall Corporation of Canada, the latter does not thereby become entitled to recover from the plaintiffs in respect thereof. The plaintiffs' further contention with respect to that item of claim is that if the defendants are entitled to claim from the plaintiffs in respect of the compensation paid under the *Workmen's Compensation Act* their claim must be considered as falling to be paid out of the limited property fund only of the *Apollonia* of $693,333.64. There is also some conflict between the plaintiffs and Hall Corporation of Canada as owners of the *Leecliffe Hall* with respect to the claim for removal of part of the wreck of the vessel from the waters of the St. Lawrence River in compliance with their obligation under the *Navigable Waters Protection Act*. The plaintiffs claim these expenses in an amount of $176,898.95 constitute a loss of or damage to property or infringement of rights in respect of which they are entitled to limit their liability. Hall Corporation on the other hand says that plaintiffs cannot limit their liability for this item because the above amount was incurred by it pursuant to its

statutory obligations under the *Navigable Waters Protection Act* and these expenses constitute a claim neither for loss or damage to property nor for the infringement of rights.

Four issues are, therefore, to be considered at this time:

(1) Whether the expenses incurred by Hall Corporation of Canada as owners of the *Leecliffe Hall* for removal of the wreck in compliance with their statutory obligation constitute "loss or damage to property or infringement of rights" pursuant to s. 657 of the *Canada Shipping Act* in respect of which the plaintiffs are entitled to limit their liability.

(2) Whether those who lost their lives or were injured during the course of the attempts made to beach the *Leecliffe Hall* after her collision with the *Apollonia* so lost their lives or were injured as a direct result of the collision so as to make the plaintiffs, the owners of the *Apollonia*, responsible in damages for such losses of lives or personal injuries.

(3) Assuming that the answer to question (2) is in the affirmative, whether Hall Corporation of Canada, as owners of the *Leecliffe Hall* are entitled to claim from the plaintiffs, the owners of the *Apollonia*, as a head of damage a moiety of the compensation which they paid to the injured crew member of the *Leecliffe Hall* and to the dependents of those who lost their lives in discharge of the then statutory obligation under the Quebec *Workmen's Compensation Act*[1].

(4) Whether, if the *Apollonia* is liable to the *Leecliffe Hall* for a moiety of the compensation paid by them, this claim should be paid out of the limited fund for property damage rather than the fund for injury, death and property, which is greater. The plaintiffs and Hall Corporation are agreed, as we have seen, that the total compensation paid amounted, as we have seen, to $75,331.57.

I will now deal with the first issue which is whether the wreck expenses incurred by Hall Corporation of Canada for the removal of their vessel the *Leecliffe Hall* in compliance with their obligation under the law, constitute loss of or damage to property or infringement of rights in respect of which the plaintiffs are entitled to limit their liability with the result that such expenses would be paid out of the limited fund of the *Apollonia pari passu* with all other claims for loss of or damage to property or infringement of rights.

In 1960 the Supreme Court of Canada in a majority decision in *Marwell Equipment Ltd v. Vancouver Tug Boat Co.*[2] held that a company was not entitled to limit its liability under secs. 657 and 659 of the *Canada Shipping*

[1] R.S.Q. 1964, c. 159.
[2] [1961] S.C.R. 43.

Act for the cost incurred in removing a wreck at the direction of the river authorities. The majority decision was written by Martland J. who stated at pp. 66 and 67:

> Section 657 (of the *Canada Shipping Act*) permits limitation of liability where, by reason of improper navigation of a ship, loss or damage is caused to another vessel, but only "in respect of loss or damage" to that vessel. In my opinion the words just quoted are not used to define the wrongful act of the shipowner whose vessel causes damage. They are used to define that kind of damage in relation to which, the wrongful act having occurred, he may limit his liability. This he can only do in the case of a collision between vessels (apart from claims for loss of life or personal injury) where the damages are for loss of or damage to the other vessel or the goods, merchandise or other things on board it or on board his own vessel. This is not a claim for that kind of damage. The language used in the section to define those kinds of damage in respect of which liability may be limited is not broad enough to describe the statutory obligation to raise the dredger which arose as a result of the respondent's tort.

He then, at p. 68, pointed out that:

> Section 659 only affords protection to a shipowner in respect of a claim for loss or damage caused to property or rights of any kind by reason of improper navigation or management of the ship. I do not read this as applying to any kind of damage resulting from the infringement of another's rights. The section does not so state. It limits liability for the infringement of rights in respect of a particular kind of loss or damage, i.e., loss or damage caused to property, or to rights. The "rights" referred to in this section must be rights which may be subject to loss or damage.
>
> The claim with which we are concerned here is not one for damage to property. That was the subject-matter of the claim for the loss of the dredger itself to which s. 657 applied. Is it a claim for loss or damage to the appellants' rights? I do not think that it is. As previously stated, the substance of the matter is that as a consequence of the improper navigation of the respondent's tug a statutory liability was imposed upon the appellants by s. 13(3) of the *Navigable Waters Protection Act*. The only rights created under that Act were granted to the Crown and not to the appellants.

Martland J. then referred to *The Urka*[3] and stated that he agreed with the words of Lord Sorn:

> In order to come within the words of the section, the pursuers' liability for this claim must be held to be a liability in respect of "loss or damage to property or rights," etc. First of all, then, can it be said that the liability is in respect of any loss or damage to property or rights of the defenders, the owners of the *Portugal*, who present the claim? Obviously not. The *Portugal* was their property, but its loss is covered by their other claim, and this claim is not in respect of any loss or damage to property of theirs. Nor can it be said to be in respect of any loss or damage to any right of theirs. When they incurred this expenditure they were neither rescuing their property nor vindicating their rights.

This decision should be a complete answer to the first issue were it not for the fact, as pointed out by counsel for the plaintiffs, that the sections of the

[3] [1953] 1 Lloyd's Rep. 478 at p. 480.

Canada Shipping Act dealing with limitation were amended in 1961. It is also of some interest to note that *The Urka,* which was referred to in the *Marwell Equipment* case, was later held to be wrongly decided by Lord Merriman, P. in *The Arabert*[4] where he said:

> It is scarcely necessary to say that it is with the utmost diffidence that I differ from Lord Sorn; but as I have come to a conclusion opposite to that expressed by him in *The Urka,* and as the case of the defendants depends in the main on the contention that *The Urka* was rightly decided, I must express my considered opinion that *The Urka* was wrongly decided, and that the plaintiffs are entitled to include the wreck-raising expenses in their claim for limitation. I give judgment accordingly.

The modifications made to secs. 657, 658 and 659 of the *Canada Shipping Act* relevant to the present issue are set down hereunder:

Canada Shipping Act as amended by 1960-61 (Can.), c. 32, secs. 32, 33, 34	*Canada Shipping Act* R.S.C. 1952, c. 29
657. . . . (2) The owner of a ship, whether registered in Canada or not, is not, where any of the following events occur without his actual fault or privity, namely:	**657.** (1) The owners of a ship, whether registered in Canada or not, are not, in cases where all or any of the following events occur without their actual fault or privity, that is to say,
. . .	. . .
(*d*) *where any loss or damage is caused to any property* . . . or any rights are infringed through (i) the act or omission of any person, . . . in the navigation or management of the ship, in the loading, carriage or discharge of its cargo or in the embarkation, carriage or disembarkation of its passengers, or (ii) any other act or omission of any person on board that ship; liable for damages beyond the following amounts, namely:	(*d*) where any loss or damage is, by reason of the improper navigation of the ship, caused to any other vessel, . . . liable to damages in respect of loss of life or personal injury . . . nor in respect of loss or damage to vessels, goods, merchandise, or other things,
. . .	
658. (1) *Where any liability is* alleged to *have been incurred* by the owner of a ship *in respect* of any loss of life or *personal injury, any loss of or damage to property or any infringement of any right* in respect of which his liability is limited by section 657 and several claims are made or apprehended in respect of that liability a judge of the Exchequer Court may . . . determine the amount of his liability and distribute that amount rateably among the several claimants; such	**658.** (1) *Where any liability is alleged to have been incurred* by the owner of a British or foreign ship in *respect of loss of life, personal injury or loss of or damage to vessels or goods,* and several claims are made or apprehended in respect of that liability, the President or the Puisne Judge of the Exchequer Court may, on the application of that owner, determine the amount of his liability and distribute that amount rateably among the several claimants; such President or Puis-

[4] [1961] Lloyd's Rep. 363 at p. 371.

judge may stay any proceedings pending in any court in relation to the same matter, and he may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the Court thinks just.

. . .

659. The provisions of sections 657 and 658 extend and apply to

. . .

where any of the events mentioned in paragraphs (*a*) to (*d*) of subsection (2) of section 657 occur without their actual fault or privity, and to any person acting in the capacity of the master or member of the crew of a ship and to any servant of the owner or of any person described in paragraphs (*a*) to (*c*) where any of the events mentioned in paragraphs (*a*) to (*d*) of subsection (2) of section 657 occur, whether with or without his actual fault or privity.

ne Judge may stay any proceedings pending in any court in relation to the same matter, and he may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the Court thinks just.

. . .

659. The limitation of the liability of the owners of any ship set by section 657 in respect of loss of or damage to vessels, goods, merchandise, or other things shall extend and *apply to all cases where, without their actual fault or privity, any loss or damage is caused to property or rights of any kind,* whether on land or on water, or whether fixed or moveable, by reason of the improper navigation or management of the ship.

I have set down the above sections opposite each other and italicized those parts which are relevant to the determination of the first issue herein.

From the above it appears that the only relevant changes made to those sections of the *Canada Shipping Act* which deal with limitation of liability since the judgment rendered in the *Marwell Equipment* case are the amendments to section 657(2)(*d*) and 658(1) by 1960-61 (Can.), c. 32, whereby the words, "or any rights are infringed" were added to s. 657(2)(*d*),[5] the words "any infringement of any right" were added to s. 658(1), and the words "any loss or damage is caused to property or rights of any kind, whether on land or water, or whether fixed or moveable . . . were deleted from s. 659.

It is interesting to note the limits of the rights conferred by Parliament upon shipowners in Canada with respect to the limitation of their liability since the *Merchant Shipping Act* of 1894[6] in the United Kingdom. From 1867 to 1934, when the *Canada Shipping Act* was adopted, Canada in maritime matters was governed by the laws of the United Kingdom and our own legislation in so far, however, as it was not contrary to the English law. By s. 503 of the *Merchant Shipping Act* 1894, owners were liable to limit in the four cases provided for in s. 1 under the sub-headings (*a*), (*b*), (*c*) and (*d*)

[5] A corresponding change was made in par. (*e*) and (*f*).
[6] 57 and 58 Vict., c. 60.

which remained substantially the same in our own legislation from 1934 to 1960. All those sub-headings are concerned with damage or loss caused to persons or things on board either the ship causing the damage or some other ship affected by the damage. In 1900 with the *Merchant Shipping (Liability of Shipowners and others) Act,* 1900 the area of the right[7] of limitation was taken beyond that of a carrying vessel when s. 1 of the Act of 1900 extended the right of limitation to all cases where, (without their actual fault or privity) "any loss or damage is caused to property or rights of any kind whether on land or on water, or whether fixed or moveable." . . .

The next relevant amendments came, as already mentioned, in 1960-1961 when secs. 657(2)(*d*) and 658(1) of the *Canada Shipping Act* were amended by adding in the former the words "or any rights are infringed", and this paragraph now reads as follows:

> (*d*) Where any loss or damage is caused to any property, other than property described in paragraph (*b*) or *any rights are infringed through* . . . (italics are mine).

and by adding the words "any infringement of any right" in the latter.

Counsel for the plaintiffs submit that the effect of the addition of these words in the description of the casualty in par. (*d*) of s. 657(2) and in s. 658(1) is to now embrace as limitable the amounts expended to raise a wrecked ship or, as here, to cut her down to a size which will clear the waterway and allow the safe passage of traffic.

In order to appreciate the plaintiffs' submission here, it is necessary to examine in some detail the decision rendered in *Marwell Equipment Ltd v. Vancouver Tug Boat Co.*[8] and particularly the reasons of Martland J. who wrote the majority decision. From these reasons which have already been set down herein, it appears that he relied on s. 657(1)(*d*) which was the effective legislation at the time and which then stated that the owners of a ship . . . where any loss or damage is, by reason of the improper navigation of the ship, caused to any other vessel . . . without their actual fault or privity, are not liable to damages in respect of loss of life or personal injury either alone or together with loss or damage to vessels, goods, merchandise, or other things, to an aggregate amount exceeding $72.97 for each ton of their ship's tonnage, and s. 659 which at the time stated that the limitation of the liability of the owners of any ship set by s. 657 in respect of loss of or damage to vessels . . . shall extend and apply to all cases where, without their actual fault or privity, any loss or damage is caused to property or rights of any kind, whether on land or on water, or whether fixed or moveable, by reason of the improper navigation or management of the ship.

Martland J. held that s. 659 was not to be read as applying to any kind of damage resulting from the infringement of another's rights. The section,

[7] 63 and 64 Vict., c. 32.
[8] [1961] S.C.R. 43.

he stated, limits liability for the infringement of rights in respect of a particular kind of loss or damage, *i.e.* loss or damage caused to property or to rights and the rights referred to must be rights which may be subject to loss or damage. He then held that the claim for the expenses incurred in removing the wreck in that case was not one for damage to property. Neither, he added, is it a claim for loss or damage to the appellant's rights, nor was there any claim in damages for damage to the property or rights of the Crown as distinct from those of the appellant's which could make s. 659 applicable. Martland J., indeed, referred to the decision rendered by Lord Sorn in *The Urka* where the latter stated that the owners of the obstructing vessel who had paid for its removal were when they "incurred this expenditure neither rescuing their property nor vindicating their rights", and stated that he agreed with this statement.

Locke J. on the other hand who with Cartwright J. dissented in this case, held that the claim for the cost of removing the wreck falls within the terms of secs. 657 and 659 as they were at the time. He was of the view that (p. 57):

> . . . By reason of the sinking of *The Townsend* through the negligence of the respondent the dredge was lost and there was imposed upon the owners the statutory obligation to remove the wreck. This was a direct result of the negligent act and was in my opinion damage "in respect of" the damage to the dredge within the meaning of s. 657 and to the "rights" of the appellants within the meaning of s. 659. I can see no basis for a contention that to impose a legal liability upon a third person by a negligent act is not an infringement of his rights.

He thus was using words similar to those added later to s. 657(2)(*d*) of the Act, "or any rights are infringed", and the plaintiff even suggests that the amendment was probably brought on as a result of the use of those words.

The question now is whether the inclusion of the words "any rights are infringed" or "any infringement of any right" has changed the situation. It would seem so if we refer to *The Putbus*[9], where a public authority had sued in damages for reimbursement of the expenses incurred to remove a derelict vessel. Lord Denning, M.R., referring to the liability involved in that case, stated:

> ...Is it a type to which a limit is set by s. 503, as amended? I think it is. First of all, it is a liability to *damages* for negligence, and not a liability to pay a debt. Thus, it is quite different from *The Stonedale No. 1 (Owners) v. Manchester Ship Canal Company and Others,* [1956] A.C. 1; [1955] 2 Lloyd's Rep. 9, when the liability was in debt, irrespective of negligence. Secondly, it was liability to damages "where rights are infringed": for the right of public passage is infringed through the negligent act or omission which caused the obstruction.

[9] [1969] Lloyd's Rep. 253 at p. 257.

He then explained why, in his view, the words "where rights are infringed" were inserted in s. 2(1) of the 1958 Act in the United Kingdom (and in this country in s. 657(2)(*d*) by 1960-61 (Can.), c. 32) when he said:

> Those words "where rights are infringed" were inserted in s. 2(1) of the 1958 Act, so as to fill the gap disclosed by *The Millie* [1940] P. 1; (1939) 64 Lloyd's Rep. 318. The draftsman has taken the very words used by Mr. Justice Langton.

It appears that the gap referred to in *The Millie* is that, although the section mentions loss or damage caused to property or rights, the expense of removing an obstruction does not result in any loss or damage to its rights or property and, therefore, cannot be limited. Cf. *The Millie*, 64 Lloyd's Rep. at p. 321.

It would, however, now appear from the decision rendered in *The Putbus* that the addition of the words "where rights are infringed" has now filled the gap and that, although the removal of an obstruction of a wreck may not have caused any loss or damage to the authority's rights or property, it has, nevertheless, "infringed its rights" and therefore, since 1958 in the United Kingdom (and since 1960 in Canada), it would seem that a Port Authority or the Crown, who under a statutory right removes an obstruction from a waterway can be met by a limitation action if the amount claimed is founded on damage as distinct from an action for debt. In *The Arabert (No. 2)*[10] at p. 367, Lord Merriman, P. said:

> ... It is obvious that a decision that limitation is not available in the case of wreck-raising expenses recoverable as a debt by a harbour authority against the owners of the obstructing wreck, irrespective of any question of negligence, is in a different category from the case where the wreck-raising expenses incurred by the innocent victims of a collision are properly recoverable as damages for negligence against the wrong-doer.

If such is the situation, the same would apply to our country as the words added are the same as those which appear in the United Kingdom legislation of 1958.

The question now is whether we can go one step further and hold that, in view of the addition of the words "or any rights are infringed ..." in s. 657(2)(*d*) the same may apply to a situation such as here where the owners of the *Leecliffe Hall* upon notice received from the Department of Transport complied with s. 13(3) of the *Navigable Waters Protection Act*, R.S.C. 1952, c. 193, cut down their vessel to a size satisfactory to the Department and incurred expenses of $176,000. If s. 657(2) par. (*e*) is read with par. (*d*), it does, as a matter of fact, become explicit. The question is, therefore, no longer whether, as stated by Martland J. in the *Marwell Equipment* case, at p. 68, we are dealing with "infringement of rights in respect of a particular kind of loss or damage, *i.e.* loss or damage caused to property or to rights" but whether as clearly shown in the words added to s. 657(2)(*d*) "any rights are infringed" which appears to be a different matter and which is in no way limited by the former s. 659 which applied only where "any loss or damage is caused to property or rights ...".

[10] [1961] Lloyd's Rep. 363.

By proceeding as we have, we have, I believe, reached a point where words expressed by Locke J. in his dissenting opinion in the *Marwell Equipment* case at p. 57 may now apply. He, indeed, stated then:

> In my opinion the claim for the cost of removing the wreck falls within the terms of ss. 657 and 659. By reason of the sinking of *The Townsend* through the negligence of the respondent the dredge was lost and there was imposed upon the owners the statutory obligation to remove the wreck. This was a direct result of the negligent act and was in my opinion damage "in respect of" the damage to the dredge within the meaning of s. 657 and to the "rights" of the appellants within the meaning of s. 659. *I can see no basis for a contention that to impose a legal liability upon a third person by a negligent act is not an infringement of his rights.* (The italics are mine).

He is using here words very similar to the amendments of 1960-1961 and I would have to agree that when the owners of the *Leecliffe Hall* were through the partial fault of the *Apollonia* obliged to remove the wreck at their expense, even if this was done because of a legal requirement, their rights were being infringed and it should, therefore, follow that whatever amount they are now claiming can only be one for damages resulting from the infringement of their rights. There can, indeed, be no other basis for their claim against the plaintiffs. It then follows, of course, that under present legislation the plaintiffs should now be entitled to limit the amount claimed. I find further support in reaching this decision in the words of Martland J. at p. 68 in the *Marwell Equipment* case, where he impliedly seems to accept that if s. 659, as it was then, had contained words which applied to any kind of damage resulting from the infringement of another's rights (and the new words appear to be unlimited) he might have held another view of the matter. He, indeed, stated:

> Section 659 only affords protection to a shipowner in respect of a claim for loss or damage caused to property or rights of any kind by reason of improper navigation or management of the ship. *I do not read this as applying to any kind of damage resulting from the infringement of another's rights. The section does not so state.* It limits liability for the infringement of rights in respect of a particular kind of loss or damage, i.e., loss or damage caused to property, or to rights. The "rights" referred to in this section must be rights which may be subject to loss or damage. (The italics are mine).

May I add that if Lord Denning's statement at p. 257 in *The Putbus, supra,* is correct and the gap disclosed by *The Millie, supra,* has been filled by the words "where rights are infringed" so as to make possible, if claimed as damages, a limitation of expenses incurred by an authority who has removed the wreck at its expense, there would, indeed, be more reason to allow the same limitation to apply to a claim made by the owner of the obstructing vessel who did the removal work and incurred the expenses. In my view, the only claim he has is one in damages from the other vessel in respect of the expenses he was put to as a result of the neglect of the other ship. I am of opinion that the act of the plaintiff resulting in negligent damage to the defendant's ship of such a character as to make the defendant

legally liable to pay such expenses is, as contemplated by the amended section, a clear infringement of his rights.[11]

My tentative conclusion, therefore, is that the expenses incurred by Hall Corporation of Canada as owners of the *Leecliffe Hall* for removal of the wreck in compliance with their obligation constitute infringement of rights pursuant to s. 657 of the *Canada Shipping Act* in respect of which the plaintiffs are entitled to limit their liability.

I now turn to the second issue which is whether those who lost their lives or were injured during the attempts made to beach the *Leecliffe Hall* after the collision with the *Apollonia,* so lost their lives or were injured as a direct result of the collision so as to make the plaintiffs responsible in damages for such losses of life or personal injuries.

Counsel for the plaintiffs, Mr. Brisset, stated that if the court comes to the conclusion that those members of the crew who perished or were injured were not entitled to salvage fees, but were, at the time, merely fulfilling their duty as members of the crew, he will concede that their demise or injuries resulted from the collision.

The question here really is whether the action taken by those members of the crew after the captain left the vessel, was a new venture which broke the chain of causation.

In order to determine this question it will be necessary to consider what took place following the collision. The plaintiffs and Hall Corporation filed a consent with regard to the evidence relied upon and this material will now have to be considered.

The parties, by their counsel, agreed that for the purposes of the present action in limitation of liability they will rely upon and refer to certain parts of the transcript of evidence taken at the formal investigation into the circum-

---

[11] Until such time as our Act is changed to include in the limitation section a sub-heading such as we find in 2(*a*) of the *Merchant Shipping* (*Liability of Shipowners and others*) *Act* 1958 in the United Kingdom, it will not be possible to limit wreck-raising expenses merely recoverable as a debt. Sub-heading 2(*a*) of s. 503 of the *Merchant Shipping Act* 1958, indeed creates a special "occurrence" and a claim resulting therefrom may some day give rise to a limitation of liability. This provision is, however, declared to be not effective until such day as the Minister of Transport may appoint and as he has not brought it into force it is not yet effective. This paragraph reads as follows:

> 2. For the purposes of the said subsection (1) where any obligation or liability arises
> (*a*) in connection with the raising, removal or destruction of any ship which is sunk, stranded or abandoned or of anything on board such a ship, or
> * * *
> the occurrence giving rise to the obligation or liability shall be treated as one of the occurrences mentioned in paragraphs (*b*) and (*d*) of that subsection, and the obligation or liability as a liability to damages.
>
> 3. The application of the said s. 503 to any liability shall not be excluded by reason only that the occurrence giving rise to the liability was not due to the negligence of any person.

stances attending the collision which took place in November 1964 before the Honourable Mr. Justice Arthur J. Smith. The relevant parts are set down in the consent document and comprise the witnesses listed therein and the particular pages of the evidence relied upon.

From this evidence it appears that those who lost their lives and for whom compensation had to be paid by Hall Corporation under the Quebec *Workmen's Compensation Act* were second engineer G. Descheneaux, and the wheelsman, J. L. Desjardins. Roméo Rail, the third engineer, was injured.

The collision between the *Apollonia* and the *Leecliffe Hall* occurred on September 5, 1964, at about 17:15 hours in the St. Lawrence River to the eastward of Ile-aux-Coudres Passage in the Province of Quebec. The *Leecliffe Hall* of Hall Corporation of Canada was then on a voyage from Seven Islands to Buffalo, New York, fully loaded with a cargo of iron ore. The *Apollonia* was proceeding from Duluth, Minnesota, to Bremen, Germany, loaded with a full cargo of grain. After the collision which took place at 17:15 hours, the master of the *Leecliffe Hall* took the decision to abandon the ship at approximately 18:05 hours the same day. The entire crew of 32 men, together with the pilot and 11 passengers, were taken off on one of the *Leecliffe Hall* lifeboats and went first of all to the *Apollonia* on which vessel the master, chief engineer, third engineer, pilot and one of the passengers, namely, Frank A. Hawkesbury, president and chief executive officer of Hall Corporation, boarded for the purpose of obtaining the assistance of the vessel and to make use of her radio-telephone to summon other assistance. The lifeboat of the *Leecliffe Hall* then headed in towards shore but while doing so met the yacht *Laurentian* on board which were taken all the passengers and crew with the exception of the chief officer, second officer, second engineer, electrician and one of the wheelsmen, all of whom volunteered to return to the *Leecliffe Hall* to assist in the salvage operations under the supervision of the master, chief officer and engineer.

The tug *Foundation Vibert* arrived alongside and put a line on the *Leecliffe Hall* at about 19:05 hours at which time the chief engineer, the second engineer, G. Descheneaux, and the third engineer were already back on board starting up the diesel generator, getting the deck lights in operation and taking all possible steps to prepare for the salvage operation. During the next three hours, the president of Hall Corporation, the master, chief officer, second officer, electrician, boatswain and two of the wheelsmen, were continuously on the scene moving between the *Foundation Vibert*, the lifeboat which was by the gangway and the *Leecliffe Hall* for the sole purpose of working with the tug to beach and save the vessel. The *Foundation Vibert* managed to tow the *Leecliffe Hall* stern first, to within 300 feet of the shoreline where she touched bottom but almost immediately thereafter suddenly broke in two and sank, taking with her those who were still on board and those who were in the lifeboat alongside, *i.e.*, G. Descheneaux, second engineer, J. L. Desjardins, wheelsman and M. Modrak, chief cook (for whom, however, no claim is being made). Roméo Rail was seriously injured and required hospitalization and medical treatment over an extended period. The total amount paid by Hall Corporation with respect to the deceased Desjardins and Descheneaux

and the injured Roméo Rail is $75,331.57 and for a moiety of which sum, the defendant, Hall Corporation, claims the plaintiffs are liable to reimburse it above and beyond their limited liability as calculated in the statement of claim. Hall Corporation also claims that the above deaths and personal injuries were the direct consequence of the collision and of the negligent acts of those on the *Apollonia*. The plaintiffs, on the other hand, claim that they were not the direct result of the collision so as to make them liable in damages therefor because the chain of causation had been broken for the following reasons:

(*a*) the order to abandon ship had been expressly given by the master of the *Leecliffe Hall*;

(*b*) the whole crew was landed safely and without injury into the lifeboat of the *Leecliffe Hall* and before returning to the latter were all in safety either on the lifeboat, the yacht *Laurentian* or the tug *Foundation Vibert;*

(*c*) those who returned to the *Leecliffe Hall* returned of their own free choice as volunteers under no compulsion or orders from anyone in authority and this applies more particularly to those in respect of whom claims are made, namely G. Descheneaux, Roméo Rail and J. L. Desjardins;

(*d*) the true cause of the demise or injury of these men was the amateurish attempts of those in authority, namely the master and the representative of the owners of the *Leecliffe Hall,* to beach the *Leecliffe Hall* with the assistance of the tug *Foundation Vibert* after having refused all other outside assistance which was available and of better capabilities than the tug *Foundation Vibert.*

[*His Lordship reviewed the evidence in detail, and continued as follows*:]

The conclusion of fact at which I have arrived is that, although the ship was abandoned shortly after the collision, the captain did not have a clearly formed intention to leave or abandon his vessel. He no doubt realized the danger and risk involved of any action that could be taken to save his vessel by pushing or towing it to shore and this explains why he was reluctant to order the men back and emphasized that they were returning as volunteers.

From the evidence it also appears that those men who returned were doing so voluntarily out of a sense of duty and even in some cases, out of a sense of loyalty to the owner. I believe Desjardins, one of the deceased, told wheelsman Harvey, "The company is certainly going to appreciate this, on our part, that we are coming to help save the ship".

The first question, of course, is whether the contract of service of the crew was put to an end by the order of abandonment of the vessel given by the captain in the above circumstances. I do not think it was. Although this

order was given for the purpose of saving life, it was made at a time when no assistance seemed immediately available. Shortly thereafter he received assurance that a tug was coming and returned to his vessel in order to assist in beaching her. This, in my view, indicates that at this stage he was hopeful of saving his ship. He even said prior to leaving the *Apollonia* that his vessel could be saved. On the other hand, the position taken by those members of the crew who volunteered to assist the vessel in reaching the shore is well in line with what mariners, under such circumstances, would be expected to do. Chief officer Sydney Palmer was expressing this clearly when he told his captain that "the ordinary practice of seamen is to try and save their ship". Furthermore, the mere fact that a master offers an option to members of the crew to leave or stay with the vessel, cannot by itself determine whether a sailor's contract is ended. It is in fact only an option given to continue or discontinue the contract of service. The act of volunteering of those members of the crew who returned to the *Leecliffe Hall* did not alter their original contract and was, in my view, merely a continuation of their services to their ship. In *The Portreath*[12] a claim for salvage by members of the crew was refused in circumstances closely resembling the present case. The master in that case, thinking his vessel was in danger of sinking as the result of a collision, gave orders to abandon ship and he and the crew went on board a pilot cutter which was standing by. Shortly afterwards he came to the conclusion that the vessel was not sinking and called for volunteers to return to her. About half the crew responded and returned to the vessel and navigated her while she was towed in shore and beached.

Hill J. at p. 158 dealt with this matter very effectively and his observations on this occasion could apply to the present case. He indeed, said:

> In my view it would be most dangerous to regard seamen, owing a duty under a contract, as entitled in such circumstances, to convert themselves into salvors, and I have come to the conclusion, dealing with the case without any reference to the authorities, that there is no justification for saying that there was anything which determined the plaintiffs' contract of service. But I have a better guide than my own view on the matter because the case seems to me to be absolutely covered by the authorities cited. In the first place there is the old general principle of a seaman's duty for which I was referred to the judgment of Lord Stowell in *The Neptune* (1 Hagg. Adm. 236):
>
> "What is the obligation", his Lordship said, "which a mariner contracts with the ship in which he engages to serve? It is not only to navigate her in favourable weather, but likewise in adverse weather inducing shipwreck, to exert himself... to save as much of the ship and cargo as he can. It is part of his bounden duty in his character of a seaman of that ship. It is certainly a laborious and probably a dangerous portion of his service, but certainly not less a service, and a meritorious service on those accounts. In performing that duty he assumes no new character. He only discharges a portion of that covenanted allegiance to that vessel which he contemplated, and pledged himself to give in the very formation of that contract which gave him his title to the stipulated wages."

He then added the following:

> The doctrine of this Court is... that the crew of a ship cannot be considered as salvors. What is a salvor? A person who, without any particular relation to a ship in distress, proffers useful service, and gives it as a volunteer adventurer, without any pre-existing covenant that connected him with the duty of employing himself for the preservation of that ship.

[12] [1923] P. 155.

He then finally made the following remarks with which I agree entirely as I do not, indeed, wish to say that members of the crew of a vessel can never claim as salvors. There may possibly be some special although exceptional circumstances when this may well be possible. Hill J. expresses this very aptly in the following terms:

> I will not say that in the infinite range of possible events that may happen in the intercourse of men, circumstances might not present themselves that might induce the court to open itself to their claim of a persona standi in judicio. But they must be very extraordinary indeed;

There is no question that the contract of service between sailor and ship can be cancelled. A complete and final abandonment of the vessel, ordered by the master and without hope of recovery of the vessel, would it seems, dissolve the contract of service and discharge the sailor's obligations under the contract. A temporary abandonment, however, as frequently occurs in collisions from moderate fear, before the state of the ship is known, such as we have here, should not vacate the contract. I must say that the circumstances here are not such as to have put an end to the crew's contract of service and nothing was done here by the members of the crew who supplied their services for the beaching of their vessel, that could have transformed them into salvors.

As counsel for the plaintiffs agreed that if the members of the crew could not have claimed as salvors he would concede that their demise or injuries resulted from the collision, it also follows that the answer to the second issue here must, of course, be that the plaintiffs are responsible in damages for the demise of Descheneaux and Desjardins and for the injuries sustained by Rail, and the loss of life and injury claims form as much a part of the total claim in damages as the loss of the ship itself.

I should add that the steps taken to save the vessel, although unsuccessful, were not in themselves negligent. It is my view that the chain of causation was not broken by the alleged refusal of the master of the *Leecliffe Hall* to accept the proffered assistance of the U.S. Navy salvage vessel *De Soto County* or any of the vessels that were available. With regard to the *De Soto County* the captain did not know, nor could he realize the advantages of accepting a vessel equipped as this one was for salvaging as this was not described to him. As for the other vessels, his answer appears to be that if they were allowed to come alongside his ship, they would not have been of any assistance but would have done more damage. I am not prepared to say that he was not right in this regard or in attempting to beach his vessel merely with the assistance of one tug.

I now come to the third issue which also happens to be, in my view, the most difficult one to determine. Having decided that those who lost their lives or were injured did so as a direct result of the collision and that the plaintiffs should therefore be responsible in damages for such losses, can

Hall Corporation of Canada, as owners of the *Leecliffe Hall,* claim from the plaintiffs as a head of damage a moiety of the compensation which they paid to the injured crew member of the *Leecliffe Hall* and to the dependents of those who lost their lives in discharge of their statutory obligation under the Quebec *Workmen's Compensation Act*[13]? The total compensation so paid amounted to the sum of $75,331.57, which is agreed and not in issue.

Counsel for plaintiffs claims that Hall Corporation cannot recover from the plaintiffs a moiety of the sum paid in virtue of the Quebec *Workmen's Compensation Act* to the injured crew member of the *Leecliffe Hall* and to the dependents of those who lost their lives because:

(1) Section 7 of the Quebec *Workmen's Compensation Act* which deals with the claims of a workman or his dependents either against some person other than his employer or under the Act, should be interpreted in such a way as to preclude any recovery by the employer of the injured or deceased workman from a negligent third party when that employer and the third party are both to blame or at fault with respect to the accident which resulted in injury and death Plaintiffs indeed submit that in order for there to be recovery, the third party must have been solely responsible for the accident, and

(2) even if it were held that Hall Corporation is entitled to recover from the *Apollonia* a moiety of the sum paid under the Quebec *Workmen's Compensation Act* on the basis of it being "a loss resulting from an infringement of their rights" which directly resulted from the collision the sum so paid would no longer be a claim for damages for loss of life or personal injury but would change its nature and fall to be paid out of the limited fund for property damage of the *Apollonia* under s. 657 of the *Canada Shipping Act.*

In order to properly appreciate the position taken by the plaintiffs and the arguments made by Mr. Brisset, their counsel, and dealing with his first argument it will be necessary to set down hereunder secs. 649 and 650 of the *Canada Shipping Act*[14] and secs. 7 and 15 of the Quebec *Workmen's Compensation Act*[15].

Canada Shipping Act

649. (1) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and of any other vessel or vessels, the liability of the owners of the vessels shall be joint and several.

(2) Nothing in this section shall be construed as depriving any person of any right of defence on which, independently of this section, he might have relied in an action brought against him by the person injured, or any person or persons

[13] R.S.Q. 1964, c. 159.
[14] R.S.C. 1952, c. 29.
[15] R.S.Q. 1964, c. 159.

entitled to sue in respect of loss of life, or shall affect the right of any person to limit his liability in cases to which this section relates in the manner provided by law.

650. (1) Where loss of life or personal injuries are suffered by any person on board a vessel owing to the fault of that vessel and any other vessel or vessels, and a proportion of the damages is recovered against the owners of one of the vessels that exceeds the proportion in which she was in fault, they may recover by way of contribution the amount of the excess from the owners of the other vessel or vessels to the extent to which those vessels were respectively in fault; but no amount shall be so recovered that could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or could not for any other reason have been recovered in the first instance as damages by the persons entitled to sue therefor.

(2) In addition to any other remedy provided by law, the person entitled to any such contribution as aforesaid has, for the purpose of recovering the same, subject to the provisions of this Act, the same rights and powers as the persons entitled to sue for damages in the first instance.

Quebec *Workmen's Compensation Act*

7. (1) Where an accident happens to a workman in the course of his employment under such circumstances as entitle him or his dependents to an action against some person other than his employer, such workman or his dependents, if entitled to compensation under this Act, may, at their election, claim such compensation or bring such action.

(2) If an action is brought and less is recovered and collected than the amount of the compensation to which the workman or his dependents are entitled under this Act, such workman or his dependents shall receive compensation for the difference.

(3) If the workman or his dependents elect to claim compensation under this Act, the employer, if he is individually liable to pay it, or the Commission, if the compensation is payable out of the accident fund, as the case may be, shall be subrogated pleno jure in the rights of the workman or his dependents and may personally or in the name and stead of the workman or his dependents, institute legal action against the person responsible, and any sum so recovered by the Commission shall form part of the accident fund. The subrogation takes place by the mere making of the election and may be exercised to the full extent of the amount which the employer or the Commission may be called upon to pay as a result of the accident. Nevertheless, if as a result of this Act, the employer or the Commission happen afterwards to be freed from the obligation of paying a part of the compensation so recovered, the sum not used shall be reimbursable within the month following the event which determines the cessation of the compensation.

Agreements or compromises effected between the parties respecting such action or right of action shall be null and void, unless approved and ratified by the Commission and the payment of the amount agreed upon or adjudged shall be made only in the manner indicated by the Commission.

15. The compensation under this act shall be in lieu of all rights, recourses and rights of action, of any nature whatsoever, of the workman, of the members of his family, or his dependents against the employer of such workman by reason of any accident happening to him, by reason of or in the course of his work for such employer, and no action in respect thereof shall lie in any court of justice.

Counsel for the plaintiffs submits that on a proper interpretation of the above provisions of the *Canada Shipping Act* and the Quebec *Workmen's*

Compensation Act the position of the claimants herein, where both vessels are to blame, could have been as follows:

(*a*) They could have elected to sue the *Apollonia* for their full damages as a joint and several tortfeasor and recovered their full damages from the *Apollonia*. In such a case the *Apollonia* would not be entitled to recover any part of the damages paid to the claimants from the *Leecliffe Hall* as the owners of the latter could not (as employers under the *Workmen's Compensation Act*) have been sued at common law for damages by the claimants and s. 650 of the *Canada Shipping Act* would then come into effect. The latter part of this section, indeed, says clearly "but no amount shall be so recovered (by way of contribution) that could not, by reason of any statutory or contractual limitation of, or exemption from, liability, or could not for any other reason have been recovered in the first instance as damages by the persons entitled to sue therefor".

(*b*) They could have elected to claim compensation from their employers (which they did here) and either sue or not sue the *Apollonia* for the excess of their damages over the compensation payable to them. (They did not sue for the excess here). As regards the compensation paid to them by their employer the latter could not (according to counsel for the plaintiffs) seek a contribution or indemnity from the *Apollonia* for such proportion of the compensation paid, corresponding to the percentage of negligence of the *Apollonia*, because, if I understand Mr. Brisset's submission, the employer can only claim if the *Apollonia* was solely to blame and the claim of the employer would not be a claim for damages as required by s. 650 of the *Canada Shipping Act*.

If the claimants had also sued the *Apollonia* for the excess of their damages (which they did not do) over the value of the compensation, then the *Apollonia* would have to pay (according to counsel for the plaintiffs) such excess in full as a joint tortfeasor and would have no recourse for a contribution on the part of the *Leecliffe Hall*, again because of the application of s. 650 of the *Canada Shipping Act*. There can (and I suppose that this is Mr. Brisset's argument) be no indirect action taken against an employer covered by the *Workmen's Compensation Act* because of s. 15 of this Act.

Paraphrasing s. 7 of the Quebec *Workmen's Compensation Act*, the wording used according to counsel for the plaintiffs contemplates three situations and should be construed as follows:

1. Where an accident happens to a workman under such circumstances as entitle him to an action against some person other than his em-

ployer, which person he calls a "stranger", the workman (if himself an innocent victim of the accident or jointly to blame with the "stranger") is entitled,

(*a*) to take such action against the stranger, the latter being a tort-feasor and whether partly or wholly responsible for the accident, and recover damages from him in full if he, the workman, is an innocent victim, or a proportion corresponding to the stranger's negligence if he, the workman, were himself partly at fault, or,

(*b*) to claim compensation from his employer whether or not the latter is also partly to blame for the accident.

2. If the workman recovers from the stranger an amount of damages less than the amount of the compensation he would be entitled to receive from his employer, and this would happen if the workman were partly to blame himself for instance, then he can claim compensation for the difference from his employer who, of course, cannot claim a contribution from the stranger for the additional compensation payable.
3. If the workman elects to claim compensation from his employer, the latter is subrogated *pleno jure* in all his rights to claim damages and may personally or in the name of the workman institute an action against the person responsible for the accident and recover damages from the latter to the full extent of the compensation paid.

Counsel for the plaintiffs claims that the words "the person responsible for the accident" can only mean the person solely responsible for the accident, for otherwise, he says, how could the stranger be described as "the person responsible" if the accident were caused by the joint negligence of the employer and the stranger?

In such a case, if the negligence of the employer were partly responsible for the accident, and his negligence might have been greater than that of the stranger, the employer being subrogated in all the rights of his innocent workman would be able to recover the full damages which the workman himself could have recovered from the stranger. This, according to Mr. Brisset, cannot be what the Legislature intended because in the case of an accident to a workman caused by the joint negligence of the employer and a stranger, the stranger would have to pay full damages to the workman if the latter elected to claim damages from him, or would have to reimburse the employer for the full amount of the compensation paid if the workman elected to claim compensation.

Counsel for the plaintiffs points out that there is a difference in the wording of subsec. (1) and subsec. (3) with reference to the "stranger". Subsec. (1) speaks of "an action against some person" and subsec. (3) speaks of "an action against the person responsible".

He also submits that, as decided in *Mingarelli v. Montreal Tramways Co.*[16] the subrogation in s. 7(3) of the Act is an exception to the general

[16] [1959] S.C.R. 43.

law and must be strictly interpreted. He, therefore, concludes that s. 7 as a whole, and subsec. (3) in particular, provide for an action in indemnity on the part of the employer calling for a complete reimbursement from the stranger tortfeasor when the employer is free of blame and not an action calling for partial or a moiety of reimbursement by way of contribution from the stranger when both the stranger and the employer are joint and several tortfeasors.

Mr. Brisset admits that contribution in its broadest sense is a form of indemnity but submits that indemnity in s. 7(3) must be considered isolated and on its own as "a shifting of the entire loss" in contrast to "a sharing of the loss" as with contribution *per se*. Section 7, subsec. (3), he says, speaks of subrogation only but since subrogation and indemnity are inextricably married, the action which the subrogee is entitled to against the stranger wrongdoer is one in indemnity as clearly distinguishable from an action calling upon a stranger wrongdoer for contribution towards the damages of the workman. This is why, he says, the use of the word "subrogation" in the sense of indemnification limits the right of the employer to sue for and recover only the amount paid in compensation. Subrogation, he adds, is a remedy for the enforcement of a broader right than is contribution which only involves proportional payment. A subrogee, he says, is entitled to full indemnity and not only to contribution.

Counsel for the plaintiffs, therefore, concludes that if he is right in his interpretation of s. 7(3) of the Quebec *Workmen's Compensation Act*, the owners of the *Leecliffe Hall* cannot invoke the provisions of s. 650 of the *Canada Shipping Act* to recover a moiety of the compensation which they have paid to the life and personal injury claimants for s. 650 only contemplates the case where the owners of one vessel partly to blame with the owners of another vessel for a collision between their respective vessels, are sued for damages by the life and personal injury claimants who have sustained such damages and pay such damages. In such a case they then have a right to recover from the owners of the other vessel the joint tortfeasor, a contribution to such damages equal to the proportion of the negligence of the owners of such other vessel.

In the present case, however, the owners of the *Leecliffe Hall* have not been sued for damages by the life and personal injury claimants, in fact they could not be sued for s. 15 of the Quebec *Workmen's Compensation Act* takes away or prohibits such a recourse. They could only be called upon to pay, and in fact were called upon to pay, compensation. Counsel for the plaintiffs, then gives to the word "compensation" a limited meaning in that it can mean only, he says, "the money relief afforded according to the scale established and for the purpose designated by the Act and not the compensation damages recoverable in an action at law for a wrong done or a contract broken". He also relies for this interpretation on the fact that the Act itself differentiates between "damages" and "compensation" when it says that the

workman can either claim compensation from his employer or take an action against some person which can only be an action in damages founded on tort even though the word "damages" is not used.

Dealing with counsel's first proposition, I must say that several of his basic assertions are far from certain. For instance, the assertion that, in a case where both vessels are to blame and the claimants sue *Apollonia* for their full damages on the basis that the *Apollonia* was a joint and several tortfeasor, they would be entitled to recover their full damages from the *Apollonia* would not be so if a decision of the Quebec Appeal Court is relied on[17] , nor would the assertion that if the *Apollonia* had paid the full damages to the claimants, it would not be entitled to recover any part of the damages paid to the claimants from the *Leecliffe Hall* be true if another decision of the Appeal Court is relied on[18].

I am not saying that I would agree entirely with the above decisions but the fact remains that there is at the present time some difference of opinion as to what happens when a person is injured or dies as a result of the joint negligence of the employer of the victim and of a third party or a stranger. I do not have to determine, for the time being, the correctness of the plaintiffs' assertions. I shall merely say that the problems involved herein are due mainly to the difficulties involved in apportioning liability between the employer of the victim and a third party or stranger when both are responsible for the accident in a case such as here where the employer is governed by the *Workmen's Compensation Act*. Under the ordinary law and between them, both would be liable for the damages in accordance with their percentage of fault. But here, as far as the employer is concerned, we are faced with an industrial accident which must be dealt with in accordance with special legislation, the Quebec *Workmen's Compensation Act*. We indeed have here two methods of dealing with claims which are based on two different concepts. Solidarity or the obligation in *solidum* to which co-authors of damages are sometimes subjected to, is a surety given the victim to insure that he will obtain reparation from one or the other of the co-authors, notwithstanding the insolvency of the other. This rule creates difficulties when dealing with an industrial accident caused by both a third party and the employer. How, indeed, can the principles involved in the *Workmen's Compensation Act* be reconciled with the rule of solidarity

[17] *Universal Pipeline Welding Co. v. McKay*, [1969] *Que.* Q.B. 777 where it was decided that "Le tiers ne peut, par conséquent, être tenu responsable que de la proportion des dommages imputables à sa propre faute." on the basis that there can be no solidarity where one of the authors of the accident is an employer who comes under the *Workmen's Compensation Act*.

[18] Cf. *Les Religieuses de la Présentation-de-Marie v. Gauthier* [1969] *Que.* Q.B. 48, where a third party sued by the victim of an accident was allowed to call in warranty the victim's employer who was covered by the *Workmen's Compensation Act*. I should say that Chief Justice Tremblay dissented and held that this was not possible as one could not do indirectly what s. 15 of the *Workmen's Compensation Act* clearly forbade to do directly referring to a similar dictum of Cartwright J. in *Cauchon v. Commissaire des accidents du travail du Québec* [1964] S.C.R. 395 at p. 400.

between co-authors of a delict or of a quasi-delict? The third party responsible for a delict or quasi-delict must compensate the victim for the totality of the prejudice sustained as a result of the common delict committed by him and the employer whereas the latter merely has to pay an annual assessment if he comes under Schedule I of the Act or compensation if he comes under Schedule II.

The apportionment of liability for an accident between several persons should ordinarily only affect the co-debtors amongst themselves and should not affect the obligation of one of them towards the victim.

The reason given in some of the decisions in Quebec in refusing to apply solidarity is that the victim's claim against the third party and the claim he has against the employer, have not the same legal cause, or do not originate from the same legal or juridical cause. With respect, this assertion, in my view, is not correct. It is not true to say that the claim of a victim against the third party responsible and the employer have not the same juridical cause. In both cases the cause of the victim's claim is the reparation of the prejudice caused by the employer and the third party for the same accident. It is truer to say, I believe, that solidarity in the case of the employer is excluded because of the special requirements of the *Workmen's Compensation Act*. Solidarity, indeed, supposes that each of the co-authors of the delict is personally and pecuniarily liable towards the victim. The employer, under the *Workmen's Compensation Act,* is not, however, personally or pecuniarily liable towards the victim. He discharges whatever obligation he has by paying assessments or compensation. He, therefore, cannot be held solidarily responsible for a debt which he does not owe and for the payment of which he has been replaced by the fund.

Furthermore, one of the essential effects of solidarity which is to protect against the insolvency of one of the co-authors is no longer as necessary as it would be in a case which is governed by the *Workmen's Compensation Act* as the solvency of a fund up to a certain amount in any event, cannot be questioned.

On the other hand, the application of solidarity to the obligation of a third party partially responsible for an accident covered by the *Workmen's Compensation Act* should give him a recourse against the employer, co-author of the accident, which recourse would, of course, go against s. 15 of the *Workmen's Compensation Act*.

The co-authors of an accident, whatever may be their obligations towards the victim or the manner in which they must discharge them, are liable for one and the same thing; they must compensate for or repair the prejudice sustained. The manner in which they discharge this obligation should not modify the nature of their debt towards each other and whether they do so personally, by the intermediary of an insurance company or by the Workmen's Compensation Commission, they should still be held to the same obligation.

If there is no solidarity the victim suffers in that, if his damage is greater than the indemnities paid out of the compensation fund, or the contribution of the third party, he will not be fully compensated. If there is no solidarity, the immunity given to an employer under the Act would benefit the third

party, co-author of the accident. He, indeed profits indirectly from a provision which was not made for him. If such is the case, why should not solidarity be applied unilaterally? Should indeed the third party responsible be protected to the detriment of the victim?

On the other hand, if the ordinary rule of solidarity was allowed to operate, the interests of the victim would no doubt be protected but those of the third party or stranger would not as he could not claim from the employer a co-author of the prejudice the amount corresponding to the latter's responsibility.

As in either case the ordinary principles of solidarity will be affected, the question really is who should be protected and there is no easy answer. This, I believe, explains why there has been some dissent in the decisions rendered in Quebec on this subject.

The answer to this problem may well be that solidarity should not be applied to a case such as the present one. There is sufficient reason to adopt such a solution where, if solidarity is applied, a third party responsible, for instance, for a minor part of the liability, could be called upon to pay the entire amount without any possible recourse (which it would ordinarily under the law be entitled to) against the main wrongdoer, the employer, although, of course, if the latter was insolvent, he would pay the total amount. The same inequitable situation would result from a claim by this same employer who has paid compensation under the *Workmen's Compensation Act* and then after being subrogated to the rights of the victim, takes an action against the third party for the full amount of the compensation. By adopting such a course of action, *i.e.* by refusing to apply subrogation, a more equitable result seems to be attained and the problem is solved in a more practical way. There would, indeed, be no injustice were it accepted that when a victim has a claim against an employer covered by the *Workmen's Compensation Act,* the employer, the Commission or the victim can never claim more from the third party than the portion for which the latter is liable. This would do away with the unjust claim of an employer subrogated to the rights of the victim and claiming from a third party an amount corresponding to a percentage of the claim far in excess of the third party's liability. If solidarity was not applied, it would also no longer be necessary for a third party who is sued for the full amount to try and recover from his co-author, the employer, an amount corresponding to the latter's liability as was allowed in *Les Religieuses de la Présentation-de-Marie v. Gauthier, supra.* I can see in the language used in s. 7(3) of the *Workmen's Compensation Act* nothing to prevent the adoption of the solution hereinabove described to a claim made under secs. 649 and 650 of the *Canada Shipping Act.* I rather think that it would prevent some absurd results which I cannot believe the Legislature could have intended.

On the one hand, there is the law of tort or delict established by the *Canada Shipping Act,* under which, where two persons by their fault cause personal injuries,

(*a*) as between them and the injured party, they are jointly and severally liable (s. 649), and

(*b*) as between themselves, they are responsible for the damages according to their respective faults (s. 650).

On the other hand, there is the *Workmen's Compensation Act,* under which, when a workman is injured,

(*a*) he is entitled to be paid, regardless of his fault or the fault of his employer, a statutorily determined amount by his employer or out of a fund to which his employer contributes, and

(*b*) his employer is not liable to pay in respect of his injury any amount other than such statutorily determined amount, regardless of his fault.

Being an Act to benefit employees and their employers, and not an Act to benefit third party wrongdoers, the *Workmen's Compensation Act* also provides

(*a*) that the workman can, instead of claiming compensation under that Act, claim damages against a person other than his employer who caused his injury (s. 7(1)), and then, if he recovers less by way of damages than the statutorily fixed compensation, he will be paid the difference by his employer or out of the fund (s. 7(2)), and

(*b*) that, if the workman claims compensation under the Act, the employer (or the fund) can exercise the workman's legal right to claim damages from a third party tortfeasor.

In this case, it is clear that, if there had been no *Workmen's Compensation Act,* the employee could have sued either the plaintiff or his employer for the full amount of his damages and, as between themselves, each of them would have had to pay half.

It follows that, if the scheme of the *Workmen's Compensation Act,* as I have outlined it, has been well worked out in the detailed provisions of the Act, what the liability to pay compensation thereunder replaces is the employer's liability in delict for his share of the employee's damages. They should not operate to relieve the third party of any part of the damages for which he would otherwise be liable nor should they operate to make him responsible for more than the damages for which he would otherwise be responsible.

On first reading, however, it would seem that the detailed provisions of the *Workmen's Compensation Act* do both of these things depending on which course of action is followed.

If the employee sues the third party in the first instance, he recovers the full amount of his damages from the third party and the third party cannot recoup any from the employer because he is met by the second part of s. 650 read with s. 15. The result is that the third party is responsible for the whole of the damages.

If the employee claims compensation and the employer exercises the employee's right to sue the third party, the employer recovers the full

amount of the employee's damages from the third party and the third party cannot recoup any from the employer by reason of the same combination of provisions. The result again is that the third party is responsible for the whole of the damages.

In my view no such intention should be attributed to the Legislature when it enacted the *Workmen's Compensation Act*. Just as the Legislature intended that the right to compensation under the Act should not operate to reduce the damages payable by a third person wrongdoer, as the Supreme Court of Canada has decided in *The King v. Snell*[19] although that is nowhere to be found in so many words in the statute, I am of opinion that the *Workmen's Compensation Act* should not be construed as imposing a larger overall responsibility for the employee's injuries on the third party than would have existed apart from the statute. Section 15 should not, therefore, be construed as operating to bar a claim over by a third party for contribution from the employer under s. 650 of the *Canada Shipping Act* when the third person has paid to the injured person not only the share of damages for which he is ultimately responsible but also the share for which the employer is ultimately responsible as a wrongdoer. Similarly, s. 15 should not be given the bizarre result of enabling one wrongdoer to recover in his own name, or that of another, from his fellow wrongdoer not only the share of the damages for which the fellow wrongdoer is responsible as between them but also the share of the damages for which he himself is responsible as between them. There is, in my view, no need to restrict, as suggested by the plaintiffs, the word "compensation" in s. 7(3) solely to the money relief granted according to the scale established under the Act. It does, of course, mean that, but it should and does also mean the excess which, under the same Act, the claimant may be entitled to claim as this also is part of his compensation. It could also mean the indemnity that the victim of an accident may be entitled to as damages which he has assigned and which may then be recovered by the owners of a vessel "by way of contribution" under s. 650 of the *Canada Shipping Act* but insofar only as the owners may, under that section, claim contribution and only for the amount they are entitled to claim.

The words "against the person responsible" in s. 7(3) of the *Workmen's Compensation Act* do not, in my opinion, mean that the legal action can be instituted only when that person is solely liable. The section does not, indeed, say "that person 'alone' or 'solely' ". I would, indeed, be restricting unduly the words used in this section if I held, as suggested by the plaintiffs, that the legal action by subrogation given in s. 7(3) can be taken only when "the person responsible" is solely liable and where there is no liability on the part of the employer. These words merely refer to that "some person other than his employer" in par. (1) s. 7 where it appears clearly that the person contemplated can be one of several or any person

[19] [1947] S.C.R. 219.

or persons against whom a workman may have an action. "The person responsible" refers to the person who, under the ordinary law governing liability, is responsible. There may even conceivably be several third parties involved in one accident who could all be liable. They could all be sued and, as I pointed out above, there would be none of the inequitable results mentioned by counsel for the plaintiffs, if they were sued only for their share of liability. I am also of the view that the language used in that subsection does not prevent such a course of action.

The object of the *Workmen's Compensation Act* is to protect the victim of an industrial accident by allowing him to obtain, whether he is at fault or not, compensation for his injuries. It also places the liability of the employer on a fixed basis. It does not, however, as mentioned in s. 13(2) "do away with any of the common law rights belonging to any person not subject to its provisions" and I am thinking here of the "stranger" who should not be affected by the Act.

Had Hall Corporation been sued at a time when it was not under the *Workmen's Compensation Act,* it would have been entitled under the ordinary law (Art. 1156 *Civil Code*), after paying in full the claims (assuming it were in part to blame) to be subrogated by the sole operation of the law. It then by a recursory action could have recovered from the owners of the *Apollonia* their share and portion (Art. 1118 *Civil Code*). As a matter of fact, this right still subsists notwithstanding the subrogation contained in s. 7(3) of the *Workmen's Compensation Act.* It, therefore, follows that whatever language was used in s. 7(3) of the *Workmen's Compensation Act,* whether the indemnity mentioned there should be, as suggested by counsel for the plaintiffs, considered isolated and on its own as "a shifting of the entire loss" rather than "a sharing of the loss" it should not, in my view, prevent an employer who has paid the victim thereunder, from claiming a "contribution" from the third party for his part of the damage. I say this because whatever the words used in that section may mean, they cannot affect the right of Hall Corporation, under the ordinary law, to claim reimbursement by way of contribution under s. 650 of the *Canada Shipping Act* for the *Apollonia's* share of liability.

It was held in *Universal Pipeline Co. v. McKay,* that there can be no joint and several liability where an industrial accident has resulted from the concurrent faults of the employer or of a co-employee of the victim and of a third party. I can see no reason why the same should not apply to Hall Corporation's claim against the *Apollonia.* There would, indeed, be no inconsistency in allowing recovery by Hall Corporation from the plaintiffs of an amount representing the latter's degree of fault under secs. 649 and 650 of the *Canada Shipping Act.* It is true that s. 649(1) says that there is a joint and several liability towards the victim where both vessels are at fault. The above claim, however, should be considered for the purposes of the *Canada*

Shipping Act as one for contribution from the *Apollonia* which it really is even if Hall Corporation is subrogated to the rights of the victims and could even have claimed under their names.

As a matter of fact, accepting the view expressed in *Universal Pipeline Co. v. McKay*, that because of the operation of the *Workmen's Compensation Act* the liability of the employer ceases to be joint and several in nature, then I have no difficulty in finding also that the same must hold true for the third party whose fault contributed to the accident.

I therefore must conclude that the owners of the *Apollonia* are not only liable to the owners of the *Leecliffe Hall* for a moiety of the compensation paid by them but that (although I do not have to decide this) the amount corresponding to the other ship's liability may well be the only one that it can claim.

I now come to plaintiffs' last submission which is that even if the above is true, the claim would no longer be a claim for damages for loss of life and personal injury, but would be one for loss or damage resulting from infringement of rights and, consequently, it would fall to be paid out of the limited fund for property *pari passu* with all other claims for loss of or damage to property, rather than the fund for injury and death and property which is greater and in which case the claim would be paid in its entirety.

Counsel for the plaintiffs submits that if the *Apollonia* is liable to the *Leecliffe Hall* for a moiety of the compensation paid by them, it is not because the latter stands in the shoes of the life and personal injury claimants which he submits they cannot do, but because this compensation paid by them was a loss resulting from an infringement of their rights which directly resulted from the collision just as did the expenses which they incurred for the removal of the wreck of the *Leecliffe Hall*. They were forced to discharge a statutory obligation or a statutory debt which they would not otherwise have had to discharge or to pay, but which could have been contemplated as resulting from the collision.

I do not believe that one can say that the owners of the *Leecliffe Hall* in paying compensation under the Quebec *Workmen's Compensation Act* to the life and personal injury claimants were merely paying a statutory debt and that their claim now in subrogation is completely disconnected from the original claim of the victims or their representatives. The compensation paid by Hall Corporation arose, in my view, not only from an infringement of rights but from a collision admittedly caused by the fault of those on both vessels. The compensation received by the victims, or their representatives, is to compensate them for their injuries or because of their death. The *Workmen's Compensation Act* simply provides a method whereby the injured employee and the dependents of the deceased may recover damages and compensation without having to prove fault. It does not, in my view, change the nature nor the object of the claims.

Sections 657 and 658 of the *Canada Shipping Act* clearly distinguish between liability for loss of life and personal injury on the one hand and loss or damage to property or infringement of rights on the other. It is not

disputed that if there has been loss of life or personal injury, the liability for damages (including damage to property) is 3,100 gold francs per ton, whereas if there has been damage to property or infringement of rights alone, the liability is 1,000 gold francs per ton. It would, indeed, be a strange anomaly as well as a gross injustice, if the owners of a wrongdoing ship could get off scot free no matter how many persons are killed or injured simply because those persons or dependents had elected to obtain compensation under the Act and had not sued for any excess. If, indeed, the plaintiffs are correct in their submission, it would mean that even if their vessel the *Apollonia* were alone to blame, the limit of liability would be that relating to property damage alone. One may well ask also what the situation would be if Hall Corporation were a mere contributor under Schedule I and had not paid the compensation to the fund as it did here. Could, in the event the Commission sued the owners of the *Apollonia,* the latter then limit liability as property damage and if not, why should Hall Corporation be in a different situation simply because they fall under Schedule II? It is my view that payment by Hall Corporation of the amount paid as compensation to the victims or their families is merely the method whereby the victims were indemnified. The claims were for death or injury and the fact that they have been satisfied through the above procedure, cannot for the purpose of claiming under secs. 649, 650, 657 and 658 of the *Canada Shipping Act* have changed their nature. This is a claim for loss of life or injuries even if it is being enforced by a person who is subrogated to the rights of the original claimants. It, therefore, follows that Hall Corporation's claim for the compensation paid to the injury and death claimants should be considered as a death and injury claim and paid accordingly.

I now come to the conclusions prayed for in the present action. Counsel for the plaintiffs submits that upon sufficient evidence being adduced, the court should declare that the plaintiffs are entitled to have their liability limited pursuant to the provisions of s. 657 of the *Canada Shipping Act.* They also request the entry of a decree that they are not liable in respect of all losses or damage to property or infringement of rights in an amount exceeding $693,333.64 with interest at 5% from the date of the collision to the date the amount of plaintiffs' limited liability is paid into court or such decree is entered, whichever comes later. The suggestion is that the entry of the decree should be made immediately and that such decree should be advertised in a number of newspapers for the purpose of allowing any claimant to come forth and participate, if entitled, in the limited fund.

Such, indeed, is the procedure followed in the United Kingdom where, however, a rather involved procedure is set down (in Order 75 rules 37, 38, 39, 41 of the Rules of the Supreme Court) to allow claimants to enter an appearance, to file their claims and even to set the decree aside (O. 75 r. 39 (1) and (3)).

We have no such procedure in this country. We have only s. 658 of the *Canada Shipping Act* which merely deals with the matter of limitation and distribution of the limitation fund and which does not spell out the manner in which this should be done:

> **658.** (1) Where any liability is alleged to have been incurred by the owner of a ship in respect of any loss of life or personal injury, any loss of or damages to property or any infringement of any right in respect of which his liability is limited by section 657 and several claims are made or apprehended in respect of that liability a judge of the Exchequer Court may, on the application of that owner, determine the amount of his liability and distribute that amount rateably among the several claimants; such judge may stay any proceedings pending in any court in relation to the same matter, and he may proceed in such manner and subject to such regulations as to making persons interested parties to the proceedings, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of any costs, as the Court thinks just.
>
> 1 (*a*) A judge of the Court in making a distribution under subsection (1) where there are claims in respect of loss of life or personal injury, and of loss of or damage to property or the infringement of any right, shall distribute rateably among the several claimants the amount at which the liability has been determined, as follows:
>
> (*a*) twenty-one thirty-firsts of the amount shall be applied in payment of claims in respect of loss of life and personal injury; and
>
> (*b*) ten thirty-firsts of the amount shall be applied in payment of claims in respect of loss of or damage to property or infringement of any right, and to the satisfaction of the balance of any claims in respect of loss of life and personal injury remaining unpaid after distribution of the amount applied pursuant to paragraph (*a*).
>
> (2) The President or the Puisne Judge of such Court, instead of exercising in person the powers conferred upon him by subsection (1) may, by order of his court, commit to any District Judge in Admiralty of such Court the power to determine as aforesaid, whereupon such District Judge may proceed as if he were, and with the powers of the Judge to whom such application of such owner was made.
>
> (3) In making a distribution under this section of the amount determined to be the liability of the owner of a ship the Court may, having regard to any claim that may subsequently be established before a court outside of Canada in respect of that liability, postpone the distribution of such part of the amount as it deems appropriate.
>
> (4) No lien or other right in respect of any ship or property shall affect the proportions in which any amount is distributed by the Court under this section amongst the several claimants.

It appears from this section that the decision to be rendered by the judge of the Exchequer Court in establishing the amount of liability of the owner of a ship and distributing that amount rateably among the several claimants is a final judgment[20]. This, of course, is quite different from the procedure adopted in the United Kingdom where the decree is entered immediately and the claimants may, under the rules, come and file within the period advertised, their claims, attack the decree entered and even raise the question as to whether the events which led to the collision occurred with the privity or

---

[20] Cf. s. 82(5) of the *Exchequer Court Act:*

> 82. ... (5) A judgment is final for the purpose of this section if it determines the rights of the parties, except as to the amount of the damages or the amount of liability.

fault of the owners of the vessel. There is no such procedure available under our rules and it appears to me that a judgment rendered entering a decree in this country can only be altered by an appeal. If such is the situation, it appears to me that the procedure followed in the United Kingdom cannot be followed in our country. If, indeed, the judgment prayed for cannot be attacked otherwise than by an appeal, it will be necessary to insure that before a final decision is rendered, all claimants entitled to claim and to contest plaintiffs' right to limit their liability have the opportunity to come and express their rights and contest the right of the party seeking limitation or even the right of other claimants to claim from the fund. This can be done by allowing the plaintiffs to advertise the intent to obtain a decree for the purpose of limiting their liability and call upon all claimants who have claims to file them within a period of time sufficiently long to enable them to do so, having regard to the fact that we are dealing in such matters with claimants (hull, cargo, seamen and passengers) who may, and most of the time do, live in various parts of the world. In England, the period of time allotted for filing claims is two months and I do not feel that in most cases such a period of time is excessive. I will therefore refrain at this stage from entering the decree prayed for or even from issuing a judgment on the contentious matters raised in these proceedings until such time as the proposed decree prayed for by the plaintiffs has been advertised as hereinafter set down and the various claimants have had the opportunity of entering and filing their claims or of attacking the right of the plaintiffs herein to limit their liability as well as the right of any claimant to claim against the fund.

The decree requested by the plaintiffs shall, therefore, be advertised by a single insertion in two Montreal daily newspapers, one in English, the Montreal *Gazette,* and the other in French, the Montreal *La Presse,* identifying the action, the casualty and the relation of the plaintiffs thereto (whether as owner of a ship involved in the casualty or otherwise as the case may be) stating that the proposed decree is requested and specifying the amounts to be fixed thereby as the limits of the plaintiffs' liability and the various claims made against the fund and specifying that any person who wishes to claim must do so within two months of the publication of the advertisement by entering an appearance in this action and filing a defence or otherwise putting forward their claim or claims. The plaintiffs must within the above two months file in the Montreal Registry a copy of each newspaper in which the advertisement appears and an affidavit establishing compliance with the order. All further proceedings in action No. 916 of the records of the Quebec Admiralty District of this court wherein the present plaintiffs are the defendants, and the defendants, Hall Corporation of Canada and the master, officers and crew of the *Leecliffe Hall,* are plaintiffs, and in action No. 1069 of the records of the Quebec Admiralty District of this court wherein Bethlehem Steel Corporation is plaintiff and the present plaintiffs are the defendants, are hereby stayed

and all persons who may have claims in respect of loss of or damage to property or infringement of rights arising out of the said collision may enter their claims as hereinabove set down but are hereby restrained from instituting or continuing any other proceedings in Canada against the said plaintiffs or against the motor vessel *Apollonia* for the recovery of such losses or damages.