

ONTARIO ADMIRALTY DISTRICT

1963
June 10

BETWEEN :

THE TORONTO HARBOUR COM- }
MISSIONERS } PLAINTIFF;

AND

THE SHIP *ROBERT C. NORTON* }
et al. } DEFENDANT.

*Admiralty—Practice—Requirements in answer to plea of res ipsa loquitur
—Application to strike out plea granted.*

Held: That a defendant who intends to prove some reasonable explanation for an accident in answer to the plea of *res ipsa loquitur* raised by the plaintiff must give sufficient information for the accident which he intends to raise or may raise in order that the plaintiff may plead to it.

MOTION to strike out an allegation in a statement of defence.

The motion was heard before Mr. A. S. Marriott, Q.C., Surrogate Judge in Admiralty in Chambers.

A. J. Stone for the motion.

J. A. Bradshaw contra.

Per MARRIOTT, Surrogate Judge in Admiralty:

Where a plaintiff pleads *res ipsa loquitur* it is well settled that it is open to the defendant to attempt to prove some reasonable explanation for the damage which will excuse him and preclude operation of the said principle; Salmond on Torts 13th ed. p. 453-4. However, if the defendant wishes to make such an allegation in his statement of defence it should be made in accordance with the rules of pleading.

Here the defendant has followed that rule in paragraph 5(a) and (b), but so far as (c) is concerned it gives no information to the plaintiff at all as to the nature of the explanation for the accident which the defendant intends to raise or may raise and therefore the plaintiff cannot plead to it and thus define the issue. So that the plaintiff is put in the position of having to go to trial with this unidentified allegation overhanging him and possibly may be caught by

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surprise. For that reason the pleading in my view is embarrassing.

The allegations contained in paragraph 5(a) and (b) are far reaching and it seems that they are sufficient to enable the defendant to conduct a wide discovery and if anything is unearthed which may give rise to a defence not covered by paragraph 5(a) and (b), leave may be obtained to amend the statement of defence either prior to or even at the trial. For these reasons I do not think it would be proper for the Court to allow the allegation in question to stand.

For these reasons the application will be granted and paragraph 5(c) will be struck out. Time for reply extended to ten days after entry of this order. Costs of the application to the plaintiff in the cause.

Order accordingly.
