

CASES  
DETERMINED BY THE  
EXCHEQUER COURT OF CANADA  
AT FIRST INSTANCE  
AND  
IN THE EXERCISE OF ITS APPELLATE  
JURISDICTION

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BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN:

BIRKS CRAWFORD LIMITED ..... PLAINTIFF;

AND

THE SHIP *STROMBOLI* ..... DEFENDANT.

*Shipping—Practice—Stay of action brought in Canada—Agreement in bill of lading on forum.*

*Held:* That where the parties to a bill of lading have agreed to litigate any dispute arising thereunder by Italian law at Genoa, Italy, an action brought in this Court will be stayed in order that the parties may carry out the agreement.

MOTION to have action dismissed or stayed.

The motion was heard before the Honourable Mr. Justice Sidney Smith, District Judge in Admiralty for the British Columbia Admiralty District at Vancouver.

*J. R. Cunningham* for the motion.

*F. H. H. Parkes, contra.*

SIDNEY SMITH D. J. A. now (December 9, 1953) delivered the following judgment:

This is a motion by the defendant that this action be dismissed or stayed. The proceedings concern cargo found damaged on discharge at Vancouver. There can be no doubt of the Court's jurisdiction.

1953  
Nov. 27  
Dec. 9

1953  
 BIRKS  
 CRAWFORD  
 LIMITED  
 v.  
 THE SHIP  
*Stromboli*  
 Smith D.J.A.

The only question to be decided arises by way of a provision in the Bill of Lading to the effect that the parties thereto had contracted to litigate any dispute arising thereunder by Italian law, and "before the Judicial Authority of Genoa", Italy, and not otherwise. On reading the pleadings and on consideration of the authorities, I think the proper order is that made by Sir Samuel Evans in *The Cap Blanco* (1).

In dealing with commercial documents of this kind, effect must be given if the terms of the contract permit it, to the obvious intention and agreement of the parties. I think the parties clearly agreed that disputes under the contract should be dealt with by the German tribunal, and it is right to hold the plaintiffs to their part of the agreement. Moreover, it is probably more convenient and much more inexpensive, as the disputes have to be decided according to German law, that they should be determined in the Hamburg Court.

Although, therefore, this Court is invested with jurisdiction, I order that the proceedings in the action be stayed in order that the parties may litigate in Germany, as they have agreed to do.

I direct therefore that the proceedings in this action be likewise stayed in order that the parties may litigate in Genoa, Italy, as they have agreed to do.

The defendant will have costs of the motion.

*Order accordingly.*