

(THE QUEBEC ADMIRALTY DISTRICT)

1952
Feb. 18-21
1953
Jan. 9

BETWEEN:

ILLINOIS ATLANTIC CORPORA-
TION AND FEDERAL MOTOR-
SHIP CORPORATION (*Plaintiffs*)

APPELLANTS,

AND

THE S.S. *RAPIDS PRINCE* and her
owners (*Defendants*) }

RESPONDENTS.

Shipping—Claim for bottom damage—Burden of proof—Expenses of adjusting general average expenditures as between ship and cargo not recoverable by carrying ship from wrong-doing ship.

The plaintiffs brought action against the defendants for damages alleged to have resulted from a collision between their *M.V. Buckeye State* and the defendants' *S.S. Rapids Prince*. The defendants paid all the damages except the claims for bottom and detention damage sustained by the *Buckeye State* and the expenses incurred in adjusting general average expenditures between ship and cargo. Liability for these damages was denied. The action was dismissed by Smith D.J.A. of the Quebec Admiralty District. The plaintiffs appealed.

Held: That the burden of proof that the *Rapids Prince* was responsible for the bottom damage sustained by the *Buckeye State* rests on the *plaintiffs*. The plaintiffs need not establish their case beyond all reasonable doubt. All that is needed is a preponderance of evidence that the damage complained of was caused as alleged so that the Court may be reasonably satisfied, having regard to all the circumstances, that it was so caused.

1953
ILLINOIS
ATLANTIC
CORPORATION
et al.
v.
S.S. *Rapids
Prince*

2. That where damage may have been due to one of several causes it is not to be assumed, in the absence of cogent reasons, that it was the result of any one particular cause.
3. That the expenses of adjusting the general average expenditures to determine the proportions to be paid by ship and cargo respectively were not collision damage.
4. That while cargo has an independent and direct right to recover from the wrong-doing ship its portion of the general average expenditures that were collision damages there is no justification for allowing the owners of the carrying ship the further expenditures involved in adjustments between the ship and cargo. *Owners of Cargo ex "Greystoke Castle" v. Morrison Steamships Company Ltd.* (1947) 80 Ll. L. 55 discussed.

Appeal from judgment of Smith D.J.A. of the Quebec Admiralty District dismissing the plaintiffs' action.

The appeal was heard by the President of the Court at Montreal.

J. Brisset for (plaintiffs) appellants.

R. C. Holden Q.C. for (defendants) respondents.

The facts and questions of law raised are stated in the reasons for judgment.

THE PRESIDENT, on January 9, 1953, delivered judgment, but the same is reported only on the questions stated:

This is an appeal from the judgment of Smith D.J.A. of the Quebec Admiralty District dismissing certain claims by the appellants for damages alleged to have resulted from a collision between the respondent vessel S.S. *Rapids Prince* and the M.V. *Buckeye State* owned by the appellant Federal Motorship Corporation and chartered by the appellant Illinois Atlantic Corporation.

[The President then set out the facts on which the plaintiffs made their disputed claims relating to bottom and detention damage and to general average disbursements.]

1953
 ILLINOIS
 ATLANTIC
 CORPORATION
 et al.
 v.
 S.S. *Rapids
 Prince*
 Thorson P.

[The President then set out the nature and extent of the claim for bottom damage and held]:

The burden of proof that the *Rapids Prince* was responsible for the bottom damage sustained by the *Buckeye State* rests on the plaintiffs. To succeed in their claim they must prove that the *Buckeye State* was grounded after she was tied up to the bank and that the damage to her bottom and other damage complained of was the result of such grounding. The plaintiffs need not, of course, establish their case beyond all reasonable doubt. All that is needed is a preponderance of evidence that the damage complained of was caused as alleged so that the Court may be reasonably satisfied, having regard to all the circumstances, that it was so caused.

[The President then reviewed the evidence relating to the claim for bottom damage and stated]:

Where damage may have been due to one of several causes it is not to be assumed, in the absence of cogent reasons, that it was the result of any one particular cause.

[The President continued his review of the evidence and concluded]:

On the evidence, as I find it, I have no difficulty in reaching the conclusion that the plaintiffs have failed to discharge the burden of proof cast upon them. There is certainly no preponderance of evidence that the damage complained of was caused while the *Buckeye State* was tied up to the bank as alleged by the plaintiffs and I do not see how the Court could possibly feel satisfied that it was so caused. In my judgment, the plaintiffs have failed to establish any responsibility on the part of the *Rapids Prince* or her owners for the damage complained of.

[The President then commented on the condition of the bottom plates and held]:

And it should be remembered that it is not for the defendants to prove the cause of the bottom damage. It was for the plaintiffs to do so and to prove that the cause was attributable to the *Rapids Prince*. This they have failed to do and their claim in respect of the bottom damage cannot be allowed.

[The President then continued as follows]:

There remains only the claim for so-called general average expenditures set forth in item 14 of the first group of the plaintiff's claims. These were not general average expenditures in the ordinary sense of expenditures incurred by an injured ship in putting into a port of refuge, but rather the expenses of adjusting the general average expenditures to determine the proportions to be paid by ship and cargo respectively. They were therefore not collision damage, the collision not being the *causa causans* of the adjustment expenditures but only their *causa sine qua non*. All the actual expenditures for salvage and general average expenditures in the ordinary sense have been paid by the defendants. They deny liability for the expenditures connected with adjusting such expenditures as between the owners of the ship and the cargo. Counsel for the plaintiffs relied upon the decision of the House of Lords in *Owners of Cargo ex "Greystoke Castle" v. Morrison Steamship Company Ltd.* (1) in support of their claim. While it was held there for the first time, overruling *The Marpessa* (2), that cargo had an independent and direct right to recover from the wrongdoing ship its portion of the general average expenditures I agree with counsel for the defendants that this decision does not cover the adjustment and other expenses set out in item 14. The decision merely goes to the extent of deciding that cargo can claim its portion of the general average expenditures that were collision damage, such as, for example, its portion of the general average expenditures that might be incurred because as a result of a collision with the wrongdoing ship the carrying ship had to put into port, discharge cargo, effect repairs and reload cargo, but that there is no justification for allowing the owners of the carrying ships the further expenditures involved in adjustments between the ship and cargo. The claim for the so-called general average disbursements is thereof denied.

For the reasons given the appeal herein must be dismissed with costs.

Judgment accordingly.

1953

ILLINOIS
ATLANTIC
CORPORATION
et al.
v.
S.S. Rapids
Prince
Thorson P

(1) (1947) 80 Ll. L. 55.

(2) (1891) P. 403.