



1924
Feb. 28.

BRITISH COLUMBIA ADMIRALTY DISTRICT

WINSLOW MARINE RY. & SHIP-
BUILDING CO. } PLAINTIFF;

AGAINST

THE SHIP *PACIFICO*

Shipping—Admiralty law—Claim for work and material supplied—Interest on claim ex contractu—Time from which to be allowed.

In an action against a ship to recover an amount due for work and labour done, and material supplied to the ship, with interest, it was held, that the plaintiff was entitled to recover interests upon the amount of his bill from the date of the formal demand of payment thereof, after due completion of the work under the contract. (The Northumbria, 1869, L.R. 3 Adm. & Ecc. 6, followed).

ACTION by plaintiff to recover the amount of an account against the ship for work and labour done and material supplied.

January 3, 4 and 10, 1924.

Action now tried before the Honourable Mr. Justice Martin at Victoria.

E. C. Mayers for plaintiff.

N. D. Hossie for defendant.

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

MARTIN L.J.A. now, this 28th February, 1924, delivered judgment.

At the close of the hearing I said that subject to the objection to my jurisdiction and the question of interest, I was prepared to give judgment for the plaintiff's claim in full.

As to the objection to the jurisdiction, my impression at the time was that it was not supported by the authorities cited and I remain of that opinion.

As to the interest: the plaintiff claims it from the time it rendered its bill on the 27th of March last for the work and labour done and materials supplied. It is beyond serious question that the ancient practice of the Admiralty Court in allowing interest upon claims arising *ex delicto* still prevails, *e.g.*, in collision cases from the time when the injury occurred, a practice which is based upon the civil law and which Lord Esher, M.R. commended in *The Gertrude* (1), as

more just than the common law rule, and as not being in any way disapproved of by Lord Selborne L.C., in the House of Lords in *The Khedive; Stoomvaart Maatschappij Nederland v. Peninsular & Oriental St. Nav. Co.* (2), in the following language:

It does not appear to have been the general course of the court that those decrees should contain any directions as to interest; and I think it more probable that the principle on which interest was computed under them is that mentioned by Mr. Sedgwick in his book on Damages (chapter 15, pp. 373 and 385-7), where he treats of the power of a jury to allow interest, as in the nature of damages, for the detention of money or property improperly withheld, or to punish negligent, tortious, or fraudulent conduct; the destruction of or injury to property involving the loss of any profit which might have been made by its use or employment.

And in *The Gertrude*, *supra*, the rule as to interest was applied to a case which before the Judicature Act could

1924
WINSLOW
MARINE RY.
& SHIP-
BUILDING
Co.
v.
THE SS.
Pacifico.
Martin
L.J.A.

(1) [1888] 13 P. 105 at p. 108.

(2) [1882] 7 A.C. 795 at p. 803.

1924
 WINSLOW
 MARINE RY.
 & SHIP-
 BUILDING
 Co.
 v.
 THE SS.
Pacifico.
 —
 Martin
 L.J.A.
 —

not have been tried in Admiralty, but only in one of the Common Law Courts; that case was one of damage to cargo by stranding; and the *Baron Aberdare* (1) in the same report was one of negligence by a dock company in mooring. It is instructive to note that in *Smith v. Kirby* (2), the King's Bench Division, affirming Lush J., followed the Admiralty rule and allowed interest from the date of collision. In *The Khedive, supra*, Lord Bramwell, p. 823, agreed that the matter must be decided by the Admiralty practice, saying:

It is not a question of principle; it is not a question of reason; it is a question of what was the law of the Court of Admiralty; because undoubtedly what was the law formerly is the law still, for the Judicature Act has not changed the law in that respect.

No authority has been cited to show that with respect to interest any change has been affected by the Judicature Act; the earlier case of the *Jones Brothers* (3), is only a decision as to the date upon which interest upon judgments and costs taxed should begin to run and does not touch the question at bar. Moreover, the *Jones* case was one of salvage which claim arises neither *ex contractu* nor *ex delicto* and therefore it never was the practice in Admiralty to allow interest upon salvage awards.

The question, then, is narrowed down to the right to interest upon a claim *ex contractu*. Reliance is placed by the plaintiff upon the following observations of Sir Robert Phillimore in *The Northumbria* (4), a case arising out of a collision, at p. 10:—

But it appears to me quite a sufficient answer to these authorities to say, that the Admiralty, in the exercise of an equitable jurisdiction, has proceeded upon another and different principle from that on which the common law authorities appear to be founded. The principle adopted by the Admiralty Court has been that of the civil law, that interest was always due to the obligee when payment was not made, *ex mora* of the obligor; and that, whether the obligation arose *ex contractu* or *ex delicto*. The American common law has been made more liberal than the English; Mr. Sedgwick, in his work on damages (4th ed.), p. 443, remarks: "There is considerable conflict and contradiction between the English and American cases on this subject. But as a general thing, it may be said that while the tribunals of the former country restrict themselves generally to those cases where an agreement to pay interest can be proved or inferred, the courts of the United States, on the other hand, have shewn themselves more liberally disposed, making the allowance of interest more

(1) [1888] 13 P. 105.

(2) [1875] 1 Q.B.D. 131.

(3) [1877] 37 L.T. 164.

(4) [1869] L.R. 3 Adm. & Ecc. 6.

nearly to depend on the equity of the case, and not requiring either an express or implied promise to sustain the claim."

And he points out, p. 11, that the Chancery Courts followed the Admiralty rule as to interest, citing Vice-Chancellor Wood in *Straker v. Hartland* (1), wherein he said:

It was quite clear that justice required that a debt which was due but the payment of which was delayed, should carry interest.

In view of the positive statement of so learned a judge in Admiralty law as Sir Robert Phillimore that his court had adopted the just principle of the civil law

that interest was always due to the obligee when payment was not made *ex mora* of the obligor, and that, whether the obligation arose *ex contractu* or *ex delicto*

I do not feel at liberty to refuse the claim of the plaintiff herein to interest after it made a formal demand for payment by presenting its bill after due completion of the work under the contract. To say that interest could not be awarded in such circumstances by other courts is only another illustration of the more equitable rules that are established in this court in several respects: Lord Chancellor Herschell in *London Chatham Dover Ry. v. South Eastern Ry.* (2), said at p. 440, that claims for interest in the Common Law Courts were kept within limits which were

too narrow for the purposes of justice.

In the ascertainment of the exact date from which interest is to run herein, I direct counsel's attention to the final words in the letter of defendant's attorney, dated 21st February, 1923, (Ex. 9), with leave to speak to the point, if necessary.

The plaintiff is entitled to judgment for the full amount of its claim and costs.

Judgment accordingly.

1924.
 WINSLOW
 MARINE RY.
 & SHIP-
 BUILDING
 Co.
 v.
 THE SS.
Pacifico.
 Martin
 L.J.A.