

BRITISH COLUMBIA ADMIRALTY DISTRICT

Vancouver
1964

BETWEEN:

Sept. 14-16
21, 22

GEORGE PERDIA PLAINTIFF;

Nov. 6

AND

KINGCOME NAVIGATION CO. LTD. DEFENDANT.

Shipping—Collision of ships—Apportionment of fault—Offer to admit liability to avoid costs of trial—Apportionment of costs.

Costs—Rejection of offer to admit liability—Costs of trying issue—Discretion of judge.

Following institution of an action for damages resulting from a collision of two ships plaintiff's solicitor offered to admit 50% fault in order to avoid the costs of trying that question. Defendant refused the offer, the action went to trial and defendant was found 85% at fault.

Held, plaintiff was entitled to all costs incurred after the date of his offer. Costs incurred prior thereto should be divided in the same proportions as the apportionment of fault.

Admiralty Rule 131 applied.

APPLICATION to determine apportionment of costs.

John I. Bird, Q.C. for plaintiff.

R. M. Hayman for defendant.

NORRIS, D.J.A.: This is an application to settle the proportion of costs in an action in which blame was assessed 15% against the plaintiff and 85% against the defendant. Admiralty Rule 131 provides:

131. In general costs shall follow the event; but the Judge may in any case make such order as to the costs as to him shall seem fit.

On September 12, 1964, the solicitors for the plaintiff wrote to the solicitors for the defendants as follows:

As a result of instructions received from our clients were (sic) hereby make a firm offer to settle the question of liability for the collision in this case, on the basis that both ships are equally to blame; any question as to the amount of damage suffered by our clients to be referred to the Registrar in Admiralty, if it cannot be agreed.

We make this offer with a denial of liability and in order that the costs of the trial of the issue of liability may be avoided.

We ask that you advise us not later than 10 a.m. Monday, September 14th whether you accept or reject this offer.

In the event that this offer is rejected and the Court fixes your clients with fifty per cent, or more, of the blame for the collision, we shall ask the Court to order that all taxable costs incurred after the time fixed for acceptance of this offer, be paid by your clients.

This offer was refused over the telephone on September 12 and on September 14 the refusal was confirmed by letter.

1964
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 PERDIA
 v.
 KINGCOME
 NAVIGATION
 Co. LTD.
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 NORRIS
 D.J.A.
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The writ was issued on February 6, 1963, the action tried on September 14, 15, 16, 21 and 22, 1964, and judgment delivered on October 28, 1964.

Counsel for the plaintiff argues that under these circumstances the plaintiff should be awarded costs throughout or at least from September 12. Counsel for the defendant argues that costs should be awarded in the same proportions as each of the parties was found blameworthy, in this case 85% against the defendant and 15% against the plaintiff.

There was cited to the Court by counsel for the plaintiff as authority in favour of the plaintiff's submission the case of *The Hudson's Bay*.¹ I have not been able to find other helpful authority.

In the circumstances of this case I order that all of the costs incurred after September 12th be paid to the plaintiff and all previous costs be paid by the parties in the same proportions as they have respectively been found blameworthy.