

56, 1934

No. 72 of 1933.

In the Privy Council.

ON APPEAL

FROM THE COURT OF KING'S BENCH FOR THE PROVINCE
OF QUEBEC (APPEAL SIDE).

BETWEEN—PATERSON STEAMSHIPS LIMITED
(Defendant) APPELLANT

AND

CANADIAN CO-OPERATIVE WHEAT
PRODUCERS LIMITED... (Plaintiff) RESPONDENT.

CASE FOR THE RESPONDENT.

RECORD

1.—This is an appeal from a Judgment of the Court of King's Bench (Appeal Side) for the Province of Quebec, rendered on the 29th March, 1933, affirming a Judgment of the Superior Court, dated 31st May, 1932, maintaining the Respondent's (Plaintiff's) action against the Appellant (Defendant) for damages in the amount of Seventy-six thousand Nine hundred and Eleven dollars and Forty-four cents. (\$76,911.44) with interest and costs.

p. 148

p. 136

2.—The Appellant is a shipowner and operates its ships in the grain trade on the Great Lakes and the St. Lawrence River.

3.—The Respondent is a grain dealer and during the month of October 1929 at Fort William, Ontario, shipped a cargo of wheat and barley on the Appellant's steamer "Mantadoc" which cargo on the 28th November 1929 was transhipped at Port Colborne, Ontario, on the Appellant's steamer "Sarniadoc" destined for the Port of Montreal.

pp. 9-10

pp. 207-8-9

4.—The "Sarniadoc" departed from Port Colborne on the afternoon of November 28th and continued her voyage eastward on Lake Ontario until about 7.30 o'clock a.m. November 30th when she stranded stern first at Main Duck Island and with her cargo became practically a total loss.

p. 19, L. 40

p. 4, L. 40

5.—The learned Trial Judge found as a fact that the "Sarniadoc" was unseaworthy in regard to the stowage of her cargo and further found that the Appellant had not proved that it had exercised due diligence to make the

p. 136, L. 37

RESPONDENT'S CASE

- RECORD
p. 5, L. 35 "Sarniadoc" in all respects seaworthy and properly manned, equipped and supplied within the meaning of Section 6 of the Water Carriage of Goods Act.
- p. 136, L. 40 6.—The learned Trial Judge also found that unseaworthiness in respect to the stowage of the cargo was the cause of the casualty and resultant loss.
- p. 148 7.—The Court of King's Bench (Appeal Side) by a majority of four to one (Bond J. dissenting) approved the reasoning and confirmed the Judgment of the learned Trial Judge.
- p. 164, L. 41 8.—Bond, J. agreed that under the Canada Shipping Act shifting boards are required as a precaution against the shifting of cargo but not having been used on the Great Lakes for some time, that requirement did not apply to a ship registered in England although owned and operated in Canada. He held that the cause of the stranding could not be attributed to the absence of shifting boards and that therefore the Appellant was freed from liability due to errors in navigation under the Water Carriage of Goods Act. 10
- p. 165, L. 8
p. 187, L. 5
p. 169, L. 32
- p. 5, L. 8 9.—No question arises with regard to the quantum or the fact of the damage. The issue is whether the Appellant is entitled to the protection of the provisions of sections 6 and 7 of the Water Carriage of Goods Act (R.S.C. 1927 Ch. 207) the Appellant having raised the Defences of (a) Error in Navigation and (b) Peril of the Sea.
- p. 5, L. 25
p. 5, L. 45
p. 6, L. 1
- 10.—At trial and in appeal the Respondent urged two respects in which the Appellant's steamer "Sarniadoc" was unseaworthy. 20
FIRST: The boilers of the "Sarniadoc," including her furnaces and furnace tubes, were in a damaged condition and inadequate for the purposes of the voyage.
SECOND: The stowage of the cargo was improper, faulty and insufficient inasmuch as no precautions were taken to prevent the cargo from shifting.
- p. 4, L. 40 11.—The Lower Courts failed to conclude from the fact that the "Sarniadoc" was blown ashore stern first in ordinary and seasonal weather that there must have been something radically wrong with her propelling machinery. 30
- p. 99, L. 45
p. 101, L. 31
p. 195, L. 29
p. 195, L. 18 12.—That there was something wrong with the furnaces of the "Sarniadoc" was established by the testimony of the Appellant's witnesses, the Surveyors who surveyed the "Sarniadoc" after her maiden voyage in 1929. Her boilers had been badly salted in crossing the Atlantic and when she was surveyed in May and subsequently surveyed in September 1929 it was found that her tubes were leaking. During the season of navigation 1929 the boilers were giving continuous trouble.
- p. 195, L. 40 13.—The condition of the boilers was so bad, due to salting, that the surveyor representing the Salvage Association recommended the renewal of the furnaces tubes and screw stays on flat surfaces in each boiler. 40

14.—The new furnaces and other recommended replacements had arrived in Canada and were actually awaiting installation at the time the “Sarniadoc” stranded and except for her stranding would have been installed during the closed season of navigation immediately after her last voyage which ended so disastrously. p. 197, L. 15
p. 96, L. 27

15.—The Master of the “Sarniadoc” knew his ship’s limitations and went so far as to make the admission that he did not know whether the “Sarniadoc” was seaworthy or not. In commenting upon this fact the learned Trial Judge said :— p. 50, L. 15
p. 39, L. 8

10 “ It is admitted by the Master that he could not navigate his ship
“ with liberty for fear that his cargo would shift, and no doubt it is the
“ reason why he would not swear his vessel was seaworthy.” p. 139, L. 15
This leads to the Respondent’s second point dealing with the matter of stowage.

16.—The “Sarniadoc” was registered in England and consequently subject to the laws of England, the Merchant Shipping Acts and the Regulations of the Board of Trade particularly with regard to stowage. p. 187, L. 5
p. 174-175,
et seq.

17.—Under the Merchant Shipping Act 1894 (Section 452) all necessary and reasonable precautions must be taken in order to prevent a grain cargo from shifting. The Canada Shipping Act, section 696, as applying to ships registered in Canada prohibits the loading of grain unless contained in bags, sacks, or barrels or is properly secured from shifting by boards or otherwise. p. 176
p. 37, L. 12

18.—The learned Trial Judge found as a fact that no precaution had been taken to prevent the cargo from shifting.

He said :—

30 “ I have, therefore, reached the conclusion that the ship—no
“ precaution having been taken to prevent the shifting of the cargo—was
“ not safe for the voyage and, therefore, was unseaworthy ; that she was
“ driven on the rocks on account of bad navigation ; and that she was
“ not properly navigated because of improper loading.” p. 140, L. 35

19.—It is respectfully submitted that a fair interpretation of the requirements of section 452 of the Merchant Shipping Act 1894 would imply the application of section 696 of the Canada Shipping Act. In other words, broad as the language is, it is clear that something must be done, some precaution taken, whether by shifting boards or otherwise, to prevent the cargo from shifting. p. 176
p. 37, L. 12

20.—It is submitted that in taking the measures which resulted in the stranding of the vessel in preference to measures which would probably have saved his ship the master was influenced by apprehension in regard to the danger of shifting his cargo, and this apprehension must have been intensified by the knowledge of the fact that his ship was not fully loaded and that her furnaces and tubes were giving trouble. She did not have that stability which a fully loaded bulk carrier would be expected to possess. p. 39, L. 10
p. 29, L. 29
p. 50, L. 15

RECORD

21.—It is submitted that if the cargo had been properly stowed no such fear could have existed and the “Sarniadoc” would have arrived safely in port. The improper stowage prevented the Master of the “Sarniadoc” from navigating in a manner and on a course which would have avoided the disaster.

22.—It is also submitted that the improper stowage of the cargo rendered the ship unseaworthy and that the damage complained of was caused thereby and would not have arisen but for that unseaworthiness.

23.—The Respondent respectfully submits that this appeal should be dismissed and that the Judgments of the Superior Court and of the Court of King’s Bench (Appeal Side) should be affirmed for the following among other 10

REASONS.

- (1) BECAUSE the propelling machinery of the “Sarniadoc” was in fact faulty and inadequate.
- (2) BECAUSE the cargo of the “Sarniadoc” was improperly stowed.
- (3) BECAUSE no precaution was taken to prevent the cargo from shifting.
- (4) BECAUSE by reason of the matters aforesaid the “Sarniadoc” was unseaworthy. 20
- (5) BECAUSE the loss of the Respondent’s cargo was caused by such unseaworthiness.
- (6) BECAUSE it was a condition precedent to the Appellant Company’s right to rely upon the exemptions pleaded by it viz : fault or error in navigation or in the management of the vessel and perils of the seas that due diligence should have been exercised to make the ship in all respects seaworthy and properly equipped and supplied and there are concurrent findings of the Courts below that due diligence in those respects had not been exercised. 30
- (7) BECAUSE the Judgments of the Superior Court and of the majority of the Court of King’s Bench (Appeal Side) were correct and should be affirmed.

W. NORMAN RAEBURN.

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AND

CANADIAN CO-OPERATIVE WHEAT
PRODUCERS LIMITED
(Plaintiff) RESPONDENT

CASE OF THE RESPONDENT

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