
ONTARIO ADMIRALTY DISTRICT

1962
Jan. 29

BETWEEN:

CANADIAN BRINE LIMITED .....PLAINTIFF;

AND

NATIONAL SAND AND MATERIAL COMPANY LIMITED, WILSON TRANSIT COMPANY and HANNA COAL AND ORE CORPORATION } DEFENDANTS.

Shipping—Practice—Rule 29, General Rules and Orders in Admiralty—Motion to strike out defendants—Motion dismissed.

Held: That where the plaintiff is not certain which defendant or combination of defendants caused the damage complained of which arose out of the same matter all defendants may be joined in the same action as provided in Rule 29 of the General Rules and Orders of the Exchequer Court in Admiralty.

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1962

CANADIAN BRINE LTD. v. NATIONAL SAND & MATERIAL CO. LTD. et al.

MOTION to strike out certain defendants.

The motion was heard before Alfred S. Marriott, Q.C., Surrogate Judge in Admiralty for the Ontario Admiralty District at Toronto.

R. F. Chaloner for the motion.

A. J. Stone contra.

MARRIOTT S.J.A. now (January 29, 1962) delivered the following judgment:

This is an application by the defendant National Sand & Material Company Limited for an order that the other defendants Wilson Transit Company and Hanna Coal & Ore Corporation, both of whom carry on business out of the jurisdiction, be struck from the writ as parties improperly joined therein.

The plaintiff's claim as endorsed on the writ of summons is as follows:

> The plaintiff's claim is for damages in the amount of $203,295.53 caused on or about the 25th or 26th day of November, 1958, by the ship *Charles Dick* owned by the Defendant National Sand & Material Company Limited, or the ship S/S *Thomas Wilson* owned at that time by the Defendant Wilson Transit Company, or the steamer *Edward J. Berwind* owned at that date by the Defendant Hanna Coal & Ore Corporation, or any combination of the said ships, in that the ship or ships did collide and interfere with a pipe line and appurtenance situate under the Detroit River between the City of Windsor, in the County of Essex, and the City of Detroit, state of Michigan, United States of America, due to the negligent navigation and operation of the aforementioned ship or ships . . .

It is contended on behalf of the applicant that the other two defendants are not necessary or proper parties to an action against the defendant applicant in the sense that the claims are for separate torts, and the case of *Sadler v. Great Western Railway Co., et al.*[1], is relied on. This is a land case, but in any event it is distinguishable from the present on the facts. In that case the plaintiff had a distinct and separate cause of action against each defendant. Here from the endorsement it appears that the plaintiff is not certain which defendant, or if a combination of two or three caused the damage.

The relevant rule is Rule 29 which provides:

> 29. Any number of persons having interests of the same nature arising out of the same matter may be joined in the same action whether as plaintiffs or as defendants.

[1] [1896] A.C. 450 at 454.

From the nature of the claim as disclosed by the endorsement of the writ of summons; the allegation against each defendant relating to the same dates, it is fair to conclude, keeping in mind the wide language of the Rule, that the three defendants have interests of the same nature, that is an interest to defend themselves from liability for the damage suffered by the plaintiff, which arose out of the same matter. That it is proper to interpret the Rule as being wide in its scope is in accord with the observations of Martin, L.J.A. in *Evans Coleman & Evans Ltd. v. The Roman Prince*[1], where at p. 135, he remarked on the absolute nature of the powers given by Admiralty Rules 29-32 over the interest of parties, and the sweeping language employed by the said Rules. This view is confirmed by the remarks of Lord Phillimore in *Marlborough Hill v. Cowan & Sons*[2], where after pointing out the wide scope of Rule 29 of the Australian Admiralty Court, which was exactly the same as ours, he said at p. 457: "Admiralty jurisdiction originates in the Civil law and never lost touch or connection with it. This procedure was maleable and adaptable." That was a case where the Court approved the joinder of several plaintiffs in an action against a ship.

Other authorities although relating specifically to costs do incidentally establish the rule that where the plaintiff is not certain against whom he has a cause of action, the proper course is to join all defendants in one writ, and the plaintiff will not be allowed the extra costs incurred by bringing separate actions against them. The test generally is whether the plaintiff has acted reasonably; *The Svein Jarl*[3]; *The W. H. Randall*[4]; see also 1 Halsbury 3rd ed. p. 98.

It appears from the nature of the plaintiff's claims as endorsed on the writ of summons that *prima facie* it has acted in accordance with the above principles, and therefore having found that Rule 29 is wide enough to permit joinder of the three defendants in this action, the application must be dismissed at this time, but the order should be without prejudice to a further application being made when the issues are more fully developed, if the defendant is so advised. Costs to the plaintiff in the cause.

Judgment accordingly.

[1] [1924] Ex. C.R. 133.
[2] [1921] A.C. 444.
[3] (1923) 16 Asp. 159.
[4] (1928) P. 41.