

ONTARIO ADMIRALTY DISTRICT

1941
THE
INSURANCE
COMPANY
OF
NORTH
AMERICA
v.
COLONIAL
STEAMSHIPS,
LIMITED.
Barlow
D.J.A.

BETWEEN:

THE INSURANCE COMPANY OF }
NORTH AMERICA } PLAINTIFF;

AND

COLONIAL STEAMSHIPS, LIMITED .. DEFENDANT.

Shipping — Practice — Application for particulars of the “danger of navigation or peril of the sea” pleaded — Motion granted.

Held: That where the cause of a loss is a matter of common knowledge the party pleading danger of navigation or peril of the sea should give particulars of the occurrence in so far as he is able to do so.

MOTION by plaintiff for particulars of the “danger of navigation or peril of the sea” pleaded by defendant.

The motion was argued before His Honour Judge Barlow, District Judge in Admiralty for the Ontario Admiralty District, in Chambers.

Francis King, K.C., for the motion.

Frank M. Wilkinson, K.C., *contra*.

BARLOW D.J.A. (March 12, 1940) delivered the following judgment:

This is an application by the plaintiff for particulars of the “danger of navigation or peril of the sea” alleged in paragraph 15 of the statement of defence as to the cause of the sinking of the S.S. *Northton*.

The S.S. *Northton*, which was loaded with a cargo of grain on the 25th day of November, 1938, while moored in her winter berth in Port Colborne harbour, sank with resultant damage to her cargo. The plaintiff was the insurer of the cargo and by reason of the transfer to it of the bills of lading and all rights of action, now brings this action.

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The defendant, among other defences, in paragraph 15 of the statement of defence pleads as follows:

15. The defendant says that on or about the 1st day of February, 1939, the S.S. *Northton* sank at her winter berth with resultant damage to her storage cargo as a result of a danger of navigation or a peril of the sea.

The plaintiff makes this application for particulars for the purpose of pleading. From the material before me it is quite clear that both the plaintiff and the defendant are familiar with what took place as to the sinking of the S.S. *Northton*.

It has been held that where an insurer insures against danger of navigation or peril of the sea that the insured when bringing an action against the insurer for loss and damage is not required to give particulars of the peril of the sea pleaded. It is sufficient to plead what is set out in the proofs of loss. See *Munro, Brice & Co. v. War Risks Association Limited et al.* (1). I followed this decision in *Climie v. The Western Assurance Co.* (2), but in this latter case the vessel and crew were lost and the plaintiff could have no knowledge of the particulars. It is well settled law that the same rules as to particulars apply in the Admiralty Court as in the other Courts. On the material before me it would appear that the S.S. *Northton* by reason of low water had her hull punctured by some object on the bottom of the harbour. What happened is of more or less common knowledge and so far as the defendant has particulars of the occurrence it should give the same in order that the issues may be defined as narrowly as is reasonably proper. It is not the ordinary case of the loss of a ship in a storm.

The motion will, therefore, be granted, with costs in the cause.

Order accordingly.

(1) (1918) 2 K.B.D. 78 at 85.

(2) 1938 O.W.N. 333.