VERREAULT NAVIGATION INC. .....PLAINTIFF;

AND

COOPÉRATIVE DE TRANSPORT MARITIME ET AÉRIEN .....} DEFENDANT.

Quebec 1966 Nov. 17 Ottawa 1967 Mar. 3

Admiralty—Judgment for freight and demurrage—Right to interest before judgment—Jurisdiction to award—Exchequer Court Rule 172(6), Quebec Code of Civil Procedure, art 475.

In this court's reasons for judgment issued following trial of an action for freight and demurrage plaintiff was held entitled to recover a specified amount but through inadvertence the court omitted to deal with plaintiff's claim for interest from the date of its original demand for payment (which was made several years before the action was tried). Plaintiff moved to correct the reasons for judgment by awarding interest as claimed.

Held, as the minutes of the court's judgment had not yet been settled the court still had power, whether under Exchequer Court Rule 172(6) or the analagous procedure under Art. 475 of the Quebec Code of Civil Procedure, to deal with the claim for interest.

Paterson & Sons Ltd v. Canadian Vickers Ltd [1959] Ex. C.R. 289, distinguished.

Held also, the court's discretion to award interest prior to judgment is not confined to collision cases.

The Northumbria L.R. 3 A.& E. 6, referred to.

By an action commenced on February 10, 1961, the plaintiff claimed from defendant, the charterer of plaintiff's ship, the M/V *Keta:*—

(1) $11,300 in respect of the carriage of cargo on a voyage from Carleton, Quebec, to the Magdalen Islands, Quebec, Charlottetown, P.E.I., and Seven Islands, Quebec, in 1959;

(2) $1,200 for illegal detention of the ship for three days in the Magdalen Islands, plus $103.93 for unloading costs on Seven Islands; and

(3) interest on $5,974.10 from May 11, 1960.

The action was tried at Quebec in November 1966 before Noël J., who gave reasons for judgment dated February 3, 1967, wherein he held plaintiff entitled to judgment in the amount of $3,853.93 and costs but did not deal with the claim for interest. The plaintiff now moves to correct the reasons for judgment by awarding interest from May 11, 1960, that being the date on which the plaintiff demanded payment of the sums alleged to be due by defendant together with interest thereon from such date.

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Raynold Langlois for plaintiff.

Trevor H. Bishop for defendant.

NOËL J.:—On February 3, 1967, I issued reasons for judgment[1] in the instant case and made a fiat or pronouncement whereby I determined that "the plaintiff is entitled to judgment against the defendant in the amount of $3,853.93 and costs" without considering or dealing with the question of interest claimed in the action from May 11, 1960, the date of a letter sent by the plaintiff to defendant claiming payment of an amount of $5,974.10 with interest as of the above date and costs.

The matter for the payment of interest herein was inadvertently not considered nor dealt with by me in the above mentioned reasons for judgment nor in the pronouncement, and as the pronouncement or fiat of the present judgment has not yet been reflected in the minutes of judgment it is in my view still possible to remedy the situation and award interest in the event an award of interest should be made herein.

Upon discovering such an omission, I could have, of my own motion, delivered a supplementary pronouncement with or without a supplementary memorandum of reasons for judgment explaining what I was doing, or I could have, as I have done here, upon a motion produced by the plaintiff, awaited its presentation and following argument from counsel, determined if interest should be awarded and for what period of time prior to the date of judgment.

Counsel for the parties agree that the awarding of interest prior to the date of judgment is customary in admiralty cases and is within the discretion of the court, although counsel for the defendant maintains that it is customary only in claims resulting from collisions. Cf. *The Joannis Vatis* No 2[2]; *The Kong Magnus*[3].

There is considerable authority that the granting of interest prior to judgment is not, however, confined to collision cases but can be granted in all cases. In *The Northumbria*[4] Sir Robert Phillimore, at p. 10, expressed himself as follows:

> If it were necessary to examine this proposition, I should find it difficult to reconcile it with the recent case of *British Columbia Saw*

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[1] Not reported.
[2] [1922] P. 213.
[3] [1891] P. 223; 7 Asp. M.C. 64.
[4] L.R. 3 A &E. 6.

> *Mill Company v. Nettleship.* 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 a 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 where payment was not made, *ex mora* of the obligor; and that, whether the obligation arose *ex contractu or ex delicto.*

In *Compania Naviera Limitada v. Attorney General for Palestine*[5], which dealt with a claim for compensation for loss of a ship, interest was awarded, at p. 316, from the date of the requisitioning of the ship by the defendant.

Counsel for the defendant took the position that plaintiff's motion to correct the reasons for judgment, dated February 3, 1967, was not the proper remedy and that if there was one it could only be done by way of appeal. He then referred to *Paterson & Sons Ltd v. Canadian Vickers Ltd*[6] where Smith D.J.A. refused to grant a motion moving for an order fixing the date from which interest was payable as the date or dates on which the various repair bills were paid. This case, however, is quite different from the instant one. In the *Paterson & Sons Ltd case* (*supra*), the learned judge had dealt with and therefore considered the matter of interest by condemning the defendant to pay the sum of $2,810.83 with interest and costs and furthermore the minutes of judgment had been settled.

In the instant case, the matter was not considered nor dealt with and the minutes of judgment have not yet been settled. It is therefore still possible for me, as I pointed out to counsel at the hearing of the plaintiff's motion, to deal with the matter prior to appeal, either under the Admiralty Rules and the Exchequer Court Rules or the rules set down in the Code of Civil Procedure of the Province of Quebec. It is indeed possible to do so under the Exchequer Court Rules, and particularly Rule 172 by virtue of Rule 215 of the Admiralty Rules which refers to the general practice of the Exchequer Court where there is a gap in the Admiralty Rules, and there is one here in that there is no provision in the Admiralty Rules for the reflection of fiats or pronouncements in minutes, although such minutes have always, as a matter of practice, been prepared and signed in admiralty cases in Quebec.

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[5] (1948) 81 Ll. L.L.R. 314.

[6] [1959] Ex. C.R. 289.

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Noël J.

Rule 172(6) provides a means for correcting omissions in judgments or orders by stating that:

> (6) Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court without an appeal.

The same result would also be reached if the Admiralty Rules contemplated the document prepared and delivered by the judge being the document representing the judgment of the court. On the above assumption, there would be no express provision in either the Admiralty Rules or the Exchequer Court Rules for dealing with an omission in a judgment and under Rule 2 of the Exchequer Court Rules read with Rule 215 of the Admiralty Rules, the Court could adopt, for the particular matter, a procedure by analogy to the practice and procedure in force in the appropriate provincial court, which here would be the practice in force in Quebec. By article 475 of the new Code of Civil Procedure of the Province of Quebec "a judgment which by obvious inadvertence ... has omitted to adjudicate upon part of the demand may ... be ... corrected" and "such correction may be made on motion of one of the parties so long as the judgment has not been appealed; it may even be made of the judge's or prothonotary's own motion before the expiry of the delay for execution".

Having determined that I can deal with the matter of interest herein, the question is should I exercise the discretion I have of so awarding interest prior to the date of judgment in the circumstances of the present case.

Counsel for the plaintiff requests that interest be awarded from May 11, 1960, date of the letter forwarded to defendant by plaintiff claiming payment of an amount of $5,974.10, which letter, however, was not proven nor produced at the trial. The action herein was taken and served on the defendant on February 10, 1961, and any interest awarded herein cannot go beyond such date. The present action was heard in November 1966, i.e., seven years after the event which gave rise to the action and more than four years after the date upon which action was taken. It appears that a good part of the delay was caused by the difficulty of locating, for purposes of discovery, Captain Stanley Wilson, a key witness herein and the former captain of the plaintiff's ship.

In view of this and the fact that the plaintiff herein was content to charter his ship without insisting upon the drawing up of a written agreement or even a written confirmation of such agreement which, in my view, has had some effect on the contestation herein, as well as on the length of time it took to bring it to trial, an award of interest of five percent for half of the period from February 10, 1961, to February 3, 1967, and interest at the same rate from February 3, 1967 to the satisfaction of this judgment should be adequate in the circumstances of the present case to which the defendant (in addition to the amount of $3,853.93 and costs to which he is already condemned) should and is hereby condemned. In view of the fact that the matter of interest was not raised in argument at the trial, there will be no costs awarded on plaintiff's motion for correction.