

BRITISH COLUMBIA ADMIRALTY DISTRICT

BETWEEN:

WILLIAM ROBINSON LIMITED.....PLAINTIFF;

AND

STEAMSHIP STROMBOLI .....DEFENDANT.

1951  
}  
Feb. 28  
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Mar. 7  
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*Shipping—Carriage of Goods by Sea Act of the United States 1936, s. 4(2) and s. 4(2) (c)—Cargo shipped in good condition and under a clean bill of lading damaged en route—Onus on plaintiff discharged—Onus on defendant to bring itself within one or more exceptions in the Act—No inherent defect in containers—Damage not due to peril of the sea.*

*Held:* That where goods have been shipped in good condition under a clean bill of lading and there is no evidence that damage was due to a peril of the sea the conclusion is justified that damage to such goods was due to bad stowage for which the defendant is liable to the plaintiff for the loss suffered by him.

ACTION for damages suffered to goods during a sea voyage.

The action was tried before the Honourable Mr. Justice Sidney Smith, District Judge in Admiralty for the British Columbia Admiralty District, at Vancouver.

C. C. I. Merritt for plaintiff.

V. R. Hill and J. Cunningham for defendant ship.

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v.

STEAMSHIP  
*Stromboli*

Sydney  
Smith  
D.J.A.

The facts and questions of law raised are stated in the reasons for judgment.

SMITH, D.J.A. now (March 7, 1951) delivered the following judgment:

This is an action against the defendant ship claiming damages for injury to 72 barrels of cherries, the property of the plaintiff, on a voyage from Genoa in Italy to Vancouver, B.C. The bill of lading showed that the shipment had been received on board in apparent good order and condition. On discharge at Vancouver however it was found that most of the barrels had been stove in, that brine had escaped, and that the cherries for the most part were unfit for human consumption. The barrels were stowed in No. 4 lower hold, fore and aft, on each side of the tunnel, and on top of barrels of lemons shipped at a previous port. Above the barrels of cherries were 15 tons of marble chips in bags and on top of these cartons of cork. The bill of lading was subject to the Carriage of Goods by Sea Act of the United States 1936.

It is common ground that the onus is on the plaintiff to prove that its goods were shipped in apparent good order and condition, and discharged in a damaged condition (both of which I find established), and that the onus then shifts to the defendant to bring himself within one or more exceptions in the Act. The case for the defendant here is that the evidence establishes that it is within the exception as to inherent defect, quality or vice of the barrels containing the cherries (Sec. 4, Subsec. 2), or the exception as to perils of the sea (Sec. 4, Subsec. 2 (c)), or both of them.

As to inherent vice: the barrels of cherries were shipped under a "clean" bill of lading, so the defendant is estopped from proving that they were not externally to all appearances in good condition. (Scrutton on Charter-parties, 15th Ed. p. 169.) Apart from this there was documentary evidence from the point of origin that the barrels were in good condition and "adequate for this kind of transport". I think this can only refer to the voyage in question. The contention therefore fails.

With respect to "perils of the sea"; the vessel encountered some heavy weather during the voyage, but it was not of an unusual nature, and there would appear to have been nothing fortuitous in connection with it. It is mere speculation to say that this damage was due to a peril of the sea, as that term is defined in the authorities. There was no evidence of other cargo having been damaged. The likelihood is just as great, indeed I think greater, that it was due to bad stowage, the evidence as to which was vague and unsatisfactory. *Canadian National Steamships v. William Bayliss* (1); *Donaldson Line Ltd. v. Hugh Russell & Sons Ltd.* (2); *Keystone Transports Limited v. Dominion Steel and Coal Corporation Limited* (3) and *N. E. Neter & Co. Ltd. v. Licenses and General Insurance Co. Ltd.* (4).

In these circumstances there will be judgment for the plaintiff with costs. I do not imagine there should be much difficulty in agreeing upon the quantum of damage, but if so it may be referred to the learned Registrar for assessment.

*Judgment accordingly.*

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