

EASTERN STEAMSHIP COMPANY } APPELLANT;
 LIMITED (DEFENDANT) }
 AND
 CANADA ATLANTIC TRANSIT COM- } RESPONDENT.
 PANY (PLAINTIFF) }

1928
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 Sept. 12.  
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 1929  
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 Feb. 16.

Shipping—Limitation of liability proceedings—“Engine room space deducted”—Canada Shipping Act (R.S.C. 1927, c. 186, sec. 904)—Tonnage

Held (reversing the judgment appealed from), that the words “engine-room space deducted” as found in sec. 904, ch. 186, Canada Shipping Act, R.S.C., 1927, and in the corresponding provision of the Merchant Shipping Act, 1894, refers to the deduction allowed for propelling power as appearing in the certificate of registry.

- 2. That in calculating the tonnage of a ship in limitation of liability proceedings, the tonnage allowed for the power propelling space, must be added to the register tonnage.

APPEAL from the judgment of the Honourable Mr. Justice Hodgins, Local Judge in Admiralty for the Toronto Admiralty District, in limitation of liability proceedings.

The appeal was heard before the Honourable Mr. Justice Maclean, President of the Court at Ottawa.

G. M. Jarvis for appellant.

Frances King, K.C., and *Mr. Pratt* for respondent.

The facts are given in the reasons for judgment.

THE PRESIDENT, now, this 16th February, 1929, delivered judgment.

This is an appeal from a judgment of Hodgins L.J.A., Toronto Admiralty District, in which he found the tonnage

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of the steamer *Dalwarnic*, in a limitation of liability proceeding, to be her register tonnage of 1,472·82, and in addition thereto the actual engine-room spaces 399·47 tons, making altogether 1,827·29 tons. The appellant claims that the addition to the register tonnage should be 766·15 tons, being the deduction allowed on account of space required for propelling power in ascertaining the register tonnage, and as appearing in the certificate of registry; this would make a total of 2,193·97 tons. The whole issue therefore is, does "engine-room space deducted," as found in sec. 904, ch. 186, Canada Shipping Act, R.S.C., 1927, and in the corresponding provision of the Merchant Shipping Act, 1894, here mean, only the actual engine-room spaces, or does it mean the deduction or allowance made "on account of space required for propelling power," as determined by sec. 78 of the Merchant Shipping Act, which in this case is 32 per cent of the gross tonnage, of the *Dalwarnic*, and considerably greater than the actual engine-room spaces. The learned trial judge was of the opinion that the only addition to be made to the register tonnage, was the actual engine-room spaces below the upper deck, and the light and air spaces above the upper deck, and not the deduction allowed on account of space required for propelling power, in ascertaining the register tonnage under sec. 78 (1) (a) of the Merchant Shipping Act.

It is provided by sec. 78 of the Merchant Shipping Act, 1894, as follows:—

78. (1) In the case of any ship propelled by steam or other power requiring engine-room, an allowance shall be made for the space occupied by the propelling power, and the amount so allowed shall be deducted from the gross tonnage of the ship ascertained as in the last preceding section mentioned, and the remainder shall (subject to any deductions hereinafter mentioned), be deemed to be the registered tonnage of the ship, and that deduction shall be estimated as follows;

(a) As regards ships propelled by paddle wheels in which the tonnage of the space solely occupied by and necessary for the proper working of the boilers and machinery is above twenty per cent and under thirty per cent of the gross tonnage of the ship, the deduction shall be thirty-seven one-hundredths of the gross tonnage; and in ships propelled by screws, in which the tonnage of such space is above thirteen per cent and under twenty per cent of the gross tonnage, the deduction shall be thirty-two one-hundredths of the gross tonnage.

It will be seen from this, that in the case of a ship propelled by power requiring engine-room, an allowance shall be made for the space solely occupied by and necessary for

the proper working of the boilers and machinery. The space required for propelling power, is the space occupied by and necessary for the proper working of the boilers and machinery. It would therefore appear that the actual space required for engine-room, or for propelling power, is one and the same thing, so far at least as the space or volume required for either is concerned. Then for registry purposes the statute arbitrarily fixes the tonnage of engine-room or propelling power spaces at 32 per cent of the gross tonnage, if that space is actually between thirteen and twenty per cent of the gross tonnage of the ship. The tonnage thus ascertained and fixed is the only space deducted in ascertaining the register tonnage of the ship.

Turning to Rule 3, Second Schedule of the Merchant Shipping Act, we find directions for the measurement of allowance for engine-room space in steamships. If the engines and boilers are fitted in separate compartments, the contents of each shall be measured severally according to the rules, and the sum of their several results shall be deemed to be the tonnage of the said space. In the case of screw steamers in which the space for propelling power is to be measured, the rule provides how the contents of the shaft trunk is to be ascertained. Here again, engine-room space, and space for propelling power, seem to be used as denoting the same thing. The net tonnage of the actual engine-room space having been ascertained according to the rules in the Act, the method of estimating the allowance to be deducted for the purposes of the register propelling power, is provided for by sec. 78 (1) of the Merchant's Shipping Act, 1894 and 1906.

The actual engine-room tonnage of the *Dalwarnic* was between thirteen and twenty per cent of the gross tonnage, and accordingly, the deduction for space required for propelling power was fixed at 32 per cent of her gross tonnage, or 766·15 tons. It is clear therefore, that it was necessary to ascertain the tonnage of the actual engine-room space in order to reach the deduction to be allowed in the register for the propelling power space, and that is why the tonnage of the actual engine-room space is to be found in the certificate of registry under Note 1, and not as was suggested, for the purpose of furnishing that information for use in actions for limitation of liability. It is plain, I think, that it was

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the 32 per cent deduction that was made in ascertaining the register tonnage of the *Dalwarnic*, and none other. Therefore "engine-room space deducted" can only refer to the deduction allowed on account of space required for propelling power, which was 32 per cent of the gross tonnage.

Further, in the printed instructions regarding the tonnage measurements of ships issued by the British Board of Trade, I find an enumeration of the items entering into engine-room tonnage under sec. 78 of the Act. This includes space below the crown of the engine-room; space between the crown and the upper deck framed in for the machinery or for the admission of light and air; space similarly framed in above the upper deck; and the contents of the shaft trunk or trunks in screw vessels. I do not say that this has any legal effect, but it is illuminating.

I think if it was intended by the statute to differentiate between actual engine-room tonnage, and the arbitrary tonnage allowance of 32 per cent for space for propelling power, in limitation of liability suits, there would have been some attempt made to express the distinction. It appears to me that the statute is to be taken as expressing the fact, that the deduction allowed for propelling power in the register tonnage, was the tonnage that was to be added in limitation of liability proceedings.

Counsel for the appellant produced a certified order made in the Admiralty Division of the High Court of Justice in England, in a limitation of liability proceeding, and from that it would appear that the addition made to the register tonnage, was the deduction allowed for the space required for the propelling power, as appearing in the certificate of registry. The point here in issue may not have been raised, or it may have been overlooked. I am only stating what appears upon the face of the order of the Court. Since this appeal was heard, there accidentally came under my notice a report of a similar proceeding published in the legal proceedings columns of the *London Times*, in 1928; this was the case of the steamship *The White Abbey*. I took steps to procure the gross tonnage of this ship and the deductions allowed on account of propelling space, and with that information before me I make the deduction from the order of the Court, that the tonnage calculated in making the decree for limitation of liability in that case, was

reached by adding to the register tonnage, the deduction allowed for spaces for propelling power. There being no authority upon the point, I am constrained to assume that in practice, in England, engine-room space, and space for propelling power are regarded as the same thing in limitation of liability proceedings. I think it will be found that there the universal practice is to calculate the tonnage of a ship in limitation of liability proceedings, by adding the tonnage allowed for the power propelling space, to the register tonnage. I think that was the intention of the legislature, and it does not seem an unreasonable provision.

I have reached the conclusion therefore that I must, with respect, differ from the conclusion reached by the learned trial judge, and I allow the appeal with costs.

Judgment accordingly.

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