

British Columbia Admiralty District

1950  
 June 21, 22  
 July 11

BETWEEN:

SUZUKI *et al.*..... PLAINTIFFS;

AND

IONIAN LEADER..... DEFENDANT.

*Shipping—Liability for dumping injurious substance in navigable waters.*

*Held:* That the dumping of an injurious substance, oil in the particular instance before the Court, in a navigable river, renders the person so doing liable at common law for damage resulting from such action.

ACTION for damages resulting from the dumping of an injurious substance in the Fraser River.

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

*J. R. Cunningham* for plaintiffs.

*C. C. I. Merritt* for defendant.

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

SIDNEY SMITH, D.J.A. now (July 11, 1950) delivered the following judgment:

The two plaintiffs sue for damage to their fishing-nets caused by crude oil floating in the Fraser River. They say that this oil was dumped there by the defendant ship in pumping out its tanks while it was stranded on a mud-bank in the river.

The evidence that the oil came from the ship is circumstantial, except that one of the plaintiffs gave evidence that he saw it coming out of a discharge pipe on the port side of the ship. The defendant relied as an answer on evidence given by its engineer-officers that this was impossible because this particular discharge outlet is below the water-level. However, I am by no means convinced that this plaintiff was wrong. On the contrary, I accept his evidence; as I do the evidence of the other plaintiff and of their three independent witnesses, all of whom testified with impressive candour.

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Apart from this piece of direct testimony, there was so much circumstantial evidence against the ship that I am satisfied the ship was the source of the oil. The defendant, as is usual in cases of circumstantial evidence, argued that the case made out against it was mere conjecture and suspicion. But if there are enough circumstances pointing one way, we pass the line bounding suspicion and reach the field of legitimate inference.

Lord Wright in *Caswell v. Powell Duffryn Associated Collieries, Ltd.* (1), puts the matter thus:

. . . Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.

Here the evidence, both direct and circumstantial, leaves little room for doubt that the oil that damaged plaintiffs' nets came from the defendant ship. So far I have had little difficulty; what has bothered me is whether on this finding the plaintiffs can recover.

Defendant claims that it is not liable for damage caused by the oil, even if it is found to have dumped this into the river. The plaintiffs rely on sec. 33 of the Fisheries Act, 1932, which forbids the dumping of deleterious substances into fishing waters. This does not specifically mention oil, but I have no doubt that oil would be covered by the section. Plaintiffs also rely on By-law 57 passed by the Harbour Commissioners of New Westminster under their special Act, which by-law specifically forbids the dumping of oil into the harbour. The question how far breach of a by-law gives rise to an action for damages, is troublesome; but I need not decide the point.

Defendant relies chiefly on the case of *Fillion v. New Brunswick International Paper Co.* (2), as showing that the Fisheries Act is for the protection of fish and not fishermen. It is unnecessary for me to consider whether I agree entirely with the reasoning in that case, for it is easily distinguishable. There the defendant was sued for emptying pulp-waste into a river. The case might be in point if the present plaintiffs were complaining that the fish were

(1) (1940) A.C. 152 at 169.

(2) (1934) 3 D.L.R. 22

frightened away by the oil, or that in some way it caused them loss suffered by all of the public alike. That however is not so; the plaintiffs suffered direct injury to their fishing gear through the defendant's release of an injurious substance. The *Fillion* case also turned on remoteness of damage, the element of frost coming in as a supervening factor. Here the injury seems to me very direct and one that could easily have been foreseen. I think the defendant is responsible for the breach of the statutory duty: for its disobedience to the express statutory prohibition. The cases cited to the contrary turn on failure to do acts enjoined by the legislature.

In my view the defendant is liable at common law on another ground. No case has been cited to me dealing with damage from oil, but on principle I do not see how the defendant can escape liability. Even apart from statute the defendant had no right to dump an injurious substance in a navigable river, which is a public highway. It is much as if it left a pool of oil on the road outside its premises, and someone fell into it in the dark. Or, as if it had a spray of oil on its premises, which the wind blew onto someone's clothes or someone's motor car on the street.

It is unnecessary to decide whether defendant would have been excused if it had had to jettison oil in order to avoid serious danger to the ship. No such case was made out. Even without the pumping it seems extremely likely that the ship would have been freed within a few hours, at high water, with or without the assistance of the tug which had been called for, and was standing by. And even if pumping was unavoidable, the oily mixture should not have been dumped into the river, whether wilfully or negligently; a lighter could and should have been used.

In my opinion therefore the defendant is liable for the damage done, with costs. There will be a reference to assess the damages to the learned Deputy Registrar.

*Judgment accordingly.*

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