1924

May 22.

Held, that in estimating the amount of damages to be allowed in a case of collision with a dredge, an allowance will be made on the principle set out in The Marpessa, 1906, P. 14 and 95, and 1907 A.C. 241.

Damages—Interest.

(2) Interest, in admiralty cases, will be calculated on the damages allowed from the date of the collision; and on payments made in respect of wages, and payments made by reason of the collision, from the dates of such payments.

ACTION for damages resulting from collision with a dredge. Judgment was given on the 26th of April, 1923, in favour of the plaintiffs (1), and directing a reference to the District Registrar to settle the amount due.

An appointment was made by the Registrar and particulars of the plaintiffs' claim were filed, of which the following were contested:

1. June to July, 1920—	
To paid crew of dredge for nine days time and	
board in repairing dipper handles of dredge	\$ 459 15
4. 4th to 12th Sept., 1920, inc.—	
To paid crew of dredge and tug stripping dredge	
for repairs at shippard, removing crane to re-	
place foot casting, replacing rivets and draw-	
ing in heel of crane, replacing foot casting, re-	
placing crane in dredge and for board and	
coal	1,293 40
7. 23rd Aug., 1919—	
To lost time of dredge on day of accident, 4 hours	
at \$35 per hour	140 00
8. 4th to 12th Sept., 1920—	
To 6 days working time lost by dredge while being	
stripped for removal of crane and replacing	
footing casting, replacing crane, etc., at dock	
of Port Arthur Shipbuilding Co., Ltd., at 134	
hours per day (being the average for the	
month of September), making a total of 82½	
hours lost time at \$35 per hour	2,887 00

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Deduct 6 days wages, board and coal (included in above item of \$1,293.40), \$862.26.....

2.024 74

9. 24th Aug. to 26th Nov., 1919-

To average of ½ hour lost time each working day for 74 days, balance of season of 1919 due to dipper handle and crane being bent and twisted and not in good working condition and which could not be repaired till dredge was laid up for a considerable period at \$35 per hour.

1.295 00

The District Registrar in his report allowed practically the whole amount claimed by the plaintiffs. His report is as follows:—

I find that there is due to the plaintiffs the sum of seven thousand nine hundred and thirty-six dollars and seventeen cents, including interest as set out in the schedules hereto annexed.

I am of the opinion that the plaintiffs are entitled to an allowance for lost time for the use of the dredge and tug, and I am of the opinion on the evidence that thirty-five dollars (\$35) per hour is a reasonable sum to be allowed for the services of the dredge and tug for such lost time.

I am of the opinion that it was not through any fault of the plaintiffs that they could not get the dredge under the shear leg at an earlier date than they did, and I think on the evidence they are entitled to the amount claimed in item No. 9 of the particulars.

I am of the opinion that in Admiralty Cases (differing generally from Common Law Cases), interest should be allowed from the date of the disablement of the earning power of the dredge, and the dates of payments made in respect of repairs of wages, etc., caused by such disablement, and I adopt as reasonable the proposition as to interest submitted in the argument in reply of counsel for the plaintiffs, and allow interest as set out in the schedule hereto annexed.

I am of the opinion that the items in Claim No. 9 of the particulars, for survey and correspondence, should be disallowed, and I allow the other items of the claims as set out in the particulars, as shown in the schedule hereto annexed.

I am also of the opinion that the plaintiffs are entitled to the costs of this reference.

An appeal was taken to the Local Judge in Admiralty to vary the Registrar's Report, and on May 17, 1924, this appeal was heard by the Honourable Mr. Justice Hodgins at Toronto.

- F. W. Grant for plaintiffs.
- R. I. Towers, K.C. for Northern Navigation Co.
- S. Casey Wood, K.C. for Canadian Towing and Wrecking Company.

Hodgins L.J.A., now this 22nd May, 1924, delivered judgment.

Appeal by defendants from Report of Local Registrar allowing \$6,694.82 as damages due to collisions with \$1,241.35 for interest thereon.

There are several items in dispute.

Item 1. \$459.15 I confirm the Registrar's Report.

Item 2 and 3 are not contested.

Item 4. \$1,293.40. I allow this and will consider it in connection with item 8.

Items 5 and 6 are not contested.

Item 7. The rate of \$35 per day is said to be excessive. I allow this at \$96 for reasons given under item 8.

Item 8. \$2.024.75 is for the earnings of dredge said to have been lost by reason of the collision, the actual expense being already charged in item 4. I think this claim is based on a misapprehension of what the plaintiffs are entitled to. When the collision occurred the plaintiffs had to decide whether to operate in the dredge's damaged condition and finish their contract or give up work. No other work was contemplated in 1919, nor was any available so far as the evidence shows. They decided to continue and lost 6 days time. In item 4 they are allowed for the expenditure during the time occupied in making the temporary repairs which enabled them to finish their contract that autumn. The fact that they cannot show any loss beyond these expenses during the 6 days and the cost of the repairs is not decisive. The Greta Holme (1), determines that the plaintiffs are entitled to some damages and the case of the Marpessa (2), sets out some of the items that will make up such damage in a case like this.

In order to save the parties further litigation, I would assess these damages at \$1,000 in addition to the expenditure during the period in question and the cost of the repairs.

But if either party prefers it, such party may at his own expense have it referred back to the Local Registrar to arrive at these damages upon the basis of the *Marpessa*, *ubi supra*.

At present this item will be allowed at \$1,000 instead of \$2,024.75 and these damages will be substituted for the profit included in items 4 and 9.

(1) [1897] A.C. 596.

(2) [1906] P. 14 and 95; [1907] A.C. 241. 1924
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Item 9. \$1,295 being for an average of $\frac{1}{2}$ hour a day for time lost while finishing the contract by reason of the injury which necessitated spending this ½ hour in replacing bolts destroyed or lost owing to operating the machinery in its damaged condition. The temporary repairs having been done and their cost allowed for, as well as the running expenses, this item represents or should represent the cost of the extra time which had to be taken to complete the contract over and above that which it would have taken if the dredge had not been injured. Half an hour every day for 74 days is of course an estimate but no doubt there was much lost time in doing the job under the conditions then existing. The defendants were saved a considerable amount by the decision to operate instead of abandoning the work and claiming damages for its non-completion, and I think a reasonable amount should be allowed.

The \$35 per day is, however, based upon profits. I think this is wrong for the reasons I have already given. It should be calculated on the daily expense of \$215 per day plus certain elements of damage which I have allowed at \$1,000 as covering 9 days, giving an amount of \$111 per day, a total of \$326. I would allow this on that basis of 3 days at \$3.26 per day or say \$978 which amount I allow.

Interest. I allow interest on the items, calculated on the basis adopted by the Local Registrar.

The items are allowed as follows, with interest as indicated, given below:

Allowed	Struck Off
1\$ 459 15	
$2 \ldots 212 86$	
3 691 05	
4 1,293 40	
5 541 29	
6 37 33	
7 96 00	7 44 00
8 1,000 00	8 1,024 75
9 978 00	9 317 00

The report will be varied as indicated. If a reference is required notice must be filed with the Local Registrar within one week, in which case there will be a reference back to him limited to the question dealt with under item 8.

As success is divided there will be no costs.

Judgment accordingly.