

## BRITISH COLUMBIA ADMIRALTY DISTRICT

1925

May 27.

EAST ASIATIC COMPANY LTD.....PLAINTIFF;

AND

THE *CHILCOT* .....DEFENDANT.

*Shipping—Collision—Liability based on tonnage—Engine-room space—Canada Shipping Act—R.S.C. 1906, c. 113 as amended by 13-14 Geo. V, c. 35, sec. 9.*

*Held*, that the words "engine-room space" in R.S.C. 1906, c. 113, as amended by 13-14 Geo. V, c. 35, sec. 9, are wide enough to cover the boilers appurtenant to the engines whether they are actually in the same compartment or not, which arrangement is primarily one of convenience and would vary according to the size and construction of the vessel.

ACTION to recover damages by reason of a collision in Burrard Inlet, between the plaintiff's motorship *Peru* and the defendant steamship. The liability for damages was admitted by the defendant but the question arose respecting the extend of defendant's liability based on her tonnage.

Vancouver, March 21, 1925.

Action now heard before the Honourable Mr. Justice Martin.

*Martin Griffin* and *Sydney Smith* for the plaintiff.

*E. C. Mayers* and *J. L. Abbott* for defendant.

The facts are stated in the reasons for judgment.

MARTIN L.J.A., now this 27th day of May, 1925, delivered judgment.

This action arises out of a collision in Burrard Inlet between the plaintiff's motor ship *Peru* and the defendant steamship. The liability for the damage is admitted by the defendant but a question has arisen respecting the extent of the defendant's liability based on her tonnage, under sections 921-2 of the Canada Shipping Act [R.S.C. (1906) c. 113], as amended in 1923 by 13-14 Geo. V, c. 35, sec. 9, as follows:—

922. Tonnage of a steamship shall be her registered tonnage with the addition of any engine-room space deducted for the purpose of ascertaining that tonnage; and the tonnage of a sailing ship shall be her registered tonnage: Provided \* \* \* \*

The plaintiff submits that the expression *engine-room space* which first appeared in Canada in this section, should include the space for the boilers whether situate within

the walls of the main engine room or not, as being inseparable parts of the engines as the propelling power, and if this view is correct about 138 tons should be added to the computation of the tonnage as otherwise conceded by the defendant. For the defendant it is submitted in brief, that *engine-room space* is a new expression, first used in the Merchant Shipping Act of 1906, sec. 69 (in force 1st June, 1907) and is in contra-distinction to the former wide expression of *space occupied by the propelling power* in sec. 78 of the Merchant Shipping Act, 1894, and that as a fact, in the *Chilcot* the engine room and the boiler room are in separate compartments.

Several cases were cited by the plaintiff's counsel but they are not really applicable, all being based on actions begun before the act of 1906 came into force. This case therefore is one of first impression and so I have carefully considered all the statutes and relevant rules and regulations that have been cited with the result that I think the expression *engine-room space* is wide enough to cover, and should in reason and practice be held to cover, the boilers appurtenant to the engines whether they are actually in the same compartment or not, which arrangement is primarily one of convenience and would vary according to the size and construction of the vessel. As to whether *engine-room space* is in general equivalent to *space occupied by the propelling power*, I express no opinion, but confine myself to the distinct point in issue which alone it is necessary to decide. There will be judgment for the plaintiff in accordance with this view, the costs to follow the event.

*Judgment accordingly.*

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