

1955
 Nov. 9

ONTARIO ADMIRALTY DISTRICT

BETWEEN:

MARY McLEOD PLAINTIFF,

AND

THE ONTARIO-MINNESOTA PULP }
 AND PAPER COMPANY LIMITED } DEFENDANTS.
 and GORDON K. GAGE

Shipping—Motion to dismiss plaintiff's action—The Admiralty Act, R.S.C. 1952, c. 1, s. 2(1), Schedule A, section 22—The Canada Shipping Act, R.S.C. 1952, c. 29, s. 726—“Any claim for damage done by a ship” —“Any claim for damage received by a ship”—Inboard motor boat is a ship—Right of action given to ship extends jurisdiction of Court in respect of claim for loss of life.

Held: That a boom of logs is not a ship.

2. That an inboard motor boat is a ship within the meaning of the Admiralty Act, R.S.C. 1952, c. 1, s. 2(1).
3. That the Court has jurisdiction to entertain a claim for the death of a passenger in an inboard motor boat caused by the boat being in collision with a boom of logs.

MOTION by defendant The Ontario-Minnesota Pulp and Paper Company Limited to have action dismissed.

The motion was heard before the Honourable Mr. Justice Barlow, District Judge in Admiralty for the Ontario Admiralty District, at Toronto.

J. D. Arnup, Q.C. and *J. B. Gillespie* for the motion.

F. C. Hayes contra.

P. W. Isbister for defendant Gage.

BARLOW D.J.A. now (November 9, 1955) delivered the following judgment:

1955
 }
 McLEOD
 v.
 THE
 ONTARIO-
 MINNESOTA
 PULP AND
 PAPER CO.
 LTD.

A motion by the defendant The Ontario-Minnesota Pulp and Paper Company Limited to dismiss the action as against it on the ground that there is no jurisdiction in this Court to entertain the action.

Counsel for the defendant Gage was present but took no part in the motion.

This action is brought by the widow of John Erastus Jerome McLeod on behalf of herself and Marilyn Joy McLeod.

The deceased John Erastus Jerome McLeod, on the 17th day of July, 1954, was a passenger in an inboard motor boat *Red Devil* operated by the defendant Gage which, on a voyage from Keewatin to Kenora came into collision with a boom of logs owned by the defendant The Ontario-Minnesota Pulp and Paper Company Limited, as a result of which McLeod was drowned.

Counsel for the applicant contends that a boom of logs is not a "ship" and that no action lies in this Court. "Ship" is defined in the Admiralty Act, R.S.C. 1952, chapter 1, section 2(i) as follows:

"ship" includes any description of vessel used in navigation not propelled by oars.

It is clear to me that a boom of logs is not a ship. For reference see *The Mac*, (1); *Paterson Timber Co. Ltd. v. The S. S. British Columbia* (2), and *Pigeon River Lumber Co. v. Mooring* (3) and affirmed 14 O.W.R. 639.

The finding that a boom of logs is not a ship, however, does not dispose of the matter. The jurisdiction of this Court is to be found in the Admiralty Act, R.S.C. 1952, chapter 1, Schedule A, section 22, the pertinent parts of which are as follows:

(1) The High Court shall, in relation to admiralty matters, have the following jurisdiction (in this Act referred to as "admiralty jurisdiction") that is to say:

- (a) Jurisdiction to hear and determine any of the following questions or claims:
 - (iii) Any claim for damage received by a ship, whether received within the body of a county or on the high seas;
 - (iv) Any claim for damage done by a ship.

(1) (1882) 7 P. 131.

(2) (1913) 16 Ex. C.R. 305.

(3) (1909) 13 O.W.R. 190.

1955
 {
 McLEOD
 v.
 THE
 ONTARIO-
 MINNESOTA
 PULP AND
 PAPER Co.
 LTD.
 Barlow,
 D.J.A.

(2) The provisions of paragraph (a) of subsection (1) of this section which confer on the High Court admiralty jurisdiction in respect of claims for damage shall be construed as extending to claims for loss of life or personal injuries.

See also the Canada Shipping Act, R.S.C. 1952, chapter 29, section 726, which is as follows:

Where the death of a person has been caused by such wrongful act, neglect or default as if death had not ensued would have entitled the person injured to maintain an action in the Admiralty Court and recover damages in respect thereof, the dependents of the deceased may, notwithstanding his death, and although the death was caused under circumstances amounting in law to culpable homicide, maintain an action for damages in the Admiralty Court against the same defendants against whom the deceased would have been entitled to maintain an action in the Admiralty Court in respect of such wrongful act, neglect or default if death had not ensued.

The jurisdiction as set out above which gives a right of action for "any claim for damage received by a ship" and for "any claim for damage done by a ship" is the same as the jurisdiction of the English Courts.

An inboard motor boat comes within the definition of a "ship". As such there would be jurisdiction in an action by the motor boat or its owner for damage received as a result of the collision with the boom of logs against the owner of the boom of logs and it follows that a passenger on the motor boat would have an action for injuries received against both the motor boat and the owner of the boom of logs or either of them by reason of the collision. The plaintiff has the same right of action that the passenger McLeod would have had if he had lived. See *The Zeta* (1). This was an action by the owners of the *SS. Zeta* against The Mersey Docks and Harbour Board by reason of the negligence of a dock official which resulted in *The Zeta* coming into collision with the dock. In this case the jurisdiction was the same as in the case at bar. Lord Herschell at page 478 says:

It is enough to say that the proposition that the Act of 1861 applies to damage done by a ship to persons and things other than ships has been well established by many authorities, the correctness of which I see no reason to question.

It would be a strange result if, in the case of a ship striking against a dock wall, the Court of Admiralty had jurisdiction to entertain a claim for damage done to the dock wall by the ship, and not for damage done to the ship by its contact with the dock wall.

(1) [1893] A.C. 468.

See also pages 484, 485 and 490, where Lord Macnaughton says:

There was, therefore, at the time when Admiralty jurisdiction was given to county courts, legislation in force which seems to have been intended, as Fry, L.J. observes, "to give reciprocal rights in cases of damage done by a ship and to a ship," and in both those cases, as his Lordship pointed out, and as the Lord Chancellor has now more fully shewn, it had been determined that it was not necessary that the body receiving or doing damage should be a ship.

It is clear to me on the above authority that the inboard motor boat would have a right of action in this Court against the boom of logs. This right of action by Schedule A, section 22 (2) extends the jurisdiction in respect of claims for loss of life.

For further reference see *The Bernina* (1) and *Elizabeth J. Monaghan v. Sarah Horn, in re The Garland* (2).

It is therefore clear to me that this Court has jurisdiction to entertain this action.

The motion will be dismissed with costs to the plaintiff. No costs to or for the defendant Gage.

Judgment accordingly.

1955
 }
 McLEOD
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 THE
 ONTARIO-
 MINNESOTA
 PULP AND
 PAPER Co.
 LTD.
 ———
 Barlow,
 D.J.A.
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(1) (1887) 12 P. 36.

(2) (1881) 7 S.C.R. 409.