Privy Council Appeal No. 107 *of* 1919.

Scrutton, Sons and Company - - - - - *Appellants*

v.

The Attorney-General for Trinidad - - - - - *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD AND TOBAGO.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 19TH OCTOBER, 1920.

Present at the Hearing:

LORD DUNEDIN.
LORD ATKINSON.
MR. JUSTICE DUFF.

[*Delivered by* LORD DUNEDIN.]

The Government of Trinidad are proprietors of a floating dock which is moored in Chaguaramas Bay, the use of which they let for hire to shipowners or to ship-captains requiring it. The plaintiffs, the appellants, are owners of the S.S. "Savan." This ship being at Port of Spain, and having lost a blade of her propeller, it was arranged that she should proceed to the dock for repairs. The captain navigated the ship from the Port of Spain to the Bay without asking the services of a pilot, and arrived there safely at 10.10 a.m. on the 3rd March, 1915. The time for the reception of the ship had been arranged for 10.30 a.m. On the ship's arrival a boat was sent to her by the dock authorities to inform the captain that the dock was not yet ready for the reception of the ship, and the captain anchored in the middle of the channel at a point about 350 feet distant from the warping buoy which is itself distant about 625 feet from the entrance of the dock. The effect of the wind on the ship as it lay at anchor was to blow the ship athwart the entrance to the dock so that she lay with her head to the eastward, the dock being directly to her north. At 10.30 a.m. the captain was informed that the dock was ready; he then requested one of the dock officials

to come aboard, and Mr. Sharpe, who was in charge of the dock, came aboard. The position of the ship was such that it could not straighten on her starboard helm and enter the dock straight. The captain, therefore, determined to go round on a port helm seawards until he had sufficient room to turn completely round and head straight into the dock.

The bay in which the dock lies may be roughly described as pear-shaped, the dock being situated at the narrow end of the pear. The bounding land on the east has an irregular point which is the point on which Nora Villa stands. To the north of this there is shoal water, and with a view to marking the presence of a shoal the dock authorities had put a buoy with two other buoys directly to the north. The principal buoy was anchored in $3\frac{1}{2}$ fathoms, and the engineer who put it there as well as the fishermen who frequented the bay were not aware that outside the line of that buoy and the two small buoys there was any danger to shipping. As a matter of fact there was a concealed rock. The captain while turning round on the port helm asked Mr. Sharpe if it was safe outside the buoy and was told it was. He directed his course close to the line of the three buoys and struck the rock.

The plaintiffs raised their action by way of a Petition of Right and claimed as damages the sum which was lost by direct injury to the ship and by demurrage while the ship was being repaired. The learned Trial Judge gave judgment in favour of the plaintiffs, but his judgment was reversed by the Full Court of Trinidad. From this judgment the present appeal is brought.

A Petition of Right must be founded on contract and not on tort. The appellants accordingly argue that in respect of the contract with the dock authorities, the authorities were under a contractual liability to afford him safe access to the dock; that the buoy, as placed, was misleading and that the ship suffering damage while passing outside the buoy showed a breach of warranty on the part of the respondent. The learned Trial Judge cited a number of authorities on which he relied. He sought to draw a parallel between this case and the well-known case of *Indermaur* v. *Dames*, L.R. 2 C.P. 311. This may at once be put aside. *Indermaur* v. *Dames* proceeded entirely upon the fact that the defendant was in control of the premises upon which he invited the plaintiff and in which he allowed to lurk a hidden danger. It is obvious that the dock authorities were not in control of a portion of the sea in this bay in the sense that the defendant was in *Indermaur* v. *Dames*. As little can the appellants get help from the case also cited by the learned Judge of *Reney* v. *The Magistrates of Kirkcudbright*, 1892 A.C. 264. In that case the ship was entirely under the orders of the harbour-master and bound to do what the harbour-master told him; the accident occurred in consequence. Here the ship was not under the control of Mr. Sharpe nor was the captain, the actual operation of entering the dock not having begun, under his orders, in any sense whatsoever.

Their Lordships accept the law as laid down in the cases

of the "*Moorcock*," 14 P.D. 64, the "*Calliope*," 1891 A.C. 11, and *The Queen* v. *Williams*, 9 A.C. 418. If the appellants could equiparate the facts in this case to the facts dealt with in those cases they would be entitled to succeed, but in their Lordships' opinion it is not possible for them so to do.

In the "*Moorcock*" the part of the channel which it was held that the defendants had impliedly warranted to be safe was the channel close up to the quay, without resting on the bottom of which it was impossible to use the quay. In the "*Calliope*" where, upon the facts no liability was held to exist, Lord Watson, it is true, used the expression "access to the dock." His expression, however, must be interpreted *secundum subjectam materiem*, and the place which was being discussed as an access was a few feet distant from the place where the vessel was destined to lie. In *The Queen* v. *Williams* the concealed snag was close to the staith which was provided by the dock authorities for the vessel to moor at. If the wreck here had been in the jaws of the dock or even in close proximity to the warping buoy, the case might have been a parallel one, but the wreck here was in no proper sense in the access to the dock. There was an ample fairway by which the dock could be approached. All fairways fringed by a shore must have a limit, and it was a very proper thing for the authorities to do to put a buoy in a shoal where the distance to the shore was very near. But to extract from that fact a guarantee on the part of the authority that there was absolute safety on the outside, however near to the buoy a ship might go, is a proposition for which their Lordships know of no authority.

The appellants then argued that there was liability in respect of the statement made by Mr. Sharpe that there was safety outside the buoy. As a matter of fact Mr. Sharpe in so saying was telling what he believed to be true. No one knew of the concealed rock, not even the fishermen. But even had he known, for any tortious statement of Sharpe the respondent cannot be held liable, and it is clear that once it is settled that the dock authorities had not by their contract warranted that there was absolute safety outside the buoy, Mr. Sharpe had no authority to impose upon them such a warranty.

Their Lordships, therefore, come to the conclusion that the appeal fails and must be dismissed with costs, and will humbly advise His Majesty accordingly.

In the Privy Council.

SCRUTTON, SONS AND COMPANY

v.

THE ATTORNEY-GENERAL FOR TRINIDAD.

DELIVERED BY LORD DUNEDIN.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.

1920.