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ROBIN LINE STEAMSHIP COMPANY (DEFENDANT) ..... } APPELLANT;

*Apr. 24.
*May 2.

AND

CANADIAN STEVEDORING COMPANY (PLAINTIFF) ..... } RESPONDENT.

SEAS SHIPPING COMPANY (DEFENDANT) ..... APPELLANT;

AND

CANADIAN STEVEDORING COMPANY (PLAINTIFF) ..... } RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Maritime law—Shipping—"Space" charter-party—Stevedores—Engagement by charterer—Liability of owners of vessels—Principal and agent—Actual agency—Ostensible agency.

The appellants entered into a "space" charter-party with the Southern Alberta Lumber Company under which the latter agreed to load lumber on appellants' ships. Afterwards the Southern Alberta Lumber Company, as charterer, engaged the respondent to do the stevedoring work. Owing to the bankruptcy of the charterer before the respondent was paid, the latter sued, not the charterer who engaged it but the appellants who owned the ships, alleging agency. Clause 15 and addendum C of the charter-party read as follows: "15. (Printed) Cargo to be stowed under the master's supervision and direction, and the stevedore to be employed by the steamer for loading and discharging, to be nominated by the charterers or their agents, at current rates. "C" (typewritten) In connection with clause 15, charterers agree to load and stow cargo for one dollar seventy cents ($1.70) per thousand board feet or its equivalent, * * *." The court of appeal construed the charter-party as constituting agency in fact.

Held, reversing the judgment of the Court of Appeal ([1928] 1 W.W.R. 308), that, although clause 15 without the addendum may support actual agency, the stipulation in the addendum "charterers to load and stow the cargo, etc.," excludes any actual agency of the charterer to engage a stevedore on behalf of the owners of the vessels and thus to render them liable to such stevedore for the cost of the loading and stowing of cargo.

Held, also, that, upon the evidence, there was no ostensible agency of the charterer entailing the same result. When actual authority of an alleged agent has been negatived, a plaintiff seeking to hold the

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*PRESENT:—Anglin C.J.C. and Duff, Mignault, Newcombe and Lamont JJ.

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alleged principal liable on the basis of ostensible authority either must shew a holding out by the principal of the alleged agent as such or must give proof of some custom on which ostensible agency can be predicated.

APPEAL from the decision of the Court of Appeal for British Columbia (1), affirming the judgment of McDonald J. (2) and maintaining the respondent's actions.

The appellants are companies incorporated in the United States of America. The appellant Robin Line Steamship Company, Inc., is the owner of the steamships Robin Goodfellow and Robin Gray, and the appellant Seas Shipping Company, Inc., is the owner of the steamships Robin Adair and Robin Hood. These four ships, together with others, are known as the Isthmian Lines. The respondent is a stevedoring company carrying on business in Vancouver, B.C. This is an appeal by the two appellants from a judgment of the Court of Appeal for British Columbia dismissing two consolidated appeals by the appellants from judgments against them in the Supreme Court of British Columbia for payment for stevedoring work performed by the respondent in British Columbia on three of the above ships, namely the Robin Goodfellow, the Robin Gray and the Robin Adair. The work was ordered by the charterer of the ships, the Southern Alberta Lumber Company, Limited, purporting to act on behalf of the appellants. The charter-party is the only document in writing. There was no communication oral or written between the parties to this action. The difficulty arose through the bankruptcy of the charterer before the respondent company was paid.

A. R. Holden K.C. for the appellants.

G. B. Duncan for the respondent.

The judgment of the court was delivered by

ANGLIN C.J.C.—The plaintiff (respondent), a stevedoring company, has recovered judgment against the appellants as owners of several steamships for the cost of loading and stowing cargo at Vancouver. The vessels were chartered to the Southern Alberta Lumber Company by what is known as a "space charter." The provincial courts con-

(1) [1928] 1 W.W.R. 412. (2) [1927] 2 W.W.R. 737.

strued this charter as constituting the charterer agent for the appellants and authorizing it as such to bind the appellants by a contract, which, it is said, it purported to make on their behalf with the stevedoring company. The latter supports the judgment in its favour on this ground of actual agency, and, should that fail, maintains that under the circumstances there was an ostensible agency of the charterer entailing the same result.

The majority of the Court of Appeal (Macdonald C.J.A., Galliher and McPhillips JJ.A.), affirming the trial judge, construed this charter as constituting agency in fact of the charterer. Martin and Macdonald JJ.A., dissenting, held that the charterer expressly excluded actual agency, and that ostensible agency of the charterer had not been established.

Material clauses of the charter read as follows:

13. Steamer to pay all port charges, harbour dues and other customary charges and expenses in loading and discharging cargo.

15. Cargo to be stowed under the master's supervision and direction, and the stevedore to be employed by the steamer for loading and discharging, to be nominated by the charterers or their agents, at current rates.

Addendum C. In connection with clause 15, charterers agree to load and stow cargo for one dollar seventy cents ($1.70) per thousand board feet or its equivalent, and agree there will be no extra charges during customary working hours, unless detention is caused by break-down of machinery, winches, or other defects of the steamer. Charterers have the option of working overtime by paying all expenses in connection therewith, but if owners elect to have the steamer worked overtime, it is understood this will be subject to charterers' approval and all expenses in this case to be for owner's account.

32. Steamer to be consigned at ports or places of loading to charterers' agents, steamer paying the customary agency fees, not to exceed $100 total for all loading ports, and at ports of discharge to owners or their agents, by whom steamer is to be reported and entered at Custom House.

Clauses 13, 15 and 32 are in the printed form of the charter party which is used. Addendum C is inserted in typewriting.

It was common ground at bar that clause 15 and addendum C must, if possible, be read together and effect given to both, but that, if they are in irreconcilable conflict, the terms of the addendum will prevail so far as may be necessary to give them full operation. Counsel also agreed that clause 15, unaffected by the addendum, would support the actual agency found below.

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While the principles of construction on which these conclusions rest are indubitable, with the utmost respect we are unable to agree in the view taken by the learned appellate judges who upheld the judgment of the trial judge as to the effect of clause 15 read with the addendum. That view ignores the positive and unqualified words of the addendum:

> Charterers agree to load and stow the cargo for one dollar seventy cents ($1.70) per thousand board feet or its equivalent.

Either this was a "nomination" of the charterer as stevedore for loading within the terms of clause 15, and a substitution (for that service) of the fixed loading price of $1.70 per 1,000 M for the current rates mentioned in clause 15, or, if that view should be untenable, would amount to a supersession of clause 15 so far as that clause standing alone might constitute the charterer agent of the owners to "nominate" a stevedore to load cargo at current prices. Any other construction of the addendum fails to give effect to the express provision: "Charterers to load and stow the cargo." We agree with the view expressed by Macdonald J.A., that this stipulation excludes any actual agency of the charterer to engage a stevedore on behalf of the owners and thus to render them liable to such stevedore for the cost of the loading and stowing of cargo at $1.70 per 1,000 M.

There remains the question of the ostensible agency of the charterer to bind the appellant by a contract with the stevedore (respondent).

Counsel for the respondent presented a double-barrelled argument on this part of the case:

First, he contended, there was an actual general agency created by clause 32 and the limitation of that agency by the addendum C being unknown to the respondent it had the right to rely on such general agency. But to sustain a claim by virtue of such general agency the respondent must have known of clause 32. If he did, he also had knowledge of the limitation of any authority conferred by clause 32 contained in the same instrument. He, however, denies knowledge of both clause 32 and the addendum C. He cannot, therefore, rely upon clause 32 of which he had no knowledge.

Second, counsel for the respondent contended that at common law the duty of loading rests on the shipowner

and that, in the absence of knowledge of any stipulation that that duty had been undertaken by the charterer, a third party, such as the stevedore, dealing with the charterer is entitled to assume that the common law duty remains unchanged and to rely upon the representation of the charterer, whom he finds in actual control of the ship for loading purposes, that he is the agent of the owner to make contracts for such loading. But the common law only imposes the duty of loading on the owner "in the absence of custom or agreement to the contrary." *Blakie et al* v. *Stembridge* (1). Here the stevedoring company knew that the ships were under charter and, as pointed out by Macdonald J.A.:

> parts of it (the charter) were read to its manager and he was at liberty to read it all.

The stevedoring company must be taken to have known that it was quite usual for charter parties to make special provisions in regard to stevedoring and liability therefor. If its manager did not take the trouble to inform himself in the present case of what these arrangements were, he cannot rely upon his neglect to do so to induce the court to hold that there was an ostensible authority in the charterer (which had itself undertaken the stevedoring work) to contract for the owner becoming liable directly to the stevedoring company, which was in reality the charterer's sub-contractor. As Lord Watson said in *Baumwoll Manufacturer* v. *Furness* (2):

> I know of no principle or authority which requires that notice must be given when an owner parts, even temporarily, with the possession and control of his ship in order to prevent the servant of the charterer from pledging his credit.

It had been there argued that the

> respondent (owner) remains liable for contracts made by the charterers' agent with shippers who had no notice of the terms of the charter.

But, Lord Watson answered:

> For that proposition no authority whatever was produced. All the decisions cited at bar, so far as they had any bearing upon such circumstances, appear to me to point very distinctly to the opposite direction.

True that was a case of a "demise" of a ship, or what was treated as tantamount thereto and the question was as to

(1) (1859) 58 L.J. C.P., n.s. 329, at p. 351.

(2) [1893] A.C. 8, at p. 21.

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agency of the master for the owner; but the general principle on which the non-liability of the owner was decided seems to be equally applicable to the case at bar. Here the owner had contracted with the charterer that the latter would do the stevedoring work and had given him such control of the ship as was requisite to enable him to do so. When actual authority of an alleged agent has been negatived a plaintiff seeking to hold the alleged principal liable on the basis of ostensible authority either must shew a holding out by the principal of the alleged agent as such, of which there is here no evidence, or must give proof of some custom on which ostensible agency can be predicated, which is here entirely lacking. There is no rule of law under which an implication of agency of the charterer for the shipowner, such as here suggested, arises from the mere existence of that relation.

For these reasons we are of the opinion that the appeal must be allowed with costs in this court and in the Court of Appeal and judgment entered for the appellants-defendants dismissing these actions with costs.

Appeal allowed with costs.

Solicitor for the appellants: *J. H. Lawson.*

Solicitors for the respondent: *McPhillips & Duncan.*