Supreme Court of Canada
Canadian Pacific Ry. Co. v. S.S. Storstad, (1918) 56 S.C.R. 324
Date: 1918-03-11

The Canadian Pacific Railway Company (Plaintiff) Appellant;

and

The "S.S. Storstad" (Defendant) and The Ætna Insurance Company and Others (Claimants) Respondents.

1917: October 30; 1917: November 2; 1918: March 11.

Present: Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff and Anglin JJ.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA, QUEBEC ADMIRALTY DISTRICT.

Admiralty law—Collision—Sale of vessel liable for damages—Distribution of insufficient fund—Priority between life and property claimants—Sec. 503 "Imperial Merchants Shipping Act," 1894.

The "S.S. Storstad," arrested and held liable at the suit of the appellant owner of the "S.S. Empress of Ireland" with which she collided, was sold under an order of the court, and the proceeds of the sale were deposited in court for distribution between the claimants for loss of life and property according to their respective rights.

Held, Idington J. dissenting, that the distribution of the fund must be made in accordance with the provisions of sec. 503 of the "Imperial Merchants Shipping Act," the claimants for loss of life or personal injury being entitled to 7/15 of the fund and then ranking for the balance of their claims *pari passu* with the claimants for loss of property.

Per Idington J. dissenting:—Section 503 of the Act is effective only upon the application of the owner of the ship to a competent court, invoking limitation of his liability.

The appeal was allowed in part and the judgment of the Exchequer Court, Quebec Admiralty Division, was varied, Idington and Duff JJ. being of opinion to allow the appeal in full.

APPEAL from the judgment of the Quebec Admiralty Division of the Exchequer Court of Canada, Maclennan J.[1], who confirmed the report of the deputy district registrar as to the distribution of the fund in court amounting to $175,000.

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The circumstances of the case and the questions of law in issue are fully stated in the above head-note and in the judgments now reported.

Aimé Geoffrion K.C. and A. R. Holden K.C. for the appellant.

G. F. Gibsone K.C., Errol Languedoc K.C. and Eug. Angers, for the respondents.

[1] 16 Ex. C.R. 472.

THE CHIEF JUSTICE.—The appellants' steamship "Empress of Ireland" was sunk with great loss of life in a collision with the "S.S. Storstad," a foreign ship, in the St. Lawrence River off Father Point on the 29th May, 1914. The "Storstad" proceeded to Montreal where she was arrested in a suit for damages brought by the appellant in the Exchequer Court, Quebec Admiralty District. She was subsequently sold by order of the court and the proceeds $175,000 paid into court to take the place of the ship and to avail for all parties interested therein.

Judgment in the suit was pronounced in favour of the plaintiff's claim and a reference directed to the deputy registrar to report the amount due. A large number of intervenants and claimants came in and established their claims and the deputy registrar made his report admitting claims to the total amount of $3,069,483.94 of which $469,467.51 were for loss of life and the balance for loss of property including over $2,000,000 claimed by the appellant as the value of its ship, the "Empress of Ireland." The fund in court being insufficient to satisfy all claims, the deputy registrar collocated the amount *pro ratâ* in favour of the life claims so far as the same was sufficient and excluded all other claims from participation in the collocation.

On motion by the appellant to vary the report and

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seeking to be collocated for its claim as admitted, judgment was given confirming the report; from this judgment the present appeal is brought.

The liability to any of the claimants found entitled by the Registrar's report is not contested. We have not therefore to consider the effect of the decision in *Seward* v. *"Vera Cruz"*[2]. The question for determination turns, I think, upon the construction to be put upon sec. 503 of the Imperial statute "The Merchant Shipping Act" (1894). That Act, so far as material parts are concerned, is expressly extended to the whole of His Majesty's Dominions. A statute of the Imperial Parliament, so declared to extend to all His Majesty's Dominions, is binding on all courts in Canada, those of Admiralty no less than the civil courts. It is upon this statute that the Local Judge in Admiralty has rested his judgment.

[2] 10 App. Cas. 59.

Part VIII of the "Imperial Merchant Shipping Act," 1894, is under the caption "Liability of Shipowners" and comprises secs. 502 to 509 inclusive. Sec. 503, so far as material, is as follows:—

> 503. (I) The owners of a ship, British or foreign, shall not, where all or any of the following occurrences take place without their actual fault or privity; (that is to say)
>
> *(a)* Where any loss of life or personal injury is caused to any person being carried in the ship;
>
> (*b*) Where any damage or loss is caused to any goods, merchandise, or other things whatsoever on board the ship;
>
> (*c*) Where any loss of life or personal injury is caused to any person carried in any other vessel by reason of the improper navigation of the ship;
>
> *(d)* where any loss or damage is caused to any other vessel or to any goods, merchandise, or other things whatsoever on board any other vessel, by reason of the improper navigation of the ship;
>
> be liable to damages beyond the following amounts; (that is to say.).
>
> *(i)* In respect of loss of life or personal injury, either alone or together with loss of or damage to vessels, goods, merchandise, or other things, an aggregate amount not exceeding fifteen pounds for each ton of their ship's tonnage; and

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> *(ii)* In respect of loss of, or damage to, vessels, goods, merchandise, or other things, whether there be in addition loss of life or personal injury or not, an aggregate amount not exceeding eight pounds for each ton of their ship's tonnage.

The tonnage of the "Storstad" is 6,028 tons and the amount realized by her sale and forming the fund now in court is less than £7 for each ton of such tonnage.

It is contended by the appellant:—

(1) That inasmuch as no limitation of liability has been obtained or sought for by the owners of the ship, the section has no application and that in the distribution of the fund all claims should be paid ratably.

(2) That in any event the section does not give any right to preferential payment.

In an action *in rem* there can be no liability beyond the value of the *res.* Prior to 1862 the ascertaining of the value of the ship was a fruitful source of litigation and expense.

> To obviate this and also in order that bad and inferior ships should not have an advantage, in case of collision, over good and valuable ships, 25 & 26 Vict. ch. 63 was passed. That Act struck a rough average value for all ships at £15 or £8 per ton, the valuation to be at the higher or lower rate according as the collision was accompanied by loss of life or personal injury or not. In 1894 it was repealed, but in substance re-enacted by 57 & 58 Vict. ch. 60, sec. 503. (Marsden on Collisions, 6th ed., pages 151-2.)

The "Merchant Shipping Act" is a complete code of the law relating to the subject and Part VIII. under the caption "Liability of Shipowners," must have been intended to deal comprehensively with the subject. It is clear that in a very large number, probably a majority, of cases the value of the ship is, as in the present instance, less than the statutory amount. I do not think it can be maintained that the Act has its application only where the value is the "rough average value" fixed by the statute and not where it is the actual value of the ship.

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We should not, if it can be avoided, construe the Act as making a reservation in favour of the life claims in the case of the statutory value and none at all in the case of the actual value which may be little less or indeed equal to it since there can be no limit of liability unless the real value is greater than the statutory value.

But whilst I think the registrar was right in his report in holding that the distribution of the fund must be in accordance with sec. 503, I think that he has taken a mistaken view of the effect of the section as affecting the particular case. I do not think you can take the maximum amount given in the section when the actual amount is less; it is the proportion that must be observed, that is to say the amounts reserved for the life and other claims must respectively abate in the proportions which the actual fund bears to the amounts fixed by the statute. It is not seven-fifteenths of an amount equal to £15 per ton to which the life claimants are entitled but seven-fifteenths of the fund of $175,000. This would be about $81,000 and leave some $93,000 against which the life claimants would be entitled to rank for the balance of their claims *pari passu* with the other claimants. This, of course, subject to the deduction of costs out of the fund.

I confess that I have some difficulty in following the construction which the courts have placed upon sec. 503 as to the reservation in favour of the life claims. The case of *"The Victoria"*[3], decided in 1888 was, of course, upon the statute of 1862 then in force, but the

[3] 13 P.D. 125.

provisions of this are for all practical purposes identical with those in the statute of 1894 and the construction then placed upon what is sec. 503 in the latter does not seem to have been ever questioned

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since that time. It must now be accepted as laying down the law correctly.

I do not see the necessity of the cross-appeal. The order of the 26th September, 1916, against which this is brought simply extends the time for filing claims. It does not, and from the nature of the things cannot, be any adjudication on the claims which may be brought in. The cross-appellants in their factum say that "the judgment decides two things: First, that (after providing for costs) the fund in court to be distributed exclusively among claims founded upon loss of life; secondly, that claims for loss of life filed up to the 10th October, 1916, are to be considered *and apparently to be collocated."* I can see no grounds for this supposition. It will be open to the cross-appellants on the further inquiry to raise the objection that any new claims are statute barred or for any other reason inadmissible. The cross-appeal should, I think, be dismissed with costs.

The judgment should be varied as above indicated and the whole matter remitted to the deputy registrar for further inquiry and report as directed by the judgment so varied.

The costs of all parties other than of the cross-appeal should be paid out of the fund in court.

DAVIES J.—I concur with my brother Anglin.

I would vary the judgment below by directing that the sum for distribution be apportioned to a fund upon which claimants for loss of life or personal injuries should be entitled to rank exclusively for seven-fifteenths and to another fund upon which these claimants shall be entitled to rank for unsatisfied balances *pro ratâ* with claimants for loss of property. Costs of the appeal out of the fund. I would dismiss the cross-appeal with costs.

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IDINGTON J. (dissenting).—The learned judge below held that in the case of the bankrupt owner of the vessel in fault and the losses suffered thereby, exceeding her value, the classes of sufferers referred to in sec. 503 of the "Imperial Merchants Shipping Act," 1894, or some of them, must be preferred over others in sharing the proceeds of her sale.

Whether such holding can be maintained or not must depend upon the scope and purpose of part 8 of the said Act in which the section is found.

An ambiguous section often, indeed generally, has been made to respond to and subserve the obvious purview of the Act in which it is found.

The history of the enactment now in question does not enable that mode of treatment to be successfully applied herein. The "Shipping Act" of 1894, has been the growth of legislation extending over many years, and relates to so many subjects that it is impossible to gather much help from it as a whole in order to be enabled to interpret and construe part 8 thereof, which is all that really is involved or has to be considered in the disposition of the question raised. The enactments contained therein represent the last feature of legislation of that kind applied to the hazardous employment of shipping. The original liability of shipowners for loss suffered by shippers through the misconduct and especially negligence on the part of servants of the shipowners in managing the thing given them in charge, is said to have been unlimited in England until the year 1734. See Marsden on Collisions, 5th ed. 148.

Then 7 Geo. II. ch. 15, limited shipowners' liability for loss of cargo by theft of master or crew to the value of the ship.

26 Geo. III., ch. 86, limited the loss from theft by strangers or by fire.

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Then 53 Geo. III, ch. 159, furnished the first limitations of liability in the case of collisions.

The substance of these enactments was incorporated into the "Shipping Act" of 1854. In 1862 many amendments were made to that Act by the enactment of 25 & 26 Vict., ch. 63, sec. 54, which in substance adopted the same terms as appear in sec. 503 of the "Shipping Act" of 1894, now in question. By the first section of the said amending Act it was enacted as follows:—

> This Act may be cited as the "Merchants Shipping Amending Act," 1862, and shall be construed with and as part of the "Merchants Shipping Act," 1854, hereinafter termed the "Principal Act."

When we have regard to this enactment and turn to the said "Principal Act" we find in sec. 514, thereof, the following:—

> 514. In cases where any liability has been or is alleged to have been incurred by any owner in respect of loss of life, personal injury, or loss of or damage to ships, boats or goods, and several claims are made or apprehended in respect of such liability, then, subject to the right hereinbefore given to the Board of Trade of recovering damages in the United Kingdom in respect of loss of life or personal injury, it shall be lawful in *England* or *Ireland* for the High Court of Chancery, and in *Scotland* for the Court of Session, and in any *British* possession for any competent court, to entertain proceedings at the suit of any owner for the purpose of determining the amount of such liability subject as aforesaid, and for the distribution of such amount ratably amongst the several claimants, with power for any such court to stop all actions and suits pending in any other court in relation to the same subject matter; and any proceeding entertained by such Court of Chancery or Court of Session, or other competent Court, may be conducted in such manner and subject to such regulations as to making any persons interested parties to the same, and as to the exclusion of any claimants who do not come in within a certain time, and as to requiring security from the owner, and as to payment of costs, as the court thinks just.

It was doubtless under this enactment that proceedings were taken in the many cases that arose under the said "Shipping Act" as amended by said sec. 54.

Turning then to part 8 of the "Shipping Act" of 1894, we find sec. 504 providing in substance for that which was enacted in the clause just quoted.

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When we consider the frame of the Act of 1854, or of the said amending Act of 1862, we find each subject matter, as it were, which is dealt with legislatively, made to appear under a defining caption. Having regard to that system of defining the subject matter we need not concern ourselves much with the general purview of the Act as a whole. We should further confine ourselves to looking at the purview of the enactments appearing under each of these respective captions, unless, indeed, as in the case of the amendment by sec. 54 in the amending Act of 1862, we find it relates to cognate matters in the Principal Act, and then, of course, we should consider all such together. It is to be observed that there is nothing expressed in the Act of 1894 which lends the slightest colour to the claim of priority by any one over others in relation to damages which the ship as such was responsible for, and has been condemned to answer, much less to the proceeds of her sale resulting from the condemnation against her.

The same is true of each of the several enactments giving to shipowners a right to secure limitations of liability. It so happened, however, that the courts which had been entrusted with the power of giving effect to the relief provided by these several Acts of limitation, in administering these laws, on the application of the shipowners invoking protection, gave

relief only upon payment into court of a sum or sums based on the application of the measurements specified in the Act, and priorities were thus created, indeed of necessity sprang from the course of judicial relief given in each of the classes of cases provided for.

That, however, is surely very far removed from the possibility of constituting the fund realized out of the sale of the vessel, in an action in *rem,* as this is, at the suit of another party like appellant, one which must

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be administered on the basis which the courts have adopted in an entirely different sort of proceeding.

Sec. 504, forming part of said part 8, expressly provides that upon such claims as in question in that part of the Act being taken or apprehended, then the owner may apply to a competent court and invoke the relief given him or it by the preceding section.

The enactment was substantially in principle the same as sec. 514 above quoted from the Act of 1854.

The numerous cases which had to be dealt with under the last mentioned section indicate that any preference or priority given to any claimant invoking said section, or the powers therein, was solely in furtherance of the privilege given to the shipowners and for the purpose of effectively working out the scheme of the limitation clause or clauses.

Sec. 504 of the Act of. 1894, with which we have to deal, I think has been treated in the same way as in acting upon it the like principles have been applied. This section alone seems to render this part of the Act operative and give the court power to determine the amount to be paid and administer the fund thereby created.

Unless and until this part of the Act has thus been made effective and operative there can be no claim under it.

The case of *"The Victoria,"*[4] relied upon below, was one of the very many decisions passed upon questions raised under the amendment of 1862, and was simply the result of an application to the Court of Chancery under the sec. 514 above quoted. It decides

[4] 13 P.D. 125.

nothing to support the present contention of priority in relation to the fund derived from the sale of the vessel in this action in *rem.* In not a single case so far as I

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can find has the construction of the amendment of 1862, or the part 8 of the Act of 1894, been otherwise brought into question or declared to have any effect.

Indeed being a case of privilege given the owner only under certain circumstances, it seems impossible for the question otherwise to arise and when raised the issue must be tried as other questions upon pleadings and proof.

For aught we know the owners may have been privy to the wrong done which is in question here. That suggestion may appear remote when a case has been tried without one word of contention or evidence relevant thereto having been set up, but it is to be observed the case being in *rem* does not necessarily involve the privity of the owner or its individual responsibility.

Such being the conclusions which I have reached upon the construction of the Act relied on, it is needless to pursue the many other questions raised, for admittedly under the "Canada Shipping Act" there can be no claim to the priority alleged.

The appeal must be allowed with costs.

As to the cross-appeal by some claimants that others are barred by the limitations of the time within which those entitled in virtue of "Lord Campbell's Act" must bring action, it seems to be rather late now to raise such a question for the first time.

There is nothing in the judgment appealed from to indicate that such a contention was set up below.

The objection to the right of the judge to amend the order as to the original time fixed for bringing in claims, does not cover the ground.

The case of *"The Alma"*[5], cited in the factum is not in point.

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[5] [1903] P. 55.

That is where owners had taken proceedings to establish a limitation under the sections I have already discussed and the question raised before the judge in charge of working out a reference thereunder, was whether or not he could let in claims which were not presented within the time limit originally fixed by the judgment giving relief.

It presented no case based on the Statute of Limitations or the clause of "Lord Campbell's Act" limiting the time.

When those cross-appealing saw any claim competing with theirs presented before the referee they may have been entitled to raise the objection of the Statute of Limitations, or the corresponding limitation in "Lord Campbell's Act," but failing to do so, or someone entitled to do so failing to object, I cannot think it can now be raised for the first time and the cross-appeal should therefore be dismissed with costs which would seem to be trifling if worth noticing in view of the factum.

DUFF J.—I think the appeal should be allowed with costs.

ANGLIN J.—Arrested and held liable at the suit of the owners of the "Empress of Ireland," with which she had collided, the S.S. "Storstad" was sold under an order of the court made in the action by consent of all parties interested. The proceeds of the sale are in court. The respective rights in the distribution of them, on the one hand of persons entitled to maritime liens on the delinquent ship for damages for loss of life or personal injuries, and on the other of persons entitled to similar liens in respect of loss of or injury to property resulting from the collision, form the subject of this appeal. The priority of the claim of the plaintiff

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for its costs incurred in securing the arrest and condemnation of the offending ship is not contested, nor is her liability to any of the claimants found entitled by the registrar now disputed. Were it otherwise the status of claimants in respect of loss of life would call for very careful consideration in view of the decision in *Seward* v. *Vera Cruz*[6].

The money available, however, will answer but a fraction of the claims and falls far short of either the £15 per ton fixed by sec. 503 of the "English Merchant Shipping Act," 1894, or the $38.92 per ton fixed by the "Canada Shipping Act" (R.S.C., ch. 113, sec. 921), as the limit of the owner's liability.

[6] 10 App. Cas. 59.

The question at issue between the parties is whether all the recognized claimants are entitled to rank *pari passu* upon this fund, as it is conceded would be the case if the "Canada Shipping Act" should govern or if neither it nor the "English Merchant Shipping Act" should apply, or whether claimants in respect of loss of life or personal injuries are entitled to whatever preference sec. 503 of the latter Act provides for. There is also a question as to the extent of this preference.

Neither the "Storstad" nor the "Empress of Ireland" was registered in Canada. The registry of the "Storstad" was Norwegian, that of the "Empress of Ireland," British. Part 8 (secs. 502-509) of the "Imperial Merchant Shipping Act," 1894 (57 & 58 Vict., ch. 60), is, by sec. 509, made applicable to the whole of His Majesty's Dominions; and, by sec. 735, the power of the legislature of any British possession to repeal wholly or in part any of its provisions is restricted to their application to ships registered in that possession,

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The "Merchant Shipping Act" of 1854 (17 & 18 Vict., ch. 104), contained similar provisions—secs. 502 and 547. I have no doubt whatever that if this case falls within either of them, the liability of the defendant and the rights of the plaintiff and other claimants *inter se* must be determined by sec. 503 of the Imperial Act rather than by sec. 921 of the "Canada Shipping Act," which is *in pari materia.*

The heading of part 8 of the Imperial Act is "The Liability of Shipowners." It was presumably intended to be exhaustive. By sec. 503 (sec. 54 of the Act of 1862), it limits the liability of the shipowner to £15 per ton of the delinquent ship's tonnage in respect of loss of life or personal injury either alone or together with loss of or damage to property, and to £8 per ton in respect of loss of or damage to property whether it is or is not accompanied by loss of life or personal injury. No doubt

> the *ordinary* mode of obtaining this limitation of liability is for the shipowner to pay the statutory amount into court in an action in which he asks a decree limiting his liability to that sum. (Carver's Carriage by Sea, 5th ed., page 36).

But, having regard to the history of the limitation of shipowners' liability in English law, I agree with the learned local Judge in Admiralty that it is not made dependent on such an action being taken.

Sec. 503 enacts in general terms a limitation upon the claimants' right of recovery. The only condition attached is that the loss shall have occurred "without (the owner's) actual

fault or privity." I cannot think that this term imports that the fact of absence of personal fault or privity must be established in a proceeding in which it is alleged by the owner as an actor. It must suffice if it appears and is found, as is the case here, in a suit in which the liability of the ship is

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determined—or, it may be, if the contrary does not appear, since such privity or fault should not be presumed. As the learned local judge points out, sec. 504 is permissive. It enables the shipowner where it is his interest to do so, to protect himself against multiplicity of actions with the harassing consequence of burdensome costs, which are not within the limitation. It affords him "the full benefit of having the whole case settled at once" and enables him to obtain a speedy release of his vessel, which may be worth much more than a sum equal to £15 or £8 per ton of its tonnage, as the case may be.

The company that owned the "Storstad," however, had no interest to invoke the protection afforded by sec. 504. She was, so far as appears, its sole asset, and, if not, she was, at all events, the only property owned by it subject to the process of the Canadian court. She was worth only £5 10s. per ton of her tonnage as was proved by the result of the sale. The company therefore had nothing to gain by instituting proceedings under sec. 504; the claimants could not force it to do so; and they were not taken.

Sec. 503 is not merely an enactment for the shipowner's benefit limiting his liability. It contains a substantive provision for the advantage of claimants in respect of loss of life and personal injuries upon whom it confers valuable rights of priority. A construction which would make the existence and enforceability of those rights entirely dependent on the shipowner's seeking and obtaining a judgment under sec. 504 declaratory of the limitation of his liability and fixing the amount thereof would seem so utterly unreasonable and so contrary to what Parliament apparently intended should be the effect of the statute that, in my opinion, it should not prevail. Whether loss of

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life and personal injury claims are to have a limited preference over loss of property claims or are to rank *pari passu* with them on the entire fund available was not left to be determined by the action or the inaction of the shipowner whether prompted by interest or purely spontaneous.

An argument in support of the contrary view rests on the juxtaposition of secs. 503 and 504 in the Act of 1894. But in the Act of 1854 the section corresponding to sec. 503 of the statute of 1894 was sec. 504 and that corresponding to sec. 504 of 1894 was sec. 514. When sec. 54 of the Act of 1862 replaced sec. 504 of the Act of 1854, sec. 514 was left unaltered. Compare secs. 1 and 4 of 26 Geo. III., ch. 86; 53 Geo. III., ch. 159, sec. 1 and sec. 7; and see the speech of Lord Blackburn in the *Stoomvaart Maatschappy Nederland* v. *The Peninsular and Oriental Steam Nav. Co.*[7], at pages 814 *et seq.* There is no interdependence between the two provisions. Their juxtaposition in the Act of 1894 has not the significance suggested.

Subject to the priority of the plaintiff for costs of the suit in which the offending ship was seized and its liability determined, the proceeds of the sale of it in court form part of the amount for which the owners are liable under the "Merchant Shipping Act." Their liability to have their ship confiscated for the purpose of making good the damage inflicted is part of the personal liability which that statute has limited. *Leycester* v. *Logan*[8]. It follows that credit must be given upon the owner's statutory liability for any sums received by claimants out of the proceeds of the sale of the ship. If those proceeds should be distributed otherwise than in the proportions in which the full

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amount of the statutory liability, if paid into court by the owners, would be distributed, on the final disposition of the balance of the statutory liability, should it be realized, payments to the claimants would be so adjusted that they would be allowed thereout only such sums as would make the total amount to be received by each equal to what would have been his share in the full amount of the statutory liability had it been paid into court in the first instance. *The "Crathie"*[9]. The balance of the statutory liability of the owners of the "Storstad" certainly may not, and in all probability will not be realized. Were the court to distribute the money now available *pro ratâ* amongst all the claimants, as the plaintiff contends for, the policy of sec. 503 of the "Merchant Shipping Act" would be defeated. It would be equally disregarded were the entire proceeds of the sale of the ship devoted to a fund available exclusively to satisfy demands in respect of loss of life and personal injury. The statute does not give them any such priority. It provides for the concurrent establishment of two distinct funds in which it defines different rights.

[7] 7 App. Cas. 795.
[8] 3 K. & J. 446, 451.
[9] [1897] P. 178, 181.

To carry out the policy of the Act the proceeds of the sale of the ship in court must be treated as a realization *pro tanto* (as in fact they are) of the owners' statutory liability and distributed as such amongst the several claimants in the same proportions in which the full amount of that liability, if available, would have been distributed. The sum on hand for distribution will therefore be apportioned between the two funds—to one of them seven-fifteenths of it, and to the other the remaining eight-fifteenths. According to the rule laid down in *The "Victoria"*[10], and subsequently acted on in *The "Alma"*[11], and *The "Inventor"*[12],

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the former fund will be distributed *pari passu* amongst recognized claimants in respect of loss of life and personal injury, and, in respect of any deficiency, these claimants will share *pro ratâ* on the latter fund with the approved claimants in respect of loss of life and injury to property.

The judgment in appeal should be varied accordingly.

An order of the local Judge in Admiralty extending the time for filing claims until the 10th October, 1916, has been made the subject of a cross-appeal on the assumption that it determined that all claims which should be filed before the date so fixed would be *ipso facto* eligible for collocation in the distribution. The order does not so provide. Any claims filed pursuant to it must be adjudicated upon by the referee and will be open to all defences to which they are subject. The cross-appeal was misconceived and unnecessary.

Appeal allowed in part with costs of all parties out of fund.

Cross-appeal dismissed with costs.

Solicitors for the appellant: Meredith, Holden, Hague, Shaughnessy & Heward.

Solicitors for the respondents De Goss and others: Gibsone & Dobell.

Solicitors for the respondents Fabri and others: Greenshields, Greenshields, Languedoc & Parkins.

Solicitors for the respondents Bronken and others: Ross & Angers.

[10] 13 P.D. 125.
[11] [1903] P. 55.
[12] 10 Asp. M.C. 99.