Supreme Court of Canada
Burrard Drydock Co. Ltd. v. Canadian Union Line Ltd. and Union Steamship Co. Of New Zealand Ltd., [1954] S.C.R. 307
Date: 1954-06-21

Burrard Drydock Company Limited *(Third Party) Appellant;*

and

Canadian Union Line Limited and Union Steamship Company of New Zealand Limited *(Defendants) Respondents;*

and

Australian Newsprint Mills Limited *(Plaintiff).*

1954: March 4, 5, 8; 1954: June 21.

Present: Rinfret C.J. and Kerwin, Rand, Estey and Cartwright JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Damages—Negligence—Third Party proceedings—Water carrier—Carrier held liable for damages to cargo—Relief over against negligent ship's repairer—Proximate cause of the damage—Contributory negligence—Estoppel—Water Carriage of Goods Act, 1936, c. 49—Contributory Negligence Act, R.S.B.C.1948, c. 68.

In a judgment from which no appeal was taken, the cargo owner recovered damages from the respondents, the ship owner and the charterer, for a cargo damaged during its carriage in the respondents' ship, on the ground that due diligence had not been exercised to make the ship seaworthy. The trial judge found that the damage had been caused, by the imperfect tightening of the covering of a storm valve which had allowed water to seep through to the cargo.

Immediately prior to loading the cargo, the appellant, a ship repairing: company, had overhauled and repaired the ship, including this storm valve. An officer of the ship had inspected the work generally, but in spite of his apprehension that the valve might not have been screwed tight, no final inspection of it was made. A certificate that the repairs had been done to their satisfaction was signed by the officers of the ship.

In the third party proceedings taken by the carriers against the appellant and tried subsequently, judgment for relief over was given at trial and this was affirmed in the Court of Appeal.

In this Court the appellant contended that the failure to fulfil the contract had not been the proximate cause of the damage, that the respondents were estopped from denying that the work had been properly done, and that, in any event, there had been contributory negligence.

Held: The appeal should be dismissed.

Per Rinfret C.J., Kerwin and Estey JJ.: The damage to the cargo was a natural and probable consequence that was, or ought to have been, in the appellant's contemplation when it breached its contract. Assuming

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that the phrase *novus actus interveniens* may apply to a case of contract, that breach was the proximate cause of the damage and not the action of the ship's officers. The repairer's negligence continued even though the ship's officers failed to intervene. Furthermore, there was no duty owing by the respondents or their agents to the appellant to inspect. The taking of the ship to sea was the very thing contemplated as well by the appellant as by the respondents.

As the repairs to the valve itself had in fact been properly done, the signing of the certificate did not create an estoppel.

Although the evidence of the appellant's workmen that the bolts had been tightened securely was not believed by the trial judge, it must be taken that they would have reported to their foreman who would thereupon have given the same information to the respondents and, therefore, there was no negligence on the part of the respondents which caused or contributed to the damage.

Per Rand and Cartwright JJ.: The damages sought were such as would be contemplated or anticipated and came well within the scope of those for which redress is given.

The ground on which the default of the intermediate actor, the ship, was not be treated as a *novus actus* was that the respondents were entitled to rely upon their contract for the completeness of the work to be done. So far as the respondents inspected the work, they did so in their own interest and not because of any obligation toward the repairer. There was an absolute obligation to finish the work with care and skill. Nor is the burden of guarding against such an oversight to be thrown on the ship as a matter of policy in limiting damages. For those reasons also, it could not be said that, as between these parties, there were concurrent causes of damages.

The certificate of satisfaction did not imply an acceptance of all particulars regardless of latent flaws and could not be intended to conclude against the ship such a delinquency as was present here.

APPEAL from the judgment of the Court of Appeal for British Columbia[1], affirming, Sloan C.J.A. dissenting in part, the judgment at trial in a third party proceeding for relief over against a ship's repairer for damage to the cargo of a ship.

J. W. de B. Farris Q.C. and J. D. Taggart for the appellant.

C. K. Guild Q.C. and V. R. Hill for the respondents.

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[1] [1953] 9 W.W.R. (N.S) 13; 2 D.L.R. 828.

The judgment of Rinfret C.J., Kerwin and Estey JJ. was delivered by:—

KERWIN J.:—Australian Newsprint Mills Limited brought action in the Supreme Court of British Columbia against Canadian Union Line Limited, the owner of the S.S. "Waitomo", and Union Steamship Company of New Zealand Limited, the charterer by demise of the ship, for

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damages to a quantity of unbleached sulphite wood pulp shipped by the plaintiff in the Waitomo from Powell River, British Columbia, to Tasmania. Third party proceedings were taken by the defendants for indemnity from Burrard Dry Dock Company Limited against any liability that might be imposed upon them in the main action. Counsel for all parties took part in the trial of the action and on November 24, 1951, judgment was given by Mr. Justice Coady for the plaintiff against the defendants for $21,384 and costs. From that judgment no appeal was taken.

Subsequently Mr. Justice Coady presided at the trial of the issues in the third party proceedings in which, by agreement, the evidence in the main action, so far as it had any application, was taken as if it had been repeated. Also by agreement both parties to the issues put in further evidence. Judgment was given for the plaintiffs in the third party proceedings against the Dry Dock Company for $21,384 and interest at five per cent per annum from November 24, 1951; for $1,653.25, being the taxed costs of the plaintiff in the main action; for the costs of the defendants in that action, and the latter's costs as plaintiffs in the third party proceedings. Subsequently, pursuant to an order made by the trial judge, the plaintiffs in the third party proceedings amended their claim by asking, in the alternative, for relief over against the Dry Dock Company in respect of any and all damages and costs found against them in the main action. Special leave was given to postdate the judgment in the third party proceedings from March 26, 1952, to October 6, 1952.

An appeal to the Court of Appeal[2] was dismissed although the Chief Justice of British Columbia would have given judgment for only one-half of the damages and costs as he was of opinion that there was active, concurrent, continuing negligence of the ship's officers, as well as of the Dry Dock Company, and that the case came within the British Columbia *Contributory Negligence Act,* R.S.B.C. 1948, c. 68. That point was raised for the first time in the Court of Appeal by the Chief Justice and hence there is no reference to it in the reasons for judgment of the trial judge.

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The Dry Dock Company now appeals. Some of the arguments advanced in the Courts below need not now be considered as counsel for the appellant realized that there were concurrent findings of fact. However, judging from the form and scope of the reasons for judgment, the main questions have been presented to us in a somewhat different manner and, in view of the argument, a new approach to the problem must be made.

In the main action Mr. Justice Coady held that the respondents had not exercised due diligence to make the Waitomo seaworthy as required by paragraph 1(*a*) of article 3 of the Rules relating to Bills of Lading scheduled to *The Water Carriage of Goods Act, 1936* (Canada), c. 49. He found:— "The cause of the damage to the Plaintiff's goods was occasioned by a storm valve the covering of which had not been screwed down tightly thereby allowing sea water in 'tween decks and when this water had there accumulated in sufficient quantity it flowed over the hatch combing and down into the No. 3 hold where the goods in question were stowed." Part of what the trial judge says later is relied on by the appellant and it is therefore transcribed:—

> The defendants here probably did rely on and expect the Third Party to do the work entrusted to it in a proper and workmanlike manner but I am not now dealing with any claim or liability arising as between them with respect to that. In the discharge of the defendants' statutory duty to the Plaintiff however it is clear the defendants did rely to some extent at least on Captain Beaton to check the work of the Drydock Company in respect to any matter of repair which could affect the seaworthiness of the ship. Captain

[2] [1953] 9 W.W.R. (N.S) 13; 2 D.L.R. 828.

> Beaton admits that his duty went that far. With respect to the valve coverings, he knew that these had been removed—he knew that the inspections had been made by the surveyors when the valve coverings were removed—he knew that they had not been replaced when the surveyors were there—he knew that the failure to replace properly would affect the seaworthiness of the ship. With this knowledge and in pursuance of what he considered his duty, he asked an employee of the Drydock Company to be advised when the valve coverings had been replaced so that he could check them, and he says that he would have checked them to see that these valve coverings had been replaced and properly screwed down if he had been so advised. He states however that he was not advised when or if these valve coverings had been properly replaced and he consequently did not check. That certainly was not the exercise of due diligence—that was not carrying out what he admits was his duty. He apparently assumed, not having been advised, that the valve coverings had been replaced and securely fastened. Before he had any opportunity to check, the valves had been boxed in. But it would not even then have been a difficult matter for him to check as he ought

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> to have done. It is difficult to understand his conception of duty when he says he would have checked had he been advised and did not apparently consider it necessary to check when not advised.
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> The only conclusion I can arrive at upon the evidence here is that there was a lack of due diligence on the part of the defendants under the circumstances.

The appellant is a dry dock company having its works at North Vancouver. Prior to the voyage of the Waitomo to Tasmania, the appellant had contracted with the respondents to overhaul and repair the ship in order that it might pass Lloyd's four year survey. This contract included specifically the work on and in connection with the storm valves as the following requisition shows:—

> All storm valves to be put into working order. At present ineffective.

The account ultimately rendered by the appellant to the respondents for its services totals approximately $126,000 and includes this item:—

> *Order No. 5645*
>
> *Storm Valves*

> Opening up all storm valves throughout vessel and cleaning for examination. Supplying and fitting new flap leathers as necessary, freeing up valves, rejointing and closing up in good order. Removing sparred protection boxes in way of valves in Nos. 3 & 4 ‘tween decks for access and refitting in good order.

Then follow the charges for work and labour.

About one hundred employees of the appellant had been engaged in the work. For the respondents, the Chief Officer of the ship (Beaton) was on duty from 8 a.m. to 5 p.m. each working day but it is made clear in the evidence that he could not possibly oversee everything. The appellant removed the old sparring and covering which protect the valves, and repaired and reseated the valves. Confining ourselves to the valve in question, the evidence shows that it was examined by Beaton and one of the appellant's workmen. They removed the plate, worked the flap back and forth, found the valve "in effective condition", and replaced the plate. The bolts were put on and tightened by hand but, as it was necessary that they should also be tightened by a spanner, Beaton told the workman to let him know later through the appellant's foreman when the spanner had been used. He heard nothing further about the matter from anyone. The ship proceeded from the dry dock to Powell River and Ocean Falls and thence to New Westminster where Beaton noticed that "the valves

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had been completely boxed in" i.e., with new sparring and covering. In the course of Beaton's cross-examination by counsel for the plaintiff in the main action this appears:—

> Q. Now, before your ship commences a voyage, is it not one of your normal duties to see that all inlet and outlet valves are closed?

(After an objection, which was overruled, the question was read by the reporter).

> A. No, not if the ship is just making a normal voyage and hasn't gone into dry dock, or hasn't had those valves open, we don't go around and inspect them.

Q. Assuming it has been in dry dock for repairs to be opened, is it part of your duty to see that it is closed?—A. To the company.

Q. It is your duty to your company, is that right?—A. Yes.

Q. And your company owes that duty to its shippers, doesn't it?—

A. I should say so, yes.

Q. And I think that you have already given evidence to the effect that the only reason you didn't in this case was because you were waiting for some further word from the Burrard Dry Dock Company's foreman?

—A. That is more or less true, yes.

The interjection by the Court at this stage is of particular significance:—

The COURT: That is only part of the reason. He has already stated that he saw that they were all boxed in, and he assumed that the work had been done by the Burrard Dry Dock that they were supposed to do.

On October 1, 1948, a "shop order" was prepared by the appellant reading as follows:—

5645. Storm Valves

All storm valves to be put into working order. At present ineffective.

5646 *Port Deep Tank Ladder Rung*

Rung to be inserted in steel ladder to port deep tank (to replace missing rung).

5647 *Mainmast Head Light Screen*

Horizontal screen to mainmast head range light to be readjusted to requirements. At present screen ineffective and light illuminates bridge.

The above work has been carried out to our satisfaction.

This was signed by Ritchie, the Master of the ship, and Beaton.

Upon these facts the contentions advanced on behalf of the appellant are:— (1) the appellant's failure to fulfil its contract to overhaul and repair the ship was not the proximate cause of the damage giving rise to the judgment in the main action against the respondents: (2) by reason of the signatures of their officers to the shop order of October 1, 1948 the respondents are estopped from denying that the

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work was properly done: (3) in any event, the respondents are entitled to judgment only as proposed by the Chief Justice of British Columbia.

As to the first point, it being established that the appellant breached its contract, the damage to the wood pulp was a natural and probable consequence that was, or ought to have been, in its contemplation. But it is said it was not the appellant's breach of contract but the action of Beaton, amounting to a *novus actus interveniens,* that was the proximate cause of the damage. Assuming that the phrase may apply to a case of contract, the real position is that the appellant's negligence continued even though Beaton failed to intervene. Beaton did not do anything which permits it to be said that that original negligence ceased to operate. Furthermore, there was no duty owing by the respondents or its agents to the appellant to inspect: *Mowbray* v. *Merryweather*[3], a decision of the Court of Appeal which was followed in *Vogan v. Oulton*[4], and which was also followed by a trial judge in *Scott* v. *Foley*[5]. There is nothing in *Nance* v. *British Columbia Electric Railway Company Ld.*[6], inconsistent with this. *Buckner* v. *Ashby and Horner Limited*[7], was relied on by the appellant but, there, the Court of Appeal merely affirmed the decision of Atkinson J. on the facts, and that was a case of a plaintiff who was injured failing to recover against contractors who had agreed with the

[3] (1895) 2 Q.B. 640.
[4] (1899) 81 L.T. 435.
[5] (1899) 16 T.L.R. 35.
[6] [1951] A.C. 601.

Corporation of the City of London to erect a roof above the ground in a private passage as a protection against "blast" and "shrapnel" to the satisfaction of the Corporation. Similarly, in my opinion none of the other decisions referred to on behalf of the appellant has any bearing upon the question. Connected with this first point of the appellant is the argument that the damage was really caused by the respondents taking out the ship in an unseaworthy condition. As to this it is sufficient to say that the action of the respondents in taking the ship to sea was the very thing contemplated as well by the appellant as by the respondents.

On the point of estoppel, I agree with Mr. Justice Sidney Smith that the repairs to the valve itself had in fact been properly done and that the fault was in the appellant's

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workmen not securely bolting the plate. I also agree with him that, as stated by the trial judge, the shop order of October 1, 1948, must be construed reasonably. "It cannot", Mr. Justice Sidney Smith says, "be read as meaning that every item incidental to repair must be inspected by the ship's people—otherwise they would have to follow the workmen all day long and every day. The ship was in Burrard hands for three weeks and the repairs were extensive, costing $126,000." What the trial judge had stated with reference to this matter in his reasons for judgment in the trial of the third party proceedings is as follows:—

> It would be going a long way to hold that the defendant's officers had by signing the memorandum in question released the Third Party from any liability with respect to work negligently done in the repair and overhaul of this ship which was, as I stated, a rather major job. To hold that, would be to hold that the defendants have assumed a duty to check every nut and bolt handled by the Third Party's workmen to see that these workmen were not negligent. In other words, it would be necessary to have someone representing the defendants continuously with the workmen of the Third Party inspecting their work as they proceeded to see that nothing was left undone which they ought to have done. This was never in the contemplation of the parties. The defendants owed no duty to the Third Party to check the work done by the workmen engaged by the Third Party and the Third Party cannot take refuge now behind the memorandum to which I have referred and claim to be relieved from liability for the negligent acts of its workmen.

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[7] [1941] 1 K.B. 321.

The third point raised by the appellant before us is that, in any event, it should be held liable for only one-half of the damages and costs by virtue of the *Contributory Negligence Act.* In his reasons for judgment in the third party proceedings the trial judge found that the plate on the valve had not been properly replaced and that it had not been properly screwed down, and that owing to the negligence of the workmen employed by the appellant. He then continued:—

> The evidence permits of no other reasonable conclusion despite the evidence of the workmen who contended that this valve covering was properly screwed down. Their evidence as to that, while given in good faith no doubt, I cannot accept.

One of the workmen referred to, Murdo Maclean, testified in chief as follows:—

> Mr. TAGGART: Q. After the chief officer and yourself had inspected that particular valve, what action did you take with regard to that valve?
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> —A. Tightened the holding—down nuts.
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> Q. You positively recall that?—A. Yes.
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> Mr. GUILD: That, again, is a leading question.

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> Mr. TAGGART: Q. After you had tightened down the holding down nuts, what action did you then take?—A. I informed my foreman that the job was completed.
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> Q. And that was the end of the job?—A. That was the end of the job.

The other workman, Stuart Grant, testified in chief:—

> Mr. TAGGART: Q. Can you add anything, now to that answer? The question was: Do you wish to add anything to the last answer?—A. After the officer told Maclean to put the cover plate on, on the last one that was left open, we went back and closed it up, bolted it securely. I was the last one to test it with a spanner to see if it was tight.

Q. Do you remember how many valves you worked on?—A. It is hard to say, but I think we put the cover plates on three storm valves on the starboard side and two on forward port and one on after port.

Mr. TAGGART: That is to say, two on the forward port side, and one on the after port side, my lord.

Q. In what condition were these valves when you finally finished the work?—A. In good shape.

This is the evidence referred to by the trial judge and which he did not accept, and his finding in that respect is one that was approved by the Court of Appeal and upon which no attack has been made. However, in view of this evidence, it must be taken that the foreman would have reported to Beaton that the bolts had been tightened with a spanner and, therefore, there was no negligence on the part of the respondents which caused or contributed to the damage.

The appeal should be dismissed with costs.

The judgment of Rand and Cartwright JJ. was delivered by:—

RAND J.:—The question raised on this appeal is one of damages. The appellant undertook certain large scale repairs to a vessel owned by the respondent, placed in drydock for the purposes of undergoing a four-year Lloyd's survey, included in which was that of putting a galley drain storm valve in proper condition. This valve, about 2 1/2 inches in diameter, was affixed to the side of the vessel in a 'tween deck hold about three feet above the water line. A flap prevented sea water from entering but permitted the discharge of the drainage. A box with a removable cover was set on the horizontal portion of the valve about a foot or so from the vessel's side and by removing the cover the operation of the flap could be observed. The cover fitted over four threaded stud bolts and was held in position by

nuts screwed on the studs. The flap had been working sluggishly, admitting water, and after the repair had been done an inspection for the purposes of certification was made for which the cover had to be removed. After replacing it, the nuts were to some extent screwed on by hand to be later tightened with a wrench.

An officer of the vessel inspected the work generally as it was being done, including that of the valve, and in fact assisted a workman in replacing the cover and giving a turn to two of the nuts. At that time there was no wrench available and the officer asked to be notified when the nuts were made tight and he would make a further examination, but no notice was given and no further inspection made.

In the course of the next voyage, entered upon immediately after the repairs, water entered the hold and damaged cargo. It was found that the nuts had not been tightened and that there was a play in the cover of about threeeighths of an inch at one end through which the water had entered. The claim of the cargo owners was allowed for unseaworthiness and a failure of due diligence on the part of the vessel. From this judgment no appeal was taken.

Third party procedure was invoked by the vessel against the contractor, the appellant company, which being found responsible for the failure to tighten the nuts was held liable to the vessel in the amount of judgment and costs of the main action. This second judgment was affirmed on appeal[8] and from that ruling the appellant has brought the case here.

Mr. Farris, in a thorough and lucid argument, put his case thus. The third party claim is for damages and damages only, and there is no case for indemnity; it is then a matter solely of the extent to which damages are allowable. The issue is whether the judgment recovered against the vessel by reason of a breach of warranty of seaworthiness can be taken to be the measure of damages resulting from the breach of the contract to repair. The chain of consequences in damages is broken by the intervention of the act of a new conscious

volition, and there was such an intervening act here in putting the vessel to sea with the cover loose, in the knowledge that it had not been given a final inspection. That inspection was a duty of the ship

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toward the cargo, its failure was culpable, and combined with the act of setting upon the voyage was the sole cause of the loss. Being a duty toward cargo, it is to be taken as something contemplated and expected by both parties to the repair contract. He criticizes the references in the judgments below to there being no "duty" on the part of the ship toward the contractor as confusing negligence with damages. Incidentally, he raises the question of collateral liability in tort for negligence in the defective work done and its significance to the recovery of damages by both cargo and ship. He relies on a written acknowledgement by representatives of the vessel that the work of repairs had been done to their satisfaction. His final submission is that in any event there was concurrent default on the part of the vessel which jointly with that of the contractor brought about the damage.

Notwithstanding the force of this argument, I am unable to agree with it. It is unnecessary to cite authority for the general proposition that damages for breach of contract reach at least to consequences which, if the parties to the contract had thought about the question at all, would have come within the range of foreseeable likely, probable or reasonably possible happenings. The language used to express this idea has taken various forms; they are "natural consequences", consequences within "the contemplation of the parties" or what, as reasonable men, they would "anticipate". These I take to mean the same thing; they are intended to convey the notion of proximate events following the culpable act in the not exceptional course of things, not necessarily proximate in time or space but in consequential relation.

In the circumstances here there can be no doubt of what those events would have been. The valve was one of the few means by which sea water could enter the holds, and in the latter

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[8] [1953] 9 W.W.R. (N.S) 13; 2 D.L.R. 828.

would soon be stowed goods which would be damaged by sea water. It was a vital feature of repair the importance of which everybody appreciated. It was equally evident that the goods, if not owned by the respondent, would be carried under the ordinary and uniform terms—prescribed in fact by statute—and that the seaworthiness of the ship would be one of the obligations of the vessel. That the cargo would in all probability be damaged if the

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top of the box was not tightly fastened would be patent to every person familiar with the workings of a vessel. On principle, then, the damages sought are such as would be contemplated or anticipated and come well within the scope of those for which redress is given. Whether any such distinction between a contractor for the general repair of the vessel for survey purposes and one engaged for, say, the repair of a valve only, can, as suggested by Smith J.A., be made, does not call for consideration.

We are not lacking in express authority on such a situation. In *Mowbray* v. *Merryweather*[9], the defendant agreed to supply a chain along with other equipment to be used in discharging a cargo from a ship. The chain was defective and broke while being so used. An employee of the purchaser was injured and recovered judgment against his employer on the ground that the latter could have discovered the defect by reasonable inspection. The employer then brought action against the seller on the warranty that the chain was suitable for the purpose intended. The Court of Appeal held the employer's liability to the workman to be the natural consequence of the breach of warranty reasonably presumed to have been within the contemplation of the parties when entering into the contract.

To the application of this case two objections are made: first, that there was no conscious act on the part of the dockman who was carrying on the work, but rather a mere failure to inspect; and secondly, that a claim by the workman against the person furnishing the chain could there, but not here, have been maintained. The "consciousness" in the present case is the knowledge that the tightness of the screws had not been tested; but equally so was the

knowledge of the dockman that he had not examined the chain before using it. Then, whether a direct liability in negligence toward the injured person by the original wrongdoer in any case exists depends upon its circumstances; but that question is not involved here. The basis of a wrong under the general law and that arising under a contract have no necessary relation, and how far the former can be affected, if at all, by the circumstances of the latter offers a bait to speculation that must be refused: what must be kept in mind is the fundamental distinction between their

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origins. The appellant is liable on its contract to put the valves "in working order" and the respondent on its warranty to furnish a seaworthy vessel. The third person, in this case the cargo owner, has no claim arising out of that contract for repairs; but no rule has ever been laid down that a contractual claim in damages reaching to injury done to a third person is conditioned upon a collateral tortious liability in the original wrongdoer to the third person. A duty under the general law may or may not have arisen between the contractor and either or both the vessel and the cargo owner, and a like duty between the vessel and the cargo; but these collateral possibilities are irrelevant to the issue before us.

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[9] (1895) 2 Q.B. 640.

In *Mowbray, supra,* Kay L.J. referred to a direct remedy and Rigby L.J. mentioned its admission by the defendant as concluding the question of damages: but there was no reference to it by Lord Esher M.R. nor was there any suggestion that it was a condition of the recovery which was allowed. The question was incidentally mentioned in *Boston Woven Hose* v. *Kendall*[10]. In that case a boiler had been warranted to stand a pressure of 100 pounds. It was defective and the defect was patent to any real inspection. Subjected to a pressure much below 100 pounds, the boiler weakened to allow naphtha to escape which exploded and injured employees of the purchaser. The latter admitted liability to the employees, paid the damages suffered and was allowed to recover them from the seller. In giving the judgment of the court, Holmes C.J., in speaking of *Mowbray, supra,* said:—

> It is intimated in that case that the workman himself could have recovered in the first place against the defendant. Whether that is a necessary condition of a recovery over we need not consider… There are many cases in our own and other reports which offer as strong or stronger applications of the principle of liability over.

The ground on which the default of the intermediate actor, here the vessel, is not to be treated as a *novus actus* is that the respondent was entitled to rely upon its contract with the Drydock Company for the completeness of the work to be done, and it is that persisting contractual right which differentiates the case from one of negligence. So far as the respondent inspected the work, it did so in its own

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interests and not because of any obligation toward the contractor. The default was in relation to an item of detail which it would be absurd to say the parties contemplated or anticipated would be the matter of a specific inspection by the vessel as a check for the benefit of the contractor. That would require the ship owner to see that every nail was properly driven and every screw tightened in the entire course of the work. Here was an absolute obligation to finish the work with care and skill. So long and so far as the respondent is entitled to rely on that contract, it cannot be said that any act of his in the ordinary run of things is *novus actus,*

[10] 178 Mass. 232.

and that reliance, as it is here, may be of the essence of the agreement. If he is not so entitled, then a new situation is presented. Circumstances may indicate a common understanding or assumption that, for example, a machine repaired will not be put in use without a fresh inspection or test of the part repaired, an inspection, say, required by law: but that is another way of saying that there is no right to rely on the contractor's obligation.

Nor is the burden of guarding against such an oversight to be thrown on the vessel as a matter of policy in limiting damages. The object of such a policy should be to minimize losses, but how can that be done by exempting the guilty person from responsibility for its consequences? Except in special circumstances, and as between the parties, reliance upon undertakings is essential to modern business and in fact to our daily affairs generally; occasionally there will be failures, but that possibility cannot justify such a transfer of the burden, which in practical terms would mean the shifting of the obligation of insurance from the culpable to the innocent.

These considerations furnish the answer also to the last contention that, as between these parties, there were concurrent causes: the original failure was in a setting which contemplated reliance on the contractor, a fact which the evidence puts beyond dispute; and so long as that reliance was justified, there can be no intervening cause.

The certificate of satisfaction related, obviously, to the general performance of the different items of the work including that of the valve; it did not imply an acceptance of all particulars regardless of latent flaws; that would have been equivalent to a release which the persons furnishing

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the certificate had no authority to give. Nor is this avoided by treating it as an estoppel. If the certificate had been refused or had expressly excepted defects in the work, what would the Dockyard Company have done? Certainly not entered upon a minute re-inspection of the whole work. As Smith J.A. intimates, the purpose of the certificate is primarily to authorize

payment; it is not intended to conclude against the vessel such a delinquency as was present here.

I would therefore dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors for the appellant: Farris, Stultz, Bull & Farris.

Solicitors for the respondents: Macrae, Montgomery & Macrae.