# Suzuki v. Ionian Leader (The)

**Between:**
**Suzuki et al., Plaintiffs; and**
**Ionian Leader, Defendant.**

[**1950] Ex.C.R. 427**

3 D.L.R. 790

Exchequer Court of Canada
British Columbia Admiralty District

**S.A. Smith D.J.A.**

1950: June 21, 22 / 1950: July 11.

J.R. Cunningham, for the plaintiffs.
C.C.I. Merritt, for the defendant.

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S.A. SMITH D.J.A. now (July 11, 1950) delivered the following judgment:

**1** **S.A. SMITH D.J.A.**:-- The two plaintiffs sue for damage to their fishing-nets caused by crude oil floating in the Fraser River. They say that this oil was dumped there by the defendant ship in pumping out its tanks while it was stranded on a mud-bank in the river.

**2** The evidence that the oil came from the ship is circumstantial, except that one of the plaintiffs gave evidence that he saw it coming out of a discharge pipe on the port side of the ship. The defendant relied as an answer on evidence given by its engineer-officers that this was impossible because this particular discharge outlet is below the water-level. However, I am by no means convinced that this plaintiff was wrong. On the contrary, I accept his evidence; as I do the evidence of the other plaintiff and of their three independent witnesses, all of whom testified with impressive candour.

[page428]

**3** Apart from this piece of direct testimony, there was so much circumstantial evidence against the ship that I am satisfied the ship was the source of the oil. The defendant, as is usual in cases of circumstantial evidence, argued that the case made out against it was mere conjecture and suspicion.

But if there are enough circumstances pointing one way, we pass the line bounding suspicion and reach the field of legitimate inference.

**4** Lord Wright in Caswell v. Powell Duffryn Associated Collieries, Ld.[1], puts the matter thus:

> ... Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture.

**5** Here the evidence, both direct and circumstantial, leaves little room for doubt that the oil that damaged plaintiffs' nets came from the defendant ship. So far I have had little difficulty; what has bothered me is whether on this finding the plaintiffs can recover.

**6** Defendant claims that it is not liable for damage caused by the oil, even if it is found to have dumped this into the river. The plaintiffs rely on see. 33 of the Fisheries Act, 1932, which forbids the dumping of deleterious substances into fishing waters. This does not specifically mention oil, but I have no doubt that oil would be covered by the section. Plaintiffs also rely on By-law 57 passed by the Harbour Commissioners of New Westminster under their special Act, which by-law specifically forbids the dumping of oil into the harbour. The question how far breach of a by-law gives rise to an action for damages, is troublesome; but I need not decide the point.

**7** Defendant relies chiefly on the case of Fillion v. New Brunswick International Paper Co.[2], as showing that the Fisheries Act is for the protection of fish and not fishermen. It is unnecessary for me to consider whether I agree entirely with the reasoning in that case, for it is easily distinguishable. There the defendant was sued for emptying pulp-waste into a river. The case might be in point if the present plaintiffs were complaining that the fish were [page429] frightened away by the oil, or that in some way it caused them loss suffered by all of the public alike. That however is not so; the plaintiffs suffered direct injury to their fishing gear through the defendant's release of an injurious substance. The Fillion case also turned on remoteness of damage, the element of frost coming in as a supervening factor. Here the injury seems to me very direct and one that could easily have been foreseen. I think the defendant is responsible for the breach of the statutory duty: for its disobedience to the express statutory prohibition. The cases cited to the contrary turn on failure to do acts enjoined by the legislature.

**8** In my view the defendant is liable at common law on another ground. No case has been cited to me dealing with damage from oil, but on principle I do not see how the defendant can escape liability. Even apart from statute the defendant had no right to dump an injurious substance in a navigable river, which is a public highway. It is much as if it left a pool of oil on the road outside its premises, and someone fell into it in the dark. Or, as if it had a spray of oil on its premises, which the wind blew onto someone's clothes or someone's motor car on the street.

**9** It is unnecessary to decide whether defendant would have been excused if it had had to jettison oil in order to avoid serious danger to the ship. No such case was made out. Even without the pumping it seems extremely likely that the ship would have been freed within a few hours, at high water, with or without the assistance of the tug which had been called for, and was standing by. And even

if pumping was unavoidable, the oily mixture should not have been dumped into the river, whether wilfully or negligently; a lighter could and should have been used.

**10** In my opinion therefore the defendant is liable for the damage done, with costs. There will be a reference to assess the damages to the learned Deputy Registrar.

Judgment accordingly.

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## [1950] 3 D.L.R.


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Forces in attending at the trial should be borne by those Forces. In considerable measure they were responsible for the irregularities which occurred.

*Election declared void.*

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## SUZUKI et al. v. "IONIAN LEADER"

*Exchequer Court of Canada, British Columbia Admiralty District, Sidney Smith D.J.A. July 11, 1950.*

**Shipping I—Fisheries II—Ship dumping oil into navigable waters—Damage to fishing nets—Common law liability—Breach of statutory duty—Fisheries Act (Can.), s. 33—**

Where a ship while stranded on a mud-bank in a river pumped oil out of its tanks into the river and the oil damages plaintiffs' fishing nets, *held*, the shipowners were liable at common law for dumping an injurious substance in a public highway and, moreover, they were liable because of breach of the statutory duty imposed by s. 33 of the *Fisheries Act*, 1932 (Can.), c. 42 which forbids the dumping of deleterious substances into fishing waters.

**Cases Judicially Noted:** *Fillion* v. *N.B. Internat'l Paper Co.*, [1934] 3 D.L.R. 22, 8 M.P.R. 89, distd.

**Statutes Considered:** *Fisheries Act*, 1932 (Can.), c. 42, s. 33.

ACTION for damage to fishing nets.

*J. R. Cunningham*, for plaintiffs.

*C. C. I. Merritt*, for defendant.

SIDNEY SMITH D.J.A.:—The two plaintiffs sue for damage to their fishing nets caused by crude oil floating in the Fraser River. They say that this oil was dumped there by the defendant ship in pumping out its tanks while it was stranded on a mud-bank in the river.

The evidence that the oil came from the ship is circumstantial, except that one of the plaintiffs gave evidence that he saw it coming out of a discharge pipe on the port side of the ship. The defendant relied as an answer on evidence given by its engineer-officers that this was impossible because this particular discharge outlet is below the water level. However, I am by no means convinced that this plaintiff was wrong. On the contrary, I accept his evidence; as I do the evidence of the other plaintiff and of their three independent witnesses, all of whom testified with impressive candour.

Apart from this piece of direct testimony, there was so much circumstantial evidence against the ship that I am satisfied the ship was the source of the oil. The defendant, as is usual in cases of circumstantial evidence, argued that the case made out against it was mere conjecture and suspicion. But if there



are enough circumstances pointing one way, we pass the line bounding suspicion and reach the field of legitimate inference.

Lord Wright in *Caswell* v. *Powell Duffryn Associated Collieries Ltd.*, [1940] A.C. 152 at pp. 169-70, puts the matter thus: "Inference must be carefully distinguished from conjecture or speculation. There can be no inference unless there are objective facts from which to infer the other facts which it is sought to establish. In some cases the other facts can be inferred with as much practical certainty as if they had been actually observed. In other cases the inference does not go beyond reasonable probability. But if there are no positive proved facts from which the inference can be made, the method of inference fails and what is left is mere speculation or conjecture."

Here the evidence, both direct and circumstantial, leaves little room for doubt that the oil that damaged plaintiffs' nets came from the defendant ship. So far I have had little difficulty; what has bothered me is whether on this finding the plaintiffs can recover.

Defendant claims that it is not liable for damage caused by the oil, even if it is found to have dumped this into the river. The plaintiffs rely on s. 33 of the *Fisheries Act*, 1932 (Can.), c. 42, which forbids the dumping of deleterious substances into fishing waters. This does not specifically mention oil, but I have no doubt that oil would be covered by the section. Plaintiffs also rely on By-law 57 passed by the Harbour Commissioners of New Westminster under their special Act, which by-law specifically forbids the dumping of oil into the harbour. The question how far breach of a by-law gives rise to an action for damages, is troublesome; but I need not decide the point.

Defendant relies chiefly on the case of *Fillion* v. *N.B. Internat'l Paper Co.*, [1934] 3 D.L.R. 22, 8 M.P.R. 89, as showing that the *Fisheries Act* is for the protection of fish and not fishermen. It is unnecessary for me to consider whether I agree entirely with the reasoning in that case, for it is easily distinguishable. There the defendant was sued for emptying pulp-waste into a river. The case might be in point if the present plaintiffs were complaining that the fish were frightened away by the oil, or that in some way it caused them loss suffered by all of the public alike. That however is not so; the plaintiffs suffered direct injury to their fishing gear through the defendant's release of an injurious substance. The *Fillion* case also turned on remoteness of damage, the element of frost coming in as a supervening factor. Here the injury seems to

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It is unnecessary to decide whether defendant would have been excused if it had had to jettison oil in order to avoid serious danger to the ship. No such case was made out. Even without the pumping it seems extremely likely that the ship would have been freed within a few hours, at high water, with or without the assistance of the tug which had been called for, and was standing by. And even if pumping was unavoidable, the oily mixture should not have been dumped into the river, whether wilfully or negligently: a lighter could and should have been used.

In my opinion therefore the defendant is liable for the damage done, with costs. There will be a reference to assess the damages to the learned Deputy Registrar.

*—Judgment for plaintiffs.*

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## RE KEMPSON

*Ontario High Court, McRuer C.J.H.C. June 10, 1950.*

**Dower I C—Wife leaving husband because of cruelty—Subsequent "marriage" of wife in belief husband dead—Loss of dower right—Dower Act (Ont.)—**

A married woman who leaves her husband because of his cruelty but who thereafter goes through the form of marriage with another man (whether or not in the belief that her husband is dead) and lives with him as man and wife, is disentitled to dower in her husband's lands under s. 8 of the *Dower Act*, R.S.O. 1937, c. 112.

**Cases Judicially Noted:** *Re S.*, 14 O.L.R. 536; *Re Orford & Danforth Heights Ltd.*, 58 D.L.R. 634, 49 O.L.R. 25; *Whimbey* v. *Hyde*, [1927] 3 D.L.R. 237, 60 O.L.R. 399, apld.

**Statutes Considered:** *Dower Act*, R.S.O. 1937, c. 112, s. 8.



APPLICATION by an executor to sell lands of a deceased free of any claim of dower.

*R. D. Hill*, for applicant, executor of estate.

*G. T. Walsh*, K.C., for Ruby Eddles.

McRUER C.J.H.C.:—This is an application made by the executor of the estate of John Thomas Kempson, deceased (otherwise known as John Thomas Eddles, or Eddolls), to sell real property free from the dower interest of the widow of the deceased, Ruby Eddles. The facts are very simple and on the evidence before me the case is not difficult.

Ruby Eddles in her affidavits filed, and in her cross-examination thereon, states: she was married to John Thomas Eddles (whose correct surname was Eddolls, and who subsequently assumed the name of his sister, Kempson) on December 25, 1905; she says that they lived together as man and wife for about 3 years when they separated due to her husband's excessive drinking and cruelty; he disappeared and never communicated with her thereafter; in 1911 she received a letter purporting to be from her husband's sister, Ada Kempson, informing her that her husband had died; believing this to be true, in 1914 she married one Louis Stewart with whom she lived until his death in 1927; she came to Canada in 1927 and in 1930 she married one Reginald Mitchell; in 1934 she was the proprietor of a restaurant in the City of Stratford; at this time her husband came to the restaurant and admitted that he was living with another woman in Mimico as his common law wife; he asked her to return to him; this she refused to do and thereupon her husband laid a charge of bigamy against her on which she was tried and acquitted. The first affidavit made by Ruby Eddles did not disclose the marriage to Mitchell. It was dated March 18, 1950. She was cross-examined on her affidavit on April 6, 1950, and she made a subsequent affidavit dated April 22, 1950, admitting the marriage to Mitchell and explaining certain errors in her former affidavit on the ground that she was in a nervous condition.

I can see no ground for the widow's contention that she is entitled to any dower interest in the estate of her late husband. I think *Re S.* (1907), 14 O.L.R. 536; *Re Orford & Danforth Heights Ltd.* (1921), 58 D.L.R. 634, 49 O.L.R. 25; and *Whimbey* v. *Hyde*, [1927] 3 D.L.R. 237, 60 O.L.R. 399, are a complete answer to the argument presented on her behalf. In the last case *Woodward* v. *Dowse* (1861), 10 C.B. (N.S.) 722. 142 E.R. 637 and *Bostock* v. *Smith* (1864), 34 Beav. 57, 55 E.R. 553. are referred to. In each of these cases it was held