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COURT OF APPEAL.

Thursday, May 10, 1951.

BOGUSLAWSKI AND ANOTHER v. GDYNIA-AMERYKA LINJE ZEGLUGOWE SPOLKA AKCYJNA.

Before Lord Justice SOMERVELL, Lord Justice DENNING and Lord Justice MORRIS.

Practice — Costs — Apportionment — Three similar actions — Actions set down and called on together — No consolidation or agreement between parties that first action should be test case — Same solicitors acting for plaintiffs in each case — Agreement between parties that evidence in first action should be deemed to be taken in second and third actions — Actions listed as part heard — Adjournment by consent of second and third actions — Judgment entered for plaintiffs in respect of first action — Appeal by defendants dismissed by C.A. — Taxation of costs — Objection raised by defendants that certain of costs, in particular the brief fees and costs of witnesses, should be apportioned between the three actions — Refusal by Taxing Master to apportion costs — Decision overruled by learned Judge on appeal on ground that relationship so closely approximated consolidation that apportionment should be made — Appeal by plaintiffs.

———Held, by C.A., that the mere fact that it was agreed between the parties that evidence taken in the first action should be treated as evidence in the second and third actions did not afford any ground for apportionment of costs.

———Per SOMERVELL, L.J. (*at p. 4*): *I think that the idea of close approximation to consolidation is a difficult one and I do not think it applies in a case like this. I think that in a case like this you have either got to show that there was an agreement that a case should be a test case, or, of course, that the actions had been consolidated. I think the mere fact that it is agreed between the parties that evidence taken in the first action should be treated as evidence in the second and third does not afford any basis for apportionment, nor, it is clear on the authorities, can it be suggested that there is any case for apportionment here in respect of brief fees.*

The following cases were referred to:

Metropolitan Coal Consumers' Association, *In re*, (1890) 45 Ch.D. 606;
Oppenshaw v. Whitehead, (1854) 9 Ex. 384.

This was an appeal by Jan Boguslawski and Stanislaw Krupka against an order of Mr. Justice McNair, in Chambers, concerning taxation of costs in their action against Gdynia-Ameryka Linje Zeglugowe Spolka Akcyjna, which was decided by Mr. Justice Finnemore ((1949) 82 Ll.L.Rep. 970). The order of Mr. Justice NcNair was that the taxation of the costs in the action be remitted to the Taxing Master with a direction to apportion certain items in the plaintiff's bill of costs, namely, instructions for brief, Counsel's fees on the trial of the action, and refreshers, short-

hand writers' charges, attendance of expert witnesses and interpreter's fees, as between this action and two other actions, Lech and Others v. Same, and Hys v. Zegluga Polska Spolka Akcyjna.

The three actions concerned claims by Polish seamen and ships' officers against the owners of the ships in question for sums of money alleged to be due on leaving the employers' service, or as damages for breach of agreement.

Mr. Niall MacDermot (instructed by Messrs. Hilder, Thompson & Dunn) appeared for the appellant plaintiffs; Mr. J. Scott Henderson, K.C., and Mr. Robin Dunn (instructed by Messrs. Constant & Constant) represented the respondent defendants.

Mr. MACDERMOT said that the three actions had not been consolidated, and Mr. Justice McNair based his decision that there should be an apportionment of costs on the fact that an agreement had been reached that certain of the evidence in this action should be available in the other two actions, which were later in the List. The amount of the disputed items of costs was a little over £2000. The action arose out of the transfer of recognition by the British Government from the old Polish Government, which was in London during the war, to the Lublin Government, which was established in Poland after the war.

The Polish shipping companies, which were managed from England during the war, were under the supreme management of the Polish Minister of Industry and Commerce in England. On June 25, 1945, when it was known that transfer of recognition was imminent, the Council of Ministers decided that State employees be paid compensation amounting to three months' salary, and their employment determined, and that the Minister of Industry and Commerce be authorized to pay similar compensation to employees of Polish shipping companies out of the funds of such companies. On July 3, 1945, a meeting took place between the Minister and representatives of the Officers' Union and the Seamen's Union, at which the Minister intimated that men who left their ships in consequence of the transfer of recognition and the resulting political situation would be entitled to a gratuity or compensation of three months' wages from the funds of the shipping companies. The union representatives accepted the offer. The transfer of recognition took place at midnight on July 5/6, 1945. The companies refused to pay the compensation and writs were issued. On June 27, 1949, the three actions were in the list for trial by Mr. Justice Finnemore, and Counsel agreed that the evidence taken in the first one should be available in the subsequent cases. The argument and the judgment were confined to the first action. The Master refused to apportion costs, but his decision was reversed by Mr. Justice McNair on the ground that the position was so closely equivalent to consolidation that apportionment should be made.

Mr. SCOTT HENDERSON argued in support of his Lordship's decision.

JUDGMENT.

Lord Justice SOMERVELL: This is an appeal from a decision of Mr. Justice McNair in a matter of costs, and it arises in this way. There were three actions brought by employees of a Polish shipping company. Up to a certain time they were employees of the Polish Government in London, which was recognized during the war. There came a time, as is well known, when that Government ceased to be recognized, and the Government in Poland, originally at Lublin, was recognized by his Majesty's Government as the Government of Poland. Very shortly before that change and recognition, an offer was made by the Polish Government in London of a gratuity to officers and men on the ships, employees of two, three or four different companies, if they left the service—I am not quoting the words of the agreement specifically—as they well might do having regard to the change in the recognized Government of Poland. A number of the men did so leave it and a number of writs were issued, four or five, covering some 450 claims. The three actions with which we are concerned were, first of all, Jan Boguslawski and Stanislaw Krupka v. Gdynia-Ameryka Linje Zeglugowe Spolka Akcyjna. Then there was a second action against another one of the companies, Zegluga Polska Spolka Akcyjna, and there was a third action against the Gdynia-Ameryka Linje by other persons. Those three actions were all set down, and on an application before Mr. Justice Hilbery the parties agreed, and the agreement is recorded in the note of the Associate, that evidence in one case should be deemed to be taken in the others. There was a great deal of evidence, particularly as to Polish law, and I dare say evidence as to the making of this offer which was