

1923
July 4.

QUEBEC ADMIRALTY DISTRICT

J. P. FERNS.....PLAINTIFF;

AGAINST

THE S.S. INGELBY

Shipping and Seamen—Stevedore's Claim—Jurisdiction—Force of Imperial Statute in Canada—53-54 Vict., c. 27 (Imp.)—54-55 Vict., c. 29 (Can.)—1-2 Geo. V., c. 41 (Imp.).

By section 2 subsection 2 of the Colonial Courts of Admiralty Act, 1890 (Imp.) jurisdiction was given to the Colonial Courts of Admiralty over "like places, persons, matters and things as the Admiralty jurisdiction of the High Court in England." Sections 3 and 4 of the Admiralty Act, 1891 (Can.), declares the Exchequer Court of Canada to be such Colonial Court of Admiralty in Canada. The Merchant Shipping (Stevedores and Trimmers) Act, 1911, (1-2 Geo. V, c. 41), for the first time confers jurisdiction in stevedores' claims upon "all courts having jurisdiction in Admiralty."

Held, that, as The Merchant Shipping Act, 1911, aforesaid does not exclude His Majesty's Dominions from its operations, it is in force in Canada, and the Exchequer Court of Canada is thereby given jurisdiction over stevedores' claims.

The Ship D. C. Whitney v. St. Clair Navigation Company 38 S.C.R. 303 and *Bow McLachlan & Co. v. Camuson* 1909 A.C. 597; 79 L.J. P.C. 17, compared and discussed.

MOTION to dismiss plaintiff's action for want of jurisdiction.

June 25 and July 4, 1923.

Motion heard before the Honourable Mr. Justice MacLennan at Montreal.

Antoine Garneau for plaintiff.

Lucien Beauguard for the ship *Ingleby*.

The facts and questions of law raised are stated in the reasons for judgment.

MACLENNAN L.J.A. now, this 4th July, 1923, delivered judgment.

The plaintiff, a stevedore, sues for \$642.57, balance of an account for work done on board the S.S. *Ingleby* in the Port of Montreal in connection with the stowing of cargo on board that ship. The defendant moves for the dismissal of the action on the ground that the court has no jurisdiction to hear a case of this nature.

In order to determine the question it is necessary to consider the nature and extent of the jurisdiction of the Exchequer Court of Canada in Admiralty matters. Its

admiralty jurisdiction is derived under the Colonial Courts of Admiralty Act, 1890 (1) and the Admiralty Act 1891 (2).

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Section 2, subsection 2, of the Colonial Courts of Admiralty Act, 1890, is as follows:—

The jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of this Act, be over the like places, persons, matters and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England, and shall have the same regard as that court to international law and the comity of nations.

The sections of the Admiralty Act, 1891 (Canada) which are material are as follows:—

3. The Exchequer Court is and shall be, within Canada, a Colonial Court of Admiralty, and, as a Court of Admiralty, shall, within Canada, have and exercise all the jurisdiction, powers and authority conferred by the Colonial Courts of Admiralty Act, 1890, and by this Act.

4. Such jurisdiction, powers and authority shall be exercisable and exercised by the Exchequer Court throughout Canada, and the waters thereof, whether tidal or non-tidal, or naturally navigable or artificially made so, and all persons shall, as well in such parts of Canada as have heretofore been beyond the reach of the process of any Vice-Admiralty court as elsewhere therein, have all rights and remedies in all matters, including cases of contract and tort and proceedings *in rem* and *in personam*, arising out of or connected with navigation, shipping, trade or commerce, which may be had or enforced in any Colonial Court of Admiralty under the Colonial Courts of Admiralty Act, 1890.

1 Halsbury's Laws of England, par. 323 says:—

Within the limitations, if any, laid down by the colonial legislatures the Colonial Courts of Admiralty have similar jurisdiction and powers to those exercised in Admiralty by the High Court in England.

Roscoe's Admiralty Practice, 4th Ed., p. 1, note (a) says:—

The effect of the Colonial Courts Act is to assimilate the jurisdiction of the Admiralty Courts of the colonies to that of the High Court in England (section 2, subsection 2).

Clement's Canadian Constitution, 3rd Ed., 1916, p. 238, observes:—

Now under the legislation of 1890, it (the jurisdiction of this Court) is as wide as that of the High Court of Admiralty in England.

It is clear that, subject to the provisions of The Colonial Courts of Admiralty Act, 1890, the Exchequer Court, as a Court of Admiralty in Canada, is given the same jurisdiction as the admiralty jurisdiction of the High Court in

(1) 53-54 Vict., c. 27 (Imperial). (2) 54-55 Vict., c. 29 (Canada), now R.S.C. [1906] ch. 141.

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England and that when the latter court has jurisdiction over any person, matter or thing, whether by virtue of any statute or otherwise, the Exchequer Court has throughout Canada jurisdiction over like persons, matters and things, in like manner and to as full an extent as the High Court in England.

The admiralty jurisdiction of the High Court in England at the time when the Colonial Courts of Admiralty Act was passed in 1890 did not extend to a claim such as forms the basis of the present action. In 1911, the Imperial Parliament passed The Merchant Shipping (Stevedores and Trimmers) Act, 1911 (1), intituled an Act to enlarge the remedies of persons having claims for work done in connection with the stowing or discharging of ships' cargoes or the trimming of coal on board ships. The statute applies to claims for work done in connection with the stowing, discharging or trimming of foreign ships. Section 3 of the statute is as follows:—

Any person having a claim to which this Act applies may, if he so desires, instead of proceeding under the foregoing provisions of this Act institute proceedings in Admiralty for enforcing the claim, and all courts having jurisdiction in Admiralty shall, if proceedings are so instituted, have the same jurisdiction for the purpose of enforcing the claim as if the claim were a claim for necessaries supplied to the ship.

This statute gives jurisdiction to "all courts having jurisdiction in Admiralty." Its purpose was to enlarge the remedies of stevedores and to enable them to bring their actions in the Admiralty Court. If the statute of 1911 is in force in Canada, this court has jurisdiction equal to that of the High Court in England over a claim of this kind. The statute in terms does not exclude His Majesty's Dominions from its operation and, on the other hand, there is nothing in the statute stating that its provisions shall extend to the Dominions, unless the words "all courts having jurisdiction in Admiralty" are to be held to include Colonial Courts under the legislation providing for such courts. Tarring's Laws relating to the Colonies, 4th Ed., gives a long list of Imperial Statutes relating to the colonies in general, which at page 174 includes this statute.

So far as I have been able to ascertain there is no Canadian case dealing with the effect on the jurisdiction of this

(1) 1-2 Geo. V, ch. 41.

court of new or enlarged jurisdiction given by statute to the High Court in England since the passing of the Colonial Courts of Admiralty Act, 1890.

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I have examined the cases of *The ship D. C. Whitney v. St. Clair Navigation Co.* (1), and *Bow McLachlan & Co. v. Camuson* (2), but neither deals with the precise question which I have to decide and the *dicta* in these cases, so far as admiralty jurisdiction from a new statute is concerned, were not necessary for the decision arrived at and therefore are not conclusive on the matter which is before me. There is nothing, in my opinion, in the statute of 1890 which excludes from a Colonial Court of Admiralty the new jurisdiction in admiralty subsequently given by the statute of 1911 to the High Court in England. If a Colonial Court is to exercise a jurisdiction in like manner and to as full an extent as the High Court in England, the jurisdiction of both courts must be the same over like persons, matters and things. The High Court in England, as a court having jurisdiction in admiralty, has jurisdiction over a stevedore's claim and, in my opinion, the Exchequer Court also has like jurisdiction over a claim of that kind. If the Imperial Parliament did not intend the statute of 1911 to apply to His Majesty's Dominions, a few words would have made such intention plain, as was done in the Maritime Conventions Act, 1911 (3).

In my opinion, the Imperial Statute of 1911 is in force in Canada and this court has jurisdiction over the claim in this action, and the defendant's motion to dismiss will be rejected with costs.

Judgment accordingly.

Solicitors for plaintiff: *Trudeau & Guerin.*

Solicitors for defendant: *Atwater, Bond & Beauregard.*

(1) [1906] 38 S.C.R. 303.

(2) 1909 A.C. 597; 79 L.J. P.C.

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(3) 1-2 Geo. V, ch. 57 (Imp.)