Exchequer Court of Canada

Canadian American Shipping Company, Limited v. SS. "Woron"

[1926] 4 D.L.R. 339, [1927] Ex. C.R. 12n

Martin, J., Adm.

Judgment: July 6, 1926.

Counsel: *Sydney Smith*, for the plaintiff.
Alfred Bull, for the defendant

***Martin, J.*, Adm.:**

1 This is a motion to set aside the writ and warrant of arrest on the ground that the Court has no jurisdiction to entertain this action for damages, by the charterers of the ship, occasioned, as alleged, by deviation from a specified route across the Pacific from Vancouver to Yokohama in November, 1925, and by not going to the nearest port in the Aleutian Islands for coal, if necessary, instead of to Honolulu.

2 The question turns upon the construction of sec. 5 of the Imperial *Administration of Justice Act, 1920*, ch. 81, as follows:

> 5. (1) The Admiralty jurisdiction of the High Court shall, subject to the provisions of this section, extend to —
>
> (a) any claim arising out of an agreement relating to the use or hire of a ship; and
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> (b) any claim relating to the carriage of goods in any ship; and
>
> (c) any claim in tort in respect of goods carried in any ship; Provided that —
>
> (i) this section shall not apply in any case in which it is shown to the court that at the time of the institution of the proceedings any owner or part owner of the ship was domiciled in England or Wales; and
>
> (ii) if any proceedings under this section the plaintiff recovers a less amount than twenty pounds, he shall not be entitled to any costs of the proceedings, or, if in any such proceedings the plaintiff recovers a less amount than three hundred pounds, he shall not be entitled to any more costs than those to which he would have been entitled if the proceedings had been brought in a county court, unless in either case the court or a judge certifies that there was sufficient reason for bringing the proceedings in the High Court.
>
> (2) The jurisdiction conferred by this section may be exercised either in proceedings in rem or in proceedings in personam.

3 It is conceded that if the effect of this section extends to Canada then there is jurisdiction, but otherwise none. Said jurisdiction is primarily derived from the Imperial *Colonial Courts of Admiralty Act, 1890*, ch. 27, and the Canadian *Admiralty Act* of 1891, ch. 29, now ch. 141, R.S.C., 1906. Sec. 2 (2) of the former Act provides that:

> 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.

4 And subsec. (3) declares:

> Subject to the provisions of this Act any enactment referring to a Vice-Admiralty Court, which is contained in an Act of the Imperial Parliament or in a Colonial law, shall apply to a Colonial Court of Admiralty, and be read as if the expression "Colonial Court of Admiralty" were therein substituted for "Vice-Admiralty Court" or for other expressions respectively referring to such Vice-Admiralty Courts or the judge thereof; and the Colonial Court of Admiralty shall have jurisdiction accordingly.

5 To carry out the intention of the said Imperial Act, the Parliament of Canada passed in 1891 the said "*Admiralty Act*" of that year, and its title declares that it is —

> An Act to provide for the exercise of Admiralty Jurisdiction within Canada, in accordance with "*The Colonial Courts of Admiralty Act, 1890*."

6 Secs. 3 and 4 provide that:

> 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.
>
> 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*."

7 For the motion it is submitted that the Imperial Act of 1920 does not extend its increased British jurisdiction to Canada because our Canadian jurisdiction was "stereotyped" by the Imperial Act of 1890 and so this Court

> cannot exercise powers conferred by Imperial Statutes of a later date ... unless such statutes in terms are made applicable to the Colonial Courts.

8 In answer to this the plaintiff's counsel submits that the exact question is not whether the Imperial Act of 1920 is in force here but whether when any new jurisdiction is conferred upon the Admiralty Court in England this Court "falls heir to the same jurisdiction" — *Rex v. The* "*Despatch*" (1915) 22 B.C.R. 365-6, 9 W.W.R. 738. There is no decision upon the exact point but there are some cases which require attention. Thus in *Harris Abattoir Co. v. The* "*Aledo*" [1923] Ex. C.R. 217, in the Quebec Admiralty District of this Court, it was decided that an action in rem for damages for goods carried or to be

carried out of a Canadian port to a foreign country could not be entertained for lack of jurisdiction under sec. 6 of *The Admiralty Court Act, 1861*, ch. 10 (extended to all Canada by the conjoint operation of the Acts of 1890 and 1891, *supra*) but, unfortunately, the existence of the statute of 1920, which repeals sec. 6, escaped the attention of Court and counsel and therefore the present point was not even considered. There is however, this expression of appropriate value at p. 219:

> Section 6 above referred to has been the subject of many judicial decisions in the English Court of Admiralty, and being remedial of grievances which British merchants had against the owners of foreign ships for their delivery of goods brought to England in foreign ships or their delivery in a damaged state, ought to be construed with as great latitude as possible so as to afford the utmost relief which the fair meaning of its language will allow; *The St. Cloud* (1863) Br. & L. 4, 8 L.T. 54; *The Piève Superiore* (1874) L.R. 5 P.C. 482, 43 L.J. Adm. 20; and *The Cap Blanco* [1913] P. 130, 83 L.J. Adm. 23.

9 To these cases should be added *The* "*Bahia*" (1863) Br. & L. 61, a decision of Dr. Lushington which was approved by the Privy Council in the *Piève Superiore* case, *supra*, at pp. 490 and 492, their Lordships saying, p. 492:

> The statute being remedial of a grievance, by amplifying the jurisdiction of the English Court of Admiralty, ought, according to the general rule applicable to such statutes, to be construed liberally, so as to afford the utmost relief which the fair meaning of its language will allow. And the decisions upon it have hitherto proceeded upon this principle in interpretation.

10 It is in this light, therefore, that the solution of the present question must be approached, as later to be considered.

11 The point is not touched by the decisions of the said Quebec District of this Court in *Ferns v. The* "*Ingleby*" [1923] Ex. C.R. 208, because in it there was the express declaration in the Imperial *Merchant Shipping* (*Stevedores and Trimmers*) *Act*, 1911, ch. 41, sec. 3, that "all the courts having jurisdiction in Admiralty" could enforce it, which clearly included this Court as it is the Imperial Parliament that, alone, can confer jurisdiction upon it.

12 Then in *The* "*D.C. Whitney*" *v. St. Clair Nav. Co.* (1906) 38 S.C.R. 303, Mr. Justice Idington, at p. 320, in a dissenting judgment referred to the present point as one which "may become an interesting inquiry" and went on to say "But in the view I take of this case the necessity for following such inquiry ... does not arise," and so no assistance is to be derived from his decision so reserved, nor do I think that, having regard to the subject-matter and context, any real light is derived from the expressions used by the Privy Council in *Bow McLachlan & Co. v. The* "*Camosun*" [1909] A.C. 597, 79 L.J.P.C. 17, at 22.

13 It is to be noted that by sec. 21 of the said *Administration of Justice Act, 1920*, said sec. 6 of the Act of 1861 is repealed and said sec. 5 in effect substituted therefor with a considerable amplification of jurisdiction admittedly covering the facts of this case.

14 Approaching then the subject in the light hereintofore indicated, it was said by Lord Chancellor Halsbury in *Herron v. Rathmines, etc. Commissioners*, [1892] A.C. 498, at 502, 67 L.T. 658, that:

> The subject-matter with which the legislature was dealing, and the facts existing at the time with respect to which the legislature was legislating are legitimate topics to consider in ascertaining what was the object and purpose of the legislature in passing the Act they did.

15 And in *Eastman Photographic Materials Co. v. Comptroller-General of Patents, Designs and Trade Marks*, [1898] A.C. 571, 67 L.J. Ch. 628, the same very learned Judge said, also in the House of Lords, p. 576:

> My Lords, it appears to me that to construe the statute now in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy. These three things being compared, I cannot doubt the conclusion.

16 These remarks are most appropriate to the present case, and in proceeding to apply them to the consideration of the said Acts of 1890 and 1891 one major "evil" to which their "remedy" of "amplifying the jurisdiction" was directed was the very unsatisfactory state of affairs in Canada occasioned by the exercise of Admiralty jurisdiction under various Imperial statutes (*vide* said Act of 1890, *passim*) by many Vice-Admiralty Courts in the several provinces with no appellate tribunal in Canada from their disconnected decisions but only to the Privy Council in London (as in e.g., *The* "*Hibernian*"; *Redpath v. Allan*, [1872] L.R. 4 P.C. 511, 517, 9 Moo. P.C. [N.S.] 340, 42 L.J. Adm. 8) with attendant delay and expense so great in many cases as to lead in practice to a denial of justice, and also a lack of harmony in decisions.

17 This very important question of local appeal is remedied by sec. 5 of the Act of 1890 and the existing ultimate appeal to His Majesty in Council is preserved by sec. 6 (as to which, see *Mayers' Admiralty Law and Practice* [1916] p. 295) but with certain restrictions as therein provided.

18 By sec. 17 of the same Act the Vice-Admiralty Courts in Canada were abolished upon the coming into force of this Court as established under the Canadian Act of 1891, but if those former Courts were still in existence and exercising locally the jurisdiction of the High Court of Admiralty, it would, I apprehend, be clear that their jurisdiction would march with that of said High Court and increase or decrease as the case might be in accordance with Imperial legislation affecting that Imperial Court. Such being the case it follows, to my mind, that the present Admiralty Court of Canada (i.e., the Exchequer Court) being substantially and essentially the substitute for and successor of all the said Vice-Admiralty Courts, (with additional inland powers and jurisdiction cf. secs. 4 and 17) likewise marches in the same jurisdiction and it would require clear language to the contrary to deprive it of the same continuous jurisdiction as is cumulatively possessed by the Imperial Court for the local exercise of whose jurisdiction it is in reality the local machinery and nothing more, within that same Court's powers.

19 This construction is so appropriate to the comprehensive "object and purpose of the Legislature" in 1890 that I find myself unable, after very careful consideration, to take any other view of it. Bearing in mind the common object of the two statutes in the special circumstances, I can find nothing in reason to support the view that the two Legislatures concerned intended to reduce the local application of this special Imperial jurisdiction to a stereotyped form and thereby arrest its local progressive development to meet those new conditions which must inevitably arise in the case of all legislation of an important general nature such as this. By the *Interpretation Act* of Canada, ch. 1, R.S.C., 1886, sec. 7 (3) "the law shall be considered as always speaking" and this is only a declaration of an ancient principle of construction of English statutes, and in my opinion, it was not contemplated by either of the said Legislatures that the voice of that executive one which was "speaking" at large at the time should thereafter be silenced locally so as to retard that beneficial progress which could be attained by the various Imperial possessions marching together in maritime legislative development in pursuance of a general and harmonious scheme, subject always to minor exceptions for special reasons.

20 An additional indication of this intention is to be found in the unusual, but in the circumstances very appropriate, way in which the desired result is obtained by simply making interchangeable expressions between the names of the new Colonial

Courts of Admiralty and the old Vice-Admiralty Courts, and, also, the repeal of said sec. 21 of the Act of 1861 and the substitution of sec. 5 therefor, as before noted, supports this view.

21 I do not, in brief, think that it is necessary to resort to implication to sustain the jurisdiction invoked because, having regard to the subject-matter and obvious intention, the object in view has been clearly attained by that "liberal" construction of the Statutes in the manner hereinbefore laid down as the guiding principle therefor.

22 The plaintiff's counsel in support of his position submitted in his favour the view taken by the learned author of that work of exceptional merit, *Mayers' Admiralty Law, supra*, p. 5, as of assistance, and it unquestionably is so, and in many circumstances (conveniently set out in *Craies Statute Law*, 3rd ed., 136) the Court will entertain the views of text-writers, and in this case I may say, adopting the language of the Master of the Rolls (Sir George Jessel) in *In re Warners Settled Estates* (1881) 17 Ch. D. 711, at 713, 50 L.J. Ch. 542, that:

> I should not have any difficulty without the assistance of the text-writers, but it is very satisfactory to find they have considered it independently in the same way.

23 It follows that the motion is dismissed with costs to the plaintiff in any event.