

(ON APPEAL FROM THE BRITISH COLUMBIA ADMIRALTY DISTRICT.)

Between

1906
 }
 Sept. 19.
 —

THE UNION STEAMSHIP COM-
 PANY OF BRITISH COLUM-
 BIA, LIMITED (DEFENDANTS)... } APPELLANTS ;

AND

BOW McLACHLAN AND COM-
 PANY, LIMITED (PLAINTIFFS) ... } RESPONDENTS.

THE SHIP *CAMOSUN*.

Shipping—Counter-claim—Appeal from order striking out—Jurisdiction.

The jurisdiction which the Exchequer Court of Canada may exercise under *The Colonial Courts of Admiralty Act, 1890*, and *The Admiralty Act, 1891*, is the admiralty jurisdiction and not the general or common law jurisdiction of the High Court in England. *The Cheapside* [1904] P. 339, referred to.

2. In an action *in rem* for a claim arising upon a mortgage of a ship, the court has no jurisdiction to entertain a counter-claim for breach of contract to build the ship in accordance with certain specifications.

APPEAL from an order of the Deputy Local Judge of the British Columbia Admiralty District dismissing a counter-claim to an action *in rem*.

The grounds of the appeal are stated in the reasons for judgment.

September 11th, 1906.

The appeal came on for argument at Ottawa.

W. D. Hogg, K.C., for the appellants, contended that the trial judge erred in granting an order to strike out the counter-claim of the appellants. There is jurisdiction in the court to entertain such a counter-claim. (He cited Admiralty Rule 63). The learned trial judge

dismissed the counter-claim on the ground that he had no jurisdiction to hear it, not under the second clause of the rule because it was inconvenient to dispose of it in the action brought by the respondents. The Exchequer Court on its Admiralty side has all the jurisdiction of the High Court in England in Admiralty matters. (*The Colonial Courts of Admiralty Act*, 1890, sec. 2, sub-sec. 2; *The Admiralty Act*, 1891, (Dom.) secs. 3 and 4). There is no doubt that in such a case in England the court has jurisdiction. (*The Cheapside* (1)).

1906
 THE UNION
 STEAMSHIP
 CO. OF
 BRITISH
 COLUMBIA.
 v.
 BOW
 MCLACHLAN
 & CO.
 Argument
 of Counsel.

R. Cassidy, K.C., for the respondents, argued that the Exchequer Court on its Admiralty side could not entertain an action for damages for breach of contract to construct a ship, and that was the subject of the counter-claim. Neither here nor in England would the Admiralty courts assume to entertain jurisdiction in such a case. But the Canadian court has really a narrower jurisdiction than the High Court in England in the exercise of its Admiralty jurisdiction. The case of the *Cheapside* (*supra*) cited by the counsel for appellants is an authority for this. This arises out of the different constitution of the two courts, the English court exercising the Admiralty jurisdiction in addition to its common law jurisdiction, while the Admiralty side of the Exchequer Court of Canada is distinct from the Exchequer jurisdiction. The rule cited by my learned friend is for carrying out the jurisdiction of the court in a proper case, not for supplementing it. (*The James Westoll* (2)).

Mr. *Hogg* replied, citing *Williams and Bruce's Admiralty Practice* (3).

THE JUDGE OF THE EXCHEQUER COURT now (September 19th) delivered Judgment.

(1) [1904] P. at p. 343.

(2) [1905] P. 47.

(3) 3rd ed. p. 351.

1906
 THE UNION
 STEAMSHIP
 CO. OF
 BRITISH
 COLUMBIA.
 v.
 BOW
 McLACHLAN
 & Co.

This is an appeal on behalf of the Union Steamship Company of British Columbia, Limited, the owners of the above named ship the *Camosun* against an order made on the 7th day of July last in a proceeding in the British Columbia Admiralty District, whereby it was directed that the defendants' counter-claim should be struck out.

**Reasons for
 Judgment.**

The plaintiffs having brought an action to enforce a mortgage upon the said ship the defendants set up a counter-claim for damages for an alleged breach of an agreement on the part of the plaintiffs to build the ship in accordance with the terms of a certain contract, letters, plans and specifications referred to. A motion was made to strike out this counter-claim on the grounds that the court had no jurisdiction to entertain it, and that it could not in any event be conveniently disposed of in the present action. Mr. Justice Morrison, who heard the motion, disposed of it on the first of the two grounds mentioned. He was, for reasons stated by him, of the opinion that the court had no jurisdiction in respect of the counter-claim, and he ordered it to be struck out. I agree with the views expressed by him and think that his order was right. The question turns, it seems to me upon the proper construction of the second clause of the second section of *The Colonial Courts of Admiralty Act, 1890*. The Exchequer Court of Canada is a Colonial Court of Admiralty and by virtue of the Act mentioned and of the *Admiralty Act, 1891*, its jurisdiction within Canada is over the like places, persons, matters and things as the Admiralty jurisdiction of the High Court in England. It is not contended that the Admiralty jurisdiction of the High Court in England includes jurisdiction to hear a claim for the breach of a contract to build a ship in accordance with certain specifications, but it is argued that because a judge of the High Court in England has otherwise authority to hear

and decide such a claim, and might, if he saw fit, dispose of it as a counter-claim in an action in Admiralty (1), this court has a like jurisdiction and authority. That, it seems to me, is not the effect of the statutes referred to. The jurisdiction which this court may exercise under the statutes mentioned is the Admiralty jurisdiction and not the general or common law jurisdiction of the High Court in England.

The appeal will be dismissed with costs to the respondents.

Judgment accordingly.

Solicitors for appellants: *Davis, Marshall & McNeill.*

Solicitor for respondent: *R. Cassidy.*

1906
THE UNION
STEAMSHIP
CO. OF
BRITISH
COLUMBIA.
v.
BOW
MCLACHLAN
& Co.
Reasons for
Judgment.

(1) *The Cheapside*, [1904] P. 339.