

BETWEEN

HIS MAJESTY THE KING . . . . . PLAINTIFF;

1922  
May 1.

VS.

J. DAVID PERREAULT . . . . . DEFENDANT.

*Exchequer Court—Jurisdiction—Wreck. Commissioner's Court—Canada Shipping Act (R.S.C. 1906, c. 113)—Appeal—Crown, Right to choose its court.*

1. The Crown by information sought to recover from a pilot the amount of a fine and costs, which he was condemned to pay by the judgment or decision of the Commissioner's Court created under the provisions of the Canada Shipping Act (R.S.C. 1906, c. 113, secs. 781 to 809 and amendments) relating to shipping casualties, etc.

*Held:* That the Exchequer Court had no jurisdiction by way of appeal from such decision.

2. Section 806A of said Act (as enacted by 7-8 Ed. VII, c. 65) provides that there shall be no appeal from the decision of the said Commissioner's Court, except to the Minister of Marine and Fisheries; and that the judgment of the Court cannot be set aside for want of form, etc., nor removed to any Court by certiorari or otherwise.

*Held:* That the re-opening of the case for the purpose of annulling or vacating the judgment aforesaid by means of collateral attack would be in direct violation of the statute.

3. That the Crown, having obtained the judgment of a statutory Court, was free to choose its Court to effectuate its rights thereunder, and the Exchequer Court of Canada is seized of jurisdiction for such purpose, both under section 31 of The Exchequer Court Act, and The Canada Shipping Act.

INFORMATION exhibited by attorney-general of Canada seeking to recover from defendant, a pilot, a sum for which he had been condemned by the Court of Investigation of Shipping Casualties, under the Canada Shipping Act.

April 11th, 1922.

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Case heard before the Honourable Mr. Justice Audette, at Montreal.

*J. C. H. Dusseault K.C.* for plaintiff.

*Charles E. Gaudet K.C.* for defendant.

The facts are stated in the reasons for judgment.

AUDETTE J. now this 1st May, 1922 delivered judgment.

This is an information exhibited by the Attorney-General of Canada, whereby it is sought to recover, from the defendant, the sum of \$337 being the amount of the finding or decision of the Court of Investigation created under sec. 781 et seq. of The Canada Shipping Act, ch. 113, R.S.C. 1906, as amended by 7-8 Ed. VII, ch. 65.

This amount claimed is made up as follows, and is to cover the Expenses of investigation, comprising the travelling expenses of the Commissioner and his secretary from Ottawa to Montreal, and the fees of the assessors.....\$ 160.00  
 "Fine for breach of regulations..... 40.00  
 200.00  
 "Cost of French evidence..... 137 00  
 \$ 337.00

The only appeal from the judgment of the Court of Investigation is to the Minister as provided by secs. 802 and following, as amended by the Act of 1908.

The Exchequer Court has no jurisdiction to sit on appeal from the decision at first instance or from the decision of the Minister, and cannot hear an attempt to impeach such decision even upon grounds going to

its legality or regularity. The re-opening of the case would be in direct violation of the statute and the doctrine of *res judicata* would be despoiled of its effect. What the defendant seeks to do here is to have the judgment annulled by means of a collateral attack.

“A ‘collateral attack’ on a judgment is, in its general sense, any proceeding which is not instituted for the express purpose of annulling, correcting, or modifying such decree. The fact that the parties are the same, and that the defendants seek to attack the decree by allegations in their answer, cannot change the rule, or make the attack any the less a collateral one. It is well settled that judgments of a court of competent jurisdiction are not subject to collateral attack, unless they are void, and by “void” is meant that they are an absolute nullity.” Words and Phrases, 2nd Series, pp. 753, 754, citing *People v. McKelvey* (1); *Cochrane v. Parker* (2).

By section 806A it is provided as follows:—

“806A. There shall be no appeal from any decision of a court holding any formal investigation under this Act, except to the Minister for a rehearing under the provisions of section 806.

“2. No proceeding or judgment of a court in or upon any formal investigation shall be quashed or set aside for any want of form, nor shall any such proceeding or judgment be removed by certiorari or otherwise into any court; and no writ of prohibition shall issue to any court constituted under this Act in respect of any proceeding or judgment in or upon any formal investigation, nor shall such proceeding or judgment be subject to any review except by the Minister as aforesaid.”

(1) 74 Pac. Rep. 533, 534, 19 Colo. App. 131.

(2) 54 Pac. Rep. 1027, 12 Colo. App. 169.

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These provisions reinforce the well-known maxim  
*omnia presumuntur rite et solemniter esse acta.*

This Court has no power to go behind the judgment  
of the Court of Investigation.

The King, having obtained the judgment of the  
statutory Court, can choose his own court to effectuate  
his rights thereunder and the Exchequer Court is a  
court seized of such jurisdiction both under sec. 31  
of The Exchequer Court Act and The Canada Ship-  
ping Act.

There will be judgment against the defendant for  
the sum of \$337 and interest, as prayed. <sup>6</sup>

Coming to the question of costs I think that sub-  
stantial justice will be done between the parties under  
the circumstances if I lump the plaintiff's costs at  
\$75.00, and I hereby order and adjudge accordingly.

*Judgment accordingly.*

*Godin, Dussault, Dupuis & Cadotte, for the plaintiff.*

*Charles D. Gaudet, for the defendant.*

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