CASES

DETERMINED BY THE

EXCHEQUER COURT OF CANADA

AT FIRST INSTANCE

AND

IN THE EXERCISE OF ITS APPELLATE JURISDICTION

ON APPEAL FROM THE BRITISH COLUMBIA ADMIRALTY DISTRICT

1926

Sept. 17.
Nov. 10.

THE SS. *WORON* (DEFENDANT).....APPELLANT;

AND

CANADIAN AMERICAN SHIPPING CO., LTD. (PLAINTIFF)..... } RESPONDENT.

Shipping—Admiralty Courts—Jurisdiction—Action in rem—Breach of charter-party—Colonial Courts of Admiralty Act, 1890 (53-54 Vict., c. 27 Imp.) and Admiralty Act, 1891, (54-55 Vict., c. 29, Can.)—Interpretation.

This was an action *in rem* against the SS. *Woron* for breach of charter-party. Upon motion to set aside the writ and warrant of arrest for want of jurisdiction, it was conceded that if the jurisdiction of this court was limited by the Colonial Courts of Admiralty Act of 1890 and the Admiralty Act of 1891, this court had no jurisdiction *in rem* in the premises.

Held, (reversing the judgment appealed from), that it is the policy of the law that jurisdiction cannot be extended except by clear and unambiguous legislation, and as the Act of 1925 (15-16 Geo. V, ch. 49 Imp.) was not made applicable to Canada, either by express words or by necessary intendment, the Admiralty jurisdiction thereby conferred on the High Court of Justice (England) did not extend to Canada, and that this court had no jurisdiction to entertain this action..

2. The word "existing" in subsection 2 of section 2 of the Colonial Courts of Admiralty Act, 1890, controlled as it is by the words "subject to the provisions of this Act" in subsection 3 of section 2, and the words "under this Act" and "by this Act" in section 3 and the proviso thereto, must be taken to relate to the Jurisdiction existing at the date of the Act, and that only; and that the plain reading of this Act ties the jurisdiction of the Canadian Admiralty Court to that of the English High Court as it existed at the time of the passing of the said Act, and no more.

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3. Held further that the Parliament of Canada has only a limited power of legislation in respect of admiralty jurisdiction. It cannot confer upon the Exchequer Court any jurisdiction which was not conferred by the Colonial Courts of Admiralty Act, 1890, upon a Colonial Court of Admiralty.

ACTION *in rem* by the charterers of the defendant ship, to recover damages alleged to be due to a breach of the charter-party.

The case came before the court upon a motion of the defendant, to set aside the writ and warrant of arrest issued therein, on the ground that the court had no jurisdiction to entertain such an action. On the 6th July, 1926, judgment was rendered on the motion, by the Honourable Mr. Justice Martin, Local Judge in Admiralty for the British Columbia Admiralty District, dismissing the motion (1).

An appeal was taken from this judgment to the Exchequer Court of Canada, which was heard before the Honourable Mr. Justice Audette, at Vancouver.

Alfred Bull for appellant.

W. M. Griffin and *S. Smith* for respondent.

The facts and points of law involved are stated in the reasons for judgment.

AUDETTE J., now this 10th of November, 1926, delivered judgment (2).

This is an appeal from the judgment of the Local Judge of the British Columbia Admiralty District, pronounced on the 6th day of July, 1926, dismissing the application to set aside the writ and warrant of arrest issued herein, on the ground of want of jurisdiction.

The judgment appealed from rests entirely upon section 5 of the Imperial Act, 1920, (10-11 Geo. V, ch. 81), which however was repealed by the Act of 1925 (15-16 Geo. V, ch. 49), as appears by the 6th Schedule thereof—a matter which seems to have escaped the attention of the learned Judge of first instance who dismissed the motion. Therefore it becomes unnecessary to consider the effect of the Act of 1920 upon the question before the court, beyond stating its repeal, and the attention of the court will be

(1) See page 12 for text.

(2) An appeal has been taken to the Judicial Committee of the Privy Council.

directed solely as to the effect of the Act of 1925 (which came into force on the 1st January, 1926), upon the proceedings herein instituted on the 30th April, 1926. However, it is well to add that *some* of the reasons given for supporting the jurisdiction below upon the act of 1920, would equally apply to the act of 1925.

It may be stated, as was indeed conceded by all parties, that if the jurisdiction of this court is limited by the Colonial Courts of Admiralty Act, 1890, (53-54 Vict., ch. 27 Imp.) and the Admiralty Act, 1891, (54-55 Vict., ch. 29 Can.), and to the time at which these acts were passed, this court has no jurisdiction to entertain an action *in rem* in the premises and consequently the writ and warrant issued herein must be set aside. Furthermore in order to give this court jurisdiction to entertain the same, it must be found that the Imperial Act passed in 1925 (15-16 Geo. V, ch. 49, sec. 22, subsec. XII) is in force in Canada.

In other words the present controversy is narrowed down to the question as to whether or not this court is vested with any jurisdiction given to the High Court in England by Imperial Statutes passed since 1890, although these statutes do not expressly apply to Canada.

This case is one wherein it is sought to proceed *in rem* against the ship for breach of a charter-party—a matter which is not cognizable in this court under the Act of 1890, nor any subsequent legislation, unless it is found that the Imperial Act of 1925 is in force in Canada *ex proprio vigore* and without express words.

From very early times in England the question of jurisdiction between the Court of Admiralty and the Courts of Common Law has been fought, with more or less vehemence. Prohibitions issuing out of the Common Law tribunals upon proceedings in the Admiralty were frequent. Godolphin in his age observed that the quarrel had assumed such complexity between the courts that

> betwixt land and water, between contracts made beyond the sea and obligations made at sea, the Admiralty was like a kind of derelict.

Hence in dealing with a question of admiralty jurisdiction to-day one must exercise great care in determining it to be well-founded. See Herschell L.C., in *Mersey Docks & Harbour Board* v. *Turner, The Zeta* (1).

(1) (1893) A.C. 468 at pp. 481 and 482.

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Let us now refer to the Colonial Courts of Admiralty Act, 1890, which defines the jurisdiction of any Colonial Court of Admiralty when created by a Colonial Legislature under the authority of its provisions. Subsection (2) of section 2 reads as follows:

(2) 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.

By the Canadian Admiralty Act, 1891, (sec. 3) the Exchequer Court of Canada was created

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 said Act and by this Act.

It must not be overlooked that the jurisdiction given to the Exchequer Court under sec. 4 of this Act was confined to rights and remedies in all matters

which may be had or enforced in any Colonial Court of Admiralty under the Colonial Courts of Admiralty Act, 1890.

Under the law as it stood in England when the Colonial Courts of Admiralty Act was passed there was no jurisdiction to entertain the present action *in rem*. Furthermore the latter Act makes it plain that it confers jurisdiction *existing*

whether by virtue of any statute or otherwise.

This word "existing" must, I think, be taken to relate to jurisdiction existing at the date of the Act, and that only. Again by subsection (3) of section 2, of the Colonial Courts of Admiralty Act this jurisdiction is expressly given

subject to the provisions of this Act.

Passing to sec. 3 of the same Act, it is there again provided that the jurisdiction contemplated is the jurisdiction "*under this act.*" The proviso to that section also expressly states that any such

Colonial Law shall not confer any jurisdiction which is not *by this Act* conferred upon a Colonial Court of Admiralty.

Section 4 of the last mentioned Act only enables a Colonial Legislature to pass laws affecting the jurisdiction or practice of a Colonial Court of Admiralty with the approval of His Majesty, and as we have seen above, under the pro-

visions of section 3 no such Colonial law could confer any jurisdiction which is not by this Act conferred upon a Colonial Court of Admiralty.

When we are confronted by such provisions as those contained in the last-mentioned sections of the Colonial Courts of Admiralty Act, we realize that the Parliament of Canada has only a limited power of legislation in respect of Admiralty jurisdiction. It cannot confer upon the Exchequer Court any jurisdiction which was not conferred by the Imperial Act of 1890 upon a Colonial Court of Admiralty. Clearly the situation is that the legislative authority of Canada over the subject of Admiralty jurisdiction stops short of autonomy. Not only is there a restricted field of legislation, but legislation within that restricted field cannot become effective until His Majesty's pleasure thereon has been publicly signified in this country. That is the situation briefly stated, and it must remain so until the Parliament of Great Britain sees fit to displace it by further legislation.

In view of this situation it is but natural that some way out of the difficulties that surround it should be sought. The learned judge below has found a way out by interpreting the provisions of section 5 of the Imperial Statute of 1920 (repealed in 1925 as I have before stated) as applying to Canada; but the Act was repealed before the institution of this action and no more need be said about it.

The only Act from which the respondent can get any relief is the Imperial Act of 1925 which is intituled

An Act to consolidate the Judicature Acts 1873 to 1910, and other enactments relating to the Supreme Court of Judicature in England and the administration of Justice therein.

The primary territorial scope of this Act obviously does not include this Dominion, and the Act is absolutely silent with respect to its application to the Dominions or the Colonies.

The case of *Gauthier* v. *The King* (1) discusses a question somewhat similar to the one raised by the judgment below, namely, as to whether the Colonial Courts of Admiralty Act, 1890, is to be taken by construction as *speaking always in the present tense* (sec. 10 Interpretation Act)

(1) [1918] 56 S.C.R. 176.

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so that it would impliedly confer upon the Exchequer Court of Canada whatever jurisdiction was given to the High Court of Justice in Admiralty since the year 1890. It is true that the *Gauthier* case dealt with the jurisdiction clauses of the Exchequer Court Act and not with those of the Admiralty Act; but the rules of construction are the same in all cases and where there is an authoritative interpretation of a contemporary Act to be found it affords great assistance. In the *Gauthier* case the Supreme Court was concerned with the question of whether the provincial laws invoked by the Exchequer Court Act as part of the law of the court are to be confined to the provincial laws in force in the year 1887, when the Exchequer Court Act was passed, or whether section 20 of the Exchequer Court Act contemplates that amendments to the provincial laws as they come into force from time to time have to be administered in the Exchequer Court. It is abundantly clear from the reasons for judgment of the judges of the Supreme Court that the liability of the Crown under the Exchequer Court Act must be determined by the general laws of each province in force *at the time when the Exchequer Court Act was originally passed, namely, 1887.* (See per Fitzpatrick C.J., pages 180 and 182; per Anglin J., page 194). At page 182 cited, the Chief Justice puts the matter in a nutshell when he says:

> Provincial statutes which were in existence at the time when the Dominion accepted a liability form part of the law of the province by reference to which the Dominion has consented that such liability shall be ascertained and regulated; but any statutory modification of such law can only be enacted by Parliament in order to bind the Dominion Government.

In the *Gauthier* case the Supreme Court of Canada followed the decisions in the well known cases of *Armstrong* v. *The King* (1); *The King* v. *Desrosiers* (2); *Filion* v. *The Queen* (3); *City of Quebec* v. *The Queen* (4); *Ryder* v. *The Queen* (5); *The Ship Whitney* and *St. Clair Nav. Co. et al* (6).

So far as the Exchequer Court on its Admiralty side is concerned the learned judge who heard the motion in the

(1) [1908] 40 S.C.R. 229 at 248.
(2) [1908] 41 S.C.R. 71 at p. 78.
(3) [1894] 24 S.C.R. 482.
(4) [1894] 24 S.C.R. 420.
(5) [1905] 36 S.C.R. 462.
(6) [1906] 38 S.C.R. 303 at 320.

British Columbia Admiralty Court very truly says: "There is no decision upon the exact point." Here we have to deal with an alleged breach of charter-party. And he refers to the *Harris Abattoir Co., Ltd.* v. *The SS. Aledo* (1), wherein the late Mr. Justice Maclennan decided that an action *in rem* for damages to 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 Act, 1861, and the judgment appealed from here says that the statute of 1920 (which is now repealed by that of 1925), which repealed this section 6 of 1861 escaped the attention of the court and counsel in the *Aledo* case. Mr. Justice Maclennan may or may not have overlooked the Act of 1920. He may have considered it and come to the conclusion that by sec. 21 thereof, sec. 5 relied upon applied "only" to England and Wales and thereby excluded Canadian territory. Or he may have considered that the words "England and Wales" mentioned in proviso (*a*) of sec. 2 had reference only to Acts passed before 1890, a view which would seem consistent with subsec. 2 of sec. 2. Hence his silence upon the point.

In re wolfe et al v. *SS. Clearpool* (2), Mr. Justice Maclennan held, in 1920, that

The Exchequer Court derives its Admiralty jurisdiction from two statutes, the Colonial Courts of Admiralty Act, 1890, (53-54 Vict., c. 27, Imperial), and the Admiralty Act, 1891, (54-55 Vict., ch. 29, Canada). From these statutes it is clear that the jurisdiction of the Exchequer Court, as a Court of Admiralty, is no greater than the Admiralty jurisdiction of the High Court in England. The expression "Admiralty jurisdiction of the High Court" does not include any jurisdiction which could not have been exercised by the Admiralty Court before its incorporation into the High Court, or may be conferred by statute giving new Admiralty jurisdiction,

citing *Bow McLachlan & Co.* v. *Camosun* (3).

Adverting to the *Camosun* case it will be seen that in that case the Judicial Committee held that

the jurisdiction of the Exchequer Court in Canada, as a Court of Admiralty constituted under the Colonial Courts of Admiralty Act, 1890, (Imperial) and the Admiralty Act, 1891 (Dom.), is no greater than the Admiralty jurisdiction of the High Court in England," and that "The Judicature Acts by which every judge of the High Court can exercise every kind of jurisdiction possessed by the High Court, conferred no new Admiralty jurisdiction upon the High Court.

(1) [1923] Ex. C.R. 217.
(2) [1920] 20 Ex. C.R. 153 at 154.
(3) [1910] 79 L.J.P.C. 17; [1909] A.C. 597.

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In the same case, at p. 20, Lord Gorell further says that the Exchequer Court was constituted by the Exchequer Court Act (50-51 Vict., c. 16) and that it has no common law jurisdiction and that

its Admiralty jurisdiction is derived under the Colonial Courts of Admiralty Act, 1890, and the Canadian Act of 1891.

And at p. 22:

In their Lordships' opinion this case is unaffected by the Judicature Acts . . . and if applied it would have the effect of altering the Admiralty jurisdiction into a general jurisdiction.

Adding at p. 23:

Therefore as the Exchequer Court has no common law jurisdiction and the respondents had no right under the Admiralty jurisdiction . . . they could not enforce their counter-claim in that court.

Again at p. 19, in the quotation of Burbidge J. it is said:

It is argued that because a judge of the High Court in England has otherwise authority to hear and decide such a claim . . . this court has a like jurisdiction and authority. That, it seems to me is not the effect of the statute referred to. The jurisdiction which this court (Canadian) may exercise under the statute mentioned (Acts of 1890, etc.), is the Admiralty jurisdiction and not the general or common law jurisdiction in England.

See Clement's Canadian Constitution, 3rd ed., p. 24.

The plain reading of the Act of 1890 ties the jurisdiction of the Canadian Admiralty Court to that of the English High Court as it existed in 1890. Thus the Canadian jurisdiction is, so to speak, static and stereotyped. Canada has the full jurisdiction existing in England at the time of the passing of the Act and no more.

Moreover, by the preamble of The Admiralty Act, 1891, (Canada) it is said that the Exchequer Court

shall be a Court of Admiralty jurisdiction, with the jurisdiction in the said Act mentioned.

That is the Imperial Act of 1890. See also *The Ship W. J. Aikens* (1).

Therefore the position or jurisdiction of the judge of the High Court in England is quite different from that of the Admiralty Judge in Canada. Indeed, in the *Cheapside case* (2), wherein the question of jurisdiction with respect to a counter-claim (as in the *Camosun* case) was again considered, it was also found that

the judge of the Court of Admiralty does not cease to be a judge of the High Court because he is a Judge of the Court of Admiralty, and although as Judge of the Court of Admiralty, he may have no jurisdiction in such

(1) [1893] 4 Ex. C.R. 7 et seq. (2) [1904] P. 339, at p. 343.

a case as this . . . as judge of the High Court he has, and whether or not he can blend those two jurisdictions is a matter for his discretion . . . In this case the judge of the Court of Admiralty has endeavoured to do justice by not dividing the two jurisdictions, but by availing himself of the fact that he has a double jurisdiction, which will enable him to do justice in this way.

To return to the question of jurisdiction under the Imperial Act of 1925, sec. 22, reads as follows:

22. (1) The High Court shall, in relation to Admiralty matters, have the following jurisdiction (in this Act referred to as "Admiralty jurisdiction") that is to say—

(xii) Any claim—

(1) arising out of an agreement relating to the use or hire of a ship; or

(2) Relating to the carriage of goods in a ship; or

(3) in tort in respect of goods carried in a ship; unless 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;

(*b*) Any other jurisdiction formerly vested in the High Court of Admiralty;

(*c*) All admiralty jurisdiction which, under or by virtue of any enactment which came into force after the commencement of the Act of 1873, and is not repealed by this Act, was immediately before the commencement of this Act vested in or capable of being exercised by the High Court constituted by the Act of 1873.

This Act of 1925 should be read in the light of the *Camosun* case (*ubi supra*) which holds that:

The Judicature Acts, by which every judge of the High Court can exercise every kind of jurisdiction possessed by the High Court, conferred no new Admiralty jurisdiction upon the High Court.

The jurisdiction of the Exchequer Court on its Admiralty side cannot be wider than it was at the time of the passage of the Colonial Courts of Admiralty Act, 1890, unless supplemented by clear and express legislative provisions.

As said in Craies, on Statute Law (3rd ed., p. 79),

Coke's rule has been adopted by the English Courts, and for modern use is best expressed by Lord Esher in *Sharpe* v. *Wakefield* (1). The words of a statute must be construed as they would have been *the day after the statute was passed,* unless some subsequent Act has declared that some other construction is to be adopted or has altered the previous statute.

See also *The Alina* (2).

Again at p. 66:

If the words of the statute are themselves precise and unambiguous, then no more can be necessary than to expound these words in their ordinary

(1) [1889] 22 Q.B.D. 239 at p. 241.

(2) [1880] L.R. 5 Ex. D. 227, at p. 230 et seq.

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and natural sense. The words themselves alone do in such case best declare the intention of the law-giver.

At p. 70:

If we depart from the plain and obvious meaning . . . we do not in truth construe the Act, but alter it.

At p. 113:

A distinct and unequivocal enactment is also required for the purpose of either adding to or taking from the jurisdiction of a Superior Court of Law. . . "The creation of a new right . . . is plainly an act which requires (distinct) *legislative authority.*"

Lord Mansfield in *Rex.* v. *Vaughan* (1) says that

No Act of Parliament made after a colony is planted is construed to extend to it without *express words* showing the intention of the legislature to be that it should.

Lord Bowen in *Hill* v. *Brown* (2) says that

after a colony is founded subsequent legislation in England altering the law does not affect the rights of the settlers unless it is *expressly made to extend* to the province or colony.

See Tarring On Law Relating to Colonies, 4th ed., pp. 3 and 4.

The policy of the law that jurisdiction cannot be extended except by clear and unambiguous legislation is attested by all modern books. And we have so far back as the first quarter of the eighteenth century, Cowper L.C. in *Reeves* v. *Buttler* (3) exclaiming:

God forbid that judges upon their oath should make resolutions to enlarge jurisdiction.

Holt C.J. in the famous case of *Ashby* v. *White* (4) said:

I agree we ought not to encroach or enlarge our jurisdiction; by so doing we sever both on the right of the Queen and the people.

Later on in the century, Sir William Scott (Lord Stowell) said in *The Two Friends* (5) that

this court is not hungry after jurisdiction.

Kekewich J., *in re Montagu Derbishire* v. *Montagu* (6) said:

It is part of my duty to expound the jurisdiction of the court. It is *not* part of my duty to expand it.

It is especially true of the jurisdiction of the Admiralty Court, owing to the jealous eye turned upon it by the common law courts, that the foundations of its jurisdic-

(1) [1769] 4 Burr. 2500.
(2) [1894] A.C. 124.
(3) Gilbert's Eq. 195, at p. 196.
(4) 2 Raym. Ld. 938 (Lord Raymond's Rep.)
(5) [1799] 1 C. Rob. 280.
(6) [1897] L.R. 1 Ch. D. 685 at 693.

tion have to be made doubly sure. See Roscoe's Ad. Pr.—Introduction, *passim.*

If any other rules than those above mentioned were to be followed, the result would be that the court would be *legislating.* It is for the legislature to enlarge the jurisdiction if it sees fit and it is not a matter for the court.

Now besides the considerations to which I have just adverted, we have the Colonial Laws Validity Act passed by the Imperial Parliament in 1865 (28-29 Vict., ch. 63), which by section 1 enacts that

An Act of Parliament, or any provision thereof, shall . . . be said to extend to any colony when it is made applicable to such colony by *express words* or necessary intendment of any Act of Parliament.

Then if we consult text-books on the subject we find Lefroy, Canada's Federal System, at p. 51, who says:

The legislative bodies which have power to make statutes of one sort or another, binding upon Canadians, are the Imperial Parliament, the Dominion Parliament. . . . The British North America Act contains no renunciation of the paramount authority of the Imperial Parliament. . .

At p. 54:

But the intention of an Imperial Act to apply to self-governing colonies must be *clearly expressed.*

The same view is propounded by Dicey, Law of the Constitution, 8th ed., pp. 100, 102, 103, 108, 109, 114 and 115.

See also Todd, Parliamentary Government in the British Colonies, 2nd ed., pp. 29 and 155, wherein at p. 215, after recognizing the paramount authority of the Imperial Parliament to legislate for Canada, he says:

Henceforth it is only such Imperial Laws as were in force at the time of the establishment of the colony that apply to the same, not such as may be thereafter enacted; unless "*by express words or by necessary intendment,* they are made applicable."

The same opinion is also to be found in Clement's Canadian Constitution, 3rd ed., at p. 31; at p. 54 he says:

As then the British Parliament may legislate imperially, that is to say, may extend its enactments to the colonies generally or to some one or more of them in particular, it is important to know *when a British Act does so extend. Primâ facie* the British Parliament must be taken to legislate for the United Kingdom (1) only, and there *must* be manifest indication of its intent in that respect if a statute is to be read as extending to a colony.

Having considered the question of jurisdiction in this case with great care in the light of the authorities cited

(1) 15-16 Geo. V, ch. 49, sec. 227 (Imp.)

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above, I have reached the conclusion that the Exchequer Court of Canada under the Imperial Act of 1925 (15-16 Geo. V, ch. 49, sec. 22, subsec. 12) has no jurisdiction to entertain the action in which the proceedings were taken which form the subject of this appeal; and I rest my conclusion upon the fact that this statute not only lacked express words but also "necessary intendment" to bring it into force in Canada.

Having reached this conclusion on the question of jurisdiction, I must find that the action in which the writ and warrant were issued is not cognizable by the court, and that the writ and warrant themselves must be set aside.

However, I am glad to realize that the respondent is not deprived of all remedy by reason of this appeal being allowed. The respondent still retains his right to institute an action *in personam*.

The appeal will be allowed and the writ and warrant set aside.

The whole with costs.

Judgment accordingly.

Solicitors for appellant: *Tupper, Bull & Tupper.*

Solicitors for respondent: *Griffin, Montgomery & Smith.*

(1) The following are the reasons for judgment of Martin L.J.A.

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.

The question turns upon the construction of sec. 5 of the Administration of Justice Act, 1920, (Imp.) (1), 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

(*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 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 in 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

(1) 10-11 Geo. V, c. 81.

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."

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 Colonial Courts of Admiralty Act, (1890) (Imperial) (1), and the Admiralty Act of 1891 (Canada) (2), now chapter 141 of 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."

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."

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."

Sections 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."

For the motion it is submitted that the Imperial Act of 1920 does not extend its increased British jurisdiction to Canada because our

(1) 53-54 Vict., c. 27.

(2) 54-55 Vict., c. 29.

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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." 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 juristion is conferred upon the Admiralty Court in England this court "falls heir to the same jurisdiction" —*The King* v. *The Despatch* (1). There is no decision upon the exact point but there are some cases which require attention. Thus in *Harris Abattoir Co.* v. *The Aledo* (2), 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 Act 1861 (extended to 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 the court and counsel and therefore the present point was not even considered. There is, however, this expression of apportionate 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 short 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. & Lush. 4); *The Pieve Superiore* ([1874] L.R. 5 P.C. 482), and *The Cap Blanco* ([1913] P. 130)."

To these cases should be added *The Bahia* (3), a decision of Dr. Lushington which was approved by the Privy Council in the *Pieve 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 of interpretation."

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

The point is not touched by the decisions of the said Quebec District of this court in *Ferns* v. *The Ingleby* (4), because in it there was the express declaration in the Imperial Merchant Shipping (Stevedores and Trimmers) Act, 1911, cap. 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.

Then in the *D. C. Whitney* v. *St. Clair Navigation Co.* (5), 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 neces-

(1) [1915] 22 B.C.R. 365-6.
(2) [1923] Ex. C.R. 217.
(3) [1863] Br. & L. 61.
(4) [1923] Ex. C.R. 208.
(5) [1906] 38 S.C.R. 303.

sity 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* (1).

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.

Approaching, then, the subject in the light hereinbefore indicated, it was said by Lord Chancellor Halsbury in *Herron* v. *Rathmines* and *Rathgar Improvement Commissioners* (2) 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."

And in *Eastman Photographic Materials Company* v. *Comptroller General of Patents* (3), 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."

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., *Redpath* v. *Allan* (4), 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.

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.

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

(1) [1909] 79 L.J.P.C., 17 at p. 22.
(2) [1892] A.C. 498, at p. 503.
(3) [1898] A.C. 571.
(4) [1872] L.R. 4 P.C. 511, 517.

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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.

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 the 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, R.S.C., 1884, section 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.

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.

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.

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, Mayer's Admiralty Law, *supra*, p. 5, as of assistance, and it unquestionably is, 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 *Re Warners Settled Estates* (1), 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."

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

Judgment accordingly.

(1) [1881] 17 Ch. D. 711 at p. 713.