

QUEBEC ADMIRALTY DISTRICT.

BETWEEN

1906
 }
 Dec. 20.

BOUCHARD AND OTHERS (PLAIN-
 TIFFS) } RESPONDENTS;

AND

THE MONTREAL GRAIN ELEVAT-
 ING COMPANY, OWNERS OF ELEVA-
 TOR No. 7 (DEFENDANTS)..... } APPELLANTS;

AND

THE MONTREAL GRAIN ELE-
 VATING COMPANY (PLAINTIFFS).. } RESPONDENTS;

AND

THE S.S. "GASPESIEN," BOUCH-
 ARD AND OTHERS (DEFENDANTS).. } APPELLANTS.

Shipping—Collision—Motions to consolidate and transfer actions from one registry to another—Present constitution of Quebec Admiralty District—Jurisdiction of Local Judge and Deputy Judge to remove causes from Quebec to Montreal—The Admiralty Act, R.S. 1906, c. 141.

There is at present only one registry in the Admiralty District of Quebec and the provisions of *The Admiralty Act*, 1891, as amended by the third section of the Act, 63-64 Vict. c. 45 (now R. S. 1906, c. 141, sec. 18 (2)) which enact that when a suit has been instituted in any registry no further suit shall be instituted in respect of the same matter in any other registry of the court, do not prevent a further proceeding being instituted in the office of the Deputy Registrar at Montreal in respect of the same matter in which prior proceedings have been instituted in the registry at Quebec.

2. The Deputy Judge has jurisdiction equally with the Local Judge in Admiralty in cases instituted within the Quebec Admiralty District to order the consolidation of such cases for the purposes of trial.

INTERLOCUTORY appeals from certain orders made respectively by the Local Judge and the Deputy Local Judge of the Quebec Admiralty District.

November 20, 1906.

The appeals now came on for argument.

Dr. Davidson, K.C., for the appellants;

C. A. Penland, K.C., for respondents.

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THE JUDGE OF THE EXCHEQUER COURT now (December 20th, 1906) delivered judgment.

These actions numbered 178 and 182, respectively, in the Admiralty District of Quebec arise out of a collision which took place in the harbour of Montreal. The plaintiffs in action No. 178 are the defendants in action No. 182; and the plaintiffs in the latter action are the defendants in the former. In action number 178 the proceeding was commenced in the registry at the City of Quebec. Afterwards the defendants in that action instituted the action numbered 182, the process of the court being issued from the office of the Deputy Registrar at Montreal. In the latter action Mr. Justice Dunlop, the Deputy Judge in Admiralty of the Quebec District residing at Montreal, made three orders from which appeals are taken by the defendants in that action, that is to say:

1st. An order of the 23rd day of October, 1906, whereby he dismissed the defendants' motion to dismiss the action;

2nd. An order of the same date, whereby on the application of the plaintiffs, he set the case down for trial at the City of Montreal on the 13th day of November, 1906; and.

3rd. An order of the 2nd day of November, 1906, whereby he dismissed a motion made by the defendants to consolidate the action with action numbered 178, hereinbefore mentioned.

In the action numbered 178, Mr. Justice Routhier, the Local Judge in Admiralty of the District of Quebec, on

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the 30th day of October, 1906, made an order whereby he granted a motion made by the plaintiffs in the action to fix the time of trial, and ordered that the same should take place on the 8th day of November last at the Court House in the City of Quebec, and whereby he dismissed a motion made by the defendants for an order fixing the trial for the 13th day of November last at the City of Montreal. Against that order the defendants in action numbered 178 appeal. Pending the appeals mentioned the orders setting the cases down for trial have not been acted upon, but have been held in abeyance. .

The first question to be answered, and the most important, is as to whether or not the action numbered 182 ought to be dismissed? I agree with Mr. Justice Dunlop in answering that question in the negative. By the seventeenth section of *The Admiralty Act*, 1891, the Province of Quebec was constituted an Admiralty District for the purposes of the Act, with a registry at the City of Quebec. By the fifth section of the said Act, as amended by the Act 63-64 Victoria, Chapter 45, the Governor-in-Council is given authority from time to time to

- (a) Constitute any part of Canada an Admiralty District for the purposes of the Act.
- (b) Assign a name to any such district and change such name as he may think proper.
- (c) Fix and change the limits of any such district.
- (d) Establish at some place within any Admiralty District a registry of the Exchequer Court on its Admiralty side; and
- (e) Divide the territory comprised in any Admiralty District into two or more registry divisions, and establish a registry of the Exchequer Court on its Admiralty side at some place in each of such divisions.

None of these powers have been exercised by the Governor-in-Council in respect of the Province or District of Quebec. What has happened is this: By the tenth section of *The Admiralty Act*, 1891, it is provided that a local Judge in Admiralty may from time to time, with the approval of the Governor-in-Council, appoint a deputy Judge; and such deputy Judge shall have and exercise all such jurisdiction, powers and authority as are possessed by the Local Judge. The Local Judge in Admiralty of the district of Quebec has, with the approval of the Governor-in-Council, appointed Mr. Justice Dunlop as deputy Judge; and Mr. Dunbar, the Registrar of the Quebec Admiralty District has appointed Mr. W. S. Walker to be his deputy, with an office at the City of Montreal. But there is at present no registry of the Exchequer Court on its Admiralty side at the City of Montreal. Mr. Walker's office there is merely an adjunct of the registry at the City of Quebec. For the convenience of persons who at Montreal have business to transact with the Quebec registry, Mr. Walker receives and issues documents; but any papers filed with him as deputy of the Quebec Admiralty District ought to be transmitted to the latter at the earliest possible time.

Now, the ground on which Mr. Justice Dunlop was asked to dismiss the action numbered 182 was that it was instituted in contravention of the provisions of the thirteenth section of *The Admiralty Act*, 1891, as amended by the third section of the Act 63-64 Victoria, Chapter 45, whereby it was, among other things, provided that when a suit has been instituted in any registry no further suit shall be instituted in respect of the same matter in any other registry of the Court without leave of the Judge of the Court. It was contended that there were two registrars of the Court in the District of Quebec, one at the City of Quebec and the other at the City of Montreal; and that as the two

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suits were in respect of the same matter, the second, that is the one numbered 182, could not be instituted without the leave of the Judge of the Court, which had not been obtained. But the objection fails because the contention that there are two registrars of the Court in the Admiralty District of Quebec cannot be sustained. The appeal from the order of the 23rd day of October, 1906, whereby Mr. Justice Dunlop refused to set aside the proceedings in the action numbered 182, is dismissed with costs to the respondents.

There being then two actions in which the questions at issue are substantially the same, both pending in the same district and registry, the question arises as to whether or not the two actions should be consolidated and whether an order should be made that the two actions should be tried at the same time and on the same evidence. It is clear I think that to save expense one or the other of the two courses mentioned should be adopted; and I understood it to be conceded by both parties that the Judge of the Exchequer Court would have jurisdiction to make such order as seemed proper in the premises. But it is equally clear, I think, that both the Local Judge in Admiralty of the Quebec District and the deputy Judge in Admiralty there have the same and equal jurisdiction and authority to make such an order. It makes no difference whether the proceedings were commenced at the City of Quebec or at the City of Montreal, each has jurisdiction in respect thereof. It would not do of course for both to exercise such jurisdiction as that might lead to the making of conflicting orders and to confusion and inconvenience. But that is a matter that may well be left to the sound judgment and discretion of the learned Judges in whom the authority is vested. Either the two actions should be consolidated, or they should be tried at the same time and on the same evidence; but in either case the trial

would be had before one Judge, not before two. And it seems to me fitting that the question as to which of the two courses suggested should be adopted, and also the question as to where such actions should be tried should be left to the determination of the learned Judge before whom the trial will proceed. And that it would be proper for me to refrain from doing more on this appeal than to rescind any order that might stand in the way of the questions mentioned being again raised before and decided by the Local Judge in Admiralty of the Quebec District, or by the Deputy Judge of the district, according as to whether the former saw fit to hear the questions or to leave them to the decision of the Deputy Judge. For that purpose and with that end in view I allow the appeal from the order made by Mr. Justice Dunlop on the 23rd day of October, 1906, setting the action number 182 down for trial at the City of Montreal on the 13th day of November, 1906, and set aside such order with costs to the appellants. I also allow the appeal from his order of the 2nd day of November, 1906, dismissing a motion to consolidate the two actions, and set aside such order with costs to the appellants. I also allow the appeal from the order of Mr. Justice Routhier of the 30th of October, 1906, before mentioned, and set aside the same with costs to the appellants.

And it is further ordered and directed that either the two actions be consolidated or that they be tried at the same time and on the same evidence; but the question as to which of the two courses mentioned should be adopted and also the question as to where the trial of such actions should take place will be left to the determination of the Local Judge in Admiralty of the Quebec Admiralty District, or to the deputy Judge in Admiralty of such district, according as to whether the former sees fit to hear and determine the said questions or to leave them to the decision of the deputy Judge.

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And in connection with the question as to where the trial of the said actions should take place, the Registrar of this Court is authorized and directed to transmit forthwith to the Registrar of the Quebec Admiralty District at the City of Quebec the affidavit of Alexander McDougall made at the City of Montreal on the 28th day of November, 1906, and the affidavit of Joseph Albert Bouchard made at the City of Quebec on the 26th day of November, 1906.

Order accordingly.
