

QUEBEC ADMIRALTY DISTRICT.

1920

Oct. 6.

LOUIS WOLFE *et al.*.....PLAINTIFFS;

vs.

SS. CLEARPOOL.....DEFENDANT.

Exchequer Court, Admiralty jurisdiction of—Damages—Breach of Contract—53-54 Vict., Ch. 27 (Imp.); 54-55 Vict., Ch. 29 (Dom.); 1-2 Geo. V, Ch. 41.

Plaintiffs were stevedores and had entered into a contract with the owners of the ship defendant to load the vessel on its arrival at the port of Montreal.

The captain of the ship refused to allow them to load the vessel in accordance with their said contract, and thereupon the ship was arrested on a claim for damages arising out of breach of said contract.

Held, that as the Admiralty jurisdiction of the Court is derivable from the Colonial Courts of Admiralty Act, 1890 (53-54 Vict. ch. 27 Imp) and the Admiralty Act, 1891 (54-55 Vict., ch. 29, Dom.) such jurisdiction is no greater than the Admiralty jurisdiction of the High Court of England.

2. That upon the facts the Court had no jurisdiction to entertain the present action.

ACTION in rem by plaintiffs, stevedores, to recover \$1,700, damages alleged to have arisen out of a breach of their contract to load the ship defendant.

The case came up before this court, on a motion to dismiss the action for want of jurisdiction, on the 15th September and again on the 6th of October, 1920, before the Honourable Mr. Justice MacLennan, at Montréal.

A. Chouinard for plaintiffs.

Lucien Beaugard, for defendant.

1920 The facts and questions of law raised are stated in
 LOUIS WOLFE *et al* the reasons for judgment.

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 MACLENNAN D.L.J.A. now (6th October, 1920)
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 Judgment.

This is an action in rem on a claim by the plaintiffs for breach of a stevedore's contract between them and the owners of the SS. *Clearpool*, the plaintiffs alleging that the captain of this ship, on its arrival in the port of Montreal, on or about 13th July, 1920, refused to allow them to load the vessel in accordance with their contract, whereupon they arrested the ship on a claim for \$1,700 damages arising out of the breach of said contract. The ship has been released upon a bond and the defendant now moves for the dismissal of the action and all proceedings had therein upon the ground that this Court has no jurisdiction in an action of this kind.

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., c. 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; *Bow McLachlan & Co. v. Camosun (owners)* 1).

(1) 79 L.J.P.C. 17; [1909] A.C. 597.

The Admiralty Court has never exercised a general jurisdiction over claims for damages. Its jurisdiction was originally confined within well defined limits which have been extended by the Admiralty Court Act, 1840 (3-4, Vict., c. 65, Imperial) and the Admiralty Court Act, 1861 (24 Vict., c. 10, Imperial). Under section 4 of the latter Act the Admiralty Court was given jurisdiction over any claim for the building, equipping or repairing of any ship if, at the time of the institution of the cause, the ship or the proceeds thereof are under arrest of the Court, but no provision was made in the statute giving jurisdiction to the Court to enforce a claim for damages for breach of a building contract, whether there was an arrest or not, and the Privy Council held in the *Camosun case*, that the Court did not have jurisdiction in such a claim. By the Admiralty Court Act, 1840, the Admiralty Court was given jurisdiction to take cognizance of all claims and causes of action of any person in respect of any mortgage of any ship, whenever such ship was under arrest by process issued from the Court of Admiralty or the proceeds of any ship having been so arrested have been brought into and were in the registry of the Court, and by the Act of 1861 the Court was given jurisdiction over any claim in respect of any mortgage duly registered according to the provisions of the Merchant Shipping Act, whether the ship or the proceeds thereof were under arrest of said Court or not. The *Camosun case* was an action on a mortgage in favour of the builders registered under the provisions of the Merchant Shipping Act, and it was held in that case that the Admiralty Court had no jurisdiction to enforce a claim for damages by the owners for breach of the contract for building the

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ship either as a counter claim or as a set off against the amount due under the mortgage whether the claim were against the ship or against the builders.

Reasons for Judgment.

By the Merchant Shipping (Stevedores and Trimmers) Act, 1911, 1-2 George V, chap. 41, claims for work done in respect of stowing and discharging on board or from any ship, the owners of which do not reside in the United Kingdom may be enforced as claims for necessities in all Courts having Admiralty jurisdiction. This statute contains no provision for the enforcing of a claim founded on a breach of a contract in respect of stowing or discharging.

The plaintiffs' claim is clearly one for breach of a contract in respect of stowing and the principles which were applied by the Privy Council in the *Camosun case* on a claim for breach of contract for the building of a ship are applicable, in my opinion, to a claim for breach of a stevedore's contract.

In *Cook v. the SS. Manauence* (1), Chief Justice McColl, in the British Columbia Admiralty District of this Court, in an action for an alleged breach of contract to carry plaintiff from Liverpool to St. Michaels and thence to the Yukon Gold Fields, where proceedings were taken against the ship and a warrant of arrest was obtained, held that even if the breach alleged were established the plaintiff was not entitled to a lien on the ship and the action was dismissed.

In the case of *The Montrosa* (2), an action in rem for breach of a charter party originally brought in the City of London Court under the provisions of the County Courts Admiralty Jurisdiction Amendment Act, 1869, and transferred to the High Court by the order of the latter, Sir Samuel Evans said:—

(1) 6 Can. Ex. C.R. 193.

(2) 86 L.J. Adm. 33.

“The Court could not have entertained the action if it had been originally brought in this Court, because it has not been entrusted with powers like those conferred on County Courts by the County Courts Admiralty Jurisdiction Amendment Act, 1869. Why that is so I do not know. Those interested in shipping have urged the extension of the powers of this Court to enable it to decide causes arising out of agreements made in relation to the use or hire of a ship, and also in relation to the sale and purchase of ships. It seems to me to be fitting that this should be done; but that is a matter for the Legislature. But if the City of London Court had jurisdiction to entertain the action, this Court by transferring the action to itself obtained jurisdiction to hear and determine it, notwithstanding that it could not have been instituted here originally.”

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I have examined the cases cited at the hearing and many others, but I have been unable to discover any case in which it was held that the Admiralty Court has jurisdiction to enforce a claim for the alleged breach of a contract between a stevedore and the owner of the ship. The owner is not a party to this action and, in my opinion, this Court had no jurisdiction to hear a claim of this kind whether against the ship or against the owner and the matter should be left to be settled in a Court having jurisdiction to entertain the claim.

For these reasons the plaintiffs' action must be dismissed with costs.

Judgment accordingly.

Solicitors for plaintiffs: *Poplinger & Chouinard.*

Solicitors for defendant: *Atwater & Bond.*