

ON APPEAL FROM THE QUEBEC ADMIRALTY DISTRICT.

1922
April 22.

GEORGE McCULLOUGH *et al*,

PLAINTIFFS AND JUDGMENT CREDITORS;

VS.

THE S.S. *MARSHALL*.....DEFENDANT;

AND

REAL ROBILLARD (Acting Marshall). APPELLANT.

Appeal—Admiralty Act, 1891—Section 14—Costs—Interlocutory Judgment—Absence of permission to appeal—Jurisdiction.

1. That the judgment of a Local Judge of Admiralty confirming a taxation by the District Registrar of the marshall's bill for services etc., relating to the care of the ship whilst in his custody is an interlocutory judgment. That an interlocutory judgment or pronouncement is one which determines some subordinate point or settles some special question arising in the cause and does not deal finally with the merits of the cause. It can be ancillary to or executory of the final judgment and complete the adjudication of the case.

2.—That where by statute an appeal is given to this court from an interlocutory judgment or order, upon permission to so appeal having been previously obtained, and when no such permission has been obtained, this court has no jurisdiction to hear the appeal.

Semble:—Appeals involving merely a question of costs should not be entertained, more particularly when the appeal is from the decision of the trial judge confirming the findings of the taxing master, or when the matter is only one of quantum involving the exercise of his discretion.

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APPEAL from the decree or order of the trial judge, as Local Judge in Admiralty of the Quebec Admiralty District, confirming the taxation, by the district Registrar, of the marshall's bill for services and disbursements relating to the care of the ship whilst in his custody.

April 11th, 1922.

Appeal heard before the Honourable Mr. Justice Audette at Montreal.

H. E. Walker, for appellant.

T. M. Tansay for the ship defendant.

Walter R. L. Shanks, K.C. for The Steel Company of Canada, purchaser of vessel, etc.

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

AUDETTE, J.—now (this 22nd April, 1922) delivered judgment.

This is an appeal from the judgment or order of the Local Judge of the Quebec Admiralty District, pronounced on the 8th July, 1921, confirming the taxation, by the Deputy Registrar or taxing master, of the acting Marshall's bills.

As a prelude it may be stated that appeals involving merely a question of costs should not be entertained. *Chicoutimi Pulp Co. v. Price* (1). And it would seem that such a principle should obtain with special force, when the appeal was originally from the finding of the taxing master to the trial judge who had already,

(1) [1907] 39 S.C.R. 81.

in the final judgment allowed costs, and who confirmed the master—the appeal being practically upon a question of *quantum*, again involving discretion from which there is generally no appeal.

However, there is in the present case a more serious objection standing in the way of the present consideration of the questions involved. The present appeal lies under the provisions of sec. 14 of The Admiralty Act 1891, whereby it is enacted that appeals from interlocutory decree or order can be entertained by the Exchequer Court when permission to so appeal has been previously obtained.

No such permission has been obtained.

This right to appeal is entirely statutory and this Court is given jurisdiction under the provision of such statute. It has no jurisdiction to hear the appeal in the absence of such permission, as required by the statute.

The rule of construction in such cases is that all the prescribed elements of jurisdiction must be present before the appeal can be entertained. The statute in this case imposes the duty upon the appellant to obtain the leave to appeal either from the local judge or a judge of the Exchequer Court of Canada. No such leave has been obtained, and one of the requirements of the statute preliminary to the jurisdiction of this Court arising has not been satisfied. Therefore the appeal is not properly before the Court, and cannot be entertained. *Brown on Jurisdiction*, 2nd ed. (1901) sec. 21, p. 111.

Some stress has been laid at bar upon the consideration that such judgment which determines the amount of the bill might be considered as a final judgment; but with that view I cannot agree.

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The term judgment may be considered as a generic term in law and practice covering all decisions given by a Court of law; but there is a wide difference between a final and an interlocutory judgment.

A final judgment is one which determines the rights of the parties in an action or proceedings, while an interlocutory judgment or order is one which does not decide the cause, but merely that which only settles some intervening matters relating to the cause. Words and Phrases Judicially Defined, vol. 4. p. 3712; *Idem* (Second Series) 1149; Audette, Exchequer Court Practice 478.

An interlocutory judgment or pronouncement determines some subordinate point or settles some special question arising in the cause and does not deal finally with the merit of the action. It can be ancillary to or executory of the final judgment and complete the adjudication of the case.

An order which does not deal with the final rights of the parties, but merely directs how the declarations of right already given in the final judgment are to be worked out, is interlocutory.

Having come to this conclusion, finding that this Court for want of the statutory leave has no jurisdiction, and following the decisions already given in this Court upon a similar point, in *re 251 Bars of Silver & The Sea Insurance Co. et al v. The Canadian Salvage Association* (1); and *Johnson v. Adam B. Mackay* (2), I hereby dismiss the present appeal with costs, without expressing any opinion one way or the other upon the questions involved in the present controversy.

Judgment accordingly.

(1) [1915] 15 Ex. C. R. 367.

(2) [1917] 17 Ex. C. R. 155.