

APPEAL FROM TORONTO ADMIRALTY DISTRICT.

THE MONTREAL TRANSPORTA- } PLAINTIFFS;
TIQN COMPANY, LIMITED..... }

1908

May 4.

AGAINST

THE SHIP "NORWALK."

Shipping—The Admiralty Act, R. S. c. 141, s. 19—Local Judge—Jurisdiction—Removal of action from one Registry to another—Practice.

A Local Judge in Admiralty has jurisdiction under *The Admiralty Act*, R. S. c. 141, sec. 19, sub-sec. 2, to order the transfer of an action from the registry in his district to the registry of another Admiralty district in Canada.

APPEAL from an order of the Local Judge of the Toronto Admiralty District refusing a motion to transfer an action to another district.

The grounds of the motion are set out in the following judgment of HODGINS, L. J., delivered on the 28th February, 1908 :—

The question of jurisdiction in a case of this kind is not unfamiliar to me, because I have had to consider it in administering justice under another Dominion jurisdiction which is conferred upon the provincial courts by *The Dominion Winding-Up Act*; and if counsel will look at the provisions in *The Winding-Up Act* which I will now read, and which have not been included in *The Admiralty Act*, they will see the reasons (which I shall give shortly) why the jurisdiction sought to be invoked here does not exist in the Admiralty Courts.

Section 125 of *The Winding-Up Act* says: "The courts of the various Provinces,"—that means the provincial courts,—“and the judges of the said courts respectively, shall be auxiliary to one another for the purposes of this Act;” but here is the substantial factor

in the section; "and the winding up of the business of the company, or any matter or proceeding relating thereto, may be transferred from one court to another, with the concurrence or by the order or orders of the two courts, or by an order of the Supreme Court of Canada." That section has not been incorporated into *The Admiralty Act*; nor has this next one. (126) "When any order made by one court is required to be enforced by another,"—that is the order of one provincial court is required to be enforced by another provincial court,—"an office copy of the order so made, certified by the clerk or other proper officer of the court which made the same, under the seal of such court, shall be produced to the proper officer of the court required to enforce the same."

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Now I have exercised jurisdiction under both of those sections in liquidation cases under the Dominion *Winding-Up Act*. In one case I transferred a case which had been originally instituted in the Ontario High Court to the Superior Court in the Province of Quebec. In other cases—quite a number—orders made by me here in the Winding-up Court against contributories who were residents in other provinces, have been enforced, under section 126, in the courts of those other provinces by inscribing in the records of the other provincial court a copy of the order made in the Ontario High Court here; and execution has issued in such cases from the court in which the order has been so inscribed. Neither of those sections have been incorporated into *The Admiralty Act*.

But there is enough in *The Admiralty Act*, independent of this, which shows me that the jurisdiction invoked does not exist. There are two terms used in *The Admiralty Act*, one is the term "district" that means the territorial extent of the jurisdiction of the court in trying actions; the other is "registry," that means the local place for recording the judicial action

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and proceedings of the court of the district. The 19th section of the present Act says: "When in any district there are more registries than one, all proceedings in any suit shall be carried on in the registry in which the suit is instituted, unless the judge shall otherwise order." Then comes in the second clause: "Any party to a suit may, at any stage of such suit, by leave of the court, and subject to such terms as to costs or otherwise as the court directs, remove such suit pending in any registry to any other registry,"—meaning within the same district.

Now the "court" that is spoken of here is the court of the district which has judicial authority and jurisdiction in Admiralty cases over the whole of the district. The word "registry" is the local place of recording the judicial action and proceedings of the court of the district in the proper books of the court, which are necessary for the keeping of the records of the court in proper shape. These words, therefore, in the Act clearly show that there is a distinction between the term "district" which applies to the whole Province of Ontario, and the term "registry" which applies to the local offices of the court in county towns within the district; and they satisfy me that I have not the jurisdiction which is possessed under *The Winding-Up Act* to transfer a case from one provincial court to another, or as sought in this case, to transfer an Admiralty action from one Admiralty judicial district to another district within the Dominion; and, therefore, having no jurisdiction other than that conferred upon the court to remove a pending action from one local registry to another local registry within the same judicial district, I have no jurisdiction to transfer this action to the Province of Quebec.

The word "registry" which is used in the Act has been defined by the United States Supreme Court in the

action of *United States v. Castillero* (1), as follows : " What is a "a registry?" * * * "The word is the same in Spanish and in English. Both derive it from the latin, *Liber rerum gestarum*, which the Roman lawyers contracted into *registrum*. To register a thing is to write it in a book; to preserve it from the danger of simulation, defacement, fraud, and loss, to which separate papers would be exposed."

This is a sufficiently precise and clear definition of the word "registry"—the place for recording the proceedings by writing them as a record in a book; and that word being used in *The Admiralty Act* I must give it a similar interpretation; and, therefore, hold that I have no jurisdiction to transfer this action from this judicial district of the Dominion Admiralty Court to another judicial district as asked for by the plaintiffs. The motion, therefore, must be dismissed with costs.

March 31st, 1908.

The appeal came up for argument.

E. E. Howard, for appellant.

A. H. Clarke, for the ship.

CASSELS, J., now (May 4th, 1908) delivered judgment.

The application to the learned Judge of the Toronto Admiralty District was for an order allowing the plaintiff to remove this suit from the Registry known as the Toronto Admiralty District to the Registry in Quebec.

The learned Judge came to the conclusion that he had no jurisdiction to make such an order, and dismissed the application.

The Admiralty Act, R. S. c. 141, provides, (sec. 6) that the Governor in Council may from time to time constitute any part of Canada an Admiralty District, &c., &c.

(1) 2 Black's Reports, p. 109.

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No action has been taken by the Governor in Council pursuant to the provisions of this section, and the present question must be determined on the construction of the statute as it was prior to this amendment.

By section 7 of the statute it is enacted:—

“Until otherwise provided by the Governor in Council the following provinces shall each constitute an Admiralty District for the purposes of this Act, and a registry of the Exchequer Court on its Admiralty side shall be established and maintained within such districts at the places following:—

“The Province of Ontario, under the name of the Toronto Admiralty District, with a registry at the City of Toronto;

“The Province of Quebec with a registry at the City of Quebec, &c.”

In the case of *Bouchard v. The Montreal Grain Elevating Co.* (1), the former Judge of the Exchequer Court had occasion to construe this enactment, and his conclusion was that there was but one registry of the Exchequer Court on its Admiralty side in the Province of Quebec, namely, at Quebec, and that the office in Montreal of the Deputy Registrar was not a registry of the Exchequer Court on its Admiralty side at the City of Montreal but a mere adjunct of the registry at Quebec.

The same reasoning applies to the Toronto District.

Section 19, sub-sec. 2 of the statute reads as follows:—

“Any party to a suit may at any stage of such suit by leave of the court and subject to such terms as to costs or otherwise as the court directs remove such suit pending in any registry to any other registry.”

This section in Cap. 141 of the Revised Statutes of Canada, 1906, is practically the same as section 19 in 54-55 Vict. Cap. 29, the former referring to any appeal in addition to suit.

(1) 11 Ex. C. R. 220.

It is manifest, if the opinion of the late Mr. Justice Burbidge is correct, that under section 19, sub-sec. 2, if there be a removal from one registry to another registry it must be a removal from one province to the other.

Section 10 of Cap. 141 (R. S. C. 1906) provides that:—

“Every Local Judge in Admiralty shall within the Admiralty District for which he is appointed have and exercise the jurisdiction and the powers and authority relating thereto of the Judge of the Exchequer Court in respect of the Admiralty jurisdiction of such court.”

This section is carried forward from 54-55 Vict. cap. 29.

To place a construction on this section that would take from the Local Judge the power of removal from one registry to another as prescribed by section 19 sub-sec. 2, would in my judgment do violence to the spirit and intention of the statute.

In any event I have the jurisdiction.

On the merits I was not satisfied with the particulars set forth in the affidavits and gave leave to the plaintiff to file a further and more precise affidavit, with leave to the ship also to file further affidavits in answer.

Further affidavits have been filed; on behalf of the plaintiff, the affidavits of E. E. Howard and J. A. Cuttle, and on behalf of the ship the affidavit of Frank Goodrow.

It appears that the collision between the barge *Jet* and the S.S. *Norwalk* occurred in the lower portion of Lake St. Louis, about three miles from the upper entrance of the Lachine Canal.

The writ was issued out of the Toronto Admiralty District. This became necessary for the reasons stated in the affidavit of Cuttle.

Howard in his affidavit states that “the width, depth and direction of the ship channel at the place where the collision occurred, the direction and speed of the current at that place, and the exact position of lightship No. 2 are facts essential to the determination of the

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"issues involved in this suit." This statement is not contradicted.

Howard states it will be necessary to secure the attendance of (1) the engineer under whose direction the channel was dredged and swept, and the assistant engineer who had immediate supervision of the work; (2) the officer of the Department of Marine and Fisheries who made the hydrographic survey of Lake St. Louis; (3) the officer and crew of the S.S. *Scout* who placed the lightship, and the employee of the Dominion Government who was in charge of the same during the season of navigation.

All these witnesses, except the captain of the S.S. *Scout* reside at or near Montreal. The residences of the captain and crew of the S.S. *Scout* are not known.

Cuttle states in his affidavit that the captain and crew of the barge *Jet*, the barge *Winnipeg* and the S.S. *Glide*, in all nine or ten in number, are necessary witnesses. These witnesses reside at or near Montreal.

He also states that the lock-master and officials in charge of the locks at the head of the Lachine Canal and at the lower end of the Soulanges Canal—the salvors of the *Jet* and her cargo, are necessary witnesses. These are resident in or near Montreal.

In answer to these affidavits Goodrow, the captain of the *Norwalk*, swears that the pilot and six members of the crew, in all seven, are necessary witnesses. In addition there are five other members of the crew.

Of these witnesses two reside in Detroit, one in Green Bay, Wisconsin, and two at Port Huron, five in all.

The fifth paragraph of the affidavit is undoubtedly incorrect. It refers to the fourth paragraph, and states that one resides at Buffalo and the others in the neighbourhood of Chicago. Perhaps it means to refer to the third paragraph.

I think the plaintiff's application should be granted. The fact of the writ having issued out of the Toronto Admiralty District has very little weight under the circumstances. A great many of the witnesses of the ship reside out of the jurisdiction, and can be examined on commission.

The Judge who tries the suit will no doubt exercise a reasonable judgment as to the time of the trial so as to secure the evidence of the witnesses for the ship.

The order will issue allowing the plaintiff to remove the suit from the registry known as the Toronto Admiralty District to the registry of Quebec.

The costs of the application before the learned Judge in Toronto and of this appeal will be costs in the cause.

Judgment accordingly.

Solicitors for the appellants : *Beatty, Blackstock, Fasken & Chadwick.*

Solicitors for the respondents : *Clark, Bartlet & Bartlet*

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