

Joseph Paquet and another - - - - - *Appellants*

v.

The Corporation of Pilots for and below the Harbour of Quebec - *Respondent*

FROM

THE COURT OF KING'S BENCH FOR THE PROVINCE OF QUEBEC.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 22ND JULY, 1920.

Present at the Hearing :

VISCOUNT HALDANE.

VISCOUNT CAVE.

LORD DUNEDIN.

LORD ATKINSON.

MR. JUSTICE DUFF.

[*Delivered by* VISCOUNT HALDANE.]

In this case the Attorney-General for the Dominion of Canada has been made a co-appellant, as the appeal raises questions in which the Dominion Government has a direct interest.

In 1917 the respondent Corporation brought the action out of which the appeal arises, in the Superior Court of the Province of Quebec, against a pilot named Paquet, who was one of the members of the Corporation, to recover a sum of about \$532, being the amount earned by him for services as a pilot of the Harbour of Quebec. In the Court of first instance, Dorion, J., decided for the defendant, but on appeal to the Court of King's Bench for the Province this decision was reversed by a majority of the learned Judges of that Court, Cross, J., dissenting. Paquet died subsequently, and his personal representative is the first appellant.

The plaintiff Corporation consists of the licensed pilots of the Harbour of Quebec and below. In 1860 they had been incorporated by a statute of the then Province of Canada. Under that statute the pilots had to hand over their earnings to the Corporation, and out of the fund so constituted the former were paid by the latter, who were to distribute the surplus among the pilots.

After the quasi-federal distribution of legislative powers which was effected by the British North America Act in 1867, it is clear that the power to pass laws regulating the pilotage system of the Harbour was given exclusively to the Dominion Parliament. Navigation and shipping form the tenth class of the subjects enumerated as exclusively belonging to the Dominion in Section 91 of the Act, and the second class in the section, the regulation of trade and commerce, is concerned with some aspects at least of the same subject. Whether the words trade and commerce, if these alone had been enumerated subjects, would have been sufficient to exclude the Provincial Legislature from dealing with pilotage, it is not necessary to consider, because, in their Lordships' opinion, the introduction into Section 91 of the words "navigation and shipping" puts the matter beyond question. It is, of course, true that the class of subjects designated as "property and civil rights" in Section 92 and there given exclusively to the Province would be trespassed on if that section were to be interpreted by itself. But the language of Section 92 has to be read along with that of Section 91, and the generality of the wording of Section 92 has to be interpreted as restricted by the specific language of Section 91, in accordance with the well established principle that subjects which in one aspect may come under Section 92 may in another aspect that is made dominant be brought within Section 91. That this principle applies in the case before their Lordships they entertain no doubt, and it was, therefore, in their opinion, for the Dominion and not for the Provincial Legislature to deal exclusively with the subject of pilotage after confederation, notwithstanding that the civil rights and the property of the Corporation of Pilots of Quebec Harbour might incidentally, if unavoidably, be seriously affected.

The Dominion Parliament, after confederation, passed what is now Chapter 113 of the Revised Statutes of Canada, the Canada Shipping Act, 1906. Part 6 of that Act dealt with pilotage. By Section 411 the pilotage district of Quebec is defined, and by Section 413 the Dominion Minister of Marine and Fisheries is to be the pilotage authority, in whom all the powers of the Harbour Commissioners of Quebec are vested. By subsequent sections the Minister was given powers to regulate the qualifications of pilots, the management and maintenance of their boats and the distribution of their earnings, the performance of their duties, and, subject to the limitation referred to in the case of the Quebec District, the mode and amount of remunerating the pilots, and the establishment of superannuation funds; but the alteration of the rates for pilotage in the Quebec District and of the administration or distribution of their earnings was excluded from the power of the Minister by Section 434. For some purposes, other than those specifically conferred on the Minister, the respondent Corporation retained powers, and among them were rights in certain cases to demand from the masters of ships pilotage dues. Out of the sums thus received the treasurer of the respondent Corporation was to set aside seven per cent. for a pilot fund, and the Corporation was

to account to the Minister for the administration of this fund, which was due to be employed for superannuation purposes.

It is, however, in their Lordships' view unnecessary to determine precisely what powers remained to the respondent Corporation after the passing of the Canada Shipping Act of 1906, for in 1914 another statute amending it was passed by the Dominion Parliament, and this statute applies in the case before them. It provides by Section 1 that the Minister, subject to the provisions of the general Canada Shipping Act, is to have charge of the control and management of the pilots and their boats for the pilotage district of Quebec, and of all questions respecting pilotage arising in connection with such district, and of the collection of pilotage dues in respect of such district; and that all powers vested in the Corporation of Pilots of Quebec under Part 6 of the Canada Shipping Act are transferred to and vested in the Minister. By Section 2 all powers of the Corporation of Pilots with respect to the management and control of pilots and their duties, the collection of pilotage dues and the management and control of pilotage, were thereby repealed. By Section 3 nothing in the Act was to be deemed to affect any power possessed by the Corporation in connection with the management and disposal of the pilot pension fund, but such power was to be exercised under the supervision of the Minister as theretofore.

In their Lordships' opinion it is plain that whatever powers to demand dues, or to call on a pilot to hand over his earnings as received, may have survived to the respondent Corporation after the passing of the general Canada Shipping Act, are now extinguished by the first and second sections of the Act of 1914. What right the Corporation may have had as between itself and the original defendant Paquet to demand from him a contribution to the superannuation fund is not a question which is before their Lordships. It is enough for them to say that they are unable to take the view of the majority of the learned Judges in the Court of King's Bench, that there is no repeal of the title of the respondent Corporation to receive the pilotage dues which a pilot may now earn. The result of the Act of 1914 is to get rid altogether of the old title of the Corporation, and to enable the Minister to direct that the payment shall be made to the pilot employed and no one else.

They will therefore humbly advise His Majesty that the judgment of the Court of King's Bench, which was in favour of the Corporation as plaintiffs, should be reversed and that of Dorion, J., dismissing the action with costs, should be restored. The appellant Paquet will have his costs here, in so far as he has incurred costs, and in the Court of King's Bench. The Attorney-General for Canada, in accordance with the usual practice, will receive no separate costs.

In the Privy Council.

JOSEPH PAQUET AND ANOTHER

v.

THE CORPORATION OF PILOTS FOR AND BELOW
THE HARBOUR OF QUEBEC.

DELIVERED BY VISCOUNT HALDANE.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.
1920.