Privy Council Appeal No. 11 *of* 1927.

Snia Viscoha Societa Nazionale Industria Applicazioni Viscosa - *Appellants*

v.

The Ship "Yuri Maru" - - - - - - - *Respondent*

Privy Council Appeal No. 15 *of* 1927.

The Canadian American Shipping Company, Limited - - - *Appellants*

v.

The Steamship "Woron" - - - - - - *Respondent*

FROM

THE EXCHEQUER COURT OF CANADA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH JULY, 1927.

Present at the Hearing:

VISCOUNT HALDANE.
VISCOUNT SUMNER.
LORD SHAW.
LORD MERRIVALE.
LORD WARRINGTON OF CLYFFE.

[*Delivered by* LORD MERRIVALE.]

These appeals are brought against judgments of the Exchequer Court of Canada in Admiralty by plaintiffs who had sued out in the District Court of British Columbia writs *in rem* and warrants of arrest with a view to the trial at Victoria of claims for damages under charter parties made and alleged to have been broken outside the local area of jurisdiction by parties not resident within that area.

In the case of the s.s. *Woron* the arrest was in respect of damages stated at about 18,000 dollars. The plaintiffs are a Canadian company. The owners of the ship appear to be a joint stock company registered in England. The *Woron* was said to

have been chartered for a voyage from ports in British Columbia to Yokohama and it was alleged that her master had wrongfully deviated upon the agreed voyage and thereby caused loss to the plaintiffs.

In the case of the s.s. *Yuri Maru* the plaintiffs are an Italian corporation. The vessel is Japanese, registered at Kobe, the property of owners domiciled in Japan, who have alleged *inter alia* that they became owners since the accrual of the alleged cause of action of the plaintiffs and that judgment in respect thereof had already been recovered by the plaintiffs against their predecessors in title. The claim of the plaintiffs in respect of which the arrest was made was 290,000 dollars for damages for breaches of a charter party for nine months made in December, 1919.

In each case the owners of the arrested ship moved to set aside the writ and warrant of arrest for want of jurisdiction. These motions respectively were dismissed by Martin J. in the District Court, but upon appeal were allowed in the Exchequer Court of Canada.

In view of the fact that the substantial question for argument was the same in each of the appeals, counsel for both appellants and both respondents were heard by their Lordships in the course of one hearing. The question which is immediately raised in both cases is whether, irrespective of residence of the defendant or place of origin of the alleged cause of action, a Court of Admiralty in the Dominion may by arrest of a vessel within its area be called upon to adjudicate upon all claims of plaintiffs suing under any charter party made in respect of the vessel.

Incidentally, the further question arises whether, throughout the Empire, there is a like right of litigants in Courts of Admiralty jurisdication of proceeding, by process *in rem*, in respect of like claims, under like circumstances of absence of local residence of parties impleaded and non-existence of any cause of suit arising within the local jurisdiction.

The claim of the appellants is that by virtue of the Colonial Courts of Admiralty Act, 1890 ; which provides for the establishment in British possessions overseas of Courts of Admiralty jurisdiction in lieu of the Vice-Admiralty Courts theretofore existing ; and the Canadian statutes which have brought that Act into operation in the Dominion and invested with Admiralty jurisdiction thereunder the Exchequer Court of Canada ; whatever jurisdiction in Admiralty is from time to time exercisable in the High Court of Justice in England is exercisable in Canada in the Exchequer Court. The jurisdiction of the Exechequer Court of Canada in Admiralty is exercised in the maritime provinces of Canada by district Judges, of whom the Judge sitting in British Columbia is one.

By the Act of 1890 every Court of Law in a British possession which (*a*) is declared by the local legislature to be a Court of Admiralty or (*b*) has unlimited civil jurisdiction, is constituted a

Court of Admiralty, with the jurisdiction defined in the Act in terms the meaning of which is now in question. The Act provides further (section 17) for the abolition, on the " commencement " of the Act in any British possession, of every Vice-Admiralty Court in the possession which theretofore had exercised Admiralty jurisdiction.

The due investment of the Exchequer Court of Canada in Admiralty with the jurisdiction defined in the Act of 1890 and the competence of the District Judge in British Columbia to exercise that jurisdiction are not in dispute.

The jurisdiction in Admiralty of the High Court of Justice in England did not extend to claims upon charter-parties at the time when the Colonial Courts of Admiralty Act, 1890, became law. Jurisdiction over such claims was given in the first instance by the Administration of Justice Act, 1920, section 5, in terms which have no apparent reference to courts out of England, since a proviso in the section limits the costs of actions recoverable thereunder in certain events by the amount of the costs which " might have been recovered if the proceedings had been brought in a County Court." The Act of 1920 was among the numerous jurisdictional statutes extending in date from 1873 onward which are consolidated in the Judicature (Consolidation) Act, 1925. The jurisdiction so conferred on the High Court in England is that on which the appellants rely.

In the statutes of 1920 and 1925 there are no words indicative of any express intention on the part of the legislature of conferring any extended jurisdiction on Admiralty Courts overseas.

The words for construction in the Act of 1890 are these :— " The jurisdiction of a Colonial Court of Admiralty shall . . . be over the like places, persons, matters and things as the Admiralty jurisdiction of the High Court of England whether existing by virtue of any statute or otherwise." The appellants claim that these words can only be understood as applying to conditions which are to come into being upon and after the passing of the Act. They offer, in effect, to make the meaning clear by reading into the sentence before the word "existing" the words " from time to time." The respondents on the other hand contend that the jurisdiction defined by the section is sufficiently and indeed unmistakably described as the jurisdiction of the High Court in Admiralty " existing " at the point of time when the Colonial Courts of Admiralty Act, 1890, became law.

Inasmuch as the use of words in the English tongue is not so rigidly governed by rule as to render impossible either of the alternative constructions of the parties, Counsel on both sides properly discussed the subject matter, origin and scope and apparent policy of the Act of 1890, with a view to demonstrate the true intent of the language used.

The establishment, in the overseas dominions of the Crown, of Courts of Admiralty jurisdiction under one common system, in place of the pre-existent Vice-Admiralty Courts called into being as occasion dictated in course of two or three centuries at the discretion of the Home authorities, is the most prominent of the facts in question. In a material passage in the judgment of Martin J. in favour of the appellants, the view taken by the learned judge as to the nature and scope and apparent intention of this transaction is thus stated :—

> "The Vice-Admiralty Courts in Canada were abolished upon the coming into force of this court as established under the Canadian Act of 1891, but if those former courts were still in existence and exercising locally the jurisdiction of the High Court of Admiralty, it would, I apprehend, be clear that their jurisdiction would march with that of the said High Court and increase or decrease as the case might be in accordance with Imperial legislation affecting that Imperial Court. Such being the case, it follows, to my mind, that the present Admiralty Court of Canada . . . likewise marches in the same jurisdiction, and it would require clear language to the contrary to deprive it of the same continuous jurisdiction as is cumulatively possessed by the Imperial Court for the local exercise of whose jurisdiction it is in reality the local machinery and nothing more."

To appreciate the extent to which the jurisdiction of the old Vice-Admiralty Courts was subject to automatic enlargement in harmony with an expanding jurisdiction in the High Court of Admiralty in England it is necessary to bear in mind the relation of the Vice-Admiralty Courts to the High Court during their period of development, the circumstances under which the ambit of the authority of the High Court and of the overseas Courts has been enlarged, and the mode in which as to each the process of expansion has gone on.

The extension of the powers of the High Admiral and his lieutenants or deputies in order to meet the needs which resulted from the growth of the Empire does not need to be described with particularity. (See Marsden, *Law and Custom of the Sea.* Vol. I. xiii.) Selden gives the early form of the commission of the High Admiral, when the jurisdiction had been centred in one officer of state under that title. (Mare Clausum, p. 196.) Marsden sets out the first commission which—in 1643—extended beyond "England, Ireland and Wales and the Dominions and Isles of the same." It included "all the islands and English plantations within the bounds and upon the coasts of America." (Marsden, p. 531.)

The creation of Vice-Admiralty Courts overseas is also dealt with by Marsden (Marsden, *Law and Custom of the Sea*, Vol. II, pp. xiv, xv) ; and Brown's *Civil Law and Admiralty*, published in 1802, presents from the standpoint of a learned civilian a broad view of the then existing system of Vice-Admiralty Courts constituted under commission of the High Admiral or the Lords Commissioners of the Admiralty. The substance of the matter as

things stood before 1890, is concisely presented by an experienced public servant, Sir Henry Jenkyns, in these terms (Jenkyns: *British Rule and Jurisdiction Beyond the Seas*, p. 33):—

> "In civil matters, the most important branch of extra-territorial jurisdiction, that of the Admiralty Court, was, until 1890, mainly exercised by Vice-Admiralty Courts established by an instrument under the seal of the office of Admiralty, issued in pursuance of authority given to the Commissioners of the Admiralty in England by a commission under the Great Seal of the United Kingdom. In practice, a judge of the Superior Court of the possession was always made judge of the Vice-Admiralty Court, but he held that office by virtue of an appointment from the British Admiralty, and not by virtue of his position as judge of the possession. His jurisdiction was vested in him personally, and not in the colonial court."

The jurisdiction exercised by the Vice-Admiralty Courts was commonly that of the High Court of Admiralty. The area of the exercise of the jurisdiction was enlarged as the Empire grew. Its juristic extent was not. For centuries that had been stabilised and strictly limited so far as the High Court of Admiralty was concerned by the vigilant supervision of the Court of King's Bench. The High Court of Admiralty never shared the inherent capacity for development which marked the English Courts of law and equity.

Great extensions of the Admiralty jurisdiction in England were made during the nineteenth century, before the passing of the Colonial Courts of Admiralty Act, 1890. Notable extensions had also been made during the same period by Acts of the Imperial Parliament in the jurisdiction of the Vice-Admiralty Courts. It would be wholly incorrect, however, to suppose that these were extensions of jurisdiction granted to the High Court of Admiralty here and thereupon automatically operative in the Courts overseas. Parliament made its separate grants to the High Court of Admiralty as an English Court. Dr. Lushington, as Judge of the Court, pointed out as early as 1859 that the extensions so made had no effect in the Vice-Admiralty Courts. (See *Rajah of Cochin*, Swabey, 473.) At this Board in the same year the same conclusion was stated (*The Australian*, 13 Moore, at p. 160). Parliament in fact legislated for the High Court and the overseas Courts by numerous unconnected statutes.

The Admiralty Court Acts of 1840 and 1861 conferred specific powers, carefully identified and limited, upon the High Court in England. The Vice-Admiralty Courts Acts of 1863 and 1867 (26 Vict. c. 24; 30 & 31 Vict. c. 45) extended the powers of the Admiralty Courts overseas, not by reference to the powers of the High Court in England, but by scheduled statement of the causes of action in respect of which jurisdiction was newly conferred and specification of other amendments.

So far as the appellants' case rests upon a theory that without statutory action there was before 1890 a historic and progressive growth of Admiralty jurisdiction which was common to the High Court and the Vice-Admiralty Courts, or upon a supposition that

any statutory enlargement of the jurisdiction of the High Court in England operated automatically to enlarge the jurisdiction of the Vice-Admiralty Courts, it cannot be sustained.

How then did Parliament, by the Colonial Courts of Admiralty Act 1890, deal with the condition of affairs which had grown up under the old law ?

The Act has three outstanding characteristics. So far as the " instance " jurisdiction is concerned, its plain intent is the establishment as part of the machinery of self-government within each autonomous area of courts locally constituted, wherein judges locally nominated should exercise such a measure of jurisdiction in Admiralty within prescribed limits as the government on the spot might think convenient. Subject to specific reservations the statute applied to the Empire, and it provided that on the commencement of the Act in any British possession, and subject to its provisions, every Vice-Admiralty Court in the possession should be abolished.

By Section 2 (1) and Section 3, the legislature of an overseas possession is enabled, at its will, to declare a court of unlimited civil jurisdiction within its area to be a Court of Admiralty ; to limit territorially or otherwise the extent of the jurisdiction in Admiralty to be exercised in such Courts ; and to confer partial or limited jurisdiction in Admiralty upon subordinate or inferior courts. In the absence of local legislative action, a court of " original unlimited civil jurisdiction " in any possession is constituted a Court of Admiralty. And by Section 2 (1) " where in a British possession the governor is the sole judicial authority, the expression ' Court of law ' includes such Governor."

Incidentally to the fact that the Act of 1890 empowers self-governing communities to decide for themselves within defined limits what shall be the ambit of the jurisdiction to be exercised by their courts by means of process *in rem*, it is necessary to bear in mind that, even in England, conflict of opinion long existed as to the advantage of extending the availability of this process, and that the right of trial within a local jurisdiction of actions arising elsewhere is not always an unmixed benefit. Opinion may well differ between state and state as to whether, *e.g.*, a port which is chiefly a port of call will be benefited by the existence of a power in all and sundry to arrest vessels found within its limits in order that strangers may litigate in the local court questions which have arisen elsewhere.

The Act of 1890 empowers the legislature in any of the dominions to determine by its own statute, subject to the Royal Assent on the prescribed special reservation, what shall be the extent of the Admiralty jurisdiction of the Courts for which the local legislation provides. Yet, if the contention of the appellants in this case is sound, an Act of the Imperial Parliament, purporting on the face of it to apply to England and the High Court in London, has without any choice of the self-governing states in

the Empire peremptorily enlarged the jurisdiction of their Courts in Admiralty, subject only to a power in them under Section 3 of the Act of 1890 to limit such jurisdiction anew by a new local law, after compliance with the conditions of Section 4 whereby such a law unless previously approved by a Secretary of State, must be "reserved for the signification of His Majesty's pleasure therein or contain a suspending clause."

The present case arises upon an enlargement by the Imperial Parliament of the Admiralty jurisdiction of the High Court in England. But the fact cannot be overlooked that during the last half-century the distribution of business in the High Court in England has been the subject of very numerous enactments, and there is involved in the question now presented for determination the further question whether the withdrawal of any cause of action from Admiralty process in England would *ipso facto* operate a corresponding diminution in Admiralty jurisdiction in the Courts overseas. A construction of the statute of 1890, which would have the singular effect of introducing by an automatic process unasked changes in the jurisdiction and procedure of the Courts of self-governing dominions, with possible power in the local legislature by a cumbrous process to revoke an extension of jurisdiction *in rem*, but no power to undo an unwelcome abatement, manifestly could not be adopted unless the words of the statute should be found to leave no alternative.

Neither the early history of the overseas Courts, the course of modern legislation, continuity of policy, nor practical convenience appear to their Lordships to require that the jurisdiction defined in the Act shall be declared to be that "from time to time existing" in the High Court in England.

On the whole, the true intent of the Act appears to their Lordships to have been to define as a maximum of jurisdictional authority for the Courts to be set up thereunder, the Admiralty jurisdiction of the High Court in England as it existed at the time when the Act passed. What shall from time to time be added or excluded is left for independent legislative determination.

Their Lordships will humbly advise His Majesty that in their opinion these appeals fail. The costs of the respondents must be paid by the appellants.

In the Privy Council.

SNIA VISCOHA SOCIETA NAZIONALE INDUSTRIA APPLICAZIONI VISCOSA

v.

THE SHIP "YURI MARU"

THE CANADIAN AMERICAN SHIPPING COMPANY, LIMITED

v.

THE STEAMSHIP "WORON."

DELIVERED BY LORD MERRIVALE.

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