

QUEBEC ADMIRALTY DISTRICT

THE HARRIS ABATTOIR CO., LTD. PLAINTIFF;

AGAINST

THE SS. *ALEDO* AND HER OWNERS. . . . DEFENDANTS.*Shipping—Jurisdiction—The Admiralty Act, 1861, section 6—Goods carried out of Canada—Action for damage thereto—Practice.*

On July 7th plaintiff delivered a quantity of cheese to the steamship *A* at Montreal for shipment to Copenhagen. The ship did not sail until the 19th, and plaintiff claimed that, owing to this delay, the cheese was damaged by exposure and heat and by failure of the defendant to protect it. To avoid further loss the cheese was removed from the vessel and a new lot of cheese shipped. Action was brought for the loss thereby occasioned.

Held, that although section 6 of the Admiralty Court Act, 1861 (applicable to Canada) is to be liberally construed, the jurisdiction it confers upon the court is clearly confined to cases of damage to goods carried by ships into a Canadian port, and does not extend to the case of goods shipped from Canada to foreign ports.

2. That a mere technical objection to an informality or irregularity in procedure may be waived by appearance, by the giving of bail or by taking a step in the action; but if in fact the court has no jurisdiction over the subject matter of the claim, no delay on the part of the defendant and no step in the action taken by him can give the court jurisdiction.

MOTION to set aside the warrant of arrest and to dismiss action for want of jurisdiction.

September 28, 1923.

Motion now heard before the Honourable Mr. Justice MacLennan at Montreal.

R. C. Holden, Jr. for defendants.

W. L. Bond, K.C. for plaintiff.

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

MACLENNAN L.J.A. now, October 2, 1923, delivered judgment.

This is an action *in rem* for damages against the SS. *Aledo* owned by the United States Shipping Board.

In the statement of claim the plaintiff alleges that on 7th July, 1922, at the port of Montreal, it delivered a quantity of cheese to the SS. *Aledo* for shipment from Montreal to Copenhagen, Denmark, the ship's agents having informed plaintiff that the ship would sail on July 10. On July 11 plaintiff was informed that the ship had not sailed the day before but would leave on the following day,

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July 12. On July 15 plaintiff discovered that the ship was still at her dock, although no notification had been received from her agents that sailing had been postponed, and as a matter of fact she did not sail until July 19, and as a consequence of such delay it was found that the cheese had been damaged from exposure and heat and the failure of defendants to take the necessary steps to protect it, and in order to avoid further loss the cheese was removed from the ship and replaced by a fresh quantity of like nature and quantity. The cheese so removed was reconditioned and was subsequently sold at a loss of \$2,577.20, which the plaintiff alleges is solely attributable to the neglect and default of the defendants in not carrying out their representations, in not sailing with the said cargo at an earlier date and in not protecting the cheese while under their care and control.

The defendants move to set aside all proceedings and for the dismissal of the action for want of jurisdiction, as it appears by plaintiff's statement of claim, that the present action is for alleged damage to goods shipped on board the SS. *Aledo* at Montreal for conveyance to Copenhagen; that the goods were not carried in the said vessel but were discharged at Montreal prior to her departure therefrom and that the goods were not carried into any port in Canada in the SS. *Aledo*.

The question whether or not this court has jurisdiction to arrest the vessel depends upon the construction of section 6 of the Admiralty Court Act, 1861. That section reads as follows:—

The High Court of Admiralty shall have jurisdiction over any claim by the owner, or consignee, or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods or any part thereof by the negligence or misconduct of or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship, unless it is shewn to the satisfaction of the court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales

Section 35 of the same Act enacts that the jurisdiction conferred by the Act may be exercised either by proceedings *in rem* or by proceedings *in personam*.

The provisions of the Admiralty Court Act, 1861, are made applicable to Canada under the Colonial Courts of

Admiralty Act, 1890, and are to be read as if the name Canada were therein substituted for England and Wales.

Section 6 above referred to has been the subject of many judicial decisions in the English Court of Admiralty, and being remedial of grievances which British merchants had against the owners of foreign ships for short delivery of goods brought to England in foreign ships or their delivery in a damaged state, ought to be construed with as great latitude as possible so as to afford the utmost relief which the fair meaning of its language will allow; *The St. Cloud* (1); *The Piève Superiore* (2), and *The Cap Blanco* (3).

The plaintiff's claim is not in respect of goods carried into any port in Canada, but in respect of a proposed shipment from Montreal to Denmark. The section in terms clearly relates to goods carried into any port in England or Wales and, when applied to this country, into any port in Canada. It makes no provision respecting a claim for damage to goods to be carried out of the country and no liberal construction of the statute could cover a shipment of goods going abroad. This was the view expressed by Dr. Lushington in *The Kazan* (4), where he said at page 3:—

The meaning of the section is quite plain. It is confined to the case of goods carried into England or Wales; even Scotland and Ireland are not included. It has nothing to do with goods exported and by contract deliverable abroad.

No case has been cited and my own diligent search has disclosed no case in England or Canada where it has been held that the jurisdiction given to the court as aforesaid extends to a claim in connection with goods carried or to be carried from any port in England or Canada to a foreign country. The claim for damages of that character must be made before some other court having jurisdiction over the subject matter.

The plaintiff submits that defendants having appeared and given bail for the release of the ship after her arrest are not entitled now to raise any question of want of jurisdiction. The objection raised by defendants is not a mere technical objection based on any irregularity or informality in the procedure by which plaintiff entered action or arrested the ship.

(1) [1863] Br. & Lush 4.

(2) [1874] L.R. 5 P.C. 482.

(3) [1913] P. 130; 83 L.J. Adm.

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(4) [1863] Br. & Lush 1.

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The issue of the writ of summons, of the warrant of arrest and giving of bail are matters of procedure and not of jurisdiction and irregularities or informalities in the procedure are mere matters of practice and do not go to the root of jurisdiction. Matters of practice and questions of jurisdiction are two separate and distinct things. A mere technical objection to an informality or irregularity in procedure may be waived by appearance, by the giving of bail or by taking a step in the action, but if in fact the court has no jurisdiction over the subject matter of the claim, no delay on the part of the defendant and no step in the action taken by him can give the court jurisdiction. I had occasion to deal with this phase of the question in *Stack v. The Leopold* (1), and in *Finnigan v. SS. Northwest* (2), where I acted upon the principle that absolute absence of jurisdiction under a statute is quite a different thing from a mere technical objection which could be waived by appearance and other procedure.

I am therefore of opinion that the jurisdiction of the court over the claim in question in this action never attached and that the matter should be left to be settled in a court having jurisdiction to entertain it. There will therefore be judgment setting aside the writ of summons, the warrant and the arrest of the SS. *Aledo*, releasing the bail furnished on her behalf and dismissing plaintiff's action with costs.

Judgment accordingly.

Solicitors for plaintiff: *Messrs Atwater, Bond & Beauregard.*

Solicitors for defendants: *Messrs Meredith, Holden, Hague & Shaughnessy.*

(1) [1918] 18 Ex. C.R. 325.

(2) [1920] 20 Ex. C.R. 180.