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Jan. 12.
Jan. 28.

ON APPEAL FROM THE QUEBEC ADMIRALTY DISTRICT

BETWEEN:—

THE TUG *SPRAY* (DEFENDANT).....APPELLANT;

AND

HERMAN ST. CLAIR (PLAINTIFF).....RESPONDENT.

*Shipping and seaman—Prescription—Action in rem—Maritime Conventions Act, 1914—Interpretation.*

The present action is one *in rem* against the tug *S.* for damages to plaintiff's canal boat, when in tow of the *S.*, as a result of a collision between the said canal boat, a dumb tow, and the wall of the inner basin

of the Harbour of Quebec; which collision was alleged to be due to the negligent navigating of the *S.* The action was commenced more than two years after the date when the damage or loss or injury complained of was caused, and the defence claimed that the action was barred under sec. 9 of the Maritime Conventions Act, 1914. In the trial court defendant's contention was dismissed on the ground that "from the wording of Section 9 and from the object of the Act as read in the preamble and in Section 2, Section 9 only applied to "collision between vessels."

*Held:* (Reversing the judgment appealed from) That Section 9 of the Maritime Conventions Act, 1914, was not limited in its application solely to actions for damages due to collision between vessels, and that the present action not having been commenced within two years from the date when the damages or loss or injury was caused cannot be maintained by the Court and should be dismissed (*The Cairnbahn* (1914) P. 25 followed).

2. That where the text of an enactment of a Statute is clear and unambiguous, no reference to the preamble of the Act is necessary to a proper interpretation of such enactment.

APPEAL from the judgment of the Local Judge in Admiralty, Quebec Admiralty District, rendered herein on the 1st of June, 1927.

The Appeal was heard before the Honourable Mr. Justice Audette at Quebec.

*A. C. M. Thomson* for the appellant.

*Alfred C. Dobell, K.C.,* for respondent.

The facts are stated in the reasons for judgment.

AUDETTE J., now (January 28, 1928), delivered judgment.

This is an appeal from the judgment of the Local Judge in Admiralty holding, upon the grounds set forth in his reasons for judgment, that sec. 9 of The Maritime Conventions Act, 1914, (4-5 Geo. V, ch. 13), applies only to "collisions between vessels" and that, therefore, the limitation within which actions are to be commenced within two years from the date when the damage or loss or injury was caused, as fixed by that section, does not apply to the present case as the collision herein was "between a canal boat, a dumb tow, and the port wall of the Inner Basin of the Harbour of Quebec."

With this view, with the greatest deference, I am unable to agree.

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The judgment appealed from rests its interpretation of sec. 9 of The Maritime Conventions Act (Can. 4-5 Geo. V, ch. 13) upon "the object of this Act as read in the preamble and in section 2."

The text of the enactments of The Imperial Maritime Conventions Act 1911 (1 and 2 Geo. V, ch. 57) is the same as the Canadian Maritime Conventions Act, 1914, (4-5 Geo. V, ch. 13).

The facts of the case are fully set out in the judgment *a quo* and it is unnecessary to repeat them here, suffice it to say that the damages claimed would be the result of a collision "between a canal boat, a dumb tow, and the port wall of the Inner Basin of the Harbour of Quebec," and not between two vessels.

The same questions raised in this case as to the interpretation of the Act came up for decision in England in the cases of *The Cairnbahn* (1), and *The Batavier III* (2).

Sir Samuel Evans, at p. 28 *et seq* of *The Cairnbahn* case, says, *inter alia:*

> It is necessary for the decision of the case to determine the construction to be placed upon sec. 1 of the Act of 1911 (which corresponds to sec. 2 of the Canadian Act). The Act was passed to amend the law in relation to merchant shipping, to enable effect to be given to certain international conventions, which are referred to in the preamble . . . . What is the proper construction of the section? Its language appears to me to be quite plain . . . There is nothing in the section about the two vessels in fault *being themselves* in collision with each other.

The learned President reviews some other points of law raised in that case and then proceeds:

> *If the words in the section which I have to construe were ambiguous, I think I should be entitled to look at the conventions referred to in the preamble,* in order to see whether a reasonable construction could be given to the section which would carry out what was agreed by the high contracting parties to the conventions. *It is not necessary to do this, because the words appear to be unambiguous and clear;* but it is satisfactory to find on reference to the terms of the conventions that the section in its plain meaning does carry out what was agreed.

This decision of so eminent a jurist as Sir Samuel Evans, confirmed by the Court of Appeal and followed by Mr. Justice Hill in *The Batavier III,* has clarified these questions and settled them beyond doubt. *Stare decisis.*

The question of recovery of damages in Admiralty arising out of the collision by something not a ship, etc., had long been settled before the passing of the Act of 1911.

(1) (1914) P. 25. (2) (1925-6) 42 T.L.R. 8.

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*The Mersey Docks and Harbour Board* v. *Turner; (The Zeta)* (1) and the cases cited in Mayer's Admiralty Law and Practice, pp. 110 and 111; Roscoe Admiralty Practice, 4th ed., 80.

I find in the present case that the language of the enactment of section 2 is quite clear and that in a case of that kind the preamble must be discarded to find the meaning of the section. As said on appeal by Lord Parker of Waddington in the *Cairnbahn* case (*ubi supra*), p. 30:

I do not think that such preamble or title can, according to any sound canon of construction, be called in aid to control the meaning of words in themselves clear and unambiguous.

Besides apportioning the damages, the Act, instead of being limiting in scope, has enlarged the scope of the liability to contribute, not merely dealing with the proportion of contribution; but extending to cases where more than two vessels are involved, the Judicature Act being confined to cases in which two colliding vessels only are in fault. *The Cairnbahn*, p. 38 (*ubi supra*); Craies, On Statute Law, 3rd ed., 181; *The Umona* (2).

And as further said by Warrington J., in the Court of Appeals, at page 38, *The Cairnbahn* case

. . . . According to the true construction of the Act, all damage or loss to one or more of the vessels in fault is to be apportioned between these vessels, *whether it arises from collision between them or not.* The enacting words seem to me free from ambiguity, and it would, in my opinion, be improper to seek to control them by reference to the preamble or the headings of the divisions of the Act.

For the considerations to which I have just adverted and for the reasons fully given in the cases above cited, I have come to the conclusion that as the text of the enactment of the statute is clear and unambiguous, no reference to the preamble is necessary to a proper decision of the questions in controversy here. Furthermore it should not be overlooked that all damage or loss to one or more of the vessels in fault is to be apportioned between these vessels whether it arises from collision between them or not.

The appeal is allowed; the action is dismissed as being barred, under sec. 9 of the Act, having not been brought or commenced within two years from the date when the damage or injury was caused. The whole with costs below and on appeal in favour of the defendant appellant.

*Judgment accordingly.*

(1) (1893) A.C. 468.

(2) (1914) P. 141.