ALEXANDER JOHNSTON AND OTHERS (DEFENDANTS) ..... } APPELLANTS;

AND

CANADIAN CREDIT MEN'S TRUST ASSOCIATION (PLAINTIFF) ..... } RESPONDENT.

1931
*Feb. 2, 3.
*Mar. 1.

ON APPEAL FROM THE COURT OF APPEAL FOR BRITISH COLUMBIA

Statute—Construction—"Officer"—Immunity for acts done under ultra vires statute—Whether judicial or public officers—Magistrates Act, R.S.B.C., 1924, c. 150, s. 9.

The term "officer" in section 9 of the British Columbia *Magistrates Act* should not be limited in such a way as to exclude all officers who are not judicial officers from its denotation: such interpretation would involve the contention that an act or thing done by any person, in order to fall within the ambit of the section, must be an act or thing in its nature judicial.

Any public officer, not belonging to any of the specific classes of officers enumerated, is, when performing executive duties, within the descriptive words of the section, and, subject to the conditions prescribed, entitled to claim the benefit of it.

Judgment of the Court of Appeal (44 B.C.R. 354) reversed.

APPEAL from the decision of the Court of Appeal for British Columbia (1), affirming the judgment of McDonald J. (2), and dismissing appellants' motion.

An action was brought against the appellants for trespass and loss of profits incurred by reason of the appellants having in 1926 prevented the Somerville Cannery Company from carrying on the business of salmon-canner. Before the trial this company made an assignment and the respondent became trustee in bankruptcy. The appellant Johnston was the Deputy Minister of Marine and Fisheries, the appellant Found, Director of Fisheries Service, the appellant Motherwell, the Inspector of Fisheries for British Columbia, and the appellant Mackie, a fisheries officer for the district of Prince Rupert. In 1924, the cannery company constructed the bulk of an old steamship into a salmon cannery. In the summer of 1926, when the boat was fastened to the wharf of a cannery on land and operated

*PRESENT: Duff, Rinfret, Lamont, Smith and Cannon JJ.

(1) (1931) 44 B.C.R. 354; [1931] 3 W.W.R. 33; [1931] 4 D.L.R. 569.
(2) (1931 44 B.C.R. 44; [1931] 3 D.L.R. 318.

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for canning salmon, it was seized by the appellants, the fish that were canned were seized, and the company was prevented from operating. The acts of the appellants complained of were performed by them in the execution of their respective offices, and as a result of the company having operated in breach of certain sections of the *Fisheries Act*, which sections were later declared to be *ultra vires* the Dominion Parliament. The appellants moved under marginal rules 282 and 283 of British Columbia for a decision on a point of law raised in the pleadings, namely, that they were protected from an action such as this by reason of the provisions of section 9 of the *Magistrates Act*.

W. N. Tilley K.C. for the appellants.

W. E. Williams K.C. for the respondent.

The judgment of the court was delivered by

DUFF J.—The section to be construed is in these words,

> Sec. 9. No action shall be brought against any Judge, Stipendiary or Police Magistrate, Justice of the Peace, or officer, for any act or thing by him done under the supposed authority of a Statute or statutory provision of the Province or of the Dominion, which Statute or statutory provision was beyond the legislative jurisdiction of the Province or of the Parliament of Canada, as the case may be, provided such action would not lie against him if the said Statute or statutory provision had been within the legislative jurisdiction of the Parliament or Legislature which assumed to enact the same.

We can find no ground in what is known as the *ejusdem generis* doctrine, for limiting the term "officer" in such a way as to exclude all officers who are not judicial officers from its denotation. The rule is a working rule of construction which, properly applied, is of assistance in elucidating the intention of the legislature; although there is too much reason to think that sometimes the result of applying it has been to override that intention. In the present case, we think the governing words are "for any act or thing by him done under the supposed authority of the statute or statutory provision of the province or of the Dominion." It may be that the context would justify the limitation of the scope of the term "officer," so as to restrict its application to public officers; but, beyond that, we can think of no limitation to which it is properly subject, other than that expressed by the words we have just quoted. The

argument that only judicial officers are contemplated logically involves the contention that an act or thing done by any person, in order to fall within the ambit of the section, must be an act or thing in its nature judicial.

Now we find it quite impossible to say that a county judge or a justice of the peace, performing executive duties under a statute, and many such duties are imposed upon such functionaries, is not within the protection of section 9. We can find no reason, no shadow indeed of justification, for so limiting the plain words of the enactment. That being the case, we can perceive no ground for holding that a public officer, not belonging to any of the specific classes of officers enumerated, is not, when performing executive duties, within the descriptive words of the section, and, subject to the conditions prescribed, entitled to claim the benefit of it.

As to the title of the Act, it is to be observed that the title, taken from R.S.B.C., 1924, is " An Act respecting the justices of the peace and other magistrates." These words do not, when read according to common usage, include judges; and they do not, obviously, indicate adequately the character of the provisions of the statute. The title does not, in our view, materially assist in the construction of section 9.

We do not think it is convenient to deal with the contention that the action should be dismissed on the ground that the determination of this question of law virtually disposes of the controversy between the parties. The action is not exclusively based upon the allegation that the relevant provisions of the *Fisheries Act* were *ultra vires*. It is, in part, based upon the proposition that, if *intra vires*, the *Fisheries Act* would afford no protection. No application was made in the court below to strike out the pleading as disclosing no reasonable cause of action, or to dismiss the action as vexatious, and in the factum the only point substantially argued is that just dealt with; and, although the statement of claim seems, in more than one respect, to be objectionable, we think we ought to limit the judgment on this appeal to setting aside the judgments below and declaring that the appellants are " officers " within the meaning of the *Magistrates Act*. The respondents, however, must undertake to go to trial within a reasonable time; the precise date can be fixed on the settlement of the minutes.

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Duff J.

The appellants may have liberty to apply to strike out the statement of claim as embarrassing, or as disclosing no reasonable cause of action, or for particulars, or to dismiss the action as vexatious. The respondents must pay the costs of the appeal to the Court of Appeal of British Columbia, and to this court, the costs of the proceedings before Mr. Justice D. A. MacDonald to be costs in the cause.

Appeal allowed with costs.

Solicitor for the appellants: *Knox Walkem.*

Solicitors for the respondent: *Williams, Manson, Gonzales & Taylor.*