

THE HARBOUR COMMISSIONERS } APPELLANTS; 1914
 OF MONTREAL (DEFENDANTS) ... } *March 3.
 *May 18.

AND

THE SYDNEY, CAPE BRETON AND }
 MONTREAL STEAMSHIP COM- } RESPONDENTS.
 PANY (PLAINTIFFS) }

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA,
 QUEBEC ADMIRALTY DISTRICT.

Statute—"Colonial Courts of Admiralty Act, 1890," (Imp.) 53 & 54
 V. c. 27—"Public Authorities Protection Act, 1892," (Imp.)
 56 & 57 V. c. 61—*Limitations of actions—Effect of statutes—*
Practice and procedure—Jurisdiction.

The "Public Authorities Protection Act, 1893" (Imp.), 56 & 57 Vict.
 ch. 61, does not apply to suits or actions instituted in the Exche-
 quer Court of Canada in the exercise of its jurisdiction as a
 Colonial Court of Admiralty.

APPEAL from the judgment of the Exchequer Court
 of Canada (1), reversing the judgment of Mr. Justice
 Dunlop, local judge for the Quebec Admiralty District
 of the said court, and dismissing the appellants' de-
 murrer to the plaintiffs' action.

The action was for the recovery of damages al-
 leged to have been sustained in consequence of the
 negligence of the Harbour Commissioners in permit-
 ting a shoal patch to remain in a dangerous position
 in the Harbour of Montreal. The Harbour Commis-
 sioners demurred to the action on the ground that the

*PRESENT:—Sir Charles Fitzpatrick C.J. and Idington, Duff,
 Anglin and Brodeur JJ.

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Imperial "Public Authorities Protection Act, 1893," was made applicable to the admiralty jurisdiction of the Exchequer Court of Canada by the provisions of sub-sections 2 and proviso (a) of sub-section 3 of section 2 of the "Colonial Courts of Admiralty Act, 1890" (Imp.), 53 & 54 Vict. ch. 27, and that the plaintiffs' right of action, if any, was barred by the limitation of six months provided by the first section of the "Public Authorities Protection Act, 1893."

On the hearing upon the demurrer before Dunlop, J., local judge for the Quebec Admiralty District of the Exchequer Court of Canada, the demurrer was maintained and the plaintiffs' action was dismissed. By the judgment appealed from, Mr. Justice Cassels reversed this decision and dismissed the demurrer with costs.

Peers Davidson K.C. for the appellants.

Holden K.C. for the respondents.

THE CHIEF JUSTICE concurred in the opinion stated by Cassels J.

IDINGTON J.—This appeal raises the question of whether or not the "Public Authorities Protection Act, 1893," can be pleaded in the Exchequer Court of Canada (in the Quebec Admiralty District) in answer to a claim for damages alleged to have been caused by the negligence of appellants.

The case is presented to us in argument for appellant as one of jurisdiction. Even so, I am by no means convinced that Parliament intended in its creation of the jurisdiction to carry into every place where ex-

exercised the local law now invoked. Indeed, I see many reasons why it might not so intend and especially when we consider that the Statute of Limitations is, generally speaking, a personal privilege having relation to the subject-matter in question in litigation and that, as a defence, it must be clear that the legislature intended to confer it upon the party setting it up. The statute relied upon herein is clearly applicable only to those acting in the United Kingdom and, certainly, is not by any terms used therein or elsewhere made clearly applicable to any causes of action arising elsewhere and not out of any act or omission of those it applies to.

In a sense it may even seem or may be made to seem, as urged here, to be a question of jurisdiction as illustrated in the case of *The Metropolitan Water Board v. Bunn*(1), from which it would seem that the same subject-matter might in one forum give rise to the defence resting upon one statutory limitation and yet be met in another forum by another statute of that sort.

The learned judge of the Exchequer Court, in his reasons, has so fully dealt with the matter that I need not repeat his argument here, but adopt it as properly maintaining his decision.

The appeal should be dismissed with costs.

DUFF J.—I do not think the “Public Authorities Protection Act” can reasonably be said to be an Act relating to admiralty jurisdiction.

I do not think that sub-section 2 of section 2, which authorizes the Colonial Court of Admiralty to exercise

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admiralty jurisdiction in like manner and to as full an extent as in the High Court in England, contemplates the giving effect to such statutes as the "Public Authorities Protection Act" by the colonial court.

I think it is in respect of the exercise of the admiralty jurisdiction *as such* that the phrase "in like manner and to as full an extent as the High Court in England" is used.

I may add that I fully concur in the judgment of Mr. Justice Cassels and I think the appeal should be dismissed with costs.

ANGLIN J.—For the reasons stated by Mr. Justice Cassels, to which I cannot usefully add anything, I would dismiss this appeal with costs.

BRODEUR J.—The Imperial Parliament never intended, when they passed, in 1893, the "Public Authorities Protection Act," that it should apply to Canada in proceedings before our Court of Admiralty. On the contrary, it is formally declared that the limitation enacted by that Act could be invoked only in the actions instituted *in the United Kingdom*.

The appellants rely on a provision of the "Colonial Courts of Admiralty Act" of 1890, in which it was declared that

any enactment in an Act of the Imperial Parliament referring to the admiralty jurisdiction of the High Court in England, when applied to a Colonial Court of Admiralty in a British possession, shall be read as if the name of that possession were therein substituted for *England and Wales*.

That last provision, as we may see, in reading the "Admiralty Court Act" of 1861, is passed with a view of restricting the jurisdiction of our admiralty courts

to cases where the ships are registered in Canada or where the ship's owners, or some of them, are domiciled here.

We cannot, then, under that special provision of the Act of 1890, incorporate the "Public Authorities Protection Act" in our local admiralty jurisdiction when the Imperial Parliament declared specifically it should apply only to actions instituted in the United Kingdom.

It would have required express words or necessary intendment in order that such a provision would apply in our country.

The appeal should be dismissed with costs.

Appeal dismissed with costs.

Solicitor for the appellants: *A. R. Angers.*

Solicitors for the respondents: *Meredith, Macpherson,
Hague, Holden & Shaughnessy.*

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