

## ONTARIO ADMIRALTY DISTRICT.

1951  
 {  
 Oct. 15  
 Oct. 16  
 —

BETWEEN:

WILLIAM G. HALL..... PLAINTIFF;

AND

THE OWNERS OF THE SHIP }  
 ss. QUEBEC..... } DEFENDANTS.

*Shipping—Practice—Motion to dismiss action—Courts of Admiralty Act, 1934, 24-25 Geo. V., c. 31, s. 18(3) (a) (ii) and s. 18(6)—“Goods” does not include a passenger’s luggage—No jurisdiction to entertain action.*

*Held:* That the term “goods” in the Courts of Admiralty Act, 1934, 24-25 Geo. V., c. 31, s. 18(3) (a) (ii) does not include a passenger’s luggage and the Court has no jurisdiction to entertain an action for loss of such.

MOTION to dismiss action on ground that Court lacks jurisdiction to entertain it.

The motion was argued before the Honourable Mr. Justice Barlow, District Judge in Admiralty for the Ontario Admiralty District, at Toronto.

*F. Gerity* for the motion.

*J. D. Johnston contra.*

BARLOW D.J.A. now (October 16, 1951) delivered the following judgment:

A motion by the defendants for an order dismissing this action upon the ground that the Court is without jurisdiction to entertain the action.

The claim of the plaintiff as set out in the statement of claim is for damages for the loss of the luggage of the plaintiff, who was a passenger on the ss. *Quebec*, which luggage was destroyed by a fire which occurred on board the ss. *Quebec* on or about the 14th day of August, 1950, at Tadousac, Quebec. The writ of summons was issued on the 25th day of June, 1951. It was duly served. On the 3rd day of July, 1951, the defendants appeared “under protest” and reserved “all legal objections to the jurisdiction.” The Registrar of the Court gave the following leave:—

This appearance is to stand unconditionally unless the defendants apply within ten days to set aside the writ or service thereof and obtain an order to that effect.

Upon the 13th day of July, 1951, the defendants moved for the relief asked for on this motion as set out above.

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The Courts of Admiralty Act, 1934, being 24-25 George V., chapter 31, section 18(6) provides as follows:—

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18. (6) The jurisdiction of the Court on its Admiralty side shall, so far as regards procedure and practice, be exercised in the manner provided by this Act or by general rules and orders, and where no special provision is contained in this Act or in general rules and orders with reference thereto any such jurisdiction shall be exercised as nearly as may be in the same manner as that in which it may now be exercised by the Court.

No special provision is made in the Admiralty Rules for entering an appearance under protest but it is the practice that has been followed for many years, both here and under the English Admiralty practice, and it has been retained under the above quoted section. See Mayers Admiralty Law and Practice, 1916, p. 225 and cases there cited. See also Roscoe Admiralty Practice, 5th ed. p. 284; *The Theta*, (1894) P. 280; *The Vivar*, (1876) 2 P. 29.

The motion is therefore properly before this Court.

Counsel for the defendants contends that the plaintiff's claim is not one that is properly within the jurisdiction of the Admiralty Court, on the ground that the luggage of a passenger does not come within the term "goods" as used in the Courts of Admiralty Act, 1934, 24-25 George V, Chapter 31. The only section of the Courts of Admiralty Act that can be applicable is Section 18(3) (a) (ii) as follows:

18. (3) (a) Any claim—

(ii) relating to the carriage of goods in a ship.

Does the word "goods" used in this subsection "relating to the carriage of goods in a ship" include a passenger's luggage? No bill of lading was issued. The luggage was only carried as incidental to the carriage of the passenger. The leading case is *The Queen v. The Judge of the City of London Court*, (1883) 12 Q.B.D. 115, which holds that passengers' luggage carried on board a ship is not "goods" as used in the County Courts Admiralty Act, Amendment Act, 1869, the particular section of which is worded as follows:

"or in relation to the carriage of goods in any ship."

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See also Mullins, Marine Insurance Digest, 120; *The Kensington* (1898) 88 Fed. Rep. 331 and on appeal (1899) 94 Fed. Rep. 885.

There was no bill of lading or a contract of carriage with respect to the said luggage, and it is clear to me that the same does not come within the term "goods" as used in the Admiralty Courts Act. It therefore follows that there is no jurisdiction within the Court to entertain the action.

It should be noted that the registry of the ss. *Quebec* was closed on the 27th day of December, 1950, the ship having been destroyed by fire.

An order will therefore go dismissing the action with costs.

*Judgment accordingly.*