

SMITH, C.J.  
&  
MIDDLE-  
TON, J.  
1895.  
—  
Feb. 23.

## ADMIRALTY JURISDICTION.

[SMITH, C.J. AND MIDDLETON, J.]

THE INVERMAY

Plaintiffs,

v.

THE SAN GIOVANNI BATISTA

Defendants.

ADMIRALTY—JURISDICTION OF SUPREME AND DISTRICT COURTS—SALVAGE—"SHIP OR BOAT STRANDED OR OTHERWISE IN DISTRESS ON THE SHORE"—COSTS—THE WRECKS LAW, 1886, SECTIONS 22, 25 AND 28—THE CYPRUS ADMIRALTY JURISDICTION ORDER, 1893, CLAUSES 2, 3 AND 4—COLONIAL COURTS OF ADMIRALTY ACT, 1890, SECTION 2, SUB-SECTION 2—THE MERCHANT SHIPPING ACT, 1854, SECTION 458.

The Cyprus Admiralty Jurisdiction Order, 1893, confers on the Supreme Court of Cyprus an original jurisdiction in salvage cases concurrent and co-ordinate with the jurisdiction in such cases reserved to the District Courts and the Presidents thereof under Clause 4 of the Order.

Where it appears to the Supreme Court that an action for salvage might more conveniently and with less expense to the parties have been brought before the President of a District Court, the same discretion as to disallowing such extra costs to a successful plaintiff as may have been incurred by bringing the action in the Supreme Court will be exercised by the Supreme Court as would be exercised by the High Court of Admiralty in England where actions have been brought in that Court which might otherwise have been instituted in a County Court.

The words "on the shore" in Section 22 of the Wrecks Law, 1886, mean within three miles of the coast of Cyprus.

THIS was an action for salvage brought in the Supreme Court in its Admiralty Jurisdiction.

Upon the day fixed for the determination of the facts in dispute between the parties, a preliminary objection was taken by the counsel for the owners of the cargo of the defendant ship, that the Supreme Court had no jurisdiction to hear the case in first instance, but that, under the terms of Clause 4 of the Order in Council, the proper Court before which the action should have been brought in the first instance was the President of the District Court within whose jurisdiction the salvage services claimed for were rendered.

*Macaskie* for the plaintiffs.

*Pascal Constantinides* and *Economides* for the owners of the cargo.

The arguments sufficiently appear from the judgment.

Feb. 27.

*Judgment*: The claim in this action was to recover salvage, and on the day fixed by the writ of summons for the appearance of the parties before the Court, an objection was raised by the owners of the cargo, who alone appeared

to defend the action, to the jurisdiction of the Court. This objection, stated shortly, was, that in cases of salvage the Cyprus Admiralty Jurisdiction Order, 1893, had conferred no jurisdiction upon the Supreme Court, and that the proceedings to recover salvage should have been taken before the President of the District Court of Kyrenia, under Section 25 of the Wrecks Law, 1886.

SMITH, C.J.  
&  
MIDDLE-  
TON, J.  
—  
THE  
INVERAY  
v.  
THE SAN  
GIOVANNI  
BATISTA.

It was contended that Clause 2 of the Order in Council made the Colonial Courts of Admiralty Act, 1890, applicable to the Supreme Court subject to the conditions, exceptions and qualifications contained in the Order in Council: and that one of these exceptions was contained in Clause 4 by which the jurisdiction of the Presidents of the District Courts in salvage cases was preserved: hence it was argued that in such cases the Presidents of the District Courts alone had jurisdiction, to the exclusion of the Supreme Court acting in its Admiralty Jurisdiction. It was also pointed out that, if this were not the construction of the Order in Council, both an original and appellate jurisdiction in salvage cases would be vested in the Supreme Court, which would be an anomaly; and this was relied upon as strengthening the construction placed upon the Order in Council by the defendant's counsel that no jurisdiction in salvage cases was intended to be conferred upon the Supreme Court.

For the plaintiff it was contended that the Supreme Court has jurisdiction in this case as there is nothing expressly contained in the Order in Council to show that the Admiralty Jurisdiction in salvage cases is not vested in that Court, and that the Wrecks Law, 1886, only applies to cases in which a ship is actually wrecked or likely to become a wreck.

We are of opinion that the Supreme Court has under the Order in Council jurisdiction in salvage cases. Clause 2 of the Order in Council states, "The Colonial Courts of Admiralty Act, 1890, subject to the conditions, exceptions, and qualifications herein contained, shall apply to the Supreme Court of Cyprus as if that Court were a Colonial Court of Admiralty, and the said Court shall have and may exercise all the jurisdiction conferred by the said Act upon a Colonial Court of Admiralty."

By Sub-section 2 of Section 2 of the Colonial Courts of Admiralty Act, 1890, "the jurisdiction of a Colonial Court of Admiralty shall, subject to the provisions of that Act, be over the like places, persons, matters and things as the Admiralty Jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court in England."

SMITH, C.J.  
 &  
 MIDDLE-  
 TON, J.  
 —  
 THE  
 INVERMAY  
 v.  
 THE SAN  
 GIOVANNI  
 BATISTA.  
 —

There is nothing in that Act contained to limit the jurisdiction of a Colonial Court of Admiralty in cases of salvage.

We must, therefore, consider what are the conditions, exceptions, and qualifications contained in the Order in Council with which this Act is made applicable to the Supreme Court. Clause 3 says: "The said Act shall apply to the Supreme Court of Cyprus, subject to the conditions, exceptions, and qualifications following, that is to say: A law passed by the legislature of Cyprus shall be deemed to be a Colonial Law for the purposes of this Order and of the fourth section of the Act."

It appears, therefore, to us, beyond doubt, that the Colonial Courts of Admiralty Act, 1890, is made applicable to the Supreme Court with the sole qualification contained in Clause 3 of the Order in Council.

It follows, therefore, that the jurisdiction of the High Court of Justice in England in Admiralty matters (subject to the provisos set out in certain sub-sections of Section 2 of the Colonial Courts of Admiralty Act, 1890, which do not affect its jurisdiction in salvage cases) is conferred upon the Supreme Court, and there is nothing contained in the Order in Council which expressly limits that jurisdiction in any way.

Clause 4 of the Order in Council states that "any Admiralty Jurisdiction heretofore exercisable by the District Courts established by the Cyprus Courts of Justice Order, 1882, other than the jurisdiction in salvage cases conferred upon the said Courts or the Presidents thereof by 'the Cyprus Wrecks Law, 1886,' shall cease on the day when this Order takes effect."

This clause, whilst preserving the jurisdiction of the Presidents of the District Courts in salvage cases, does not in terms in any way limit the jurisdiction conferred upon the Supreme Court by Clause 2, and we are of opinion that in salvage cases the Supreme Court has a concurrent jurisdiction with the Presidents of the District Courts.

It may be thought anomalous that the Supreme Court should have an appellate jurisdiction in salvage cases under Section 25 of the Wrecks Law, and an original jurisdiction in salvage cases under the Order in Council: but the same anomaly exists in England where the Admiralty Division of the High Court has appellate jurisdiction over Admiralty cases brought in the County Courts and an original jurisdiction also.

The County Courts in England on which Admiralty Jurisdiction has been conferred can entertain actions for salvage where the amount claimed does not exceed £300, or the value of the property salvaged does not exceed £1000: and in such cases an appeal would lie to the Admiralty Division of the High Court, but the plaintiffs in such actions

may, if they prefer it, commence their actions in the Admiralty Division of the High Court. The result would probably be that if an action were commenced in the High Court, which might more conveniently have been tried in a County Court, the plaintiff, if successful, would probably be awarded only such costs as he would have been entitled to had he brought his action in the County Court, unless he could show some good reason for bringing the action in the High Court. We should probably take the same view here, and in the case of an action for salvage brought in the Supreme Court which might more conveniently have been brought before the President of a District Court a successful plaintiff might find himself saddled with any costs incurred by reason of the action having been unnecessarily brought in the Supreme Court. For these reasons we are of opinion that the Supreme Court has, under the Cyprus Admiralty Jurisdiction Order, 1893, jurisdiction to entertain actions for salvage and we, therefore, overrule the objection of the defendant.

With regard to the point that the Wrecks Law, 1886, is confined to cases of actual wreck on the shores of Cyprus, we cannot agree with this construction of the law. Section 22 of the Wrecks Law, 1886, says: "Whenever any ship or boat is stranded or otherwise in distress on the shore of any sea or tidal water, situate within the limits of Cyprus," etc.

We do not know whether the argument of the learned counsel for the plaintiff went quite to the extent, either that the ship must be a wreck or physically on the shore, inasmuch as he stated that his contention was, that the ship must be either a wreck or in imminent danger of becoming one. In the present case, according to the facts alleged by him, there was imminent danger of the defendant ship becoming a wreck, as the allegation was that she was almost upon the rocks when the steamship came to her assistance. The circumstances alleged certainly bring the case within the words "otherwise in distress."

Neither do we think it necessary that the ship should be actually upon the shore, as in that case she would be stranded, and it would be difficult to see what meaning would be assigned to the words or "otherwise in distress on the shore." The words of Section 22 of the Wrecks Law, 1886, are taken directly from Section 458 of the Merchant Shipping Act, 1854, the only difference being the substitution of the word "Cyprus" for the words "United Kingdom." It has been decided by the Admiralty Court in England that the cases contemplated by the section are cases of wreck and distress occurring within the three mile limit. This construction appears to us to be a reasonable one and one that we should ourselves adopt.

*Objection over-ruled.*

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