Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of Gaudet v. *Brown (the Cargo ex "Argos")*, *and Geipel and others* v. *Cornforth (ship "Hewsons")*, *from the High Court of Admiralty ; delivered* 18*th February*, 1873.

Present :

Sir James W. Colvile.
Sir Barnes Peacock.
Sir Montague Smith.
Sir Robert P. Collier.

THESE are appeals from the Judge of the High Court of Admiralty in two cases brought before him on appeal from the city of London Court and the County Court of Durham, in which, contrary to his own opinion, and in deference to the decision of the Court of Common Pleas, in the case of Simpson *v.* Blues (L. R., 7 C. B. 290), he reversed the judgments given by the Courts of First Instance in favour of the Plaintiffs, on the ground that these Courts had no jurisdiction to entertain the suits; granting at the same time leave to appeal to Her Majesty in Council.

The two appeals involve substantially the same question upon the construction of the County Courts Admiralty Jurisdiction Amendment Act 1869, and were argued together.

In the first case (Cargo *ex* Argos) the Plaintiff instituted a suit for freight, demurrage, and expenses in the City of London Court by proceeding *in rem* against the goods, viz., 147 barrels of petroleum, which had been shipped by the Defendant in London on board the Plaintiff's ship, the "Argos," under

a bill of lading, making them deliverable at Havre, to order or assigns. It was alleged that the French Authorities at Havre having refused to allow the petroleum to be discharged at that port, the "Argos" endeavoured to land it at Honfleur and Trouville, but not being permitted to do so, took it back to London; the claim was for freight, back freight, demurrage, and expenses. Various defences were made, but it is sufficient, having regard to the advice which their Lordships propose to tender to Her Majesty, to indicate the nature of the suit, without entering further upon the facts. The suit was heard upon the merits in the City of London Court, and also on appeal in the Court of Admiralty, without any objection on the ground of want of jurisdiction; but, pending the consideration of the judgment on appeal, the case of Simpson *v.* Blues was decided. The learned Judge then directed the question of jurisdiction to be argued before him, and ultimately, in deference to the opinion of the Court of Common Pleas, whilst declaring his own opinion to be otherwise, reversed the judgment, without giving any decision upon the merits.

In the other case (the Hewsons) the parties were reversed. The suit was instituted by the Plaintiff, the charterer against the owner of the ship by proceeding *in rem*, for a breach of the charter. The Plaintiff had chartered the ship for successive voyages from Hartlepool to the Elbe during a definite period. It was complained that, after the ship had performed four voyages, her owners refused to complete the charter by making others pursuant to its terms. In this case an objection to the jurisdiction was made in the County Court, but over-ruled, and judgment given for the Plaintiff upon the merits against one of the Defendants.

The question turns upon the proper construction of the County Court Admiralty Jurisdiction Amendment Act, 1869, by which jurisdiction is given to County Courts (appointed to have Admiralty Jurisdiction) to try and determine causes (amongst others) "as to any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of goods in any ship," provided the amount claimed does not exceed 300*l.*

The broad contention on the part of the Respondents is, that this Statute has given to the County

Courts no more than a portion or branch of the existing jurisdiction which the Court of Admiralty then possessed; and if this be the scope and true meaning of the Statute, the objection made to the competency of the County Courts to entertain these suits must prevail, because it is plain that the Court of Admiralty itself had not, in virtue of any authority derived either from the Crown or from Parliament, any original jurisdiction over such suits. This last proposition was not controverted on the part of the Appellants; but it was contended that the Act of 1869 has intentionally given a new and enlarged jurisdiction to the County Courts appointed to have Admiralty jurisdiction, over subjects of claim beyond those cognizable by the Court of Admiralty.

It was not, on behalf of the Respondents, denied that the language of the Statute is large enough to include the present claims; but the contention at the bar was, that it may be collected from the Act itself, when read with the first Statute conferring on the County Court Admiralty jurisdiction, that the Legislature intended no more by the second Act than to give the County Courts a further part of the existing jurisdiction belonging to the Court of Admiralty which had been omitted from the first Act; and that the wide language of the enactment must be so construed as to limit its operation to this object. The question is thus raised, whether, by the legitimate application of recognized rules of interpretation, this intention can be collected from the Statutes with such distinctness as to justify a construction so greatly at variance with the ordinary and natural meaning of the words employed by the Legislature.

The County Courts Admiralty Jurisdiction Act, 1868, for the first time gave any Admiralty jurisdiction to the County Court. That Act empowered the Queen in Council to appoint any County Court to have Admiralty jurisdiction, and to assign districts to such Courts within which it might be exercised. It then enacts that any County Court having Admiralty jurisdiction shall have jurisdiction to try and determine certain causes, which in the Act are referred to as "Admiralty causes," and among them in the words of the Statute:—"As to any claim for damage to cargo, or damage by collision . . . in which the amount claimed does not exceed 300*l*."

The 6th clause of the Act authorizes the Court of Admiralty to transfer any Admiralty cause pending in a County Court to itself, and the 8th clause enables the County Court Judge so to transfer causes.

By the 26th section an Appeal from the judgments of the County Courts in Admiralty causes is given to the High Court of Admiralty.

A further provision is made by the 7th section directing the Judge of the County Court, in case, during the progress of an Admiralty cause, it should appear that the subject-matter exceeded the limit of amount, to transfer the cause to the Court of Admiralty, which is empowered either to retain or remit it to the County Court.

It appears to be agreed that this Act gave to the County Court no more than a portion, limited as to subject-matter and amount, of the jurisdiction then actually possessed by the High Court of Admiralty. The provisions above referred to are all consistent with what appears to be the scheme of the Act, viz., to confer on selected County Courts certain portions of the jurisdiction then belonging to the High Court of Admiralty to be exercised by them subordinately to the High Court.

The original jurisdiction of the Court of Admiralty (using that term to distinguish it from that given to the Court by modern statutes), as it was understood to stand after the long and memorable conflicts with the Courts of Common Law, which virtually closed in the reign of Charles II, did not extend to claims arising upon charter-parties, bills of lading, or other agreements relating to the use or hire of ships, or the carriage of goods.

Before, however, the passing af the County Court Acts of 1868 and 1869, the Court of Admiralty had, by statute, acquired a partial and limited jurisdiction over certain contracts relating to the carriage of goods.

"The Admiralty Court Act, 1861," 24 Vict., c. 10, which was passed "to extend the jurisdiction and improve the practice of the High Court of Admiralty," enacts (section 6) "that the Court shall have jurisdiction over any claim by the owner or consignee or assignee of any bill of lading of any goods carried into any port in England or Wales, in any ship, for damages done to the goods,

or any part thereof, by the negligence or misconduct of, or for any breach of duty or breach of contract on the part of, the owner, master, or crew of the ship;" unless it was shown to the satisfaction of the Court that, at the time of the institution of the suit, any owner or part owner of the ship was domiciled in England or Wales. The Court of Admiralty thus acquired jurisdiction over some claims arising out of contracts relating to the carriage of goods in ships, but in a very partial and limited manner. The jurisdiction is confined to claims by the owners, &c., of goods, and to cases where the goods are brought into an English port, and no owner or part owner of the ship is domiciled in England. No jurisdiction is given in the converse case of claims by the owner of the ship against the owner of the goods, and no jurisdiction whatever is given in the case of claims arising out of charter-parties or other agreements for the use or hire of ships.

This was the state of the jurisdiction of the High Court of Admiralty in relation to claims arising upon contracts for the carriage of goods when the County Court Acts of 1868 and 1869 were passed.

It has already been shown that the Act of 1868 gave to County Courts, only a partial and limited jurisdiction to try and determine "Admiralty Causes," relating to "any claim for damage to cargo," in which the amount did not exceed 300*l.*

Their Lordships now come to the consideration of the Act of 1869. They will, in the first place, examine the enactment itself which is to be construed. It was enacted (section 2) "that any Court appointed to have Admiralty jurisdiction" (these words are descriptive only of the Court) "shall have jurisdiction . . . . to try and determine the following causes—as to any claim arising out of any agreement made in relation to the use or hire of any ship, or in relation to the carriage of any goods in any ship."

This enactment, taken by itself, is certainly plain and intelligible, and the language is free from ambiguity. The described Courts are to have jurisdiction to try and determine causes relating to certain claims. The first head of claims is, "any claim arising out of any agreement made for the use or hire of any ship." These words plainly and in

apt language describe contracts for the use or hire of ships, *e.g.*, charter-parties, and not agreements for the mere carriage of goods, which are described and provided for in the next branch of the enactment thus: "or in relation to the carriage of goods in any ship." Now, if the contention is allowed to prevail that no jurisdiction was conferred on the County Courts by this Act beyond that belonging to the Court of Admiralty, the consequence would be that no operation would be given to the first branch of the enactment relating to claims arising out of agreements for the use or hire of any ship, for the Court of Admiralty had no jurisdiction, either originally or by statute, over such claims. There appears to their Lordships to be great difficulty in an interpretation which would nullify this first and important branch of the enactment, and practically cut it out of the statute; and if this cannot legitimately be done, it would follow that some new jurisdiction beyond that possessed by the Court of Admiralty was given to the County Courts; and if any were so given, the whole contention of the Respondent, which rests on the hypothesis that no such new jurisdiction was conferred, necessarily fails.

The words which describe the second head of claim viz., "any claim arising out of any agreement in relation to the carriage of goods in any ship," are clearly wide enough to comprehend claims, as well on the part of the owners of ships as the owners of goods; thus again, in terms at least, going far beyond the partial jurisdiction given to the Court of Admiralty by the Admiralty Court Act, 1861, in favour only of the owners of goods.

It cannot be denied that it was intended by the Act of 1869 to give to the County Courts some new jurisdiction over claims arising out of agreements between shipowners and merchants beyond that bestowed on them by the Act of 1868, which gave jurisdiction only over "any claim for damage to cargo," but it was contended for the Respondents that these last words, not being sufficiently large to include all the jurisdiction given to the Court of Admiralty by the Admiralty Court Act, 1861, in favour of the owners of cargo, the Act of 1869 was passed merely to supply this deficiency. If this were really meant to be the limited scope of the second Act, it is reasonable to suppose that the language of

the Admiralty Act 1861, would have been followed, or at all events that some words would have been used to indicate this limited intention. It seems scarcely conceivable, if the only object of the County Court Act of 1869 had been to give the County Courts so much of the partial and limited jurisdiction of the Admiralty Court Act, 1861, as had not been included within the Act of 1868, and no more, that the wide language actually found in it should have been employed—language which describes with accuracy entirely new heads of claims, viz., those arising from agreements relating to the use and hire of ships, and claims by shipowners in relation to the carriage of goods, which had no place in the Admiralty Court Act, 1861.

It was contended for the Appellants that, besides these considerations, the context of the Statute of 1869, really supported, or, was at the least, consistent with the presumption of an intention to give the new jurisdiction, which the language of the enactment, taken by itself, would undoubtedly confer.

Differences in the language and provisions of the Acts of 1868 and 1869 were relied on in support of this contention which appear to be deserving of consideration.

The causes described in the Act of 1868 are referred to as "Admiralty causes," whereas in the 2nd section of the Act of 1869, which gives the new jurisdiction, the descriptive word is "causes" only. Again, the 5th section of the Act of 1869 empowers the Judge to appoint "mercantile assessors," in any Admiralty or maritime cause. In a technical sense, Admiralty causes are no doubt maritime causes, but the latter word is introduced for the first time in the second Act, as if to designate causes which could not be strictly referred to as Admiralty causes. The power itself to appoint mercantile assessors, given for the first time, may not unreasonably be regarded as an indication that the Legislature really intended to confer enlarged mercantile jurisdiction upon the County Courts, in which the experience of merchants would be useful to the Judges.

On the other hand, their Lordships have felt the full force of the contention that, having regard to the general tenor and provisions of the two County

Court Acts, it ought not to be presumed that the Legislature intended to give to these Courts a large jurisdiction over mercantile causes not possessed by the Court of Admiralty itself, under the guise of maritime jurisdiction. Very strong grounds certainly exist against making such a presumption, if the construction of the Act depended on an implication from language capable of two meanings. The second County Court Act is directed to be read and interpreted with the first; and the first, so far at least as it relates to claims arising out of contracts for the carriage of goods, did not confer more, if so much, jurisdiction, on the County Courts as the Court of Admiralty possessed under its own act of 1861. The Act of 1869 is, in some respects, a supplement to that of 1868, and it might not be unreasonable to suppose that the Legislature only intended to give by the second Act further Admiralty jurisdiction, properly so called.

The new mercantile jurisdiction in question, if conferred, certainly establishes an eccentric system of procedure, calculated, in its operation, to lead to anomalous and inconvenient results. In the first place, it confers on the County Courts appointed to have Admiralty jurisdiction, power to determine important mercantile causes up to the value of 300*l.*, which are not within the jurisdiction of the Court of Admiralty itself, and properly belong to the domain of the Common Law Courts. The appeal is given not to the Courts which have jurisdiction over such causes when they exceed 300*l.* in value, but to the Court of Admiralty, which has not; and power is conferred on that Court to transfer the causes to itself, and determine them, although possessed of no original jurisdiction to try them. One consequence of this legislation must obviously be to increase the risk of conflicting decisions on important questions of mercantile law, inasmuch as the determination of these questions when the value is above 300*l.* will belong to the Queen's Superior Courts of Law and Equity and to the Courts of Appeal from them; and when below that amount, to the County Courts and to the special Appellate jurisdiction provided by the Act. A further anomaly, which may lead to practical inconvenience, arises from the fact that claimants within the limit of 300*l.* may seize the ship or

cargo (as the case may be) by proceeding *in rem*, whilst those above this limit have no such power. This difference in remedy involves much more than a distinction in procedure, and may, among conflicting claimants, lead to inconvenience, if not to undue advantage to some, and prejudice to others.

It is, however, to be observed that some of these anomalies must still exist, even if the construction of the Act be limited. The County Courts would still have jurisdiction over claims by owners of cargo in certain cases, and over claims of damage caused by collision up to 300*l*., with the power of proceeding *in rem*, and with an appeal to the Court of Admiralty; although, no doubt, the great anomaly of giving Admiralty procedure to the County Courts in causes which the Court of Admiralty itself could not entertain, does not exist in these cases.

Their Lordships, whilst fully appreciating the effect of the anomalies and inconveniences above referred to, and of others which are pointed out with great force in the judgment of the Court of Common Pleas in the case of Simpson *v.* Blues, still feel the difficulty of limiting, by judicial construction, the plain and unambiguous words of the Statute, especially when one of the consequences of the limitation must be, to leave without operation the important branch of the enactment relating to agreements for the use and hire of ships. Even in cases where words are ambiguous and capable of two constructions, the rule is to adopt that which would give some effect to the words rather than that which would give none.

The rule declared by the judges in delivering their opinion to the House of Lords in the Sussex Peerage case (11 Cl. and Fin. 143) appears to be applicable to the present Statute. It is as follows: "The only rule for the construction of Acts of Parliament is that they should be construed according to the intent of the Parliament which passed the Act. If the words of the Statute are in themselves precise and unambiguous, then no more can be necessary than to expound these words in their ordinary and natural sense. The words themselves alone do in such case best declare the intention of the law-giver." The words of the present Statute are precise and unambiguous, and, in spite of the

anomalies pointed out, it would be difficult to say that, when construed in their natural and ordinary sense, they lead (to use the words of Parke B. 2, M. and W. 195) "to manifest absurdity," and must therefore be qualified.

The Legislature, having regard to the convenience of speedy remedy and decision, when witnesses were on the spot and available, may have considered that the County Courts which in maritime districts were appointed to have Admiralty jurisdiction, and which under the first statute possessed a partial jurisdiction over mercantile agreements relating to cargo, might be entrusted to determine, with the aid of mercantile assessors, other mercantile and maritime causes relating to charterparties, bills of lading, and similar agreements up to the value of 300*l.*; and they may further have thought that, as these County Courts were invested with Admiralty procedure, the new causes should be dealt with as Admiralty causes, and the Appeal should go to the Court of Admiralty. If such really was the intention of the Legislature, however it may be regretted by those who value the symmetry of legal procedure, it has certainly used apt, precise and unambiguous words to define the new causes it meant to add; and their Lordships find themselves unable to affirm that the Legislature did not mean what it has plainly said.

The cases which were cited, with the exception of Simpson *v.* Blues, throw little light upon the construction of this peculiar statute. The rule that the generality of the words of a statute may in some cases be restrained by evidence of intention to be collected from other parts of it, has been indeed applied to the construction of statutes *in pari materia* with the Act in question. (See the "St. Cloud," Bro. and Lush., 4. The "Dowse," L. R., 3 A. and E., 135. Everard *v.* Kendall, L. R. 5 C. B., 428. Smith *v.* Brown, L. R. 6 Q. B., 729.) But in all these cases there were subjects to which the words were properly applicable, and which would satisfy them, when construed in a limited sense. It should be observed that in the "Dowse" the present learned Judge of the Admiralty distinguished the second County Court Act from the first in the same way as he has done in the judgments now under appeal, and that in the case of Brown *v.* Smith,

Mr. Justice Blackburn doubted as to the correctness of the decision, although the words in that case were much more capable of receiving, properly and without violence, a limited construction than those of the Act now in question.

Their Lordships have felt that the judgment of the Court of Common Pleas in Simpson *v.* Blues is entitled to great consideration, from the authority due to the Court, and the force with which the reasons for the decision are stated; and they would have been glad to have been able to rest upon it. The Queen's ordinary Courts of Law, which hold the power of prohibition, must in the end decide questions of jurisdiction; and when their opinion has been fully declared, it must and ought to be acquiesced in: but if, when the question has been brought before them on Appeal, their Lordships now yielded to the decision of the Court of Common Pleas, they would in effect conclude an important question of jurisdiction, in a manner contrary to the opinion of the Judge of the High Court of Admiralty, and, as at present advised, their own, upon the authority of the judgment of one only of the Common Law Courts, pronounced on a summary application, from which there was no appeal. They think, before this conclusion is reached, an opportunity should be given for further consideration of the statute. They will therefore think it right to advise Her Majesty to remit the causes to the Judge of the Court of Admiralty, to be disposed of on the merits. The parties will be enabled, if so advised, to take proceedings which may lead to pleading in prohibition.

It was suggested in the argument that, if "maritime" causes in the Act of 1869 meant suits different from Admiralty causes, such suits were not within the Appeal Clause (section 26) of the Act of 1868, which gave an Appeal only in "Admiralty causes." The word "maritime" is very vaguely used in the second Act, possibly to indicate causes other than Admiralty causes properly so called, and probably with no reference to the fact that Admiralty causes are technically styled "maritime." However this may be, it certainly seems to have been intended, by the scheme of the Act, to treat these new maritime causes as Admiralty causes, and that the Appeal should be to the Court of Admiralty.

Indeed, the fact that the Appellate Jurisdiction would belong to that Court has been strongly relied on to support the limited construction contended for by the Respondents.

It is unfortunate that a Statute dealing with important questions of jurisdiction, largely affecting commercial disputes, should be so framed as to afford ground for doubt and conflicting interpretations; and the Legislature may perhaps think it right to remove, by some explicit declaration, the inconvenience thus created.

In the result, their Lordships will humbly advise Her Majesty to reverse the judgments appealed from, and to remit both causes to the High Court of Admiralty. They think the parties should bear their own costs of these Appeals.

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