

QUEBEC ADMIRALTY DISTRICT.

FREDERICK R. JOHNSON *ET AL* PLAINTIFFS;

VS.

THE SHIP *CHARLES S. NEFF* DEFENDANT.

1918

January 4.

Reasons for
Judgment.MacLennan
D.L.J.A.*Shipping—Practice—Order for removal from one district to another.**Held:* That it is clearly in the discretion of the court to order the removal of a suit from one district to another upon cause shown.

2. That the determining factor in granting such an order is that of general convenience to the parties.

MOTION by defendant to have this case removed from the Quebec Admiralty District to the Toronto Admiralty District on the ground of balance of convenience.

January 4th, 1918.

Motion heard before the Honourable Mr. Justice MacLennan at Montreal.

J. A. H. Cameron, K.C., for plaintiff.

W. B. Scott for defendant.

MACLENNAN, D. L. J. A. now (January 4th, 1918), delivered judgment.

Motion by defendant to transfer this cause to the registry of the Toronto Admiralty District on the ground that the balance of convenience is in favour of having the trial take place in Toronto instead of in Montreal having regard to all the circumstances of the case.

1918

JOHNSON
ET AL
v.
THE SHIP
CHARLES S.
NEFF.

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D.L.J.A.

Before the institution of the present action, a suit in respect of the same matter had been instituted in the Toronto Admiralty District and that a suit is still pending and undetermined. It is established by affidavits filed herein that all the witnesses on behalf of the defendant live in the City of Hamilton, Ont., and the City of Milwaukee, Wis., U.S.A.; the plaintiff Johnson lives in Port Colborne, Ont., and Adam Brown MacKay lives in Hamilton; in fact, all the witnesses with one or two exceptions, live at points west of Toronto.

The authority for the removal of the suit from this district is found in the Admiralty Act, R.S., ch. 141, S. 18, sub. sec. 2, which reads as follows:

“Any party to a suit may, at any stage of such suit, by leave of the court, and subject to such terms as to costs or otherwise as the court directs, remove such suit pending in any registry to any other registry.

The order asked for is clearly within the discretion of the court and the determining factor is the general convenience to the parties. The additional expense of bringing the witnesses to Montreal for trial would be considerable, but I think it is proper to take into consideration also personal inconvenience to a large number of witnesses and probably counsel and solicitors of having to travel the additional distance and the time required to attend the trial in Montreal instead of Toronto. Counsel for defendant has undertaken to procure the consent of the surety company which gave the bond for the release of the *Charles S. Neff* to the removal of the suit.

There will be judgment on the motion in favour of the defendant, and the suit including all proceedings had herein to date, will be removed to the Toronto

Admiralty District, costs of the motion to be costs in the cause, but the order of removal will not go into effect until the defendant has filed with the deputy registrar of this district, a consent in writing of the United States Fidelity and Guarantee Company that the bail bond given by it for \$105,000.00 shall remain in full force and effect after removal of the suit to the Toronto Admiralty District; all other questions in the suit are to be determined by the judge in the Toronto Admiralty District.

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Judgment accordingly.
