

ON APPEAL FROM THE TORONTO ADMIRALTY DISTRICT.

1917

Dec. 1.

FRED JOHNSON,

(PLAINTIFF) APPELLANT,

AND

ADAM BROWN MacKAY,

RESPONDENT,

v.

THE STEAMSHIP "CHARLES S. NEFF"

(No. 1.)

*Shipping—Admiralty law—Appeal—Jurisdiction—Leave of Court.*

The Exchequer Court, sitting in appeal, cannot entertain an appeal from an interlocutory decree without leave having previously been obtained from either the local Judge in Admiralty or from the Judge of the Exchequer Court, as required by sec. 20 of the *Admiralty Act* (R.S.C. 1906, c. 141).

**A**PPEAL from the Toronto Admiralty District.

The appeal came on for hearing before the Honourable Mr. Justice Audette at Ottawa, December 1st, 1917.

*J. A. H. Cameron, K.C., for Johnson.*

*Langs, for MacKay.*

*M. J. O'Reilly and Scott, for the Ship.*

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JOHNSON  
v.  
S.S. "CHARLES  
S. NEFF."

Reasons for  
Judgment.

At the conclusion of the argument the following judgment was delivered.

AUDETTE, J. (December 1, 1917)

I do not see that there will be anything gained by my taking this case under advisement. The matter is so clearly before me, and the question that I will have now to decide is succinctly boiled down to one as to whether or not under sec. 20 of the Admiralty Act (1), this court, sitting in appeal from a local Judge in Admiralty, can be seized of an appeal from an interlocutory decree without leave having previously been obtained from either the local Judge in Admiralty or from the Judge of this Court.

This is a statutory enactment whereby I am bound, and failing to have such leave this court is not seized with the proper jurisdiction to entertain the appeal.

Moreover, under the jurisprudence of this court, the expression jurisprudence taken as used in the Province of Quebec, I have to follow the decision of my colleague, who has already passed upon a similar subject in the case of *251 Bars of Silver v. Canadian Salvage Association* (2), wherein he decides that when a mode of appeal is prescribed by statute, the same must be followed in its entirety, citing in support of such decision *Brown on Jurisdiction*, wherein it is stated: "The mode of appeal must follow the statute, and when the statute requires that the appeal shall be taken in a specified manner, it must be followed as to time, manner, and the fulfilling of all the statutory directions." See also *Supervisors v. Kennicott* (3).

(1) R.S.C. 1906, c. 141.

(2) 15 Can. Ex. 367.

(3) 94 U.S. 498.

Following this decision and finding myself bound by the statute, I dismiss the appeal with costs.

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JOHNSON  
v.  
S.S. "CHARLES  
S. NEFF."

*Appeal dismissed.*

Reasons for  
Judgment.

Solicitor for plaintiff: *J. A. H. Cameron.*

Solicitors for MacKay: *Langs & Binkley.*

Solicitor for Ship "Charles S. Neff": *M. J. O'Reilly.*