BETWEEN:

HER MAJESTY THE QUEEN .....PLAINTIFF;

AND

GARTLAND STEAMSHIP COMPANY AND ALBERT P. LABLANC } DEFENDANTS.

1958
Feb. 7
Feb. 19

Practice—Judgment—Motion for leave to present further argument after judgment entered—Jurisdiction of trial judge—Motion dismissed.

Held: That after a judgment has been pronounced and entered the Court is powerless to entertain a motion to hear further argument on a matter of law which was considered in the judgment.

MOTION for leave to present further argument after judgment.

The motion was heard before the Honourable Mr. Justice Cameron in Chambers.

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C. F. H. Carson, Q.C. and *G. B. S. Southey* for the motion.

F. O. Gerity and *P. B. C. Pepper contra.*

CAMERON J. now (February 19, 1958) delivered the following judgment:

Judgment was pronounced in this case on January 25, 1958, and on that date, in compliance with the requirements of s. 81 of the *Exchequer Court Act,* copies of the written Reasons for Judgment were filed in the Court's Registry. On the same date, the following entry was made in the Court's Docket Book:

JUDGMENT FOR PLAINTIFF IN THE SUM OF $367,823.49 AND COSTS BUT BY REASON OF LIMITATION OF LIABILITY TO WHICH THE DEFENDANT, GARTLAND STEAMSHIP COMPANY, IS ENTITLED, ITS LIABILITY FOR DAMAGES IS LIMITED TO $184,383.50.

On February 7 I heard a motion by counsel for the Crown "for leave to present further argument on the issue as to limitation of liability in the light of the decision of the Privy Council in *Nisbett Shipping Co. Ltd. v. Reginam*[1]". In my reasons for judgment I referred to that decision which was pronounced after the conclusion of the trial in the present case.

Mr. Carson, counsel for the Crown, submits that as he had no opportunity at the trial of discussing the applicability of that decision to the question of limitation of liability, he should now be allowed to do so. While the matter now before me is one for leave to present further argument, and consequently nothing was said directly as to the applicability or otherwise of the *Nisbett Shipping* case (*supra*) to the present one, I think I may assume that if leave were granted, a submission would be made that the judgment of the Judicial Committee of the Privy Council is open to an interpretation other than that made by me, or that it has here no application whatever; and that consequently the judgment should be varied or amended.

Mr. Gerity, counsel for the defendants, opposed the application on the ground that the Court is without jurisdiction to grant leave to present further argument. The submission is that when a judgment has been entered, the

[1] [1955] 3 All E.R. 161.

Judge pronouncing the judgment is *functus officio*; the entry in the Court's Docket Book referred to above, it is said, is, in the circumstances, an entry of the judgment.

Mr. Carson, however, submits that the entry in the Court's Docket Book does not constitute an entry of the judgment; that the judgment is not "entered" until the formal order containing the minutes of judgment has been brought in by the parties, settled and then entered. Until the judgment has been so entered, the Court, it is said, has power to vary its own orders. Reference is made to the cases set out at p. 1333 of the *Ontario Judicature Act* (Holmsted and Langton, 5th Ed.,); to the recent decision of the Court of Appeal in England in *Harrison v. Harrison*[1], and to Halsbury, 2nd Ed., Vol. 19, para. 560, where it is stated:

> Until a judgment or order has been entered or drawn up there is inherent in every Court the power to vary its own orders so as to carry out what was intended and to render the language free from doubt, or to withdraw the order so that the decision may be reconsidered.

The more limited powers of correction after the judgment or order has been entered or drawn up are set out in the following paragraph 561. Counsel for the Crown does not suggest that the present application falls within any of such limited powers and it is clear that it does not. There it is stated: "But it (i.e., the power of correction) does not apply where the judgment or order correctly represents what the Court intended and where the Court itself was wrong, nor enable one form of judgment to be substituted for another."

The first question for determination, therefore, is whether the entry in the Court's Docket Book on January 25 was "an entry of the judgment". In my opinion it was. The duty of a Judge to direct that judgment be entered and the authority of that direction are stated in para. 540 of vol. 19, Halsbury, 2nd Ed., as follows:

> It is the duty of the judge at or after a trial to direct judgment to be entered as he thinks right; and his direction that any judgment be entered for any party absolutely is a sufficient authority to the proper officer to enter judgment accordingly.

When I pronounced judgment on January 25 last, the reasons for judgment were followed by the usual concluding paragraph stating in brief form the judgment of the Court

[1] [1955] Ch. D. 260.

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and by the words "Judgment Accordingly". The reported cases of this Court show that for over sixty years, when final judgment has been pronounced in this Court, it has been the invariable practice to conclude the pronouncement of the judgment in that manner. I am informed by the officials in the Registry that it has also been the practice in that office to treat such a final judgment as a direction to enter judgment in accordance with the findings of the trial Judge and then to enter the judgment in the Court's Docket Book as of the day when the judgment was pronounced. That was precisely what was done in the present case.

It is to be noted, also, that when final judgments are pronounced in this Court, the direction to enter judgment in the manner I have described is the only occasion on which there is an opportunity for the trial Judge to direct the entry of the judgment. In such cases, no motion for judgment is required and unless there should be some difficulty in settling the formal minutes of judgment before the Registrar or some matter has been reserved, the proceedings are at an end so far as the trial Judge is concerned, subject always, however, to the inherent power of the Court to correct clerical mistakes in the judgment or errors arising therein from any accidental slip or omission.

The precise point has been before the Court on several occasions and, with one possible exception (to which I shall refer later), all the reported cases support the conclusion at which I have arrived.

In *The General Engineering Co. of Ontario Ltd. v. The Dominion Cotton Mills Co. Ltd., et al.*[1], Burbidge J. considered and rejected a motion by the defendants to be allowed to file certain affidavits in support of their case in respect of the matter upon which evidence had been given at the trial by both sides. The motion was made after the trial had been completed, but before judgment was pronounced. At p. 307 he said:

> I think, however, that the application, made as it is, after the taking of the evidence has been closed and the case argued, is made too late. If I should re-open the case to permit the defendants to give evidence of this kind, I could not well refuse a like indulgence to the plaintiffs. Such a practice would, I think, be found to be very inconvenient and undesirable.

[1] (1899) 6 Can. Ex. C.R. 306.

In the same case, he considered and distinguished two cases to which he had been referred. In *Humphrey v. The Queen*[1] there had been a preliminary judgment and a reference for assessment of damages and accordingly the case would again come before the Court for the pronouncement of the final judgment. In *De Kuyper v. Van Dulken*[2], while the motion to re-open was allowed, it was only for the purpose of taking evidence on a point upon which no evidence had been given and in respect of which "it was left optional to both parties to produce evidence".

In *The King v. The Globe Indemnity Co. of Canada et al.*[3], the headnote is as follows:

Where the Court in pronouncing judgment has dealt with all the questions of law and fact in issue between the parties, including the right of a defendant to bring in third parties to respond any judgment which might be entered against such defendant, the Court will refuse a motion to vary the judgment by finding, contrary to the actual finding of the trial judge, that the Court had jurisdiction in the third party proceeding; or, in the alternative (thereby raising a new point of law after judgment) that the judgment be varied by finding that the Court or such trial judge had no jurisdiction under the Canada Grain Act, and amendments, to grant the relief sought by the Crown in the information.

In refusing the motion, the Court held that in so far as the motion savoured of an appeal it was irregular; and, on the other hand, that if it were to be treated as a new proceeding between the parties the subject-matter of the motion was *res judicata*.

In that case Audette J. said at p. 217:

After hearing counsel for all parties, suffice it to say that by and under my judgment of the 12th May, 1921, all the issues and questions raised by the written pleadings, by the evidence and by the argument of counsel for all parties, inclusive of the contract resulting from the bond given by the Globe Indemnity Company of Canada, have been duly considered and passed upon, and such issues or questions have now become *res judicata*. It is axiomatic that there must be finality in litigation before the courts; and that a trial judge ought not to sit on appeal from his own judgment. In *Charles Bright & Co. v. Sellar,* [1904] 1 K.B. 6 at p. 11 Cozens-Hardy L.J. said: "Since the Judicature Act no judge of the High Court has jurisdiction to re-hear, such jurisdiction being essentially appellate." If the motion here is to be treated as tantamount to a substantive and new proceeding then clearly I cannot in such proceeding vary or add to a judgment already given in another case.

[1] (1891) 2 Can. Ex. C.R. 386. [2] (1892) 3 Can. Ex. C.R. 88.
[3] (1921) 21 Ex. C.R. 215.

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In *Lavissiere v. The King*[1], Maclean J., the late President of this Court, considered and rejected a motion for a new trial and for permission to adduce new evidence. In that case it was

Held that when in any action or proceeding before this Court final judgment has been pronounced, an application for new trial cannot be made to a Judge of the Court but should be made to the Court to which an appeal lies from the judgment of this Court.

2. That a final judgment of this Court becomes effective at and from the day on which such judgment is pronounced.

At p. 232 he said:

> There were certain English cases cited by counsel for the Claimant to show that if the old rule enabling the trial judge in this Court to order a new trial was still in force the motion could have been entertained because my judgment, though pronounced, had not been entered by the Registrar. That is an entirely technical point which rests upon a difference in the procedure in the English Courts and this Court with regard to the moment when the judgment becomes operative. I am inclined to think that under the provisions of section 81 of the Exchequer Court Act, R.S., 1927, c. 34 and of Rule 174 of the present practice, a final judgment in this Court becomes effective at and from the day on which such judgment is pronounced.

It is of particular importance to note that in that case the late President held that a final judgment of this Court becomes effective at and from the day on which it is pronounced, even though it had not been entered by the Registrar. I have examined the Court's Docket Book in that case and found that there was an entry there on the same date as the original judgment was pronounced, such entry being of the same nature as in the instant case. That book shows that no formal order embodying the terms of the judgment was ever applied for or entered and I think that the statement of Maclean J.—"because my judgment, though pronounced, had not been entered by the Registrar" (*supra*)—must refer to that fact.

In *Merco Nordstrom Valve Co. et al. v. Comer*[2], Maclean J. considered and rejected a motion by the plaintiff that the judgment pronounced be reconsidered on the ground that the reasons for judgment were based on a misunderstanding of the evidence; he held that the Court is powerless to reconsider a judgment after the date of its pronouncement and its concurrent entry. On the motion now before me, counsel for the defendants filed a certificate of the Registrar which clearly indicates that

[1] [1931] Ex. C.R. 230. [2] [1942] Ex. C.R. 156.

in the *Merco Nordstrom Valve Co.* case, the "concurrent entry" referred to by Maclean J. was that made by the Registrar in the Court's Docket Book on the same date as the pronouncement of the judgment (an entry similar to that made in the instant case) and not that entry made months after the motion was heard and following the settlement of the formal minutes of judgment by the party.

At p. 158, the late President said:

I was referred to several English and Canadian cases which appear to have decided that until a judgment pronounced has been entered, a judge may reconsider his decision and may withdraw or vary the same. Burbidge J., in the case of *Copeland-Chatterson v. Paquette* (1906) 10 Ex. C.R. 425, reconsidered a judgment pronounced by him in a patent case on a motion made on behalf of the plaintiff to vary the same on certain stated grounds—which in the end he refused—but I am not inclined to think that under the practice of this Court he was free to do so, except possibly in the case of clerical mistakes or some such other slight error. In this Court the practice is to enter judgment concurrently with the pronouncement of any judgment by the Court. Rule 174 states that where any judgment is pronounced by the Court or a Judge in Court, "entry of the judgment shall be dated as of the day when such judgment is pronounced." Here, when judgment was pronounced by the Court, judgment was the same day entered in a certain book of record, in the words "judgment dismissing the action with costs", and the time for the entry of appeal runs from the date when the judgment was given. It seems to me, therefore, that when a judgment is pronounced and entered that is the end of the matter so far as this Court is concerned. If I am right in my interpretation of the Rules of this Court and its practice, then it follows, I think, that I am powerless to entertain a motion to reconsider and vary my judgment, in the manner and to the extent here proposed. And if this view is in conflict with that of Burbidge J., in the case mentioned, then it is desirable that the point be settled by a pronouncement of the Supreme Court of Canada thereon. In fact this point has for some time been a debatable one with practitioners before this Court. Perhaps I should mention that Rule 172 provides that the Registrar shall settle the minutes of any judgment or order pronounced by the Court, but that does not, I think, affect the view I have just expressed, namely, that there was an entry of the judgment pronounced in this cause and that I am now powerless to reconsider the same in the manner which the motion suggests.

I have looked at the report of the *Copeland-Chatterson* case referred to above. So far as I am aware, it is the only reported case in which the Court has allowed a motion to reconsider the terms of a final judgment. There is nothing in the judgment as reported to suggest that the question of the Court's jurisdiction to hear such a motion was raised or considered. It seems to have been assumed that the

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Court had such jurisdiction, possibly by reason of the then Rule 174 which (as set out in Audette's *Practice of the Exchequer Court,* 1910, 2nd Ed., at p. 471) was as follows:

Former Rule 174. Upon the trial of an action the Judge may at, or after, such trial, direct that judgment be entered for any or either party, as he is by law entitled to upon the findings, and either with or without leave to any party to move, to set aside, or vary the same, or to enter any other judgment upon such terms, if any, as he shall think fit to impose, or he may direct judgment not to be entered then, and leave any party to move for judgment. No judgment shall be entered after a trial, without the order of the Court or a Judge.

For these reasons, I am of the opinion that the judgment pronounced on January 25, 1958, was validly entered on that date and that consequently I have now no power to entertain a motion such as the present one in which I am invited to hear further argument on a matter of law which was considered in my judgment.

But even if I had a discretion in the matter, I would not have exercised it in this case inasmuch as my opinion as to the applicability of the limitation of liability sections of the *Canada Shipping Act* was arrived at by a consideration of the Act itself, and my decision on this point would have been the same without the support—as I considered it to be—of the judgment of the Privy Council in the *Nisbett Shipping* case (*supra*).

Accordingly, the application will be dismissed. The defendants are entitled to be paid their costs after taxation.

Order accordingly.