

IN RE

251 BARS OF SILVER AND THE SEA
INSURANCE CO. *ET AL.*1915
Jan 26.

(DEFENDANTS) APPELLANTS;

AND

THE CANADIAN SALVAGE ASSOCIATION,

(PLAINTIFF) RESPONDENTS.

Admiralty Law—Practice—Appeal from Interlocutory Order—The Admiralty Act, 1891, c. 141, s. 14.

Held, where a mode of appeal is prescribed by statute such procedure must be followed in its entirety. *Supervisors v. Kennicott*, 94 U.S. 498, referred to.

2. Where the appellant on an appeal from the order of a Local Judge in Admiralty to the Exchequer Court failed to obtain the permission of such local judge, or the Judge of the Exchequer Court, for such appeal being taken, the appeal was dismissed for not having complied with the requirements of the statute.

APPEAL from an interlocutory order of the Local Judge for the Quebec Admiralty District, refusing to accept certain bonds tendered by defendants as bail in a salvage action.

January 23rd, 1915.

The appeal was heard before The Honourable MR. JUSTICE CASSELS at Ottawa.

George F. Gibsone, K.C. for the appellants;

C. A. Pentland, K.C., for the respondents.

CASSELS, J. now (January 26th, 1915) delivered judgment.

Since the argument of the case I have carefully considered the points argued on behalf of Mr. Gibsone.

1915
 251
 BARS OF
 SILVER
 v.
 THE
 CANADIAN
 SALVAGE
 ASSOCIATION.
 ———
 Reasons for
 Judgment.

As I have come to the conclusion that the appeal does not lie, it is not necessary to deal with the facts.

It was conceded both by Mr. Gibsone, who argued the appeal, and Mr. Pentland, who was for the respondents, that if I was of opinion that the objection taken by Mr. Pentland was well founded, there would be no object in my dealing with the other matters argued before me.

I do not see how it is possible to get away from the provisions of the statute as embodied in Sec. 14 of *The Admiralty Act*, 1891.

It is conceded by Mr. Gibsone that the order appealed from is an interlocutory order. That being so no appeal lies except with the permission of the Local Judge or of the Judge of the Exchequer Court from any interlocutory decree or order. No such permission has been granted or asked for.

Mr. Gibsone argued that under the orders of the Court regulating the procedure in Admiralty cases, no leave is necessary, and that these orders virtually overrule the statute. I cannot accede to such a statement. The orders are made pursuant to the statute. If they purported to order something contrary to the express terms of the statute, they would be simply void; but there is nothing inconsistent between the statute and the orders. The orders refer to appeals properly brought. The right of appeal is purely statutory, and the provisions of the statute must be followed. If it were necessary to quote authority on the point, it is admirably summarised in *Brown on Jurisdiction* (1):

“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

(1) 2nd ed. (1901) sec. 21 at p. 111.

“time, manner and the fulfilling of all the statutory
“directions.” And see the case of *Supervisors v.*
Kinnehatt, (1) and other cases cited by the author.

I think, therefore, that the appeal must be dismissed
with costs.

1915
251
BARS OF
SILVER
?.
THE
CANADIAN
SALVAGE
ASSOCIATION.

Reasons for
Judgment

Appeal dismissed.

(1) 94 U.S. p. 148.