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Oct. 6.

TORONTO ADMIRALTY DISTRICT.

JAMES REIDE AND MATTHEW HAYES,

PLAINTIFFS;

AGAINST

THE SHIP *QUEEN OF THE ISLES*.

AND

J. A. CAMPBELL (INTERVENING).....DEFENDANT.

Maritime law—Lien of master for disbursements and wages—Lien for liability assumed by master—The Merchant Shipping Act, 1854 s. 191—52-53 *Vic.* (*U.K.*) c. 46 s. 1.

The master of a ship sought to enforce a claim *in rem* for wages as well as for disbursements and liabilities assumed in respect of necessaries supplied the ship, for which he had made a joint-note with the owner for $250 under an agreement that the note should be paid out of the earnings of the ship. This agreement was made without the consent or knowledge of the mortgagee.

Held, that the master had a maritime lien for his wages as well as for disbursements actually and necessarily made and liability incurred in connection with the proper working and management of the ship, and that the limit of such liability would be to the value of the vessel and freight.

2. That the master did not exceed his authority in borrowing money on the note for the purposes of the ship, it appearing that the sum so borrowed had been duly and properly expended for the ship.

MOTION to confirm a report of the local registrar. The facts of the case are as follows: James Reide, the first named plaintiff, was the master of the vessel the *Queen of The Isles*. The action is brought for a balance of his wages of $295, and for disbursements. The registrar in his report found that the balance of the disbursements for the year 1891 was $16.37, that being the amount which the master had actually disbursed above the receipts of the vessel for that year. The balance of the wages for this season

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he fixes at $295, and the balance of the disbursements above actual receipts for this year, $7.67; and he also reports "that the plaintiff Reide became joint-maker of "a note for two hundred and fifty dollars with in- "terest thereon at ten per cent with one H. S. Scad- "ding, the owner of the said ship; one hun- "dred and twenty-five dollars of the proceeds of the "said note being applied as part payment of wages "due to the plaintiff for the season of 1891, and the "remaining one hundred and twenty-five dollars being "disbursed by the said plaintiff as master of the said "ship."

The owner of the vessel and the master made this note for $250 to raise money for the purposes of the vessel. The proceeds of the $250 were applied, first, $125 towards the wages of the master for the season of 1891, and the balance of it is debited in the cash accounts of receipts for this year. It was shown clearly in the evidence that the proceeds of the $250 note were actually used for the purposes of the vessel.

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Mulvey, for plaintiffs, moves to confirm the report, and for payment out of court: Our claim is based on section 1 of 52-53 Vic. (U.K.) c. 46, amending the 191st section of *The Merchant Shipping Act*, 1854. We say if we have to pay the disbursements we should get the money from the boat; and that we are liable for it, I think, is clearly shown by the evidence, and for that reason we say that we should get it from the proceeds of the vessel. *The Merchant Shipping Act*, 1854, and its amendments, apply to this court, the main statute being in effect re-enacted by the Act establishing this court (1). Under the 191st section of *The Merchant Shipping Act*, 1854, the master has the same

(1) *The Maritime Court Act*, R.S.C. c. 137.

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Argument of Counsel.

liens, rights and remedies to recover his wages as a seaman has, and I say that a master has also a maritime lien on the boat to recover his disbursements under the amending Act.

I would also refer your Honour to the case of the *Sara* (1). This case was reversed in the House of Lords; and that is the reason why the amending Act was passed, and therefore this case is good authority.

The case of the *Sara* (1) was originally decided in 1887, and the case on appeal in 1889, while the statute was passed on the 26th August, 1889. I submit, therefore, that the judgment of the House of Lords in the *Sarah* is authority now on the subject. It was held in the House of Lords that the master had a maritime lien, although he had not paid a liability he had undertaken on behalf of the ship at the time he brought his action, but was liable to pay it if he was sued.

The circumstances were all very much the same as those here.

In the present case there is a joint-note made by the master and owner. The owner has since absconded and the master is liable for the amount, and, therefore, I submit it should be paid as soon as the note itself is deposited in the registry.

I also submit that it nowhere appears in evidence or from the records in this case that Mr. Dennison's client is a mortgagee.

Dennison, for intervening mortgagee: I submit that such an agreement as that set up by the plaintiffs could not be made between the captain and the owner to the prejudice of the mortgagee. The claim of the captain is in respect of $125 wages and a certain amount of disbursements. At the time of the receiving of this money it was cash in the captain's hands; it was not the case

(1) 12 Pr. Div. 158.

of a note having been given, but cash in his hands and he treated it as having been paid the $125.

I submit further, that in a case like this, once a lien is gone it can hardly be revived, and I maintain the lien for wages is lost, when the captain is paid. And further, the note is for $250 and interest at ten per cent., and I submit that no agreement between the owner and the master can raise a liability like that to the prejudice of the other parties.

No necessity is shown for the making of a bottomry-bond or anything of that nature; and I submit, in the absence of any such necessity, this can hardly be taken to be a bottomry-bond. This agreement, I submit, could not be dealt with as a lien upon the boat at all, or at any rate a lien at such a high rate as ten per cent interest.

I also submit, from the stand-point of the mortgagee, that the captain and owner have no right to enter into such a contract, unless necessity is shown, where the interest is to be charged at a higher rate than six per cent, because other creditors would then be practically at the mercy of the owner.

McDOUGALL, L.J.—If you allow the owner to remain in possession the captain is not bound to consider the mortgagee at all, so long as he acts in good faith. He might do anything that would bind the owner in the same manner and to the same extent as if there were no mortgage against the vessel at all. The fact of the mortgage being there does not alter his relation one way or the other. If he could bind the owner, supposing there were no mortgage on the boat, such an act would be equally binding on the owner if she were mortgaged so long as the vessel was in the custody and under the control of the owner.

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Reasons for Judgment.

My judgment, therefore, is that the master has a maritime lien for his wages and also has a maritime lien, to rank with wages, for disbursements actually and necessarily made and the liability incurred in connection with the proper working and management of the ship, and that the limit of the liability would be restricted only to the value of the vessel and freight.

I also hold that the master did not exceed his authority in borrowing money on the note for the purposes of the ship, it appearing that the sum so borrowed had been duly and properly expended for the ship.

I, therefore, confirm the report of the registrar and decree that the amount found by the said report be paid to the plaintiff Reide on the delivery up of the note referred to, and on filing, in the registry, receipts for the different disbursements shown. Interest to be calculated at ten per cent to the maturity of the note, and six per cent afterwards until the amount is paid.

Judgment accordingly.