

QUEBEC ADMIRALTY DISTRICT

MORTON DOWN & COMPANY, }
 LIMITED } PLAINTIFFS.

1905
 March 24.

AGAINST

S.S. "LAKE SIMCOE," AND OWNERS... DEFENDANTS.

Security for costs — Admiralty Rule 228 — English practice—Application made by defendant after plaintiff files particulars of claim.

Under the provisions of Rule 228 of the General Rules and Orders regulating the practice and procedure in Admiralty Cases in the Exchequer Court of Canada applying the English practice to cases not provided for by such rules, an order for security for costs may be granted in Admiralty proceedings on motion of the defendant after the plaintiff has filed particulars of his statement of claim.

THIS was an action *in rem* taken against the SS. *Lake Simcoe*.

The action was upon a claim for \$3,718.14 being a balance of cash supplied for necessaries, repairs, and other disbursements to the ship SS. *Lake Simcoe* at the Port of Montreal, on the 26th day of July, and the 5th day of August, 1904, and for costs.

The action was instituted on the 26th September, 1904, and accompanying the writ was a warrant issued for the arrest of the ship SS. *Lake Simcoe*. The writ and warrant were duly executed on the date of issue and were returned into court and filed by Mr. W. S. Walker, Deputy District Registrar of the court, on the 27th September.

The owners of the *Lake Simcoe* gave bail for the amount, and the ship was then released. The bail was given on the 29th September, and the release took place on the 5th October.

On the 12th December, the *Lake Simcoe* and the owners thereof, the defendants in the action, gave

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notice of application to the court that they would move for an order directing the plaintiffs to file pleadings herein and file a statement of particulars of claim within a week from the date of the order setting out the causes and grounds of action, and the nature of their claim. This application was granted, and as the plaintiffs failed to furnish the necessary particulars within the time allowed by the order, the defendants made a motion to have the action dismissed.

The motion came on for hearing before the Local Judge in Admiralty for the district of Quebec.

The plaintiffs made application to file their written statement of claim. The court gave defendants the costs of the motion, but allowed the statement of claim to be filed. On the 6th March, the defendants made a further motion for particulars of the statement of claim. This motion was also granted, and on the 21st March, the plaintiffs filed particulars of their statement of claim. Immediately after the said particulars had been filed, the defendant moved the court asking that the plaintiffs be ordered to give security for the payment of the costs in the action.

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The motion for security for costs was now argued.

C. A. Duclos, K.C., for the plaintiffs, opposed the motion on the ground that the defendants were beyond the legal delays to file such a motion, and that it should have been made within three days after their appearance had been filed, arguing that the procedure to be followed in cases before the Admiralty court arising in the district of Quebec must be governed by the provisions of the Code of Civil Procedure for Lower Canada. He cited Article 164 of the Code of Procedure in support of his argument.

Claude Hickson for defendants, cited the General Rules and Orders regulating the practice and procedure in Admiralty cases in the Exchequer Court of Canada.

He argued that in those rules and orders no provision was made for the application for security for costs, or the filing of a power of attorney. He cited Admiralty Rule No. 228, in which it is provided that in all cases not specially dealt with in the practice and procedure in the Admiralty cases in the Exchequer Court of Canada, the procedure for the time being in force in respect to Admiralty proceedings in the High Court of Justice in England is to be followed, and argued that under the English procedure, an application for security for costs may be made at any time during the proceedings.

He cited *Roscoe's Admiralty Practice* (1); and Order 65, Rule 6, and 6a. of the High Court of Admiralty, which provides that it is within the discretion of the Judge or Court to grant an application for security for costs at any time during the proceedings.

Mr. *Duclos* replied.

Per Curiam:—The plaintiffs will give security for costs within thirty days from the date hereof to the amount of \$5000.00; costs of motion to follow the event.

Order accordingly.

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 Argument
 of Counsel.
 Judgment.

(1) 3rd ed., part 4.