

## BRITISH COLUMBIA ADMIRALTY DISTRICT.

W. H. COOK ..... PLAINTIFF ;

1898

*against*

Oct. 13.

## THE STEAMSHIP "MANAUCENCE."

*Ship—Breach of contract to carry passengers—Action in rem.*

The plaintiff, for an alleged breach of a contract to carry him from Liverpool to St. Michaels and thence to the Yukon gold-fields, took proceedings against the ship and obtained a warrant for her arrest. Held, that even if the breach alleged were established, the plaintiff was not entitled to a lien on the ship.

THIS was an action brought to recover the sum of \$777.50 passage money from Liverpool to Dawson, N.W.T., and for damages for breach of contract.

The facts of the case are stated in the judgment.

The case was tried before the Honourable A. J. McColl, Chief Justice, Local Judge for the British Columbia Admiralty District, on 13th October, 1898.

*J. A. Russell*, for plaintiff ;

*J. M. Bradburn* and *D. G. Marshall*, for the ship.

*Bradburn* for ship cites : *The Bold Buccleugh* (1) ; *The Plover* (2) ; *City of Manitowoc* (3) ; *The Mary Jane* (4) ; *The Pieve Superiore* (5) ; *Maude and Pollock on Shipping* (6) ; *The Theta* (7) ; *The Hercyna* (8).

*Russell* for plaintiff cites : *The Cella* (9) ; *The Henrich Björn* (10) ; *The Two Ellens* (11) ; *American and English Encyclopædia of Law* (12) ; *The Aberfoyle* (13).

(1) 7 Moo. P. C. 267.

(7) [1894] P. D. 280.

(2) Stockton's Adm. Dig. 129 and

(8) 1 Stuart, 274.

134.

(9) 13 P. D. 82.

(3) Cook, 179.

(10) 11 A. C. 270.

(4) 1 Stuart, 267.

(11) 4 L. R. P. C. 161.

(5) L. R. 5 P. C. 483.

(12) Vol. 22, p. 776.

(6) Vol. 1 p. 85 (4th ed.).

(13) 1 Blatch. 360.

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MCCOLL, (C.J.) L. J. now (October 13th, 1893,) delivered judgment.

The plaintiff alleges breach of a contract for his passage in the steamship from Liverpool, England, to St. Michaels, and thence by steam-launch and house-boat to the Yukon gold-fields. The contract was also that he should be supplied with provisions during the open season of 1898 if he remained in touch with the steamer and the steamer's boats and should be carried back to Victoria at the end of the season.

The breach complained of was the failure to carry the plaintiff from St. Michaels, beyond which the steamer could not go and was not supposed to go, to Dawson.

The contract was made with Captain Edwards the master and owner of the ship which was subject to a mortgage.

The plaintiff claims the condemnation and sale of the ship, and the application of the proceeds to the payment of the damages claimed and costs.

The action is brought against the ship itself, and the owner, having appeared, recently applied to set aside the arrest on the ground that it was unwarranted by the procedure of the court. At that time the contract was not before me and the parties differed about its terms, the plaintiff insisting that he would be able to prove the contract to be for such a special use of the ship as that upon breach from that moment a lien upon the ship was by law created for the damages sustained, of the same nature and enforceable in the same way as a maritime lien.

The plaintiff offered to go down to trial at once and to accept the owner's bond in release of the ship and an order was made accordingly.

The plaintiff repeated and insisted in his contention throughout the trial, during which some very interest-

ing questions were raised as to the rights of the parties because of the literal performance of the contract in the manner originally intended having become impracticable from no fault of either party; but I have to decide the preliminary question whether the plaintiff is, in the circumstances stated, entitled to the lien claimed assuming the breach alleged.

I have examined, I think, all the material decisions from *The Bold Buccleugh* to the present time, in some of which the original history and extent of the jurisdiction in Admiralty are exhaustively discussed, and all the authorities then existing are minutely examined and I think that I cannot usefully say more of them than that whatever may be left in doubt, they seem to shew clearly that the lien claimed does not exist by the law of England. I need only refer to *Pieve Superiore* (1); *The Heinrich Björn* (2); *The Cella* (3); *The Queen v. Judge of City of London Court* (4); *The Zeta* (5); and *The Theta* (6.)

I have not considered the cases cited from the United States Reports because the jurisdiction in Admiralty is exercised there upon principles differing from English law.

The action is dismissed with costs including those reserved.

Solicitors for plaintiff: *Russell & Russell.*

Solicitors for ship: *Davis, Marshall & Macneill.*

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(1) L. R. 5 P. C. 483.

(2) L. R. 10 P. D. 44.

(3) L. R. 13 P. D. 82.

(4) [1892] 1 Q. B. 273.

(5) [1893] A. C. 468.

(6) [1894] P. D. 280.