

HIS MAJESTY THE KING, ON THE INFORMATION
OF THE ATTORNEY-GENERAL OF CANADA,

1919
March 10.

PLAINTIFF;

AND

CHARLES ANDERSON,

DEFENDANT;

AND

M. A. NICKERSON,

THIRD PARTY.

*Water—Wreck—Obstruction to navigation—Removal—Authority—
Liability of "owner"—Sale.*

Since the amendment of the Canada Statutes in 1897 (R.S.C. 1906, c. 115, s. 13), the owner of a wrecked vessel at the time the wreck was occasioned may be deemed the "owner" for the purpose of the statutory liability to the Crown for the costs of removing the wreck as an obstruction to navigation, notwithstanding the sale of the wreck to a third party. *The Queen v. Mississippi &c. Co.* (1894), 4 Can. Ex. 298, distinguished.

2. By virtue of the Canada Statutes, 1909, c. 28, amending s. 18, ch. 115, R.S.C., 1906, the authority of the Governor-in-Council directing such removal is no longer necessary.

INFORMATION to recover expenditures incurred by the Crown in removing a wreck as an obstruction to navigation.

The following information was filed on the 16th day of May, 1917:

To the Honourable the Judge of the Exchequer Court of Canada:

The Information of the Honourable Charles Joseph Doherty, His Majesty's Attorney-General of Canada, on behalf of His Majesty the King, sheweth as follows:

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1. That prior to the 18th day of November, 1915, the defendant was the duly registered owner of the Schooner "Empress," O.N. 107761, registered at Bridgetown, Barbados.

2. That on or about the 10th day of November, 1915, the said schooner was burned to the water's edge and sunk and became a total wreck while lying at anchor at the western entrance of Barrington Passage, Nova Scotia, a public navigable harbour of the Dominion of Canada, and subsequently the said vessel was duly condemned, and on or about the 18th day of November, 1915, the said wrecked vessel was sold and disposed of by the defendant.

3. That the wreck of the said schooner at the place where the same was so sunk as aforesaid caused an obstruction and impediment to the navigation of the said Harbour of Barrington Passage and was a source of danger to vessels plying in said harbour.

4. That the said wreck of said schooner remained in the same position in said Harbour of Barrington Passage for more than twenty-four hours after being burned and sinking as aforesaid.

5. That His Majesty's Minister of Marine and Fisheries for Canada being of opinion that the navigation of said Harbour of Barrington Passage was obstructed, impeded and rendered more difficult and dangerous by reason of the wreck, sinking, partially sinking or grounding of said schooner or part thereof, on or about the 17th day of November, 1915, notified defendant to remove said wreck, which defendant refused to do, and upon failure of the defendant to remove said wreck in pursuance of said notice His Majesty's said Minister of Marine and Fisheries for Canada after public notice calling for tenders for the removal of said wreck accepted on

or about the 6th day of April, 1916, the tender of Hugh Cann & Son, Limited, of Yarmouth, N.S., for the removal of the said wreck and obstruction at a cost of \$750.

6. That the said obstruction and impediment so caused to the navigation of the Harbour of Barrington Passage by the said wrecked Schooner Empress was duly removed by the said Messrs. Hugh Cann & Son, Limited, said work being completed on or about the 9th day of May, 1916, and His Majesty's Minister of Marine and Fisheries for Canada duly paid for the work performed in removing said wreck to Messrs. Hugh Cann & Son, Limited, the sum of \$750.

7. His Majesty also paid the sum of \$87.80, the costs and expenses incurred for the advertising of tenders for the removal of said wreck and the further sum of \$24, being the expenses incurred in making an examination of said wreck and superintending removal of same.

8. That under and by virtue of the Statutes of Canada, ch. 115, Revised Statutes, 1906, and amendments thereto, the defendant as the owner of the said Schooner Empress is liable for all the expenditure and costs made and incurred by His Majesty the King in removing the obstruction and impediment to the navigation of the said Harbour of Barrington Passage caused by the wreck of said Schooner Empress, less any sum received on a sale of said wreck, but His Majesty's Attorney-General alleges as the fact is that no portion of the said wreck was or could be sold, and no sum has been received by His Majesty the King in respect thereof whereby and by reason whereof the defendant is liable to pay to His Majesty the sum of \$861.80,

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being the sum so paid by His Majesty as aforesaid for and in connection with the removal of the wreck of the said Schooner Empress, and His Majesty is entitled by action to recover the said sum from the defendant.

9. The Attorney General on behalf of His Majesty claims as follows:

- (1) The sum of \$861.80.
- (2) His costs of this action.

The Defence, dated April 20, 1918, was as follows:

As to the information herein the defendant Charles Anderson says as follows:

1. He denies that said vessel became a total wreck, that the said Barrington Passage or part thereof where said vessel was lying is a public or navigable harbour of the Dominion of Canada, that the said vessel was duly condemned or condemned at all or that the defendant sold or disposed of said vessel or of said wrecked vessel.

2. He denies that the said wreck caused an obstruction or impediment to the navigation of the said harbour of Barrington Passage or that it was a source of danger to vessels plying in said harbour.

3. He is not aware of and does not admit that His Majesty's Minister of Marine and Fisheries for Canada was of opinion that the navigation of said harbour of Barrington Passage was obstructed, impeded or rendered more difficult or dangerous by reason of the said wreck sinking, partially sinking or grounding of said schooner or part thereof.

4. He denies that he was notified to remove the said wreck on or about the 17th day of November, 1915, or at all.

5. He denies he refused to remove the said wreck.

6. He is not aware of and does not admit public notice calling for tenders for the removal of said wreck referred to in the fifth paragraph of the information.

7. He is not aware of and does not admit the acceptance of tender of Hugh Cann & Company, Limited, for the removal of said wreck and he is not aware of and does not admit any of the statements or allegations contained in the 5th paragraph of the Information with reference to the removal of said wreck or the tender or agreement with Hugh Cann & Company, Limited, with reference thereto or the terms thereof.

8. He is not aware of and does not admit any of the statements or allegations contained in the 6th paragraph of the Information.

9. He is not aware of and does not admit any of the statements or allegations contained in the 7th paragraph of the Information.

10. He denies each and every of the allegations and statements of fact contained in the 8th paragraph of the Information.

11. As to the whole Information the plaintiff says that the said wreck could have been sold and that there was enough of the said vessel or wreck to be sold.

12. The plaintiff will object that the Information sets forth no cause of action inasmuch as it is not therein alleged that the removal of said wreck was under the authority of the Governor-in-Council or that the wreck was so removed and sold as required by ch. 115 of the Revised Statutes of Canada, 1906, Part 2, secs. 16, 17 and 18 as amended. The said Minister did not cause the said wreck to be sold

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by public auction after being removed and the defendant will object that he is not liable for the cost of removal until after the sale of the wreck or obstacle so removed.

13. If the said wreck had been removed to a proper place the same would have been worth and could have been sold for a sum in excess of the amount required to remove the said wreck and by reason of the neglect or failure on the part of the said Minister or of the plaintiff to sell or attempt to sell the wreck or the part so removed the plaintiff is not entitled to recover from the defendant any part of the cost or expense of removing the said wreck.

14. As to the whole of the Information the defendant will object that in point of law the same discloses no cause of action against this defendant.

15. As to the whole of the Information the defendant says that before the defendant received the notice referred to in par. 5 of the Information, to wit, on the 18th day of November, 1916, the said wreck had been sold by T. W. Robertson, of Barrington Passage, N. S., Receiver of Wrecks on behalf of the owners and underwriters for the benefit of all concerned for the sum of five dollars to M. A. Nickerson, of Clarke's Harbour in the County of Shelburne and Province of Nova Scotia. By the terms of the said sale the said purchaser assumed all liability and responsibility for the removal of the said wreck.

16. The defendant repeats par. 15 hereof and says that the said M. A. Nickerson neglected and refused to remove the said wreck wherefore the defendant did cause a Third Party Notice to be duly filed herein and to be duly served upon the said M.

A. Nickerson claiming indemnity from the said M. A. Nickerson to the extent of the plaintiff's claim herein or such sum as the plaintiff might recover from the defendant with costs on the grounds herein and therein set forth.

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17. The defendant repeats pars. 15 and 16 hereof and claim indemnity from the said M. A. Nickerson to the extent of the plaintiff's claim herein or such sum as the plaintiff may recover herein against the defendant with all costs.

The case was tried before the Honourable Mr. Justice Cassels, at Halifax, N. S., September 18-20, 1918.

L. A. Lovett, K.C., for plaintiff.

J. McG. Stewart, for defendant Anderson.

V. J. Paton, K.C., for third party Nickerson.

CASSELS, J. (March 10, 1919), delivered judgment.

An information exhibited by The King, on the information of the Attorney-General of Canada, against the defendant Charles Anderson, claiming the payment of certain moneys expended in clearing Barrington Passage, Nova Scotia, from the wreck of the Schooner *Empress* owned by the defendant Charles Anderson.

A third party notice was served upon one M. A. Nickerson, the defendant Anderson claiming that the wreck in question was sold to Nickerson, and that part of the purchase price was the removal by Nickerson of the wreck in question.

The case had not been set down for trial, but by agreement between the parties, with my consent,

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the action was tried as between the plaintiff and the defendant Charles Anderson.

Nickerson's counsel consented to appear in order that he might have the right to cross-examine the various witnesses, it being arranged between the parties that the case between the plaintiff and the defendant Anderson should be tried, and if the plaintiff were held entitled to succeed then the trial as between the defendant and the third party should come on at a subsequent date to be agreed upon.

The counsel arranged to put in written arguments, and I have subsequently received papers, endorsed arguments.

I think the plaintiffs have proved their case and are entitled to judgment for the amount claimed.

The defendant Anderson's counsel alleged that the defendant Anderson was not the owner of the vessel, the vessel having been sold subsequently to Nickerson.

The date of the wreck was the 10th November, 1915; and the sale to Nickerson was on the 18th of November.

The case of *The Queen v. Mississippi & Dominion Steamship Co.*¹ was decided in the year 1894. In that case it was held that the purchaser from the owner was the owner within the meaning of the statute then in force. Subsequently the statute under which that case was decided was amended by ch. 23 of 60 and 61 Vic., 1897, which statute defined the meaning of the word "owner".

The Revised Statutes, 1906, ch. 115, sec. 13, interprets the word "owner" as follows: "Owner means "the registered or other owner at the time any "wreck, obstruction or obstacle as in this part re-

¹ 4 Can. Ex. 298.

“ferred to was occasioned, and also includes subsequent purchaser.”

Another objection raised was that there was no authority from the Governor-in-Council directing the removal. Sec. 18 of ch. 115 provides that whenever under the provisions of the Act the Minister “has with the authority of the Governor-in-Council caused to be removed,” etc.

In 1909, ch. 28, 8 and 9 Ed. VII., assented to on May 19, 1909, these words, “with the authority of the Governor-in-Council”, were deleted.

These seem to be the main defences.

Judgment to issue for the amount claimed by the plaintiff, and the defendant must pay the costs of the action.

Judgment for plaintiff.

Solicitor for plaintiff: *F. C. Blanchard.*

Solicitors for defendant Anderson: *Henry, Harris & Co.*

Solicitor for third party Nickerson: *C. J. Burchell.*

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