

British Columbia Admiralty District

1950  
 May 16, 19,  
 22  
 May 23

BETWEEN:

ARMANEKIS *et al.*.....PLAINTIFFS;

AND

THE S.S. CNOSAGA.....DEFENDANT.

*Shipping—Wages—Foreign ship—Protest by Foreign Consul—Discretion of Court—Motion for dismissal of action allowed.*

In an action for wages brought by seamen of Greek nationality who had served on defendant ship, owned by a Panamanian corporation and registered at the Port of Panama City, the defendant moved for a dismissal of the action on the ground that the consul-general for the Republic of Panama in and for the Province of British Columbia protests against its continuance. The articles signed at Mobile in the state of Alabama, one of the United States of America, written in Spanish and English, prohibited seamen from attempting action against the Master or ship, and provided for the submission of any dispute to the competent authorities of the Republic of Panama.

While the vessel was in Vancouver, British Columbia, the men went on strike and caused a delay in loading until the strike was ended by an injunction issued out of the Supreme Court of British Columbia.

*Held:* That the grounds for the protest were reasonable and the Court declined to exercise its discretion to adjudicate.

MOTION for dismissal of action.

The motion was heard before the Honourable Mr. Justice Sidney Smith, District Judge in Admiralty for the British Columbia Admiralty District, at Vancouver.

*J. R. Cunningham* for the motion.

*John Stanton contra.*

SIDNEY SMITH D.J.A. now (May 23, 1950) delivered the following judgment:

This is a motion by the Panamanian owner of the defendant ship to dismiss the plaintiffs' action for wages upon the ground that the consul-general in and for the Province of British Columbia for the Republic of Panama protests against its continuance. It has long been established that the Court has jurisdiction in these actions, but

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that it may, in its discretion, decline to exercise the jurisdiction where the accredited representative of the state to which the ship belongs objects to the Court proceeding to adjudicate, and where he does so on reasonable grounds. Here there is no doubt about his objection, so the only question before me is as to its reasonableness.

The plaintiffs are, or were, fifteen members of the ship's company, of whom one was the 2nd Mate, the others seamen in various capacities, all of Greek nationality except one, an Ecuadorian. Three of the plaintiffs withdrew from the action, re-joined the vessel and sailed in her. The defendant ship is owned by a Panamanian corporation and registered at the Port of Panama City. The owning company seems to be composed of Greek nationals, and has its head office at New York, in the United States of America.

Articles were signed at Mobile, Alabama, in the United States of America, on the 23rd January, 1950, and the vessel proceeded thence to Vera Cruz, then to Yokohama and from there to Vancouver, B.C., where she remained from 27th April till 13th May, 1950. On the 30th April the crew were paid their wages, overtime pay and certain bonuses. On the 3rd May the plaintiffs went on strike, without notice, on account of the refusal of the Master to make certain further payments. The consul-general visited the ship on the same day and warned the men that the strike was illegal under Panamanian law. The Master paid over to him \$134.27 which may have been part of the sum in dispute. There is no clear evidence as to this.

The strike caused an interruption in the loading of the vessel for a period of seven days. An injunction was obtained from the Supreme Court of British Columbia, which brought it to an end. The vessel in due course sailed but without the twelve plaintiffs concerned. These now await repatriation. The proceedings in the Supreme Court were heard by the learned Chief Justice, who declared the strike illegal; he also found the consul-general, who gave evidence, a competent and qualified authority on the law of Panama.

The present action was commenced on the 13th May, 1950. The claims made, which amount to approximately

\$100 per man, are based (other than a claim of \$62.68 for overtime) on demands for vacation pay, allegedly due under Panamanian law, and for extra pay on account of the absence of other crew members at certain times.

A clause in the ship's articles (written both in Spanish and English) is as follows:

(6) Seamen are prohibited from attempting action of any kind against the Master or ship. Any dispute which may arise between the Master or owner, and the members of the crew of the vessel relative to their contracts, salaries, working conditions or obligations and rights of the parties, shall be submitted to and be resolved by the competent authorities of the Republic of Panama, whose decisions shall be obligatory for all parties. (Art. 1230 of C.C.)

The consul-general filed an affidavit in these proceedings, part of which reads as follows:

(5) The Plaintiffs did not submit or attempt to submit any of the claims contained in the Indorsements on the Writ in this action, nor did they or anyone of them complain to me of the alleged unlawful breach of the said articles by the Captain of the SS. *Cnosaga*.

(9) I respectfully submit that the Plaintiffs do not deserve the right to proceed with their alleged claims in this Honourable Court, and, as the duly appointed representative of the Republic of Panama I consider it to be my duty to respectfully and formally protest against the exercise of the jurisdiction of this Honourable Court in connection with any alleged claims the Plaintiffs have made against the ship SS. *Cnosaga*.

Counsel for the plaintiffs on the hearing before me raised some points on this affidavit, notably as to whether the consul-general had been properly appointed. I accordingly gave the consul-general the opportunity to appear personally before me in the presence of counsel. He did so, produced his credentials, and satisfied me on his appointment, as well as on the other points raised.

In these circumstances I hold there were reasonable grounds for the protest, and I accordingly decline to exercise my discretion to adjudicate. *The Leon XIII* (1). The action is dismissed and the defendant's bail-bond for \$2,000 cancelled. Defendant does not ask for costs.

There will be judgment accordingly.

*Judgment accordingly.*

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