

1920

Dec. 20.

## IN ADMIRALTY.

APPEAL FROM THE NOVA SCOTIA ADMIRALTY DISTRICT.

BETWEEN

PERLEY W. McBRIDE, (WILLIAM  
LOVETTE, A. D. CAMERON, W.  
D. McBRIDE, ELVIN GATES  
AND HARRY I. MATHERS, DOING  
BUSINESS UNDER THE FIRM NAME  
OF I. H. MATHERS SON, ADDED  
BY ORDER OF COURT)..... PLAINTIFFS;

AND

THE STEAMSHIP *AMERICAN*..... DEFENDANT  
(APPELLANT).

AND

JOHN S. DARRELL COMPANY;  
INTERVENORS..... RESPONDENT.

*Shipping—Equitable jurisdiction of the Admiralty Court—Sale of vessel  
by sheriff—Vigilantibus et non dormientibus jura subveniunt.*

M. obtained judgment for wages, etc., against the S.S. *American*, the owners having made default to appear. But D. & Co., the owners of the cargo, intervened. The vessel was duly seized and advertised for sale. On the application of the owners of the ship, the sale was adjourned for two days, and on the expiration of this delay the vessel was duly sold at auction by the sheriff on Saturday, the 18th September, 1920, and purchased by D. & Co., who made the necessary deposit. Money had been wired by the appellant to discharge plaintiff's claim, but arrived too late to stop the sale. D. & Co. tendered the balance of price on the following Monday, which was refused on account of an application to the Deputy Local Judge to set aside the sale, and to redeem the vessel. D. & Co., on purchasing the vessel, made arrangements for repairs thereto, and at the time the said application was originally made, they were negotiating for the sale thereof. The vessel is now on the high seas, and it did not appear whether she had been sold. The D.L.J. refused the application and from his decision the present appeal was taken. The claim is based on equity alone.

*Held:* (Affirming the judgment appealed from) that while the Admiralty Court exercises an unquestionable equitable jurisdiction, inasmuch as the appellant had failed to show a superior equity to those arising in favour of the purchasers, the order below should not be interfered with.

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PERLEY W.  
MCBRIDE *et al*  
v.  
J. DARRELL.

Reasons for  
Judgment.

APPEAL from the decision of the Honourable Mr. Justice Mellish, D.L.J.A. for the Nova Scotia Admiralty District dismissing the application of the owners of the S.S. *American* to set aside the sale thereof made under authority of justice.

*Geo. Henderson, K.C.*, for appellant.

*R. V. Sinclair, K.C.*, for respondent, John S. Darrell Co.

December 9th, 1920.

Appeal heard before the Honourable Mr. Justice Audette, at Ottawa.

The facts and questions of law raised on this appeal are stated in the reasons for judgment.

AUDETTE, J. this December 20, 1920, delivered judgment.

This is an appeal from the judgment or order of the Deputy Local Judge in Admiralty for the Admiralty District of Nova Scotia, pronounced on the 25th September, 1920.

This is an action for wages and disbursements in which the plaintiffs obtained judgment for \$1,871.83 and costs after the owners of the ship had made default to appear; but when John S. Darrell & Co., the owners of the cargo, had been allowed to intervene and contest the plaintiff's claim.

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PERLEY W.  
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Reasons for  
Judgment.

After judgment the vessel was seized and advertised for sale. On the application of the shipowners, the sale was adjourned for two days and on the expiration of the two days the vessel was sold at auction by the sheriff and purchased by Darrell & Co. on Saturday, the 18th September, 1920, through their Halifax agent, when the necessary deposit was paid and the balance tendered on the following Monday—and refused on account of the present application of the shipowners to set aside the sale, and allow them to pay the amount due the plaintiffs and redeem the vessel.

It appears that the necessary monies to discharge the claim of the plaintiffs in the action came too late to Halifax,—about the time of the sale,—but not on time to stop the sale.

There is spread upon the record the further fact that the purchasers of the vessel on the Monday following the sale had made arrangements with the Halifax Shipyard to have the *American* go in the dry dock on the following Monday for repairs. Moreover, it appears from an affidavit on record that negotiations had already been entered into for the sale of the vessel at the time the application was originally presented, and a long time has elapsed since the sale. Where is the vessel at present, was asked at the hearing of the appeal, and counsel for the intervenors answered she was travelling on the high seas. She may well have been sold for all is known of her. If that were so, it would hardly be practicable to attempt at this stage, to restore the parties to pre-sale conditions.

From my first impression gathered at the hearing of the case I thought, to do justice among the parties interested, that the application ought to be granted and the vessel restored to the original owners upon paying the plaintiffs' claim and all costs occasioned by

their neglect, upon the ground that "much is to be said in favour of a principle which does justice to one party without doing injustice to the other;" however, so many conflicting interests have arisen since the time of the sale, which was made in a perfectly legal manner, that it becomes apparent that to extend an equity to the party in default would be to do an injustice to the other party whose rights were acquired in an unimpeachable way.

It is true the Admiralty Court, as said by Lord Stowell, exercises an equitable jurisdiction. The Court is not absolutely ministerial, and it is at liberty to hold its hand when it appears equitable to do so. See also *The Montreal Dry Dock and Ship Repairing Co. vs. Halifax Shipyards, Limited*(1).

However, *Vigilantibus et non dormientibus jura subveniunt*; the equitable arm of the Court is extended to the vigilant and not to the negligent. The sale was adjourned for two days to allow the shipowners to come in and cure their negligence and they failed to do so. The indulgence of the court has already been extended to them and they failed to take due advantage of it.

While the Admiralty Court exercises this unquestionable equitable jurisdiction, it must not be expected to peddle small equities. The case presents equities on behalf of both sides and they seem equally balanced. The burden was upon the appellant to show a superior equity which I fail to discover on the facts before me.

There were ample reasons for the learned local judge, after delaying the sale *for two days* at the request of the shipowners, to refuse their application and I am unable to find sufficient reasons to vary his pronouncement. And as said per Lord Loreburn, L.C., in *Brown vs. Dean* (2).

(1) 60 S.C.R. per Anglin J., p. 371.

(2) [1910]-A. C. 375.

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“When a litigant has obtained a judgment in a Court of Justice, whether it be a county court or one of the High Courts, he is by law entitled not to be deprived of that judgment without very solid grounds.” There is ample reason to support the judgment appealed from, which, under the circumstances gives substantial justice to all concerned.

There will be judgment dismissing the appeal.

*Judgment accordingly.*

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