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January 12.

QUEBEC ADMIRALTY DISTRICT.

PERCY CHARLES BONHAM.....PLAINTIFF;

VS.

THE SHIP *SARNOR*.....DEFENDANT.

Shipping—Practice—Lis pendens—Maritime lien for wages not transferable.

Held: 1°. That it is a fundamental doctrine of all courts that there must be an end to litigation and that parties to an action have no right after having tried a question in issue between them and obtained the decision of one court to litigate the same matter over again in another.

2°. That inasmuch as a lien for wages is not transferable, an engineer who has paid certain seamen cannot claim a lien for such advances against the ship, the law giving no one but the master the right to sue for wages paid to other members of the crew.

MOTION by defendant for an order that the writ of summons and all proceedings in the action be set aside and dismissed with costs on the ground amongst others that the questions between them had already been decided by another court in the province of Ontario.

January 12th, 1918.

Motion now heard this day before the Honourable Mr. Justice MacLennan, D. L. J. A., at Montreal.

J. A. H. Cameron, K.C., for plaintiff.

W. B. Scott, for defendant.

The facts are stated in the reasons for judgment.

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MACLENNAN, D. L. J. A., now (this 12th January, 1918) delivered judgment.

The plaintiff, who alleges that he is the chief engineer of the *Sarnor*, a British ship registered at the port of Montreal, instituted an action in this court and arrested the ship on 21st November, 1917, and claims against the ship and her owners \$1,127.57 for balance of wages due him; \$621.53 for wages paid to the crew; \$480.00 for necessaries supplied to the ship; \$2,000.00 for repairs done to the ship; a declaration of ownership of 60% of the shares of the ship, an account of her earnings for the years 1916 and 1917, and for bail for the safe return of the ship to the Quebec Admiralty District.

The defendant moves for an order that the writ of summons and all proceedings in the action be set aside and dismissed with costs on the grounds that some of the matters claimed by plaintiff are now pending in a suit instituted prior to the present action and in a competent Court, to wit, the Supreme Court of Ontario, wherein Adam Brown MacKay is plaintiff, and one Frederick R. Johnson and the present plaintiffs are defendants, in which action judgment was rendered on 17th November, 1917, declaring the said MacKay to be the absolute owner of all shares in the ship *Sarnor* and restraining said Johnson and the said plaintiff from interfering with the said MacKay's ownership, management or control of the said ship *Sarnor*, and that the court has no jurisdiction over the other matters included in the plaintiff's claim.

Adam Brown MacKay, Frederick R. Johnson and the present plaintiff entered into an agreement on 1st June, 1916, with respect to the steamer *Sarnor* owned by MacKay, in virtue of which said steamer was to be operated as a lake carrier, Johnson being the Master,

and Bonham, the present plaintiff, being the chief engineer. The agreement provided for Johnson and Bonham acquiring an interest in the ship upon the payment of certain sums of money. In the meantime the ship was registered in the port of Montreal in the name of Johnson as owner. The real owner was MacKay, and, on 23rd August, 1917, MacKay issued a writ in the Supreme Court of Ontario against Johnson and Bonham claiming an order vesting in him all right and title to the ship and that all shares be transferred to him and that he be registered as owner, an injunction restraining Johnson and Bonham with interfering with his ownership, management and control, his costs of action and such further relief as to the said court might seem meet. Johnson and Bonham filed a defence and all questions of ownership and accounts in connection with the operation of the ship were clearly in issue. The case was tried in the Supreme Court of Ontario, at Hamilton, On 17th November, 1917, in presence of counsel for all parties, and upon hearing read the pleadings and the evidence and what was alleged by counsel, judgment was rendered adjudging and declaring that the plaintiff MacKay was the absolute owner of all shares in the ship *Sarnor*, and the court further ordered and adjudged that the defendants Johnson and Bonham and each of them be and they were restrained from interfering in any way with MacKay's ownership, management or control of the ship.

Four days later, the present action was instituted and the plaintiff Bonham is now endeavouring to raise in this Court precisely the same questions which were litigated in the Supreme Court of Ontario. All questions of ownership, plaintiff's claim for wages, any other claims which he may have had against the ship were clearly before the Supreme Court of Ontario.

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In fact, everything claimed in the present action, with the exception of the claim for \$2,000.00 for repairs alleged to have been done to the ship at the port of Montreal during the month of November, 1917, were raised in the Ontario action and disposed of by the judgment therein rendered on 17th November, 1917. It is a fundamental doctrine of all courts that there must be an end of litigation and that the parties have no right after having tried a question between them and obtained a decision of a court to start that litigation over again on the same question; *In re May* (1); *The Phoebe* (2).

The plaintiff claims \$2,000.00 for repairs alleged to have been made to the ship in the port of Montreal, in November, 1917. The ship was not under arrest of the Admiralty Court at the time these repairs are alleged to have been made, and the jurisdiction of the court over a claim for repairs only exists, if at the time of the institution of the action the ship or the proceeds thereof are under arrest of the court; and the ship not being under arrest this court has no jurisdiction over the alleged claim for repairs; the Admiralty Court Act, 1861, section 4; *The Lyons* (3); claims for repairs and necessaries do not carry any maritime lien; *The Two Ellens* (4); *The Rio Tinto* (5); *The Flora* (6); Mayers, Adm. Law & Prac. 74. The home port of the ship was Montreal and the owners, whether MacKay alone, or MacKay, Johnson and plaintiff together, were all domiciled in Canada and these circumstances prevent this Court from having jurisdiction over the claims for repairs and necessaries; The Admiralty Court Act, 1861, s. 5; *The Garden City* (7).

(1) 28 Ch. D. 516.

(4) [1872] L.R. 4 P.C. 161.

(2) Stuart Admiralty Cases 59.

(5) [1883] 9 A.C. 356.

(3) [1887] 6 Asp. M.C. 199.

(6) [1897] 6 Ex. C.R. 137.

(7) [1901] 7 Ex. C.R. 94.

As to wages paid to crew, the plaintiff is not the master of the ship. He was in the eyes of the law a mere seaman, and there is no law giving any one not the master the right to sue in this court for wages paid to other members of the crew. Wages carry a maritime lien, but a lien for wages is not transferable; The Admiralty Court Act, 1861, s. 10; *The Petone* (1); Canada Shipping Act, s. 194.

The Court has jurisdiction to decide questions arising between co-owners under The Admiralty Court Act, 1861, s. 8. Plaintiff invokes this right but his affidavit on which the writ of summons issued refers to the judgment in the Ontario action, by which MacKay was adjudged and declared to be the absolute owner of the ship and the present plaintiff was restrained from interfering in any way with such ownership. An appeal from the latter judgment was entered after the institution of the present action, but that does not alter the position. Plaintiff's claim that he was a co-owner when he made his affidavit on the 21st November cannot be sustained, and in any event his claim in that respect formed the principal subject matter of the Ontario action where it was tried and determined, and he cannot litigate the same matter over again in this court.

For the foregoing reasons, I am of opinion that the plaintiff is improperly before this court and that defendant's motion to dismiss the writ of summons and set aside all proceedings herein must be granted with costs.

Judgment accordingly.

(1) [1917] 86 L.J. Adm. 164.

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