

BRITISH COLUMBIA ADMIRALTY DISTRICT.

1914

June 19.

In re THE SHIP "AURORA."

Shipping—Liens for equipment—Necessaries—Seaman's wages—Priority.

A lien for "building, equipping or repairing" a ship under sec. 4 of the *Admiralty Court Act*, 1861, or one for necessaries, cannot take priority over a lien for seaman's wages. *Munsen v. The Comrade*, (1902), 7 Can. Ex. 330, commented on.

MOTION for payment out of court of a sum recovered on a statutory lien for equipping a ship.

Argued at Vancouver, B. C., before the Honourable Mr. Justice Martin, Local Judge of the British Columbia District, May 2, 1914.

E. A. Lucas, in support of motion.

Sears, contra.

MARTIN, Loc. J. (June 19, 1914) delivered judgment.

This is a motion for the payment out of Court to Momsen et al., who had recovered a judgment on August 19th, 1913, for their statutory lien for equipping the "Aurora" with an engine—for \$925 and costs.¹ On November 12th, in the same year, Nosler recovered judgment for his wages as a seaman on the "Aurora".² The ship was sold by the marshal in *Momsen's* action, and so far, \$700, part of the proceeds, have been paid into Court. It is contended on behalf

¹ See *Momsen v. The Aurora* (1913) 18 B.C.R. 353, 13 D.L.R. 429.

² See (1913) 18 B.C.R. 449, 15 Can. Ex. 81, 17 D.L.R. 13.

1914

RE THE
"AURORA."Reasons for
Judgment.

of Momsen, *et al.* that because they had a decree of this court in their favour for the sale of the ship they are entitled to priority over Nosler's claim, who did not begin his action till after the decree had been pronounced. The ship after being arrested by Momsen gave bail and was released, and later re-arrested after Nosler's claim had attached, and there are other facts and circumstances on which Nosler relies which it is unnecessary to mention because, even taking the case to be wholly as Momsen *et al.* contend for, they are not entitled to the order asked for because there is no authority in support of the submission that a statutory lien for "building, equipping or repairing" a ship under sec. 4 of the *Admiralty Court Act*, 1861, or for necessities¹ can take priority over a lien for seamen's wages, in regard to which the authorities are thus summarized in *Williams & Bruce's Admiralty Practice*:²

"It takes precedence of claims for bottomry
"or necessities supplied to foreign or British
"ships and of payments for towage and for light
"and dock dues charged against the ship, but it
"ranks below maritime liens for damage done by
"collision, and for salvage rendered subsequently
"to the time when the wages were earned. Be-
"tween the holder of a bottomry bond and a
"claimant for wages earned on the same voyage
"on which the bond was given, no distinction is
"to be drawn between the portion of such wages
"earned before and wages earned after the giving
"of the bond."

¹ *Victoria Machinery Depot Co. v. The Canada and the Triumph* (1913), 18 B.C.R. 511, 514, 15 Can. Ex. 136, 17 D.L.R. 27. Cf *Roscoe's Adm. Prac.* (1903) 64 (f).

² (1902) 205-6.

Reference may also be made to *The William F. Safford*,¹ *The St. Lawrence*,² *The Andalina*³ (a case very similar to this), *The Africano*,⁴ *Roscoe's Ad. Prac.*,⁵ *The Neptune*,⁶ wherein Lord Stowell says "a seaman (has) a right to cling to the plait plank of his ship in satisfaction of his wages or part of them"; *The Cella*⁷ on the effect of the arrest, and *Munsen v. The Comrade*⁸ (a decision of this court in its New Brunswick District) shows that claimants will be protected according to their priority if they make application before the money has actually been paid out. I note, however, in this last case, on the point of priority between claimants *in pari conditione* and the decree that should be made in such circumstances in the absence of laches, the decision is not in accord with that of the President of the Admiralty Court in *The Africano*⁹ which was not cited to the Court, and points out the change in the practice since the decree in the *Saricen* case was issued.¹⁰

1914
RE THE
"AURORA."
Reasons for
Judgment.

The order, therefore, to be made herein is that Nosler is entitled to be paid his wages in full and the balance will be applied in reduction of Momsen's judgment. With respect to the order that ought to be made as to costs, I refer to *Williams & Bruce Admiralty Practice*¹¹ and *Roscoe's Admiralty Practice*,¹²

¹ (1860) 2 L.T.N.S. 301.

² (1880) 5 P.D. 250.

³ (1886) 12 P.D. 1.

⁴ [1894] P. 141.

⁵ (1903) 76-7.

⁶ (1824) 1 Hag. Adm. 227 at 237-8-9.

⁷ (1888) 13 P.D. 82.

⁸ (1902) 7 Can. Ex. 330.

⁹ [1894] P. 141.

¹⁰ See (1845) 4 Notes of Cases 498, 6 Moo. P. C. 56, Williams & Bruce *supra* 289 (z).

¹¹ At p. 469-70.

¹² 319 and the cases there cited.

1914

RE THE
"AURORA."Reasons for
Judgment.

and if the parties do not agree upon the order to be made in the unusual facts, *i.e.*, the release and re-arrest of this case, I am prepared to hear further argument thereupon, if it is desired, though counsel for *Momsen, et al.* made no submission on this point, nor did either counsel submit any authority.

Judgment accordingly.

Sears, for Nosler's claim.

E. A. Lucas, for Momsen's claim.