
NOVA SCOTIA ADMIRALTY DISTRICT

WALTER W. HODDER CO. INC.....PLAINTIFF;

AGAINST

THE SHIP *STRANDHILL*.....DEFENDANT.

Shipping—Maritime Lien—Foreign Law—Jurisdiction

W. W. H. Co. Inc., carrying on business at Boston, in the United States of America, sought, by action *in rem*, to recover the price of necessaries furnished to the defendant ship, in an American port, under a contract made there, and at the request of the owner, and to enforce a maritime lien for same against the ship, which lien was created and recognized by law of the United States where contract was made. The owner at the time of the contract was domiciled and resident in the United States, and the ship, then called the *Lincolnland*, was registered there, but later, before action, she was sold, her name changed, and she became of British Registry.

Held, that even though by the laws of this country, a person might not have a maritime lien for necessaries supplied under like circumstances, where such a maritime lien is created under the foreign law, the Exchequer Court of Canada, in Admiralty, can enforce such an action *in rem*, under the Colonial Courts of Admiralty Act, 1890, sec. 2, ss. 2.

This was an action *in rem* for the recovery of the price of certain necessaries furnished to the defendant ship in

the port of Boston. Upon motion of the defendant it was ordered that the question of law arising from the pleadings, to wit: that the court was without jurisdiction, be set down for argument before the trial on the merits.

Halifax, October 29, A.D. 1925.

Action now came on for argument on questions of law aforesaid.

Alfred Whitman, K.C., for plaintiff.

W. A. Henry, K.C., for defendant.

The facts and questions of law set down for argument are stated in the reasons for judgment.

MELLISH L.J.A., now this 26th March, 1926, delivered judgment (1).

This is an action *in rem* for necessaries supplied to the defendant ship in the United States. It is alleged that under the law of the State where the necessaries were supplied the plaintiff's claim is secured by a maritime lien on the ship.

As a preliminary point of law it is set up on behalf of the defendant ship that even assuming the facts as set forth in the Statement of Claim, the lien cannot be enforced in this court, and this for the reason that by the law of this country the plaintiffs would not have a maritime lien for necessaries supplied here under like circumstances.

Upon consideration I think that the point must be decided in plaintiff's favour. It is true that this court can only administer our own law. But if there is a maritime lien on the ship under foreign law, it is a maritime lien here, and it is only the local law which is being invoked to enforce an existing right between the parties. The action

(1) An appeal was taken to the Supreme Court of Canada, and on the 5th October, 1926, this judgment was unanimously affirmed by that court, the court referring to the decision of Hodgins L.J.A. in *Pittsburgh Coal Co.* v. *The Belchers* (1926) Ex. C.R. 24, distinguishing it from this case, and pointing out that in that case, the defendant ship was of Canadian Registry, and the owners were domiciled here.

1926

WALTER W. HODDER CO. INC. v. THE SHIP *Strandhill.*

Mellish L.J.A.

in rem is peculiar to this court and I think it is within the powers of this court when the parties are within the jurisdiction to proceed with such an action, no matter by what law the rights of the parties may have arisen. In adopting such a course the court is not administering foreign law, for it is by local law that the rights of parties before the courts are guarded no matter in what way such rights may have been acquired.

A maritime lien binds the ship not only in the hands of the owner on whose behalf the debt giving the rights to the lien was contracted, but also when in the hands of any person whomsoever.

A judgment *in rem* obtained against a ship in a foreign country creates a maritime lien—which will be enforced by an action *in rem* against the ship wherever found.

Dicey on Conflict of Laws, 3rd ed., p. 283.

It is true that there is a statement in the same volume at p. 822, that "the court has jurisdiction to entertain an action" *in rem* for the enforcement of any maritime lien if the case is "one in which, according to English law, a maritime lien exists."

From this statement it is suggested that the learned author left it to be inferred that such an action would not be entertained in a case like the present, because under English law the supplying of necessaries does not give rise to a maritime lien. In my opinion, however, the passage quoted should not be so construed because "according to English law a maritime lien exists," when created in accordance with the law of another jurisdiction, even though the circumstances might be such as not to create such a lien if they occurred within the local jurisdiction.

That this is the "most proper sense" in which to interpret the words "English law" is apparent from pages 6 and 7 of the volume above quoted from. Any other interpretation would make the passage misleading.

See the *Gaetano and Maria* (1), in which the Court of Appeal held, reversing the decision of Sir Robert Philli-

(1) [1882] 7 P. 137.

more, that a maritime lien would be enforced by the English Admiralty Court even though the facts were such as not to create a maritime lien by English as distinguished from foreign law.

In this case, at p. 143, Brett L.J. uses the following language:

> Now the first question raised on the argument before us was, what is the law which is administered in an English Court of Admiralty, whether it is English law, or whether it is that which is called the common maritime law, which is not the law of England alone but the law of all maritime countries. About that question I have not the slightest doubt. Every Court of Admiralty is a court of the country in which it sits and to which it belongs. The law which is administered in the Admiralty Court of England is the English maritime law. It is not the ordinary municipal law of the country, but it is the law which the English Court of Admiralty either by Act of Parliament or by reiterated decisions and traditions and principles has adopted as the English Maritime law, and about that I cannot conceive that there is any doubt.

This is not merely an action for necessaries, it is an action to enforce a maritime lien said to be such under the law of the State of Virginia. If it exists, even by virtue of such a law, this court in my opinion has power to enforce it in an action *in rem* under "The Colonial Courts of Admiralty Act, 1890," sec. 2 (2).

The Gaetano and Maria (1), and *The City of Mecca* (2).

If a maritime lien exists it cannot be shaken off by changing the location of the *res*. A foreign judgment *in rem* creates a maritime lien and even although such a judgment could not have been obtained in the courts of this country, it will be enforced here by an action *in rem*. But a maritime lien may be created by foreign law otherwise than by a judgment *in rem;* and if it be so created I think it can be equally enforced here in the same way. If the plaintiffs have lawfully acquired the right to the *res* even under foreign law, it would be strange if they had not the liberty to enforce it here in the only court providing relief *in rem*. As between parties before the court, the court should I think have power to adjudicate upon their rights however and wherever arising provided these have to do with matters over which the court has jurisdiction. This

(1) [1882] 7 P. 137. (2) [1881] 6 P. 106.

1926

WALTER W. HODDER CO. INC. v. THE SHIP *Strandhill.*

Mellish L.J.A.

brings me to the consideration of the question raised by the defendant as to whether this is an "Admiralty action" —a prerequisite to jurisdiction.

Dicey, 3rd ed., Rule 61, p. 280.

I am of opinion that it is. The jurisdiction clearly I think cannot depend upon whether or not the plaintiff's claim to a maritime lien exists by virtue of a foreign judgment but rather upon whether in fact it exists at all. Admittedly for the purposes of this argument it does exist and therefore I cannot decline jurisdiction.

There will be an order accordingly.

Judgment accordingly.