

ON APPEAL FROM THE QUEBEC ADMIRALTY DISTRICT  
 GEORGE McCULLOUGH, ET AL.....PLAINTIFFS;  
 AGAINST  
 THE SHIP *SAMUEL MARSHALL*.....DEFENDANT;  
 AND  
 HYMAN I. ELIASOPH (CLAIMANT).....APPELLANT;  
 AND  
 THE STEEL COMPANY OF CANADA }  
 (CONTESTANT) ..... } RESPONDENT.

1924  
 Jan. 14.

*Shipping and Seaman—Maritime lien—Non-transferrable—Wages of seaman—Meaning of seaman.*

*Held:* (Affirming the judgment appealed from), That the claimant not having signed the ship's articles, not having lived on board, and the sum sued for not having been earned on board, he was not a seaman within the meaning of the Act and his claim did not carry privilege.

2. That the maritime lien attaching to a seaman's wages is personal to the seaman, and not, transferrable and no one voluntarily paying the wages of one or more of the crew can claim a lien against the ship for the amount so paid.

This is an appeal from the judgment of the Local Judge of the Quebec Admiralty District, pronounced on the 2nd day of March, 1923, rejecting with costs the appellant's claim (1).

December 15, 1923.

Appeal now heard before Honourable Mr. Justice Audette at Ottawa.

*T. M. Tansey* for appellant.

*O. S. Tyndale* for respondent.

The facts are stated in the reasons for judgment.

AUDETTE J., now this (14th of January, 1924) delivered judgment (2):—

This is an appeal from the judgment of the Local Judge of the Quebec Admiralty District, pronounced on the 2nd day of March, 1923, rejecting with costs the appellant's claim.

Having heard counsel at bar for the appellant and the respondent, having very carefully read the evidence and upon considering the same, I am unhesitatingly led to concur in the judgment of the trial judge—who has had the advantage, not shared by me, of seeing the witnesses and

(1) [1923] Ex. C.R. 110.

(2) An appeal has been taken to the Supreme Court.

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*Samuel  
Marshall.*

Audette J.

observing their demeanor when testifying upon the facts that are the very foundation of the case.

The appellant was never a seaman within the full acceptance of that term and his claim under the circumstances carries no privilege for the nature of the services rendered. The most that could be claimed is that he was Miller's agent. The sum sued for should have been earned on board the ship to carry privilege, and he did not live on board, nor was he ever articulated. Roscoe, 4th Ed. 247.

No pursers are kept on vessels such as the one in question in this case, for the obvious reason that there is no work on board for them.

Moreover with respect to Eliasoph's contention of having paid wages, it is answered by the principle that, without the leave of the Court, no person who voluntarily pays wages of one or more of a crew has the rights which they possess against the *res*. In other words their maritime lien is not transferable—it is personal to the seaman. Roscoe, p. 254.

I also share the trial judge's view with respect to the very nature of the claim. Eliasoph who was living with his wife and children, at his father-in-law's house was not earning any money. He has not been paid any wages for the two years he has been employed by the owners of the *Samuel Marshall*. He never offered any documentary evidence to show how and where he procured the moneys for these alleged payments for which he asks reimbursement with privilege; but contented himself in saying he got the money from his father-in-law without ever calling the latter as witness. The whole story of the appellant rests on a vague and unsubstantial basis of fact that suggests fabrication and lacks the support of credible evidence necessary to give it the character of a just and meritorious claim.

Therefore the appeal is dismissed, and with costs on all issues.

*Judgment accordingly.*

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