

1924
June 25.

QUEBEC ADMIRALTY DISTRICT

ST. LAWRENCE TRANSPORTATION }
COMPANY, LIMITED }

PLAINTIFF;

AGAINST

SCHOONER *AMEDEE T.*

Shipping and Seamen—Maritime lien—Act of the Crew.

Plaintiff's scow was tied to its dock in Quebec Harbour, and the persons in charge of the defendant schooner in order to come alongside the dock cast off the lines of the schooner and let her drift on the rocks, without any right or excuse, causing her considerable damage.

The present action *in rem* is taken to enforce a maritime lien against the schooner for such damage.

Held, that inasmuch as the damage sought to be recovered was due to an act of the schooner's crew and did not arise from any wrongful act of navigation of the schooner, and as the schooner was not the instrument which caused the damage, the present action must fail. *Currie v. McKnight*, (1897) A.C. 97, followed.

MOTION to dismiss for want of jurisdiction.

Motion heard before the Honourable Mr. Justice Mac-lennan at Quebec on 21st June, 1924.

Antoine Rivard for plaintiff.

A. C. M. Thomson for defendant.

The facts are stated in the reasons for judgment.

(1) [1877] 3 Asp. N.S. 512. (2) [1908] 77 L.J. Adm. 76.
(3) [1900] A.C. 234; 69 L.J. Adm. 49.

MACLENNAN L.J.A., now this 25th June, 1924, delivered judgment.

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Defendant moves to dismiss the present action, to set aside the writ of summons *in rem*, the warrant and the arrest and to order the release of bail furnished by defendant, with costs against the plaintiff, on the ground that the facts alleged disclose no right of action *in rem* against defendant, nor the existence of any maritime lien and for want of jurisdiction to hear and decide the issue raised in the action.

The plaintiff's case, as set out in the statement of claim, is that on 23rd October, 1923, when its scow was tied up to its dock in the harbour of Quebec, the persons in charge of the schooner defendant, in order to come alongside the dock, unmoored or cast off the lines of the plaintiff's scow and let her go adrift on the rocks, without any right or excuse, thereby causing her considerable damage for the recovery of which this action *in rem* has been instituted and the schooner arrested. The purpose of this action is to enforce a maritime lien against the schooner.

There was no physical contact between the scow and the schooner, they did not come into collision. The unmooring of the scow by the crew of the schooner was to enable the latter to come alongside the dock where the scow had been moored. This proceeding on the part of the crew may be assumed for the purpose of this action to have been an unlawful act subjecting those responsible for the acts of the crew to liability for the damage suffered by the scow, but that is not the case now before the court. By the Admiralty Court Act, 1861, this court has jurisdiction *over any claim for damage done by any ship*. The question to decide is: Was the damage to the scow done by the schooner by any wrongful act or manoeuvre or negligent navigation on her part in such a manner that it can be said that the schooner was the active cause and instrument of mischief in what happened to the scow?

In the case of *Currie v. McKnight* (1), Lord Halsbury L.C., said:—

* * * the phrase that it must be the fault of the ship itself is not a mere figurative expression, but it imports, in my opinion, that the ship

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against which a maritime lien for damages is claimed is the instrument of mischief, and that in order to establish the liability of the ship itself to the maritime lien claimed some act of navigation of the ship itself should either mediately or immediately be the cause of the damage.

In the same case Lord Watson, at page 106, said:—

I think it is of the essence of the rule that the damage in respect of which a maritime lien is admitted must be either the direct result or the natural consequence of a wrongful act or manoeuvre of the ship to which it attaches. Such an act or manoeuvre is necessarily due to the want of skill or negligence of the persons by whom the vessel is navigated; but it is, in the language of maritime law, attributed to the ship because the ship in their negligent or unskilful hands is the instrument which causes the damage.

The injuries sustained by plaintiff's scow were not caused by any manoeuvre or movement of the schooner, but by an act of some of her crew. The decision of the House of Lords above cited is directly in point and is decisive on the non-existence of a maritime lien on the schooner for the damages sustained by the scow. The facts of that case are almost identical with the facts in this case and the principle applied in that case is equally applicable in this action. The damage here sought to be recovered did not arise from any wrongful act of navigation of the schooner, and, as the schooner was not the instrument which caused the damage, the present action must fail. See also *Mulvey v. The Barge Neosho* (1), where I dealt with a claim for damage alleged to have been done by a ship.

There will therefore be judgment for the defendant dismissing the writ of summons *in rem* and the warrant, setting aside the arrest and ordering the release of the bail furnished by defendant, with costs against the plaintiff.

Judgment accordingly.