

1921

June 13.

QUEBEC ADMIRALTY DISTRICT.

JEAN BAPTISTE ROBILLARD . . . PLAINTIFF;

VS.

THE SAILING SLOOP *ST. ROCH* . . DEFENDANT;

AND

ALCIDE CHARLAND INTERVENANT.

Shipping—Merchant Shipping Act—Bill of sale—Form thereof—Bad faith—Entry in register of shipping not conclusive as to ownership—Maritime law of England.

Held: That where the vendee of a ship bought in bad faith, knowing that his vendor was committing a fraud, the sale should be set aside.

2. That where the bill of sale of a ship had not been executed in accordance with the provisions of sec. 24 of the Merchant Shipping Act, it did not transfer the ownership therein.
3. That where a question of ownership is raised, the entry in the register of shipping is not conclusive, and the court may inquire into the validity of the bills of sale and into all other circumstances affecting the right of property in the ship.
4. That although the Exchequer Court of Canada on its Admiralty side sits in Canada, it administers the maritime law of England in like manner as if the cause of action were being tried and disposed of in the English Court of Admiralty.

ACTION IN REM claiming the ownership and possession of the defendant ship and praying that the transfer thereof on the register be set aside as irregular and in bad faith.

May 29th and 30th, 1921, and June 13th, 1921.

The case was heard before the Honourable Mr. Justice MacLennan at Montreal.

Conrad Pelletier K.C., for plaintiff.

F. J. Bisailon K.C., for defendant and intervenant.

The facts are stated in the reasons for judgment.

MACLENNAN D.L.J.A. now (13th June, 1921) delivered judgment.

This is an action *in rem* by which plaintiff claims the ownership and possession of the sailing sloop *St. Roch*. The action is contested by the intervenant, Alcide Charland.

Plaintiff's case is that, on 17th June, 1897, he bought the *St. Roch* through Calixte Deneau from Adolphe Laperrière, Jr., with his own money, and, as he was then involved in some litigation with his wife, took a bill of sale from Laperrière in the name of his uncle, Joseph Robillard, as purchaser, which bill of sale was registered at the Custom House, Montreal, on 29th June, 1897; that he took possession of and operated the sloop from that date for his own profit and benefit, and kept the sloop in repair until the close of the navigation season of 1918; that his uncle, Joseph Robillard, died on 17th October, 1905, leaving a will under which his wife, Annie de Lorimier, was the universal legatee and sole executrix and that she, at plaintiff's request, on 3rd March, 1908, executed a bill of sale of the *St. Roch* to Mélina Robillard, a sister of plaintiff, which bill of sale was duly registered on June 22nd, 1908; that Mélina Robillard allowed her name to be used in said bill of sale for the purpose of holding the *St. Roch* for and on behalf of plaintiff; that she had no real interest in the sloop; that she died on 11th February, 1919, leaving a will in which she appointed her nephew, Nathaniel Rondeau, exec-

1921
ROBILLARD
v.
THE SAILING
SLOOP
ST. ROCH
AND
CHARLAND.
Reasons for
Judgment.
MacLennan
D.L.J.A.

1921

ROBILLARD
v.
THE SAILING
SLOOP
ST. ROCH
AND
CHARLAND.

Reasons for
Judgment.

MacLennan
D.L.J.A.

utor and trustee and that the latter, during plaintiff's illness and without his knowledge or consent, knowing that Méline Robillard had no interest in the *St. Roch*, and that she was only holding the sloop in her name for the plaintiff, illegally and in bad faith, by an irregular bill of sale dated 12th May, 1919, and registered 15th August, 1919, purported to sell the sloop for an insignificant price to the intervenant, Alcide Charland, and by his action the plaintiff claims to be declared the sole and real owner of the sloop and its equipment; and to be put in possession thereof.

The intervenant's case is that he is the sole and actual owner of the *St. Roch* in virtue of the will of Méline Robillard and the bill of sale of 12th May, 1919, in which intervened Anthime Robillard and Maria Anne Robillard, wife of Louis Rondeau, in their quality of sole legatees of Méline Robillard. The intervenant admits the bills of sale from Laperrière to Joseph Robillard and from Annie de Lorimier to Méline Robillard and the death of the latter, and all other allegations of the plaintiff's claim are denied, and the intervenant concludes for the quashing of the arrest of the *St. Roch* and the dismissal of plaintiff's action with costs.

The first important question to be decided is:— Is it the Maritime Law of England or the Canadian Law which governs the rights of the parties in respect to plaintiff's claim for title and possession of the sailing sloop *St. Roch*? The Exchequer Court of Canada as a Court of Admiralty is a court having and exercising all the jurisdiction, powers and authority conferred by the Colonial Courts of Admiralty Act, 1890 (Imp.), over the like places, persons, matters and things as are within the jurisdiction of the Admiralty Division of the High Court in England, whether

exercised by virtue of a statute or otherwise, and as a Colonial Court of Admiralty it may exercise such jurisdiction in like manner and to as full an extent as the High Court in England.

In *The Gaetano and Maria* (1), Brett, L. J., at p. 143, said:—

“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.”

Although the Exchequer Court in Admiralty sits in Canada it administers the Maritime Law of England in like manner as if the cause of action were being tried and disposed of in the English Court of Admiralty.

The plaintiff's action is based upon section 4 of the the Admiralty Court Act, 1840 (3-4 Vict., ch. 65 Imp.), which provides that the Court of Admiralty shall have jurisdiction to decide all questions as to the title to or ownership of any ship or vessel arising in any cause of possession which shall be instituted in the said Court after the passing of that Act. This is a cause of possession.

26 Halsbury's Laws of England, p. 15, says:—

“Ownership in a British ship or share therein may be acquired in any of three ways—by transfer from a person entitled to transfer, by transmission or by building. Acquisition by transfer and transmission have been the subject of statutory enactment. Acquisition by building is governed by the common law. Ownership in a British ship or share therein is a

1921

ROBILLARD
v.
THE SAILING
SLOOP
ST. ROCH
AND
CHARLAND.

Reasons for
Judgment.

MacLennan
D.L.J.A.

(1) 7 P.D., 137.

1921

ROBILLARD
v.
THE SAILING
SLOOP
ST. ROCH
AND
CHARLAND.

Reasons for
Judgment.

MacLennan
D.L.J.A.

question of fact and does not depend upon registration of title. Whether registered or unregistered, a person in whom ownership in fact vests is regarded in law as the owner—if registered, as the legal owner; if unregistered, as the beneficial owner.”

The statutory provisions applicable to the transfer of a registered ship are to be found in the Merchant Shipping Act 1894 (Imp.) sec. 24, and beneficial or equitable ownership is recognized in sec. 57, and section 91 make these provisions applicable to Canada.

The register of the *St. Roch* shows that she was built in 1894 and registered on July 27th, 1896, in the name of Adolphe Laperrière, Jr., as owner; that he executed the bill of sale in favour of Joseph Robillard, whose executrix executed a bill of sale in favour of Mélina Robillard, and whose executor in turn executed a bill of sale to Alcide Chartrand, the intervenant. If these several bills of sale and their registration are conclusive evidence of ownership, the plaintiff has no case. He, however, claims a right to look behind the bills of sale and investigate all the surrounding circumstances in order to determine the real character of the bills of sale and to establish that he was at all times since the registration of the bill of sale in favour of Joseph Robillard, the real beneficial and equitable owner of the sloop and that, although Joseph Robillard and Mélina Robillard appeared on the register as the registered owner, each of them was in fact only his nominee or trustee holding the apparent and registered title for his benefit and on his behalf, or under the title, as it is known in the Province of Quebec in civil matters, of a *prête-nom* for him. The right of the court in a case like this to inquire into the validity of the bills of sale and into all other circumstances affecting the right of property in

the sloop is clearly recognized in the Maritime Law of England, as will appear from a reference to the following cases:—*The Victor* (1); *The Empress* (2); *The Margaret Mitchell* (3); *Gardner v. Cazenove* (4); *Orr v. Dickinson* (5); *Holderness v. Lamport* (6); *Ward v. Beck* (7); *The Innisfallen* (8); *The Jane* (9); *The Rose* (10).

The same principles were adopted and applied by the Local Judge of this Court in British Columbia recently in the case of *Haley v. S.S. Comox* (11).

Applying the principles laid down in these cases, it is clearly established that the plaintiff became the purchaser and real owner of the sloop in 1897; that he paid the price with his own money and remained in possession until the end of 1918; that during all these years he kept the sloop in good order and repair at his own expense and that he never rendered any account of his operations to his uncle, Joseph Robillard, nor to his sister, Méline Robillard, nor to any one else. He was in fact openly and publicly in possession and operating the sloop for his own benefit and advantage and no one else ever claimed to be the real owner of the St. Roch. On the death of Joseph Robillard, his widow, knowing the sloop really belonged to plaintiff, executed at his request the bill of sale in favour of plaintiff's sister, Méline Robillard, who was unmarried, lived in plaintiff's house as a member of his family and never exercised or claimed any right of ownership in the sloop. There is evidence that during

1921

ROBILLARD
v.
THE SAILING
SLOOP
ST. ROCH
AND
CHARLAND.

Reasons for
Judgment.

MacLennan
D.L.J.A.

(1) 13 L.T. 21.

(2) Swabey 160.

(3) Swabey 382.

(4) 1 H. & N., 423,
435 & 436.

(5) 28 L.J. Ch. 516, 520.

(6) 30 L.J. Chan. 489 & 490.

(7) 32 L.J. C.P., 113 & 116.

(8) L.R. 1 A. & E. 72.

(9) 23 L.T., N.S., 791.

(10) L.R. 4 A. & E. 6.

(11) 20 Ex. C.R. 86.

1921
 ROBILLARD
 v.
 THE SAILING
 SLOOP
 ST. ROCH
 AND
 CHARLAND.
 Reasons for
 Judgment.
 MacLennan
 D.L.J.A.

her lifetime she admitted that the *St. Roch* belonged to plaintiff. At the close of the navigation season of 1918, plaintiff laid up the sloop at Berthier for the winter. In January, 1919, he became ill and came to Montreal for an operation in an hospital and was ill and unable to attend the business matters during practically the whole of that year. During his illness his sister died and the sloop passed into the possession of Alcide Chartrand in May, 1919. The evidence clearly establishes that although the sloop was registered, first, in the name of Joseph Robillard, afterwards, in the name of Mélina Robillard, the plaintiff was during all these years the real owner.

The intervenant Charland claims title under the bill of sale dated 12th May, 1919, and registered 15th August, 1919, in connection with which two important questions have to be considered. First, was the transfer of the *St. Roch* to Charland made in accordance with the provisions of the Merchant Shipping Act? And second, Did Charland buy the sloop in good faith and without knowledge of fraud on the part of Nathaniel Rondeau? Unless both these questions can be answered in the affirmative, Chartrand's title is defective.

Under section 24 of the Merchant Shipping Act a registered ship shall be transferred by bill of sale which shall be executed by the transferer in the presence of and be attested by a witness or witnesses. The bill of sale upon which Charland relies describes the transferors as being Nathaniel Rondeau, executor under the will of Mélina Robillard, and Anthime Robillard and Marie Anne Robillard, wife of Jean Louis Rondeau, sole legatees of Mélina Robillard, who, "In consideration of the sum of \$850.00 paid to us by Alcide Charland, of 263 Moreau Street, in the

said City of Montreal, Province of Quebec, Canada, Sailor, the receipt whereof is hereby acknowledged, transfer 64 shares in the ship above particularly described, and in her boats, guns, ammunition, small arms and appurtenances to the said Alcide Charland. Further, we, the said Anthime Robillard and Marie Anne Robillard, for ourselves and our heirs covenant with the said Alcide Charland and his assigns, that we have power to transfer in manner aforesaid the premises hereinbefore expressed to be transferred and that the same are free from incumbrances. In witness whereof we have hereunto subscribed our name and affixed our seal this twelfth day of May, one thousand nine hundred and nineteen.

Executed by the above named Anthime Robillard and Marie Anne Robillard, in the presence of:—Donat Martel, Notaire, Notary Public, 92 Notre-Dame East, Montreal.

Anthime Robillard, Marie Anne Robillard, Jean Louis (his X mark) Robillard.

Witness: René Coutu, Nathaniel Rondeau."

This bill of sale purports to show that Anthim Robillard and Marie Anne Robillard executed it, that they signed it in the presence of Donat Martel. No witness was examined to prove the execution of the bill of sale, but Alcide Charland swore that it was signed by Nathaniel Rondeau; he does not say that Rondeau signed in his presence. According to Charland's evidence, he bought from Rondeau as executor. Under the will of Méline Robillard the two legatees, Anthime Robillard and Marie Anne Robillard certainly had no power to sell the sloop. By section 24 of the Merchant Shipping Act, the bill of sale must be in the form given in the first schedule

1921

ROBILLARD
v.
THE SAILING
SLOOP
ST. ROCH
AND
CHARLAND.
Reasons for
Judgment.
MacLennan
D.L.J.A.

1921
 ROBILLARD
 v.
 THE SAILING
 SLOOP
 ST. ROCH
 AND
 CHARLAND.
 Reasons for
 Judgment.
 Maclennan
 D.L.J.A.

of the Act and must be executed by the transferor in presence of and be attested by witness or witnesses. There is no witness or attestation of the signature of Nathaniel Rondeau in the bill of sale. The notary Donat Martel, witnessed and attested the signatures of Anthime Robillard and Marie Anne Robillard. The Privy Council, in 1912, in the case of *Shamu Patter v. Abdul Kadir Ravuthan* (1), laid down the principle that the word "attesting" in a statutory provision similar to section 24 of the Merchant Shipping Act meant the witnessing of the actual execution of the document by the person purporting to execute it. Rondeau does not covenant that he had power to make the transfer. This is another defect in the bill of sale.

In *Burgis v. Constantine* (2), Sir Gorell Barnes, at page 1052, said:—

"Beneficial owners who leave their shares on the register in the name of another person are to be bound by anything he does in the manner provided by the Act, but not otherwise." See also observations of Fletcher Moulton L.J., p. 1053, and Farwell L.J., p. 1055.

Assuming that Nathaniel Rondeau, as executor, had the right to transfer the sloop by bill of sale, it is settled law that he could only do so in the manner provided by the Act and not otherwise. The bill of sale in this case has not been executed in the manner provided by the Act, and I come to the conclusion that it did not transfer the *St. Roch*.

There remains the question whether Charland bought in good faith and without knowledge of fraud on the part of Rondeau. Charland admits that he has been

(1) 28 T. L. R. 583. (2) [1908] 2 K.B. 484 77 L.J.K.B. 1045 C.A.

a navigator for fifteen years, with the exception of a period of four years immediately preceding his purchasing of the *St. Roch*, and that while he was navigating he knew the *St. Roch* and had always seen plaintiff in charge of her. The price of \$850.00 which he paid was not a reasonable price. The *St. Roch* was worth fully twice that sum. At the trial, plaintiff swore that he met Charland in Montreal, about 21st March, 1921, and had some conversation with him concerning Charland's purchase, and plaintiff swore in examination in chief and also in cross-examination, that one of Charland's statements to him was: "Il m'a dit qu'il n'avait pas droit de le vendre, mais qu'il le vendait quand même." It is rather significant that Charland subsequently called as a witness on his own behalf, did not deny this statement. The circumstances surrounding the transaction were sufficient to put Charland on inquiry and it is reasonable to infer that he entered into the transaction knowing that Rondeau was committing a fraud on plaintiff. Rondeau was not examined as a witness, but the evidence shows he knew plaintiff was the beneficial owner of the sloop. All the circumstances of the alleged purchase go to indicate that Charland was not acting in good faith.

The evidence in this case and the principles of law applicable lead me to the conclusion that the plaintiff has established his claim as the real owner of the *St. Roch*; that the bill of sale relied upon by Charland was not executed in accordance with the provisions of the Merchant Shipping Act and is therefore invalid and void as a transfer and that the intervenant, Alcide Charland, did not acquire the sloop in good faith, and there will therefore be judgment pronouncing Jean Baptiste Robillard, the plaintiff, to be

1921

ROBILLARD
v.
THE SAILING
SLOOP
ST. ROCH
AND
CHARLAND.
Reasons for
Judgment.
MacLennan
D.L.J.A.

1921
ROBILLARD
v.
THE SAILING
SLOOP
ST. ROCH
AND
CHARLAND.
Reasons for
Judgment.
Maclennan
D.L.J.A.

lawful owner of the sloop *St. Roch*, and that he is entitled to be registered as the sole owner thereof, declaring null and void the bill of sale to Charland, dated 12th May, 1919, and registered 15th August, 1919, and its registration, and that possession of the said sloop be delivered to him by Alcide Charland, with costs against the latter.

Judgment accordingly.

Solicitor for plaintiff: *Conrad Pelletier K.C.*

Solicitors for defendant and intervenant: *Gosselin,
LeBlanc & Plante.*
