AYMAR JOHNSON,.....PLAINTIFF; 1922 March 6.

VS.

THE SS. *BELLA*.....DEFENDANT.

Shipping—Judicial sale of vessel—Jurisdiction—Status of purchaser at sale—Bad faith— Claim for expenditures on ship against person seeking to recover possession.

Held: That a judicial sale of a vessel under the decree of a Court without jurisdiction to order such sale, is an absolute nullity.

2. That a purchaser of a vessel at judicial sale is chargeable with notice as to whether or not the Court ordering the sale had jurisdiction in the matter, and if it is without jurisdiction, as in the present case, he becomes a trespasser on the property which he purports to acquire, and subsequent expenditure by him on or in respect of said property so purchased is made at his own peril, and he is not entitled to any compensation therefor.

3. The inadequacy of the price paid by a party at a sale, any false description of himself to the marshall, his flight with the ship without usual clearance, knowing that his title had been attacked, are inconsistent with good faith on his part.

ACTION *in rem* to recover possession of the S.S.*Bella* which had been sold under an order of a court of the State of New Jersey which was subsequently declared to be without jurisdiction in the matter, and a warrant of attachment and further proceedings taken thereon vacated.

February 6th and 7th 1922.

Case now heard before the Honourable Mr. Justice Maclennan, L.J.A. at Quebec.

Alfred C. Dobell K.C. and *H. H. Breland* (of New York Bar) for plaintiff;

A. C. M. Thomson for defendant.

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The facts and questions of law involved are stated in the reasons for judgment.

MACLENNAN, L.J.A. now (this 6th day of March 1922) delivered judgment.

This is an action *in rem* to recover possession of the Steamship *Bella*.

The pleadings in the action are very lengthy and their material allegations are substantially as follows:—

The plaintiff alleges that he purchased the SS. *Bella* on 31st December, 1919, by bill of sale, warranting the ship to be free and clear from all liens, at New York from the Campanhia Metallurgica De Rio de Janeiro; that he thereupon took possession and removed the vessel to Ulrich's Basin at Edgewater, New Jersey; that in the course of his usual business he went to England in the latter part of May and returned in the latter part of August, 1920, when he discovered to his surprise that the ship had disappeared during his absence, and he subsequently discovered that one W. J. Thompson had taken possession of her and removed her to Quebec, and plaintiff claims that he be declared the true and lawful owner and be put in possession of the ship.

The defence filed by W. J. Thompson, is that he purchased the ship from a marshall of the United States of America for the District of New Jersey at a judicial sale ordered by the District Court of the United States for the District of New Jersey for the sum of $1,560.00 under a bill of sale from said marshall dated 4th August, 1920; that in virtue of said purchase made legally and in good faith he became the owner of said vessel and has since laid out and expended on

her in the Port of New York approximately $6,579.00 and at the Port of Quebec a further sum of $4,167.09, which increased the value of the vessel by at least the amounts so expended, and defendant concludes by claiming that he should be declared the true and lawful owner of the vessel, that his possession be declared legal, that he be placed in possession of the vessel and, reserving all further recourse, he asks for the dismissal of plaintiff's action with costs and for such other and further relief as may be found just in the premises.

The plaintiff by his answer to the defence alleges that the sale by the United States marshall to defendant was null and void, because the District Court of the United States for the District of New Jersey was without jurisdiction to issue the writ of *venditioni exponas* by virtue of which the marshall purported to sell the vessel, and the said Court quashed and annulled the said writ and the sale and ordered that the bill of sale given by the marshall be returned for cancellation and that the said Thompson return the vessel, and subsequently said action was dismissed for want of jurisdiction in the said Court.

The defendant by his reply admits that the United States District Court for the District of New Jersey, which ordered the sale of the said vessel, acted without jurisdiction; that he bought the vessel at a public sale, received a title which he was advised by American Counsul was good; that he made extensive repairs believing he was the true and lawful owner and that since the answer to plea was filed he offered without prejudice to allow the plaintiff to take the vessel on being refunded the purchase price and the money disbursed by him and by others on his account, which offer was refused.

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The plaintiff by a reply to defendant's reply alleges among other matters that the defendant, having purported to buy the said vessel at an alleged sale by a Court which was wholly without jurisdiction to make said sale, acquired no right or title of any kind whatsoever to said vessel, the said alleged sale being void and of no effect; that any expenses, repairs or improvements in connection with said vessel after she left New York were made and done by defendant with notice of plaintiff's claim to said vessel and that defendant in so doing was a trespasser upon the plaintiff's property, and that reimbursement to defendant of sums expended by him cannot be claimed from plaintiff either as a condition to surrender of the vessel or otherwise; that the purchase price paid by defendant for said vessel was not paid to plaintiff and has never been received by him, and plaintiff further alleges that it was impossible for him to tender the cost of repairs before beginning this action as the amount thereof was unliquidated and cannot be ascertained until the same has been proved and determined by a Court of competent jurisdiction.

This vessel was built at Hull, England, in 1896, was 98.4 feet long 20.5 feet wide, 11 feet deep, had a gross tonnage of 146.44 tons, triple expansion engines, a speed of 9½ knots, was classed in Lloyd's Register 100A 1 steam trawler; she was originally known as the Screw Steamship *Jamaica* and, on 20th April, 1912, became Brazilian property and her name was changed into *Bella*. The plaintiff purchased her in New York on 31st December, 1919, from a Brazilian corporation as already stated. In April 1920, he had her placed in storage at Edgewater, New Jersey, and, on 25th May, 1920, left for Europe and returned 26th August, 1920. During his absence and without any

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notification to him or to the previous owners or to any one on his behalf the Morse Dry Dock and Repair Company entered an action in Admiralty against the SS. *Bella* in the United States District Court for the District of New Jersey on an alleged claim for wharfage charges against said steamer and, on 6th July, 1920, obtained an interlocutory order for the sale of the vessel by the marshall and an order that a writ of *venditioni exponas* issue, and upon said writ the marshall of the Court purported to sell the vessel for $1,560.00 to "W. J. Thompson of the City of New York, County of New York and State of New York", and said marshall issued a bill of sale to the said Thompson on 4th August, 1920. On plaintiff's return from Europe, on 26th August, 1920, he found that the ship had disappeared and subsequently discovered she had been sold at marshall's sale, on 26th July previous, to satisfy the claim of Morse Dry Dock & Repair Company, of which he had never had notice, to one W. J. Thompson of the City of New York, according to the records of the marshall. One of plaintiff's Attorneys in New York was informed by the marshall that on the sale of the vessel both W. J. Thompson and one Charles H. McKinney were present and that the bill of sale, in accordance with instructions given at the time of the sale, was mailed to W. J. Thompson, in the care of McKinney, Room 406, 30 Church Street, New York City, and upon inquiry at said room, which was McKinney's place of business, no W. J. Thompson could be found and McKinney, who was Thompson's broker and paid agent in the matter, refused to give any information about his principal. The plaintiff, on 17th September, 1920, upon application to a Judge of the United States District Court for the District of New Jersey obtained an order in the action

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therein pending of the Morse Dry Dock & Repair Company, libellant, against the Steamship *Bella*, that the said Company and the said W. J. Thompson and the said McKinney and all other persons claiming an interest in the SS. *Bella* show cause before one of the Judges of said Court at a stated term thereof to be held in the Court House at Newark, New Jersey, on the 27th day of September, 1920, why an order should not be entered vacating the order of the Court made on 6th July, 1920, which directed that the SS. *Bella* be sold and that a writ of *venditioni exponas* issue, and that the said persons further show cause why said writ should not be quashed and the sale of the vessel set aside and the order of the Court confirming said sale vacated and the bill of sale of the said vessel cancelled and the purchaser directed to return the ship to the marshall, and the said McKinney and W. J. Thompson and each of them were enjoined from removing said vessel out of the jurisdiction of said Court pending the determination of said application and that all proceedings be stayed. A copy of said order was directed to be served upon the proctors for the libellant and upon W. J. Thompson and upon McKinney and, in the event that the latter could not be found so that personal service could be made upon them, leave was given to mail copies of said order addressed to the post office address given to the marshall at the time of the sale of said vessel. Service of this order was duly made upon McKinney and upon W. J. Thompson and, on 23rd September, Joseph P. Nolan, Attorney at law of the City of New York, was consulted by W. J. Thompson with reference to said order served as aforesaid and instructed to appear for said purchaser, and on the following day said Nolan filed an appearance in writing, his appearance stating that: "I

hereby appear in this proceeding specially on behalf of W. J. Thompson, purchaser of the SS. *Bella*, for the sole purpose of contesting the jurisdiction of the Court", and on the same day the said Nolan filed notice of exception to the order dated 17th September, 1920, and the affidavits upon which the same was granted, upon the ground,—1st that the said affidavits do not contain the necessary jurisdictional allegations binding either this appearant or any person or corporation mentioned in said papers; *2nd*, that it appeared from the moving papers that the proceeding is an attempt to vacate a decree or order of the Court made on July 6th, 1920, and that the said proceeding to vacate the same is not made within the term. Under the same date Nolan also filed an appearance in the proceeding as proctor on behalf of McKinney. Notice of exception was also filed by Nolan on behalf of McKinney. Affidavits were filed in the United States District Court by McKinney, by the Assistant Superintendent of the Morse Dry Dock & Repairing Company, but none was filed by W. J. Thompson. Johnson, the plaintiff in the present action, was allowed to file a petition contesting the claim of the Morse Dry Dock & Repairing Company and praying that the interlocutory order of 6th July, 1920, and the sale of said vessel be vacated and that he be permitted to file a claim to the vessel and that Thompson be directed to return the vessel to the marshall to be held by the latter subject to the further order of the said District Court. The District Court having heard Counsel for the present plaintiff, for the Morse Dry Dock & Repairing Company and for McKinney and W. J. Thompson rendered judgement cancelling the bill of sale to W. J. Thompson directing him to return the vessel, and a formal order of Court was entered

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on 18th October, 1920, cancelling the interlocutory decree of July 6th, 1920, and setting aside and vacating the sale of the vessel to W. J. Thompson and ordering the bill of sale to be returned to the marshall for cancellation and ordering W. J. Thompson and any agent or agents of his including the said McKinney to deliver the said vessel, her tackle, engines, apparel and furniture to the present plaintiff at Ulrich's Basin, at Edgewater, or at such other place within or without the district of New Jersey as may be agreed upon by the present plaintiff and the said W. J. Thompson. This order was not obeyed by Thompson. Subsequently the cause was heard by the District Court on the pleadings and proofs and, having been argued and submitted by Counsel of the respective parties, a final decree was entered in said District Court on 17th May, 1921, in which it was adjudged that the wharfage alleged to have been furnished to the vessel by the Morse Dry Dock & Repairing Company was not of the character and kind which entitled that Company to a maritime lien therefor against the vessel, and that the Court was without jurisdiction to issue the warrant of attachment or to make the interlocutory decree of 6th July, 1920, or to issue the writ of *venditioni exponas* and that the marshall of said Court was without jurisdiction to sell the vessel and the Court was without jurisdiction to confirm the sale, and it was further ordered, adjudged and decreed that the libel in the cause be dismissed with costs; the warrant of attachment, the interlocutory decree of 6th July, 1920, the writ of *venditioni exponas* and the sale of the vessel made by the marshall on 26th July, 1920, and the order confirming said sale, were each and all vacated and set aside upon the ground, in addition to that upon

which the order of October 18th, 1920, was based, that said Court was without jurisdiction to issue the said writ or to direct the sale of the vessel or confirm the sale thereof, and the said bill of sale given by the marshall to the present defendant for said vessel was cancelled and said defendant was ordered to forthwith return the said bill of sale given by the marshall to the present defendant for said vessel was cancelled and said defendant was ordered to forthwith return the said bill of sale to the marshall for cancellation and to forthwith return and deliver to the present plaintiff, the said vessel, her tackle, engines, apparel and furniture and that the disposition of the monies paid by said W. J. Thompson to said marshall as the purchase price of said vessel as well as any claim which the said W. J. Thompson may wish to assert, in the event that he complies with said order and delivers possession of said vessel to the present plaintiff as therein directed, that there should be repaid to him any monies which he may have expended for the repair, improvement, upkeep and care of the said vessel since the alleged sale thereof to him by said marshall be and the same were reserved for the further order of the Court. This final decree of the District Court has been ignored by the present defendant and no attempt has been made by him to conform thereto.

It was established by the evidence at the trial that by the law of the United States, Defendant, when he appeared at what purported to be a judicial sale conducted by the marshall of the District Court of the United States for the District of New Jersey and became a bidder, and also by the appearance filed

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on his behalf by his Attorney Nolan, become a party to the action and was affected with notice of all subsequent proceedings relating to the purchase and title to the S.S. *Bella* The Circuit Court of Appeals in the case of *State of Tennessee* vs *Quintard*, (1) states:—"It is also settled that the purchaser, by his "bid, becomes a quasi party to the suit and is affected "with notice of every step subsequently taken in the "case relating to the purchase and title acquired "thereby." The opinion of the Court cites in support of that proposition the following cases decided by the Supreme Court of the United States—*Davis* vs *Trust Company*, (2); *Kneeland* vs *Trust Company*, (3); *Stuart* vs *Gay*, (4) and *Blossom* vs *Railroad Company*, (5). Although the appearance filed by the Attorney Nolan for defendant may have been intended as a special appearance for the purpose of alleging that the Court had no jurisdiction over the person of defendant, on the authority of *Thames & Mersey Marine Insurance Company, Ltd.* vs *United States*, (6) decided in 1915, and other cases, the appearance was a general appearance in the action, because exceptions and a factum or brief were filed by Nolan on behalf of his client raising questions on the merits of the application made by the present plaintiff to set aside the sale of the vessel. The merits of the present plaintiff's proceedings in the District Court to recover possession of the ship were put in issue by the purchaser. I therefore come to the conclusion, on the evidence and on the authorities referred to, that defendant, by his bid and by the actions of his attorney, became a party to the action and was affected with notice of

(1) [1897] 80 Fed. Rep. 829 at p. 835.
(2) [1893] 132 U.S. 590 at p. 594.
(3) [1890] 136 U.S. 89.
(4) [1888] 127 U.S. 518.
(5) [1863] (1 Wall.) 68 U.S. 655.
(6) [1915] 237 U.S. 19.

all the proceedings subsequently had, including all interlocutory orders and the final decree in the District Court, and that he was bound thereby having been a party to the action in the District Court.

What is the effect of the sale of a ship by order of a Court which had no jurisdiction in the matter?

This question came up in the case of the *Steamer Canadian-Kerr* vs *Gildersleeve*, (1) in which title was claimed under a sale upon a warrant of distress issued by Justices of the Peace, and it was decided by Mr. Justice Badgley, that the Justices of the Peace had no jurisdiction, power or authority to order an amount of wages to be levied by distress upon the vessel and that such order was absolutely null and void, as was also the adjudication of said vessel and that no legal right or title of property in or to said vessel passed by reason of said adjudication. In *Attorney General* vs *Lord Hotham*, (2) it was decided that, where a tribunal determines in a matter not within its jurisdiction, the decision is a nullity; and 9 Halsbury's Laws of England, page 14, says:—"Where a limited Court "takes upon itself to exercise a jurisdiction it does not "possess, its decision amounts to nothing". In Abbott on Shipping, 14th ed., p. 32, it is stated:—"A sale "taking place under the orders of a court, or of officials "having no authority to order the same, cannot, by "reason of such orders, be upheld as against the "original owners". Many decisions of the Court of Admiralty in England can be cited to the same effect and among others the following:—The *Flad Oyen* (3) where an English prize ship was taken to Bergen,

(1) [1858] 8 L.C.R. 266. (2) [1827] 3 Russ. 415.
(3) [1799] 1 C.Rob. 134.

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condemned there by the French Consul and sold, but was not deemed by Sir William Scott, afterwards Lord Stowell, to have been legally condemned and the ship was restored to the former owner; The *Thomas*, (1) where a British ship was sold under the decree of a pretended Admiralty Prize Court without proper authority and the proceedings were held to be null and void and the ship was restored to the former owner; The *Perseverance*, (2) where a prize ship purchased by a neutral under illegal condemnation was restored to the original owner; The *Nostra de Conceicas*, (3) which was a case where a British vessel captured by a Dutch privateer and carried to the coast of Africa and there sold without being brought to legal condemnation, the ship was ordered to be restored to the former owner; a similar decision was rendered in *The Fanny & Elmira*, (4). These cases were all decided by Sir William Scott. In the *Eliza Cornish*, (5) and *The Bonita*, (6), Dr. Lushington, where there was an invalid sale of ships, ordered possession to be restored to the former owners.

The principles laid down by Lord Stowell and Dr. Lushington in the High Court of Admiralty have been followed in many later cases in England and in the Supreme Court of the United States. In the case of the Schooner *Sarah, Rose* vs *Himely*, (7) Chief Justice Marshall said at page 268:—"A sentence "professing on its face to be the sentence of a judicial "tribunal, if rendered by a self constituted body or by "a body not empowered by its government to take cog- "nizance of the subject it had decided, could have no

(1) [1799] 1 C. Rob. 322.
(2) [1799] 2 C. Rob. 239.
(3) [1804] 5 C. Rob. 294.
(4) [1809] 1 Edward's Rep. 117.
(5) [1853]1 Spink's Adm. & Ecc. 36.
(6) [1861] Lush. 252.
(7) [1808] 4 Cranch. (8 U.S.) 241.

"legal effect whatever". And at page 281:—"The "sentence of condemnation being considered as null "and invalid, the property is unchanged". In *Elliott & Peirsol,* (1), the Supreme Court of the United States in its judgment said:—"Where a court has "jurisdiction it has a right to decide every question "which occurs in the cause.....But, "if it acts without authority, its judgments and orders "are regarded as nullities. They are not voidable "but simply void; and form no bar to a recovery "sought, even prior to a reversal, in opposition to "them. They constitute no justification; and all "persons concerned in executing such judgments or "sentences are considered in law as trespassers". These two cases are cited and approved by the Supreme Court in Lessee of *Hickey* vs *Stewart,* (2) and at the latter page the Court said:—"We are of the opinion "that the Court had no jurisdiction of the subject matter "and the whole proceeding is a nullity". The cases were afterwards cited and approved in *Williamson* vs *Berry,* (3) and *Guaranty Trust Company* vs *Green Cove Railroad,* (4).

From this brief review of decided cases in Canadian, English and American Courts in Admiralty and other matters, it can be taken as settled definitely that, in order to constitute a valid judicial sale by virtue of which the purchaser can acquire title to the property sold, it is absolutely necessary that the Court ordering the sale should have power and jurisdiction to take cognizance of the matters brought before it in the proceeding in which the sale was ordered, and that where there is absence of jurisdiction in the Court

(1) [1828] 1 Peters (26 U.S.) 341.
(2) [1845] 3 How. (44 U.S.) 750, 762, 763.
(3) [1850] 8 Howard. (49 U.S.) 495, 541.
(4) [1891] 139 U.S. 137 & 147.

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ordering the sale, the whole proceedings are null and of no effect and purchasers of property so sold become trespassers on the property which they purport to acquire. Applying these principles to the present case, the defendant did not acquire any title to the *SS. Bella* under the sale from the marshall in the United States District Court, the plaintiff never lost his property or title thereto and is entitled to have the ship restored to his possession.

What claim has the defendant, under the circumstances disclosed in this case, for reimbursement of the purchase price and the sums alleged to have been expended for repairs and alternations on the ship? This question, so far as the repairs and alterations are concerned, must be considered from the point of view of the character of the possession which defendant acquired, his good faith at the time of the bid, his subsequent conduct, the nature and purpose of the expenditure and the enhanced or increased value, if any, given to the ship by the sums alleged to have been expended. As has been pointed out already, the sale was made on the order of a Court without jurisdiction. It was an absolute nullity, constituted no justification for possession, no property rights passed in consequence of it and defendant is in possession without right and as a trespasser. The ship at the time of the sale was insured for 19,500 pounds sterling. The plaintiff had refused a cash offer of $10,000.00 for her and defendant bought for $1,560.00, which the District Court Judge found to be an inadequate consideration and he cited the case of *The Sparkle*, (1) quoted with approval in *The Columbia*, (2). The District Court Judge found the ship was worth at least $12,000.00, when defendant paid $1,560.00 for

(1) [1874] 22 Fed. Cas. 874. (2) [1900] 100 Fed. Rep. 890 at p. 893.

her. Defendant apparently concealed from the marshall his identity and had himself described in the marshall's bill of sale as W. J. Thompson, of the City of New York, County of New York and State of New York. He has not explained when examined at the trial why this was done. He gave the marshall his address in care of McKinney, his paid broker and agent, and McKinney, when defendant was inquired for by plaintiff's representatives, refused to give any information about the defendant.

Sir William Scott, in 1799, in the case of *The Perseverance*, (1) already referred to, said:—"It is "a general rule, undoubtedly, that whoever purchases "under an illegal title, does it at his own peril; and "must take the consequence (both in his purchase "and in his own subsequent expenditure upon it) of "his inattention to his own security". In that case, which was of a prize ship illegally sold, the Court allowed half of the money which had been expended on repairs in consideration of the benefit which the original owners were likely to receive from the ameliorations. In a later case, in 1804, the case of Nostra de Conceicas (2), the same distinguished Judge said:— "If there shall appear to have been any actual ameliora- "tion, therefore, I shall direct the Portuguese pur- "chaser to be reimbursed. At the same time neutral "merchants must observe, that this is an allowance "which the Court will not think itself bound to con- "tinue, after the invalidity of these titles has been so "generally made known by the decrees of this Court, "and of the Superior Court. If persons will accept "ships in this manner, after such a notice, it must be "at their own peril that they proceed to lay out money "upon a title so notoriously invalid"

(1) [1799] 2 C. Rob. 239. (2) [1804] 5 C. Rob. 294.

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In a later shipping case, in 1806, *Young* vs *Brander*, (1) Lord Ellenborough, C.J., said:—

"It is true that the owners of a ship are liable "for repairs ordered for them or for their benefit by "their master; but it was never heard of that, if a "stranger ordered repairs for another's ship or carriage, "the owner was liable for such repairs. Suppose a "pirate ran away with a ship, would the owner be "liable for repairs ordered by him"?

The principle to be drawn from these cases is, that a purchaser at a judicial sale is chargeable with notice as to whether or not the Court ordering the sale has jurisdiction in the matter, and when it acts without jurisdiction, any subsequent expenditure by the purchaser is at his own peril, he must take the consequences and is not entitled to compensation therefor; 16 A. & E. Ency. of Law, 2nd Ed. 94.

When defendant, on 23rd September, 1920, received the order of the District Court which called upon him, among others, to show cause why the sale should not be set aside and cancelled and the ship returned to the marshall, (the ship was still in New York) he consulted his Attorney Nolan, and has testified that Nolan advised him that the title was good and that if he was ready to leave, to do so. It is quite apparent that, if his attorney Nolan had looked into the matter sufficiently, he could have seen that there was a serious question involved which might result, as it did, in a judgment declaring that the sale was a nullity and that defendant had no right to possession. Whether Nolan was merely mistaken in his law or not, he and defendant decided upon the immediate dispatch of the ship to Quebec. Defendant left New York at once

(1) [1806] 8 East 10 at p. 12.

for Quebec with the ship by way of the Hudson River, Oswego Canal, Lake Ontario and the River St. Lawrence without obtaining any clearance, although defendant knew that by the usual practice ships should clear before sailing. Defendant, who was the manager of the Quebec and Levis Ferry Company, was experienced in shipping matters, having been over thirty years in that business He knew that his title was called in question and that he was being asked to return the ship to the marshall, and it is evident that he intended to get the vessel away from New York for reasons easy to surmise. The inadequacy of the price paid by defendant, his false description of himself to the marshall, the conduct of his agent, his flight from New York with the ship without the usual clearance, when he knew his title had been attacked, are inconsistent with good faith on his part. About the middle of August he brought eleven workmen from Quebec to overhaul the ship. Radical changes were made in her; her two masts were removed and her funnel was shortened and she was converted from an Ocean going trawler into a passenger ferry boat intended for service between the City of Quebec and the Island of Orleans to be operated by the Quebec and Levis Ferry Company for the purpose of earning a Government subsidy in favour of the Company. A considerable sum of money was expended both in New York and at Quebec in making these alterations and in the sums are included railway fares from Quebec to New York, general supplies for the maintenance of the workmen, materials used in the alterations and general supplies for the ship. The defendant has testified that, outside the special service for which his Company intended to use this ship, she is not of any use, and, in answer to a question in cross-examination as to the

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value of the ship at the time this action was commenced, defendant answered: "I would not give you "$1,000.00 for her how after spending all that money "on her, she is no good for anything" The expenditures were made to run a service to the Island and, in defendant's opinion, the ship would not bring more than $1,000.00 in the open market at the time the present action was commenced. The purchase price and the money expended were all supplied by the Quebec and Levis Ferry Company. John Simpson Thom, President of Quebec and Levis Ferry Company, examined as a witness on behalf of defendant, testified that, apart from the special purpose which his Company had in earning the Government subsidy, the ship had not much value, and that he did not know what she was worth when the present action was commenced, and added:—"It all depends on what a man wants "her for, she might be dear at any price", and "I "know she could not be sold for much today".

When defendant took possession of the ship she was an Ocean going Trawler, now she is a River Ferry Boat and, according to evidence, not increased in value by reason of the expenditures made by defendant.

Having regard to the nullity of the sale, the evidence of defendant's bad faith in the whole transaction and the failure to show any enhanced value as the result of his expenditures, in my opinion, the defendant is not entitled to any compensation for the expenditure made by and for him on the ship.

So far as the purchase price is concerned, the plaintiff never had it and the amount paid by defendant to the marshall, less the latter's fees, is still in the hands of the District Court and defendant should apply there for a refund. The plaintiff has no responsibility in that connection.

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There will therefore be judgment for plaintiff, as the true and lawful owner of the SS. *Bella*, and defendant will be ordered to deliver possession of the ship to plaintiff free and clear of any claims for repairs and to pay the costs of this action.

Judgment Accordingly.