

TORONTO ADMIRALTY DISTRICT

1925
 Nov. 30

PITTSBURG COAL CO. ET AL. PLAINTIFFS;

AND

SS. *BELCHERS* DEFENDANT.

Shipping—Necessaries—Maritime lien by foreign law—Effect of wrongful seizure

The P.C. Co., a foreign corporation, furnished coal to the SS. *B.*, a vessel of Canadian registry and owned by a company domiciled here. The coal was furnished at an American port, and not being paid, the P.C. Co. seized the vessel within this jurisdiction.

Held, that the *B.* not being a foreign vessel and its owners being domiciled in Canada, this court had no jurisdiction on a claim for necessaries and that the action should be dismissed.

2. A maritime lien for necessaries created by the law of a foreign country and not recognized by the law of this country or by general international law cannot be enforced as such by the Exchequer Court in Admiralty.
3. The seizure of a ship under a claim for the enforcement of which this court has no jurisdiction, is wrongful *ab initio*, and other claimants cannot set it up or rely on it as enuring to their benefit.

This action of the Pittsburg Coal Company, was, with a number of others, instituted against the steamer *Belchers*, and in the progress of these cases they were before trial consolidated.

Toronto, November 10, 1925.

Actions now tried at Osgoode Hall before the Honourable Mr. Justice Hodgins.

J. B. Allen for plaintiffs, Pittsburg Coal Co. and other plaintiffs.

H. H. Davis for plaintiffs, Mullen Coal Co.

G. Grant, K.C. and *R. Clyde Auld* for Chartered Trust Co., trustees under bond mortgage.

The facts are stated in the reasons for judgment.

HODGINS L.J.A., now 30th November, 1925, delivered judgment.

The SS. *Belchers*, registered in Canada, is owned by a company domiciled here. It has been seized within this jurisdiction by the Pittsburg Coal Co. The trustees under a bond mortgage have intervened to assert their priority over the plaintiffs in the various actions, now consolidated, who have supplied necessaries to this ship. All the plain-

tiffs admit this priority except the Pittsburg Coal Co. a foreign corporation which furnished coal to the ship, at the request of her master while in an American port. They urge that they have a maritime lien by virtue of the Jones Act (Merchant Marine Act, 1920, U.S. Statutes, sec. 30, ss. P. and Q.). Undoubtedly such a lien is created by that statute, flowing from the supply of necessaries, which could be enforced if the ship had been seized in the United States. The Jones Act also creates a presumption of authority in the master to order necessaries, and the supplying of them upon his order is what in this case is relied on as creating a maritime lien. But the enforcement of any claim for necessaries, whether as a maritime lien or otherwise, is limited by the statutes conferring jurisdiction on this court. Where the owner of the vessel when the action is begun, is domiciled in the Dominion, the Admiralty Court has, generally speaking, no jurisdiction over a claim for necessaries. But the Pittsburg Co. seek to invoke its aid on the assumption that where a valid and enforceable maritime lien is created by the supplying of coal in the United States, that lien attaches to the vessel and may be enforced wherever it is found.

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The case of *Minna Craig SS. Co. v. Chartered Mercantile Bank of India, London & China* (1), cited, is not in point because the court was there considering the effect on the ship and its proceeds, of the judgment of a German Court which, in Germany, had clear jurisdiction over the ship to pronounce a judgment *in rem*. Lord Esher M.R., said that according to international comity no court in England could say that the German Court had no jurisdiction to decide as it did, and consequently that its decree affected the *res* and the distribution of the moneys realized by its sale. Nor are the cases in the English courts cited by counsel, which decline to enforce a maritime lien arising under a foreign statute, under circumstances which negative the existence of such a lien by English or general international law, applicable to the exact question arising here. These are, *Clark v. Bowring* (2); *The Tagus* (3); *The Colorado* (4).

(1) [1897] L. R. 1 Q.B.D. 460.

(3) [1903] P. 44.

(2) [1908] Sc. S.C. 1168 (Ct. of

(4) [1923] P. 102 (C.A.).

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The jurisdiction of this court as to claims for necessaries is statutory, and the circumstance that a maritime lien for necessaries is given by the law of the place where they were supplied, does not help the coal company. The claim is still one for necessaries, and the remedy does not change that fact. The conditions under which I can exercise the powers of Admiralty are not complied with, in that the ship is not foreign and the owners are domiciled in Canada.

The result is that judgment must be pronounced against the claim of the Pittsburg Coal Company, resting, as it does, upon facts which oust the jurisdiction of this court to deal with it. The same rule must apply to all the other plaintiffs whose actions must also be dismissed. Those of them who claim for repairs can only sustain their demand if the seizure by the Pittsburg Company was valid.

As I find no jurisdiction in the court under which the claim of that company can be sustained, the seizure was wrongful *ab initio* and the other claimants cannot set it up or rely on it as enuring to their benefit. The costs of the trustees of the bond mortgage may be added to their claim and their taxable costs including their costs of the trial will be paid by the Pittsburg Coal Company. There will be no other costs.

Judgment accordingly.