
QUEBEC ADMIRALTY DISTRICT

L. FUGERE ET AL. PLAINTIFFS;

AGAINST

THE STEAMER *DUCHESS OF YORK*.

1924
March 26.

Shipping and seamen—Wages of master and engineer—Lien on ship—Charterers—Engagement of master by charterers—No power to bind owner—Costs.

Held, that the court has jurisdiction over claims by Master and seamen for wages earned by them on board ship, which may be exercised *in rem*, and that the lien for wages of the master and crew attaches to ships independently of any personal obligation of the owner, the sole condition required being that such wages shall have been earned on board the ship. *The Castlegate*, (1893) A.C. 52 referred to.

2. That where the master has not been engaged by the owners but by the charterers, he has no authority to pledge the credit of the owners for anything.
3. That in such a case the master has no right of action against the ship for money expended by him for board.
4. Master and engineer sued separately for wages and the actions were subsequently consolidated. *Held*, that as one action only should have been brought plaintiffs were entitled to costs of one action only.

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ACTIONS brought by master and engineer of the steamer *Duchess of York* to recover wages due them and disbursements for board. The actions were consolidated and heard together.

March 24 and 26, 1924.

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Actions now heard before the Honourable Mr. Justice MacLennan at Montreal.

Adolphe Gadoury for plaintiffs;

C. A. L. Hibbard for defendant.

The facts are stated in the reasons for judgment.

MACLENNAN L.J.A. now this 26th March, 1924, delivered judgment.

These consolidated actions were instituted separately on claims for wages and disbursements. The defendant, after having appeared, moved for their consolidation. This application was granted and the cases were consolidated into one action, costs to be allowed of one action only, as the plaintiffs should have brought one action together instead of suing separately; Rule 33; Mayers 226:—*The Strathgarry* (1); *The Marechal Suchet* (2), and *The Marlborough Hill* (3).

Pleadings having been ordered, it is alleged in the statement of claim that plaintiff Lucien Fugère, on 21st February, 1923, was appointed engineer of the steamer at wages of \$150 per month by J. O. Normand and North Land Navigation Company, Limited, lessees of the steamer and representatives of the owners; that he acted as engineer from 8th May, 1923, until 6th December, 1923, and that there is now due him for wages from 15th August, 1923, to 6th December, 1923, the sum of \$545; that the plaintiff Joseph Jean, on 21st February, 1923, was appointed master of the steamer at wages of \$100 per month by J. O. Normand and North Land Navigation Company, Limited, lessees of the steamer and representatives of the owners; that he acted as master from 8th May, 1923, until 8th October, 1923, and there is now due him a balance of \$225 for wages from 1st August, 1923, to 8th October, 1923, and that as master of the steamer he expended \$39.99 for board

(1) [1895] P. 264.

(2) [1896] 65 L.J. Adm. 94.

(3) [1920] 90 L.J. P.C. 87 and 96.

and room from 12th April, 1923, to 8th May, 1923, and plaintiffs claim a decree pronouncing the said sums to be due to them, with costs;

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By the defence it is denied that Normand or the North Land Navigation Company, Limited, ever were the representatives or agents of the owners of the steamer; that under a lease in authentic form executed before Henri Morin, Notary Public, Normand was in possession of the steamer from 22nd May, 1919, to 28th November, 1923, and had full control thereof, but neither Normand nor the North Land Navigation Company, Limited, or any one appointed by them, had the right in any way to pledge the credit of the owners or to enter into any agreements or contracts on their behalf; that the owners did not appoint the engineer or master and are not liable for plaintiffs' claims, the said Normand having by said lease undertaken to hold the steamer free from all claims, liens and incumbrances whatever, and the defendant prays for the dismissal of the action and that the steamer be freed from arrest, with costs;

By the Admiralty Court Act, 1861, section 10, the court is given jurisdiction over any claim by a seaman of any ship for wages earned by him on board the ship and over any claim by the master of any ship for wages earned by him on board the ship, which jurisdiction may be exercised by proceedings *in rem* (section 35) and the lien for wages of master and crew attaches to ships independently of any personal obligation of the owner, the sole condition required being that such wages shall have been earned on board the ship; *The Castlegate* (1). This rule constitutes an exception from the general principles applicable to claims for necessaries, that there cannot be a remedy *in rem* against a ship unless the owner is liable as debtor. The consequence therefore is that, although the steamer was in possession of a charterer who engaged the master and engineer and was personally liable for their wages, the plaintiffs are entitled to exercise their lien for their claims. Fugère, the engineer, was engaged on 21st February, 1923, by Normand for the season of 1923 at the rate of \$150 per

(1) [1893] A.C. 38 at p. 52.

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month commencing from 1st March to the end of the season. It is alleged in the statement of claim that he acted as engineer of the steamer from 8th May to 6th December, 1923, and he claims a balance of \$545. He testified that his wages for the season amounted to \$1,325, on account of which he was paid \$780, leaving the balance sued for. By his written engagement his wages were to start from 1st March, 1923. If he is to be paid only from 8th May to 5th December, when it is proved he quit work, his total pay would amount to \$1,035, and deducting the \$780 which he received on account, his balance would be \$255. It is proved, however, that he began to work as engineer before the 8th of May, and he must have, otherwise his season's pay would not amount to \$1,325. At the trial counsel for plaintiff moved to amend paragraph 2 of the statement of claim by substituting "1st March, 1923" in place of "8th May, 1923." It appears to be well established that the balance due to Fugère is \$545 and his application to amend the statement of claim is within the discretion of the court under Rule 67. The application to amend will therefore be granted upon payment of costs of a motion to amend.

Regarding the claim of Captain Jean for wages and disbursements, the record and evidence show that Normand, on 7th April, 1923, transferred his rights in the lease or charter from the owners to the North Land Navigation Company, Limited. Normand was the President and Captain Jean the Vice-president of that company and the latter subscribed for one share of \$100 in the capital stock of the company, but never paid for it. The steamer was operated in the name of the company during the season of 1923, and Captain Jean admits he was an employee of the company both in his evidence and in the statement of claim. He left the steamer in October on account of illness when he claims a balance of \$225 was due him as wages. The defendant has submitted that \$100 of his claim for wages must be declared compensated for what he owed the company on his share of the capital stock. The position seems to be that he owed his employer \$100 for the share and the employer owed him \$225 for wages; that would reduce his claim against the steamer to \$125. With regard

to his claim for \$39 alleged disbursements, it is sufficient to say that, as he was not appointed master by the owners but by the charterer, he had no authority to pledge the credit of the owners for anything. What he claims is not a disbursement; he was living at home in his own house for between three and four weeks before he took command of the steamer on 8th May and he is attempting to charge \$1.50 per day for his board and lodging while he was living at home. He had no authority to pledge the owners' credit for these so-called disbursements. He may have a claim against the North Land Navigation Company, Limited, but not against the steamer; *The Barge David Wallace* (1); *The Orienta* (2); *Baumwoll v. Furness* (3); *The Castle-gate* (4).

The result is that there will be judgment for plaintiff Fugère for \$545, and for the plaintiff Joseph Jean for \$125, with costs.

Judgment accordingly.

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