

TORONTO ADMIRALTY DISTRICT.

1897

Dec. 11.

R. S. WILLIAMS AND THE LAKE }
ERIE AND DETROIT RIVER } PLAINTIFFS;
RAILWAY COMPANY..... }

AGAINST

THE SHIP "FLORA" AND ROSE }
D. BROWN..... } DEFENDANTS.

Maritime Law—Lien—Necessaries—Home Port—24 Vict. Ch. 10 (Imp.).

A claim for money advanced to a foreign ship to pay for repairs, equipment and outfitting is a claim for necessaries, but where the work is done in the home port of the ship the court has no jurisdiction, the same coming within the exception contained in section 5 of *The Admiralty Court Act 1861* [24 Vict. ch. 10 (Imp.)].

Payment by the agent of the owner satisfies and discharges any lien in respect to the original claim of workmen or supply-men to the extent of such payments.

THIS was an action by the plaintiffs to recover money advanced to the owner of the ship to pay for repairing, equipping and fitting out the ship prior to the placing of the steamer, in the season of 1897, upon a route agreed upon between the plaintiffs and the owner.

No special contract was made for these repairs, or for the equipping, but the owner employed all the workmen by the day and purchased and supplied all material required.

The agent of the owner disbursed all the moneys advanced by the plaintiffs and instead of taking receipts, procured from the parties what purported to be assignments of their various accounts or claims to one Williams, one of the plaintiffs in the action, and who it is admitted was the agent of the plaintiff railway company who advanced the moneys.

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The owner made no defence, but other claimants against the ship intervened and disputed the claim of the plaintiffs. The facts of the case, the grounds of objection by the intervenors and the arguments of counsel are set out in the reasons for judgment.

The trial of the case was commenced at St. Thomas, on the 29th day of October, 1897, and concluded at the City of Windsor, on the 12th day of November, 1897.

W. K. Cameron for plaintiffs;

C. J. Leggatt for claimants intervening.

McDougall, L.J. now (December 11th, 1897) delivered judgment.

This action is brought against the ship and the owner, for an alleged claim on the part of the Lake Erie and Detroit River Railway Company to recover money advanced to the owner to pay for repairing, equipping and fitting out the *Flora* prior to the placing of the steamer in the season of 1897, upon the route between Port Stanley and Cleveland on Lake Erie. The facts of the case are briefly as follows:

The *Flora* was an American passenger steamer registered at the port of Detroit. The plaintiffs, a railway company, operating a road in Canada and having connections at Port Stanley and Windsor, were desirous of making traffic arrangements for freight and passengers with the owner of the *Flora* whereby that vessel would ply between Port Stanley and Cleveland in connection with the plaintiffs' railway. The owner of the *Flora* was without means to properly fit out the vessel. A traffic agreement was formally entered into between the parties and also an agreement in writing between the owner and the plaintiffs in pursuance of which the plaintiffs were to advance to the owner one thousand dollars (subsequently increased to two thousand dollars) for fitting

out the *Flora* for the season of 1897. It was stipulated in this agreement that all the earnings of the *Flora* after payment of running expenses were to be handed over to the plaintiffs and credited from time to time in repayment of the aforesaid advances. The \$2,000 was expended in painting, repairing, furnishing and outfitting the steamer. No contract was made for these repairs or for the equipping, but the owner employed carpenters, painters and other workmen by the day and purchased and supplied all material required. The agent of the owner disbursed all the moneys in making payments to the various individual workmen employed or merchants supplying goods, but instead of taking receipted bills, he procured the parties to sign documents purporting to be assignments of their various accounts or claims to one E. S. Williams, a plaintiff in this action. It is admitted that E. S. Williams was the agent and representative of the railway company, and that such assignments were intended to inure to the benefit of the railway company.

The present action was commenced by the plaintiffs after the arrest of the *Flora* in a suit for wages by some of the seamen. The *Flora* was arrested at Port Stanley, Ontario. Several objections were taken to the plaintiffs' right to recover: first, that the money was advanced solely on the credit of the owner in the home port and its repayment specially secured by pledging the earnings from freight and passengers. Such advances it is claimed, therefore, were not made on the credit of the ship itself. The express agreement it is argued supports this contention.

A second objection is that the *Flora* is a foreign ship proceeded against in a British Court of Vice-Admiralty and that this claim for money advanced in the home port to pay for such repairs, equipments and

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outfitting also executed in such home port, is a claim for necessaries, and no action therefore can be maintained by the plaintiffs, the same coming within the exceptions contained in section 5 of *The Admiralty Court Act* 1861 (24 Vict. c. 10 Imp.) That section reads as follows: "The High Court of Admiralty shall have jurisdiction over any claim for necessary supplied to any ship elsewhere than in the port to which the ship belongs unless it is shown to the satisfaction of the court that at the time of the institution of the cause any owner or part owner of the ship is domiciled in England or Wales."

The *Heinrich Björn* (1), determines that a claim for necessaries under section 5 does not constitute a maritime lien, and therefore where the owner of a ship had parted with his interest in the ship after contracting for necessaries, the purchasers took the ship free from any lien for such necessaries.

The plaintiffs' action was dismissed with costs. The *Mecca* (2) decides that an action *in rem* may be maintained against a foreign ship if found in this country in respect of necessaries supplied to such ship in a foreign port (not being the port to which the ship belongs) whether or not such foreign port be on the high seas. Lindley, L.J. in his judgment, at page 109, says: "If the ship whether English, colonial or foreign is supplied with necessaries in her own port, the probability is that there are persons there to whom credit is given and who can be sued there, but if the ship is supplied in some other place the supplier of the necessaries (if he does not obtain cash on delivery, which may be impossible) is very likely never to get paid at all." Section 4 of our Admiralty Act of 1891 defines the jurisdiction of the ad-

(1) 10 P. D. 44; 11 App. Cas. (2) [1895] P.D. at p. 109.
 270.

miralty side of the Exchequer Court and declares that "such jurisdiction, powers and authority shall be exercisable and exercised by the Exchequer Court throughout Canada and the waters thereof whether tidal or non-tidal, or naturally navigable or artificially made so," &c., &c.

The term "necessaries," may include money advanced for necessaries. In the case of the *Albert Crosby* (1) it was held that where A being master and sole owner of a vessel put in a shipwright's dock for repair and the shipwright refused to give up possession till paid his claim, money advanced by B to pay for these repairs can be recovered back in a suit for necessaries. See also the *Sophia* (2) and also as to a definition of necessaries the case of the *Riga* (3). I do not attach importance to the so-called assignments held by the plaintiff Williams for the plaintiffs, the railway company. It is admitted that the actual cash was supplied to the owner, and that his agent paid the workmen employed and also paid a number of merchants for a portion of the supplies furnished. Such payments satisfied and discharged any original claims existing in favor of such workmen or merchants supplying goods to the extent of such payments. The assignments to Williams in my opinion do not alter the nature of the transaction between the real plaintiffs, the railway company, and the owner of the *Flora*.

That arrangement was to advance money to the extent of \$2,000 to enable the owner to pay for painting, repairs, furnishing and otherwise fitting out the *Flora*. The owner executed all work that was required by hiring workmen and purchasing from several merchants all materials needed. The wages were paid in

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(1) 3 A. & E. 37.

(2) 1 W. Rob. 368.

(3) 3 A. & E. 516.

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cash by the owner, and so also were accounts for material as far as the \$2000 would permit. Wages expended in this way and materials so supplied, come within the meaning of the term "necessaries."

The \$2,000 being advanced by the plaintiffs to the owner in the port to which the *Flora* belonged, and being recoverable only as a claim for necessaries, the express terms of sections 5 of 24 Vict. c. 10 (Imp.) prevent the claim being sued for in this court.

The plaintiffs' action will be dismissed with costs.

Judgment accordingly.
