

1920
Dec. 6.

QUEBEC ADMIRALTY DISTRICT.

LA CIE DES BOIS DU NORD.... PLAINTIFF;

VS.

S.S. ST. LOUIS..... DEFENDANT.

*Shipping—Jurisdiction—Building and Equipping—Maritime Lien—
Admiralty Court Act, 1861.*

Plaintiff claimed \$1,562.99 for work done and materials furnished for the S.S. *St. Louis* while at Amos, P.Q. The vessel was arrested, and J. F. H., of Amos, aforesaid, who had an interest therein under an agreement to purchase, filed an appearance under reserve. The vessel was registered at the Port of Montreal, and at the date of institution of the action the registered owner was J. F. S., of Smiths Falls, Ont. The vessel was not under arrest of the court at the time of the institution of the cause.

Held: On the facts, that the court had no jurisdiction to entertain the claim made herein (1).

2. A claim for the supply of necessaries to a ship does not constitute a maritime lien thereon. (*The Two Ellens*, 4 P.C. 161 (at p. 166) referred to.

AN ACTION *in rem* claiming \$1,562.99 for work done and necessary disbursements made for the vessel *St. Louis*.

An appearance was filed and certain proceedings had in the case.

December 2nd, 1920.

Defendant moved before the Honourable Mr. Justice MacLennan, D.L.J.A., at Quebec, to have the action dismissed for want of jurisdiction.

(1) Reporter's Note.—See sections 4 and 5 of the Admiralty Court Act, 1861, and *The Barge Leopold*, 18 Ex. C.R., 325; and *Haley v. Comox*, 20 Ex. C.R. 86.

J. A. Gagne, K.C. for plaintiff.

A. C. M. Thomson and Lucien Moraud, for defendant.

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LA CIE DES
BOIS DU NORD
v.
S.S. ST. LOUISReasons for
Judgment.

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

MACLENNAN, D. L. J. A. this (December 6, 1920) delivered judgment.

This is an action in rem and by the endorsement on the writ of summons the plaintiff claims the sum of \$1,562.99 for work done and necessary disbursements made for the vessel *St. Louis* at Amos, province of Quebec, during the period within April and August, 1920, inclusively, and for costs. On a warrant issued from the Court the vessel was arrested in due course. The writ is addressed to the owners and others interested in the vessel *St. Louis*. An appearance was filed on behalf of Julius Francis House, lumber merchant and agent residing in Amos, province of Quebec, owner of the vessel *St. Louis* and under reserve. Both parties have taken some incidental proceedings in the action. The defendant now moves the Court to order that the writ of summons, the warrant and the arrest be set aside and be annulled, the vessel released from seizure and the action dismissed with costs, for want of jurisdiction, on the ground that the registered owner or owners were domiciled in Canada before, at the time and since the work claimed to have been done and materials claimed to have been furnished were so done and furnished and, in any event, that the warrant and the arrest should be set aside on the ground that the allegations of the affidavit for the warrant are insufficient and irregular; the whole with costs.

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It was admitted by the parties that at the time of the institution of the action the vessel was not under arrest of the Court, and it would not therefore have jurisdiction over a claim for building, equipping or repairing under section 4 of the Admiralty Court Act, 1861. Section 5 of that Act gives jurisdiction to the Court over any claim for necessaries supplied to any ship elsewhere than in the port where 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 is domiciled in Canada. This vessel was registered at the Port of Montreal, on July 3rd, 1902, and at the date when the cause of action arose and the case was instituted the vessel was registered in the name of John F. Sherman, of Smiths Falls, province of Ontario, and since April, 1919, House has had an interest in the vessel under agreement to purchase her. It is settled law that a claim for the supply of necessaries does not give a maritime lien on a ship (*Johnson and others v. Black*), *The Two Ellens* (1),

The registered owner Sherman being domiciled in Canada at the time of the institution of the action, and House, who claims to be interested in the vessel under agreement to purchase, being also domiciled in Canada since many years, it is manifest that the Court is without jurisdiction over the claim upon which the action is based and that the action must therefore be dismissed.

The defendant, as a second ground for the setting aside of the warrant and arrest, alleges that the affidavit to lead warrant is insufficient and irregular inasmuch as it does not state, as is required by Rule of

(1) L.R., 4 P.C., 161, at page 166.

Practice and Procedure, 37, the national character of the ship and to the best of respondent's belief no owner or part owner of the ship was domiciled in Canada at the time of the institution of the action. The plaintiff submits that the objection raised by defendant to the sufficiency of the affidavit is a mere technical objection which has been waived by the appearance and other proceedings in the action.

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It is unnecessary for me to decide the question raised as to the sufficiency of the affidavit, as I have come to the conclusion that under the statute there is absolute absence of jurisdiction, *Stack et al.* vs. the barge *Leopold* (1). The defendant could have raised the question of jurisdiction immediately after appearance; this would have saved some expense for both parties. There will therefore be judgment setting aside the writ, warrant and arrest, and dismissing the action with costs up to and including the appearance and defendant's motion to dismiss for want of jurisdiction, and as to all other proceedings in the action, each party will pay his own costs.

Judgment accordingly.

(1) 18 Ex. C.R. 325.