

1916
 March 22

BRITISH COLUMBIA ADMIRALTY DISTRICT.

MORRISETTE

v.

THE SHIP "MAGGIE."

(No. 2.)

Seamen—Fishermen—Lien for "lay" wages—Costs—Consolidation of actions.

Where a number of seamen, by consolidation, join in one action their individual claims for wages against the owner of one or more ships engaged in a common enterprise with resulting liens on different ships, each claimant is not thereby liable for costs consequent upon the failure of another claimant to establish a specific lien not set up by the former, but the costs in each case is awarded according to the discretion conferred by r. 132 (B.C.).

MARTIN, L. J. (March 22, 1916).—This is a reference by the registrar and solicitors arising out of the taxation of costs after the judgment delivered on February 25, last.¹ Nine plaintiffs joined in one consolidated action for wages alleged to be due to them by George Bampton on a fishing lay in connection with the gasoline fishing boats "Maggie," "Eva," and "Echo," and the "Maggie" was arrested under a separate warrant, issued at the instance of their joint solicitor, founded solely on an affidavit of Thomas Julius, one of the plaintiffs, claiming a lien for \$281.25 for his wages. By the indorsement of claim on the writ it clearly appears that only four of the plaintiffs, *viz.*: Chief Julius and his two sons, Thomas and Patrick, and Henry James Cook, set up any claim against the "Maggie," the others "respectively" claiming against the "Eva" and the "Echo." The various groups of claims against the respective vessels are properly segregated and alleged as being due to the respective laymen while operating the ship "Maggie," or "Eva," or as the case may be. George Bampton entered an appearance and denied that he was the owner of the "Maggie." His brother William Bampton claimed to be her owner, and was added as a defendant by consent

¹Ante p. 494.

and appeared by separate solicitor in order to support his claim.

The action as regards the four claims for a lien upon the "Maggie" came on for trial on February 28 and it resulted in favour of William Bampton, he being declared to be the owner thereof and she was declared free from any lien and released from arrest. On my reasons for judgment it was ordered that "the action as against the claim of the three "Indians and Cook is dismissed with costs," which left the claims of the other plaintiffs against the other vessels open for future trial, as well as the claims of the present four plaintiffs against George Bampton. The formal judgment, when first submitted to me for approval, to see that it was in accord with my judgment, was marked "approved" by the solicitors, and, after setting out the full style of cause including the nine plaintiffs, read thus:—

"The Judge having heard the plaintiffs, Chief Julius, "Thomas Julius, Patrick Julius and Henry James Cook, "the witnesses on their behalf, and their counsel, and Wil- "liam Bampton, and the witnesses on his behalf, and his "counsel dismissed the action as against William Bampton "and the ship "Maggie," and set aside the arrest of the "ship "Maggie," and directed that the said ship "Maggie" "be released forthwith."

I approved this order, but later the solicitor for William Bampton applied to me, on the 9th instant, just as I was leaving the Law Courts to return to Victoria and pointed out that by an oversight the direction as to costs given in my reasons had been omitted so I added the words "and condemned the plaintiffs in costs." On taxation of costs it was urged that these words extended to the other five plaintiffs named as such in the writ and warrant in addition to those recited in the said judgment as having been concerned in the trial against the "Maggie." This contention, in my opinion, cannot be supported in the circumstances of this case, whatever might be the result in other consolidated actions where general and undefined claims are set up and persisted in by consolidated plaintiffs as a whole. From the very beginning the liens claimed against the various vessels were clearly distinguished and at no time upon the record was the "Maggie" alleged to be liable for any

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liens except those of the four plaintiffs, and it was their claim alone against her that was in issue and adjudicated upon at the trial. Therefore it follows that they alone should be answerable for the failure of their claims and having regard to the issues, trial and context they are "the plaintiffs" who are referred to in my said addition to the judgment as being condemned in costs. This is the real "result," mentioned in r. 132, so far as they are concerned. There is, moreover, no hardship in this because if these four plaintiffs had brought this action apart from the other claimants the result would have placed the successful defendant William Bampton in no better and no worse position as regards the recovery of costs than he is now. It was quite proper, as well as convenient, to have consolidated all these claims according to the practice of this Court referred to in the judgment in *Cowan v. The "St. Alice,"*¹ for by so doing considerable costs might have been saved (and indeed may be so yet, as regards the other pending claims) and in any event no additional costs would have been incurred; the various parties would have been and can be protected in this respect on taxation by a proper apportionment.

The point, in principle, and put briefly, is that merely because various seamen take advantage of the said convenient practice to join in one action their individual claims for wages against the owner of one or more ships engaged in a common enterprise with resulting liens on different ships, it does not follow that each claimant is liable for costs consequent upon the failure of another claimant to establish a specific lien which the former never set up. The costs in each case would be awarded according to the discretion conferred by said r. 132. To reverse the present position; if the four plaintiffs who alone participated in the trial of this particular lien had been successful, I should not have felt justified in also awarding costs to the other five plaintiffs who were not concerned, and took no part therein, and could derive no benefit therefrom.

The result is that the submission of the four plaintiffs is upheld and they are entitled to set off any costs occasioned by this controversy.

Judgment accordingly.

¹ 21 B.C.R. 540, at 544.