

THE ONTARIO ADMIRALTY DISTRICT

1943
Jan. 26
Jan. 28

BETWEEN:

WILLIAM ROSS, ET AL.....PLAINTIFFS;

AND

THE SHIP *ARAGON*.....DEFENDANT,

AND

ALLAN F. MORLEY AND NORMAN }
R. GIBB.....}THIRD PARTIES.

Shipping—Maritime lien—Transferability of lien—Seamen’s wages—Discharge of lien by payment of wages—Action in rem for reimbursement.

Held: That the maritime lien attaching to a seaman’s wages is personal to the seaman and not transferable, and when the master and crew have been paid and their debts satisfied the maritime lien ceases to exist.

ACTION in rem by an assignee of a maritime lien for wages alleged to be due the master and crew of the ship *Aragon*.

The action was tried before the Honourable Mr. Justice Barlow, District Judge in Admiralty for the Ontario Admiralty District, at Toronto.

R. J. Dunn for plaintiffs.

G. P. Campbell, K.C. and *F. H. Keefer* for defendant.

F. W. Bartrem for *Norman R. Gibb*.

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

BARLOW, District Judge in Admiralty, now (January 28, 1943) delivered the following judgment:

BARLOW J.: The plaintiff Graham was the master, the plaintiff Ross the second mate, the plaintiff Springthorpe the chief engineer, the plaintiff Lumby the second engineer, the plaintiff Gallaway the second assistant engineer, and the remaining plaintiffs were seamen of the ship *Aragon*. The plaintiffs as such claim in varying amounts, as set out in the statement of claim, a total sum of \$2,170.78 for wages for services performed on the *Aragon* during the month of August 1940.

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Pursuant to a Charter Party made between Sterling Gravel and Supplies Limited, the owners of the *Aragon* and Allan F. Morley and Norman R. Gibb, the third parties to this action, which Charter Party is dated the 31st day of July, 1940, the third parties chartered the *Aragon* and covenanted *inter alia* to pay all accounts for wages in connection with the *Aragon* and indemnify and save harmless the owners of the *Aragon* against all liens or charges for wages.

The evidence shows that Morley, one of the charterers and one of the third parties to this action, hired the crew (the plaintiffs) of the *Aragon* and became responsible for the payment of their wages.

The wages of the crew of the *Aragon* not having been paid for the month of August, 1940, the said Morley approached the Weaver Coal Company and one C. P. Hotchkiss, who is connected in a capacity which is not shown in the evidence with the Weaver Coal Company, with the result that the said Morley drew a draft, on either the Weaver Coal Company or C. P. Hotchkiss, for \$1,600, which draft was accepted by C. P. Hotchkiss, and the said sum of \$1,600 advanced by the Royal Bank of Canada to the said Morley. Morley then proceeded to Windsor where the *Aragon* was berthed, and proceeded to pay to each of the plaintiffs the overdue wages. The sum of \$1,600 not being sufficient Morley discounted his own note with the Royal Bank of Canada for a further sum of \$550. It is to be noted that Morley who had hired the plaintiffs and who was responsible for their wages, paid to each of them the wages which they now claim in this action. At the time of making the said payments Morley obtained from each of the plaintiffs a document, which documents are filed in this action as Exhibit 1. Each document is signed by a plaintiff and witnessed by Morley. Each of these documents is in the following form and is identical, except that the amount owing to the particular plaintiff signing the same is inserted:

I, the undersigned, hereby acknowledge the advance by C. P. Hotchkiss to me by way of loan, of the sum of \$126 50 (One hundred and twenty-six dollars and fifty cents) and I hereby nominate and appoint the said C. P. Hotchkiss my attorney and agent, for me and on my behalf to prosecute my claim against the Steamship *Aragon* for seamen's wages owing to me up to and inclusive of the 31st day of August, 1940, and to settle and adjust the same in his sole discretion, and to bring suit in my name if he deems it advisable.

It is understood that repayment of the advance made to me by the said C. P. Hotchkiss shall be made only out of the moneys which may hereafter be recovered on my behalf by virtue of my said claim for wages.

It is further understood that I am not to be responsible for any interest charges on the said loan or for any costs or expenses of any kind incurred by the said C. P. Hotchkiss in prosecuting, settling or adjusting my said claim against the Steamship *Aragon*.

Counsel for the plaintiffs states that his instructions come from C. P. Hotchkiss and that under the agreement Exhibit 1, Hotchkiss becomes entitled to sue in the names of the plaintiffs for the various amounts claimed. The said document, Exhibit 1, is in reality an assignment of the claim of each of the plaintiffs. Although Morley was responsible for the payment of the wages claimed by the plaintiffs in this action, and although the plaintiffs have been paid in full by Morley, and although Morley in the Charter Party, Exhibit 2, agreed to pay all accounts for wages in connection with the said ship and indemnify the owner of the said ship against liens, nevertheless he is attempting by Exhibit 1 to keep alive the maritime lien which arises when a seaman's wages are unpaid. The law is well settled that a maritime lien is a right vested in a particular person (in this case the seamen), and it cannot without an order of the Court, except in the case of a lien arising out of a bottomry bond, be transferred to another person so as to give such transferee the rights of the man who by certain acts had become possessed of a particular right in *rem*. Once the master and the crew have been paid and their debts satisfied the maritime lien ceases to exist.

Does the agreement Exhibit 1 keep alive the maritime lien? Upon the facts set out above I am of the opinion that once Morley, the person liable to make payment of the wages, paid the same and the wages were received by the plaintiffs, the maritime lien of each of the plaintiffs ceased to exist. The obtaining by Morley at the time of the payment of the said wages of the agreement Exhibit 1, was a subterfuge for no other purpose than to enable him to collect from the *Aragon* the very wages which in the Charter Party, Exhibit 2, he covenanted to pay and against which he agreed to indemnify the owners of the *Aragon*. In the true sense of the word the payment made to the

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plaintiffs was not an advance by Hotchkiss, as set out in the said agreement Exhibit 1. It was a payment made by Morley.

See the following references with reference to maritime liens.

Price, *The Law of Maritime Liens*, p. 74; *The Petone* (1); *Bonham v. Ship Sarnor* (2); *McCullough v. Ship Samuel Marshall* (3); and *Rankin v. The Ship Eliza Fisher* (4).

For the above reasons the action will be dismissed with costs to the defendant. The third party proceedings will be dismissed, but under all the circumstances without costs.

Judgment accordingly.