1923
Feb. 27.
Martin L.J.A.

BRITISH COLUMBIA ADMIRALTY DISTRICT

THE ATTORNEY GENERAL FOR BRITISH COLUMBIA ..... } PLAINTIFF;

AGAINST

THE SS. *BERMUDA*

Shipping—Maritime lien—Innocent purchaser subsequent thereto—Delay within which to be exercised depending on circumstances—Limitation of Actions.

On the 8th October, 1919 the *B.* caused certain damages to the Government bridge at Sea Island, Fraser River. The amount of the final bill for repairs was received on the 16th March, 1920, and the writ issued on the 19th November, 1921, but was not served till the 11th August, 1922. On the 15th May, 1920, the present owners bought the ship from the person who was owner at the time of the damage, in entire ignorance of any claim against her on that head, of which they did not hear until after the writ was served. Service was delayed in order to catch her in Vancouver and to avoid heavy expense, inasmuch as the *B.* was employed in outside waters. The log contained no reference to the accident.

Held that plaintiff showed reasonable diligence, and that the delay in serving the action herein did not deprive plaintiff of his maritime lien, which could still be enforced even as against an innocent purchaser of the *res*.

2. That the statutory provisions in the B.C. Municipal Act limiting the time for bringing actions does not apply to suits *in rem* in Admiralty.

ACTION by the government of the province of British Columbia to recover damages caused to one of its bridges on the Fraser River.

February 13, 1923.

Case now tried before the Honourable Mr. Justice Martin at Vancouver.

Cecil Killam for the plaintiff.

R. L. Reid K.C. for the ship.

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

MARTIN L.J.A. now (27th February, 1923) delivered judgment.

This is a suit to recover damages caused to the government bridge at Sea Island, Fraser River, to answer which the defendant ship has been arrested. The damage was done on the 8th October, 1919, and it is established that it was negligently caused by said ship and that it amounted to $505.38; the amount of the final bill for repairs was

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received on the 16th March, 1920, and the writ issued on 19th November, 1921, but it was not served till the 11th of August last. About two months after the receipt of said final bill for repairs, viz., on 15th May, 1920, the present owners, the Whalen Pulp and Paper Mills Co., bought the ship from the person who was her owner at the time she did the damage, and in entire ignorance of any claim against her on that head, which it did not hear of till August, 1922, after the writ was served. The reason assigned for the delay in serving the writ is that the vessel was employed in middle northern waters (Swanson Bay), and on the west coast of Vancouver Island (Port Alice), where she could not be readily found for service and only at heavy expense, and she only came once to Vancouver City during that time, and unknown to the plaintiff, for boiler inspection; the log contained no reference to the accident.

It is submitted that the maritime lien for the damage should not be allowed to be enforced as against the innocent purchaser after this delay. The general and well-known principle, extracted chiefly from the judgment of the Privy Council in *The Europa* (1) which defined the decision of the same tribunal in *The Bold Buccleugh* (2), is succinctly and correctly stated in Maclachlan on Merchant Shipping, (1911) 334, thus:

> A maritime lien for damage done by a ship attaches that instant upon the vessel doing it, and, notwithstanding any change of possession, travels with her into the hands of a *bona fide* purchaser though without notice, and being afterwards perfected by proceedings *in rem*, relates back to the moment when it first attached; such proceedings, however, to be effectual, must be taken with reasonable diligence, and followed up in good faith.

And see Mayer's Admiralty Law, (1916), pp. 64 and 210, where the subject is given later and detailed consideration in that most useful and reliable work. To the cases cited in the notes by Maclachlan I add the following from our Canadian Courts: *The Hercyna* (3), *The Haidee* (4), and *Kennedy* v. *The Surrey* (5), in the last of which I considered the question at p. 508 and held that the delay in suing of two years, less one month, was not unreasonable, and there the purchase of the ship did not take place till

(1) [1863] Br. & L. 89.
(2) [1851] 7 Moor's P.C. 267.
(3) [1849] 1 Stuart 274.
(4) [1860] 2 Stuart 25.
(5) [1905] 11 B.C.R. 499.

one year and eight months after the accident, whereas here it occurred only seven months thereafter. I agree with what was said in the *Hercyna,* that the manifestation of the intention to retain and enforce the lien.

> must depend upon the circumstances of the case and is not susceptible of any definite rule;

and it was said in the *Europa,* p. 93, that " consideration of expense and difficulty " should enter into the question of diligence. In the circumstances before me I am of opinion that there has not been a lack of reasonable diligence, and the observation I made in the *Surrey* is also applicable to this case, viz:—

> There is nothing before me to show that the owners in any way whatever have been or will be prejudiced by this not very long delay.

It is only desirable to add with respect to that case, that the opinion I therein expressed to the effect that the statutory provision in the Municipal Act limiting the time for bringing actions does not apply to suits *in rem* in Admiralty, has been confirmed by the subsequent decision of the Court of Appeal in *The Burns* (1).

It follows that judgment will be entered in favour of the plaintiff.

Judgment accordingly.

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(1) [1907] P. 137.