

BRITISH COLUMBIA ADMIRALTY DISTRICT

RUMELY ..... PLAINTIFF;

1923  
Feb. 16.

AGAINST

THE SHIP *VERA*

AND

WESTERN MACHINE WORKS, LTD.....CLAIMANT.

*Practice—Costs—Possessory Lien—Admiralty Rules 224 and 225 interpreted.*

The value of the *res* was at least \$600, and plaintiff's claim against it was for \$354, wages, for which he obtained judgment. Immediately after judgment claimants moved to establish a prior possessory lien for \$160, which claim was successfully contested by plaintiff. Plaintiff taxed its costs under this judgment and, on appeal from the Registrar's taxation.

*Held*, that rules 224 and 225 must be read together, and where there are two distinct claims against the same *res*, which in the aggregate exceed \$500, "the sum in dispute," within the meaning of said rules, will be taken to be the aggregate of both sums claimed, at least, as in the present case, where the real point involved was the right to enforce a possessory lien in priority to plaintiff's maritime lien.

MOTION by way of appeal to the Judge in chambers from the taxation of the registrar.

February 16, 1923.

Application now heard before the Honourable Mr. Justice Martin at Vancouver.

*E. A. Dickie* for claimant-appellant.

*Roy W. Ginn* for the plaintiff.

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

MARTIN, L.J.A. (now February 16, 1923) delivered judgment.

This is a motion in chambers, by the claimant, to review the Registrar's taxation of the costs directed to be paid by the claimant to the plaintiff by the judgment pronounced herein on the 28th December, 1922, whereby the claimant's application to establish a possessory lien was dismissed, as reported in (1923) 1 W.W.R. 253 (1). Certain objections were taken to the formal notice of motion as not complying with Rules 80 and 82 but they were overruled, because, according to the long established practice of this court, applications to review taxation are heard in a summary way, the simple procedure being that if any party

(1) See also [1923] Ex. C.R. 36.

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wishes to appeal from the registrar's taxation, that officer will upon request arrange a convenient appointment with the judge for that purpose; and since no formal notice of motion was necessary, the fact that the appellant here did in fact give an unnecessary notice does not put him in a worse position than if he had properly given none at all.

Turning then to the merits of the appeal, the claimant invokes Rule 224, reading as follows:—

224. Where the sum in dispute does not exceed \$200, or the value of the *res* does not exceed \$400, one-half only of the fees (other than disbursements) set forth in the table hereto annexed shall be charged and allowed.

And submits that as its claim was for \$160 only, half fees should have been taxed.

Rule 224 must here be read with the following Rule, viz,—

225. Where costs are awarded to a plaintiff, the expression "sum in dispute" shall mean the sum recovered by him in addition to the sum, if any counter-claimed from him by the defendant; and where costs are awarded to a defendant it shall mean the sum claimed from him in addition to the sum, if any, recovered by him.

The value of the *res* was at least \$600 (for which it was sold) and the plaintiff's claim against it was for \$354 wages, for which he got judgment and later successfully resisted the claimant's motion made immediately after judgment was pronounced, to establish a prior possessory lien for \$160. In my opinion, I would not be justified in holding that where there are two distinct claims to the same *res* which in the aggregate exceed \$500, that nevertheless the "sum in dispute" is only that claimed by one of the contestants, at least not in such a case as this where the real point involved was the right to enforce a possessory lien in priority to the plaintiff's maritime lien. I find myself unable to say that the registrar took a wrong view of rule 224, which is really not appropriate to the situation, and therefore the appeal is dismissed with costs.

*Appeal dismissed.*

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