1926

*May 18.
*Oct. 5.

THE SHIP "STRANDHILL" (DEFENDANT) ..... } APPELLANT;

AND

WALTER W. HODDER COMPANY (PLAINTIFF) ..... } RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA, NOVA SCOTIA ADMIRALTY DISTRICT

Maritime law—Shipping—Ship's necessaries—Maritime lien—Foreign law —Exchequer Court of Canada—Jurisdiction

Hodder Co., carrying on business at Boston, in the United States of America, sought, by action *in rem*, to recover the price of necessaries furnished to the appellant ship, in an American port, under a contract made there with the owner and to enforce against the ship the maritime lien therefor which was created and recognized by law of the United States. The owner of the ship, at the time of the contract, was domiciled and resident in the United States and the ship, then called the *Lincolnland*, was registered there, but it was alleged in the defence that later, before action, she was sold, her name changed and that she became of British registry.—The Exchequer Court of Canada has been declared, in pursuance of the *Colonial Courts of Admiralty Act* (1890) 53-54 Vict., c. 27, to be a Court of Admiralty and has, on its Admiralty side, under s. 2, subs. 2, of that Act, jurisdiction "over the like places, persons, matters and things, as the Admiralty Jurisdiction of the High Court in England * * *," which jurisdiction, relating to claims for ship's necessaries, is defined by two statutes of the United Kingdom, (1840) 3-4 Vict., c. 65, s. 6 and (1861) 24 Vict., c. 10, s. 5.

Held that, although by the laws of this country the respondent might not have a maritime lien for necessaries supplied to the appellant ship, the Exchequer Court of Canada, in Admiralty, could entertain an action *in rem* for the recovery of the price where a maritime lien therefor is created under foreign law. A right acquired under the law of a foreign state will be recognized, and may be enforced, under the law of England, unless opposed to some rule of domestic policy or procedure which prevents the recognition of the right; and, as the contract in this case is not void on the ground of immorality nor contrary to any positive law which would prohibit the making of it, the right which has accrued under or incident to it may be recognized and enforced by a court having the requisite jurisdiction; and *held* that, in view of the above stated statutory enactments, the Exchequer Court of Canada has the requisite jurisdiction in this case: Inasmuch however as the case was submitted upon points of law arising upon the statement of claim, the court expressed no opinion upon a question of priorities suggested by the defence.

Pittsburgh Coal Co. v. *SS. Belchers* ([1926] Ex. C.R. 24) dist.

Judgment of the Exchequer Court of Canada ([1926] Ex. C.R. 226) aff.

*PRESENT:—Anglin C.J.C. and Idington, Duff, Mignault, Newcombe and Rinfret JJ.

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APPEAL from an order of the Exchequer Court of Canada, Nova Scotia Admiralty District (1), affirming jurisdiction in an action *in rem* for the recovery of the price of certain necessaries furnished to the appellant ship in the port of Boston. Upon motion of the appellant it had been ordered that the question of law arising from the pleadings, to wit: that the court was without jurisdiction, be set down for argument before the trial on the merits.

C. B. Smith K.C. for the appellant. The Exchequer Court of Canada in Admiralty has no jurisdiction to entertain an action *in rem* for necessaries supplied to the *Strandhill* (then the *Lincolnland*) in the United States of America.

The Exchequer Court of Canada in Admiralty has no jurisdiction to enforce by action *in rem* a lien created by the law of the United States under facts and circumstances that would not give rise to a maritime lien under British Admiralty law.

A maritime lien cannot be created by foreign law otherwise than by a judgment *in rem,* and when so created cannot be enforced in the Exchequer Court.

By virtue of the American law the respondent did not acquire a right in the ship which attached to and followed the ship even through change of ownership.

The statement of claim disclosed no cause of action which could be enforced by an action *in rem* in the Exchequer Court.

The Exchequer Court of Canada was wholly without jurisdiction to entertain this action as an action *in rem.*

The arrest of the *Strandhill* in this action was wrongful *ab initio.*

Alfred Whitman K.C. for the respondent. The respondent can recover in this action *in rem* for necessaries supplied to the *Strandhill,* a foreign ship in a foreign port. The respondent can invoque the statutory lien.

The Admiralty Court has jurisdiction over claims for necessaries.

The appellant has a maritime lien, by the laws of the United States of America and of the Commonwealth of Massachusetts, for the necessaries supplied to the *Strandhill.*

(1) [1926] Ex. C.R. 226.

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Where a maritime lien attaches it is not dependent on the personal liability of the owners at the time the lien is sought to be enforced. A maritime lien travels with the thing into whosesoever possession it may come and may be enforced into whosesoever possession the thing may come.

The Court of Admiralty has also inherent jurisdiction in matters of maritime liens. The ship was under the control of and in the hands of that court.

The Admiralty Court can enforce the law of the United States.

The courts do not enforce a foreign law or judgment but the rights of a party acquired under the law of a foreign country.

The material facts of the case are stated in the above head-note and in the judgments now reported.

The judgment of the majority of the court (Anglin C.J.C. and Duff, Mignault, Newcombe and Rinfret JJ.) was delivered by

NEWCOMBE J.—The claim which the plaintiff, respondent, seeks to recover is for the price of necessaries supplied to the defendant ship, appellant, under an American contract, and which, by the law of the United States, was secured by maritime lien upon the ship. I say American contract, because the vendor was carrying on its business in the United States; the contract was made in the United States for the sale and delivery of the goods; the defendant, *Strandhill,* then called the *Lincolnland,* was an American ship; the goods were delivered to her as ship's necessaries, in an American port, at the request of the owner, who was domiciled and resident in the United States, and there was thus no point of contact with any other country, save that the ship, in the course of her navigation, might visit or sometime be found in a foreign port.

The question arises upon the submission by the defence that the statement of claim discloses no cause of action within the jurisdiction of the Exchequer Court of Canada in Admiralty, wherein the action was brought; this is substantially the effect of the objections set out as points of law in the defence.

The hearing took place upon an order of the local judge setting down the questions of law to be heard before the

trial. The case therefore depends upon the allegations of the statement of claim, which is concisely drafted, and may conveniently be set out in full:

Statement of Claim

1. The plaintiff at the time of the occurrence hereinafter mentioned carried on business at Boston in the Commonwealth of Massachusetts, United States of America, as dealers in ship supplies, provisions and chandlery.

2. The said ship *Strandhill* at the time the necessaries hereinafter mentioned were supplied to her was an American ship called the *Lincolnland* and was lying in the said port of Boston under the command of one Rupert Wry as master.

The owner of the said ship at such time was Joseph F. Fertitta, of the city of New York, in the state of New York, and he was at all material times domiciled and resident in the said city of New York.

3. The said ship did not belong to the port of Boston at the time such necessaries were supplied, and at the time of the institution of this cause no owner or part owner of such ship was domiciled in Canada.

4. The plaintiff at the request and upon the order of the said owner, or alternatively at the request and upon the order of a person authorized by such owner to order necessaries for the use of said ship, namely, the said master Rupert Wry, supplied on the 24th and 26th days of October, 1922, necessaries (within the meaning of the fifth section of the *Admiralty Court Act,* 1861, and within the meaning of the United States Acts of 1910, chapter 373), for the necessary use of the said ship then called the *Lincolnland* to the value of $1,091.84; and a promissory note dated October 27, 1922, for $1,000 signed by said owner Joseph F. Fertitta and endorsed by said master Rupert Wry was given by the said owner and master to the plaintiff but said note was dishonoured by non-payment on due presentation and there is now due and unpaid to the plaintiff in respect to such necessaries the sum of $1,091.84 with interest thereon. Particulars of such necessaries are delivered herewith.

5. Said necessaries were supplied by the plaintiff on the credit of said ship and not merely on the personal credit of the master or the owner.

6. By the laws of the United States of America and the said Commonwealth of Massachusetts at the time the said necessaries were supplied, any person furnishing repairs, supplies or other necessaries to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessels, or of any person by him or them authorized had a maritime lien on such vessel which might be enforced by a proceeding *in rem.*

7. The plaintiff repeats the foregoing paragraphs of this statement of claim and says that at the time such necessaries were supplied to said ship a maritime lien in its favour on such ship was created which might be enforced by a proceeding *in rem,* and that such lien has at all times up to the present continued in force, and the plaintiff now asks for its enforcement in this court.

8. The plaintiff claims:—

(1) Judgment for the said sum of $1,091.84 together with interest thereon.

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(2) That the defendant and his bail be condemned therein with costs.

(3) A sale of the said ship and payment of the said sum and interest out of the proceeds of said sale, together with costs.

(4) Such further and other relief as the case may require.

Newcombe J.

There is a bail bond, by which the National Security Company submits itself to the jurisdiction of the court, and becomes responsible for what may be adjudged in the action.

While, upon the record of the submission, the evidence of the law of the United States is to be found in the 6th paragraph of the statement of claim, we were at the hearing, by tacit consent, referred also to the *Ship Mortgage Act*, 1920, as enacted by congress and published in the statutes at large of the United States, vol. 41, part I, p. 1005. By subs. P. of that Act, introduced under the caption of "Maritime Liens for necessaries," it is enacted that:

> Any person furnishing repairs, supplies, towage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel.

It must therefore be considered that, according to the intention and law of the contract, the plaintiff company had a maritime lien on the vessel for the price of the necessaries supplied.

The nature of a maritime lien is expounded in *The Bold Buccleugh* (1). It is said by Mellish L.J., delivering the judgment of the Judicial Committee of the Privy Council, in *The Two Ellens* (2):

> A maritime lien must be something which adheres to the ship from the time that the facts happened which gave the maritime lien, and then continues binding on the ship until it is discharged, either by being satisfied or from the laches of the owner, or in any other way by which, by law, it may be discharged. It commences and there it continues binding on the ship until it comes to an end.

In *The Ripon City* (3), Gorrell Barnes J., in the course of an instructive judgment, adopts Lord Tenterden's definition, and he says:

> The definition of a maritime lien as recognized by the law maritime given by Lord Tenterden has thus been adopted. It is a privileged claim

(1) (1851) 7 Moo. P.C. 267, at p. 284.

(2) (1872) L.R. 4 P.C. 161, at p. 169.

(3) [1897] P.D. 226, at pp. 241, 242, 243, 246.

upon a thing in respect of service done to it or injury caused by it, to be carried into effect by legal process.

* * *

The result of my examination of these principles and authorities is as follows: The law now recognizes maritime liens in certain classes of claims, the principal being bottomry, salvage, wages, masters' wages, disbursements and liabilities, and damage. According to the definition above given, such a lien is a privileged claim upon a vessel in respect of service done to it, or injury caused by it, to be carried into effect by legal process. It is a right acquired by one over a thing belonging to another—*a jus in re aliena.* It is, so to speak a subtraction from the absolute property of the owner in the thing.

This right must, therefore, in some way have been derived from the owner either directly or through the acts of persons deriving their authority from the owner. The person who has acquired the right cannot be deprived of it by alienation of the thing by the owner. It does not follow that a right to a personal claim against the owner of the res always co-exists with a right against the res. The right against the res may be conferred on such terms or in such circumstances that a person acquiring that right obtains the security of the res alone, and no rights against the owner thereof personally. A simple illustration of this is the case of bottomry.

* * *

Lastly, as pointed out above, a maritime lien travels with the vessel into whosesoever possession it comes, so that an innocent purchaser of a ship may find his property subjected to claims which existed prior to the date of his purchase, unless the lien is lost by laches or the claim is one which may be barred by the Statutes of Limitation. This rule is stated in *The Bold Buccleugh* (1), to be deduced from the civil law, and, although it may be hard on an innocent purchaser, if it did not exist a person who was owner at the time a lien attached could defeat the lien by transfer if he pleased.

This exposition must I think be taken as descriptive of a maritime lien for the purposes of the case in hand, there being no averment or proof of judicial interpretation of the foreign law, *Lloyd* v. *Gilbert* (2).

Then it is clear, upon abundant authority, that a right acquired under the law of a foreign state will be recognized, and may be enforced, under the law of England, unless opposed to some rule of domestic policy or procedure which prevents the recognition of the right, *Peninsular and Oriental Steam Navigation Co.* v. *Shand* (3); *Hooper* v. *Gumm* (4); *Jacobs* v. *Crédit Lyonnais* (5); *In re Missouri Steamship Co.* (6); and I think it may be said of the law

(1) 7 Moo. P.C. 267.
(2) (1865) L.R., 1 Q.B. 115, at p. 129.
(3) (1865) 3 Moore P.C. N.S. 272, at pp. 290, 291.
(4) (1867) L.R. 2 Ch. 282, at p. 289.
(5) (1884) 12 Q.B.D. 589 at 600.
(6) (1888) 42 Ch. D. 321.

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of the United States regarding ship's necessaries, as was affirmed by the Exchequer Chamber in *Cammell* v. *Sewell* (1), when upholding the passing of property in a ship under the law of Norway, that

> it does not appear to us that there is anything so barbarous or monstrous in this state of the law as that we can say that it should not be recognized by us.

Inglis v. *Usherwood* (2), exemplifies the application of this principle in a case in which the Court of King's Bench recognized and gave effect to a Russian modification or extension of the right of stoppage *in transitu* as sanctioned by the *lex fori*. In Storey's Conflict of Laws, 4th ed., s. 322 b, p. 527, he says, after referring to the right of stoppage *in transitu;* the lien of a bottomry bond on a thing pledged; the lien of mariners on a ship for their wages and the priority of payment *in rem,* which the law sometimes attaches to peculiar debts, or to particular persons,

> In these, and like cases, where the lien or privilege is created by the *lex loci contractus,* it will generally, although not universally, be respected and enforced in all places where the property is found, or where the right can be beneficially enforced by the *lex fori.*

And in s. 327, p. 551:

> The law of a foreign country, is admitted, in order that the contract may receive the effect, which the parties to it intended. No state, however, is bound to admit a foreign law even for this purpose, when that law would contravene its own positive laws, institutions, or policy, which prohibit such a contract, or when it would prejudice the rights of its own subjects.

In Lord Watson's speech in *The Henrich Björn* (3), he says:

> Many foreign states, whose systems of jurisprudence are based on the civil law, admit a maritime lien for necessaries, but the ground upon which the courts of England have declined to recognize such a lien is not, in my opinion, that it is opposed to some rule or principle peculiar to English law, but that it is contrary to the general principles of the law merchant.

It cannot of course be said that the contract is void on the ground of immorality, nor is it contrary to such positive law as would prohibit the making of it, and therefore I think that the right which has accrued under or incident to it, may be recognized and enforced, if the tribunal to

(1) (1860) 5 H. & N. 728, at p. 743.

(2) (1801) 1 East 515.

(3) (1886) 11 App. Cas. 270, at p. 279.

which the plaintiff has resorted have the requisite jurisdiction.

I observe that Lord Tenterden in his great work on Shipping, 5th edition, the last for which he was responsible, in a passage which is preserved by the learned authors of the 14th edition, at p. 177, says:—

> Lord Mansfield is reported to have said generally in a case depending for judgment in the Court of King's Bench, that a person, who supplies a ship with necessaries, has not only the personal security of the master and owners, but also (*Rich* v. *Coe* (1). An expression of the same import was also used by his lordship in the case of *Farmer* v. *Davies* (2)), the security of the specific ship. But in a recent case, to which I have had more than once occasion to refer, Lord Kenyon, alluding to two cases that will be presently mentioned, expressed a doubt whether the doctrine of Lord Mansfield on this subject was not too generally laid down (*Westerdell* v. *Dale* (3)); and upon the view of the decisions which I am about to quote, one of which was pronounced by Lord Mansfield himself, it appears that the law of England has not adopted this rule of the civil law with regard to repairs and necessaries *furnished here in England.*

The words which I have emphasized suggest, if they do not invite, the inference that necessaries, furnished in a country where the rule of the civil law prevails, may nevertheless be regarded in England as entitled to the lien conferred by the law of the contract, and, if so, it follows that the liability of the ship would be adjudged by a court of competent jurisdiction.

Indeed it is difficult to perceive any reason why an American citizen, the owner of a ship which is by American law subject to a maritime lien for the price of necessaries purchased by him in an American port, could avoid the enforcement of the lien by sending his ship to Canada, if there be a Canadian tribunal having jurisdiction to enforce it.

The case, as now presented, does not involve a question of priorities as between competing creditors to be determined by the *lex fori,* as in cases like *The Tagus* (4); *Clark* v. *Bowring* (5); *The Colorado* (6). Nor is it a claim by way of real privilege or lien on a chose in action, depending on the law for the recovery of the latter, as in the

(1) (1777) Cowp. 636; Trin. T. 17, Geo. 3.

(2) (1786) 1 Term Rep. K.B. 109.

(3) (1797) 7 Term Rep. K.B. 312.

(4) [1903] P.D. 44.

(5) [1908] Sc. Sess. Cas. 1168.

(6) [1923] P.D. 102.

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much debated decision of Dr. Lushington in *The Milford* (1). The case is concerned only with the vindication of the right claimed against the ship. It must, however, be remembered that it is the right, and not the remedy, which is regulated by the *lex loci;* and, as said by Story, in his commentaries on the Conflict of Laws, 4th ed., s. 327, p. 550:

> Mr. Chancellor Kent has laid down the same rule in his Commentaries, as stated by Huberus and Lord Ellenborough in *Potter* v. *Brown* (2), and has said: "But on this subject of conflicting laws, it may be generally observed, that there is a stubborn principle of jurisprudence, that will often intervene and act with controlling efficacy. This principle is, that when the *lex loci* contractus and the *lex fori* as to conflicting rights acquired in each, come in direct collision, the comity of nations must yield to the positive law of the land. *In tali conflictu magis est, ut jus nostrum, quam jus alienum, servemus.*"

The defence is pleaded by Wm. P. Cant, alleged to be the owner of the ship at the date of the writ, and it is said that he is a subsequent purchaser for value. The present issue as to the sufficiency in law of the statement of claim is not affected by these allegations; but, if it should appear at the trial that subsequent interests have intervened and that conflicting priorities are to be adjudged, other considerations may arise, which have not been debated, and as to which I am careful to say that I do not express any opinion.

As to the remaining question, the jurisdiction of the High Court of Admiralty in England, relating to claims for ship's necessaries, is defined by two statutes of the United Kingdom, 3 and 4 Vict. (1840), c. 65, s. 6:

> And be it enacted, that the High Court of Admiralty have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or seagoing vessel, or in the nature of towage, or for necessaries supplied to any foreign ship or seagoing vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered or damage received, or necessaries furnished, in respect of which such claim is made.

As to the application and effect of this section, see the observations of Mellish L.J., in *The Two Ellens* (3); also *The Anna* (4).

(1) [1858] Swabey 362.
(2) (1804) 5 East, 124.
(3) L.R. 4 P.C. 161, at p. 167.
(4) (1876) 1 P.D. 253.

The other statutory enactment is 24 Vict. (1861), c. 10, s. 5, the material part of which provides that:

> The High Court of Admiralty shall have jurisdiction over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shewn to the satisfaction of the court that at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales.

The Exchequer Court of Canada, having been declared, in pursuance of the *Colonial Courts of Admiralty Act*, 1890, 53-54 Vict., c. 27, to be a court of Admiralty, has, on its Admiralty side, under s. 2, subs. 2 of that Act, jurisdiction

> over the like places, persons, matters and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise, and the Colonial Court of Admiralty may exercise such jurisdiction in like manner and to as full an extent as the High Court of England, and shall have the same regard as that court to international law and the comity of nations.

And, by s. 3, in interpreting the Admiralty jurisdiction, so conferred, in its application to this Dominion, "Canada" is to be read in substitution for "England and Wales."

Now in view of these enactments I apprehend that if a provision, corresponding to that of the United States statute which I have quoted, had been enacted in England, the High Court of Admiralty would have found itself adequately equipped to enforce it, in the cases provided for in the Acts of 1840 and 1861. And, seeing that equivalent local jurisdiction exists, the Exchequer Court of Canada is empowered, when, in those cases, the claim for necessaries is secured by a maritime lien, to enforce that lien, notwithstanding that the right may have been acquired under the law of a foreign country.

The conclusion which I have reached, while in accord with that of the learned trial judge, and with the view expressed by Routhier L.J.A. in *Coorty* v. *S.S. Coldwell* (1), is not in conflict with the recent judgment of the learned local judge at Toronto in *Pittsbrugh Coal Co.* v. *S.S. Belchers* (2), to which our attention was directed, because, to mention one reason only, in that case, the ship against which the lien was asserted was registered in Canada, where the owner was domiciled.

I would dismiss the appeal with costs.

(1) (1898) 6 Ex. C.R. 196. (2) [1926] Ex. C.R. 24.

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Idington J.

IDINGTON J.—This appeal is from the Exchequer Court of Canada, Nova Scotia Admiralty District, in a case wherein Mr. Justice Mellish heard an argument on the law applicable to the state of facts set forth in the statement of claim. Apparently it was a substitute for a demurrer to same.

The first six paragraphs of the statement of claim, containing all that is material for our consideration, are as follows:—

The plaintiff at the time of the occurrences hereinafter mentioned carried on business at Boston in the Commonwealth of Massachusetts, United States of America, as dealers in ship supplies, provisions and chandlery.

2. The said ship *Strandhill* at the time the necessaries hereinafter mentioned were supplied to her was an American ship called the *Lincolnland* and was lying in the said port of Boston under the command of one Ruper Wry as master. The owner of the said ship at such time was Joseph F. Fertitta of the city of New York, in the state of New York, and he was at all material times domiciled and resident in the said city of New York.

3. The said ship did not belong to the port of Boston at the time such necessaries were supplied, and at the time of the institution of this cause no owner or part owner of such ship was domiciled in Canada.

4. The plaintiff at the request and upon the order of the said owner, or alternatively at the request and upon the order of a person authorized by such owner to order necessaries for the use of such ship, namely, the said master Rupert Wry supplied on the 24th and 25th days of October, 1922, necessaries (within the meaning of the fifth section of the *Admiralty Court Act* 1861 and within the meaning of the United States Acts of 1910, chapter 373) for the necessary use of the said ship then called the *Lincolnland* to the value of $1,091.84; and a promissory note dated October 27, 1922, for $1,000 signed by said owner Joseph F. Fertitta and endorsed by said master Ruper Wry was given by the said owner and master to the plaintiff but said note was dishonoured by non-payment on due presentation and there is now due and unpaid to the plaintiff in respect to such necessaries the sum of $1,091.84 with interest thereon. Particulars of such necessaries are delivered herewith.

5. Said necessaries were supplied by the plaintiff on the credit of said ship and not merely on its personal credit of the master or the owner.

6. By the laws of the United States of America and the said Commonwealth of Massachusetts at the time the said necessaries were supplied, any person furnishing repairs, supplies or other necessaries to a vessel, whether foreign or domestic, upon the order of the owner or owners of such vessels, or of any person by him or them authorized had a maritime lien on such vessel which might be enforced by a proceeding *in rem*.

On the assumption that the foregoing statements are each and all, including, of course, that in paragraph six,

stating the laws of the United States of America and of the Commonwealth of Massachusetts, correctly stated, I am of the opinion that Mr. Justice Mellish has, for the reasons he assigns, reached an absolutely correct conclusion.

Having read, amongst others, the cases he cites, I may say that they are not by any means founded upon exactly the same sort of facts as set forth in the foregoing statement of claim, but the principles therein proceeded upon are concisely as enunciated by Lord Justice Baggallay in *The City of Mecca* (1), where, at page 119, after expressing his entire adoption of the proceedings *in rem* and *in personam*, as quoted by the Master of the Rolls in the case of *The Bold Buccleugh* (2), he quotes this additional passage which he says he thinks should be read:—

> This claim or privilege travels with the thing, into whosesoever possession it may come. It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process by a proceeding *in rem*, relates back to the period when it first attached.

The third edition of Dicey, cited by Mr. Justice Mellish, is the last edition of that work (and properly read supports his conclusion), but the second edition is persistently referred to by counsel for appellant, why so puzzles me. I have the third edition at hand, but not the second.

The appellant's factum claims this case and the case of *Pittsburg Coal Co. et al* and *SS. Belchers* (3), are the same; and that Mr. Justice Hodgins' decision is directly contrary to that of Mr. Justice Mellish herein. With due respect, I cannot assent to that, for, so far as the latter case is concerned, the vessel there in question is simply set down as registered and owned in Canada, and no record of its ever having been registered elsewhere appears.

This probably is the basis of the different results.

The American law seems to have made the advance for necessities a maritime lien on American vessels.

And certainly to maintain the appellant's contention herein would open wide the door to fraud. It would be,

(1) (1881) 6 P.D. 106. (2) 7 Moo. P.C. 267.
(3) [1926] Ex. C.R. 24.

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Idington J.

I submit, intolerable to enable owners of American vessels to get advances on faith of such a maritime lien and move up to Canada and sell out.

I would dismiss this appeal with costs.

Appeal dismissed with costs.

Solicitor for the appellant: *W. A. Henry.*

Solicitor for the respondent: *Alfred Whitman.*