

BRITISH COLUMBIA ADMIRALTY DISTRICT

1921
June 13.

STANLEY STEWART STONE,
CHESTER ROY STONE, WIL-
LIAM JOHN STONE, ANGUS
McKEE, AVERY ARTHUR
RHODES AND MACNUS KNUD-
SEN..... } PLAINTIFFS;

AND

THE S.S. ROCHEPOINT AND } DEFENDANTS.
OWNERS..... }

Shipping and Seamen—Priority of wages as against mortgagee—Seamen part owners of ship mortgaged—Shipping register—True ownership.

The W.C.T. Co. were the registered owner of the S.S. *Rochepoint* and 50% of the stock of this Company was owned by the plaintiffs, S.S., C.R. and W. J. Stone. The other plaintiffs had no interest therein. In 1919, S.S. and W.J. Stone, acting for the company, mortgaged the said ship for \$4,000, and personally guaranteed the payment thereof. In February, 1921, the mortgagees took possession, and whilst technically in their possession a writ was issued on behalf of plaintiffs for arrears of wages claiming condemnation of the ship, etc., which was resisted by the mortgagees.

Held, that S.S.S. and W.J.S., Master and Mate respectively of the ship, having personally guaranteed payment of the mortgage, their claim for arrears of wages should not now be preferred or given priority as against that of the mortgagee.

2. That, with respect to the claim of C.R.S. (engineer), as the mortgagees were designedly kept in ignorance of these wage claims, and as the Company as registered owner was being used as a cloak to carry on the operations of the vessel by the three plaintiffs "Stone" as partners behind the screen of registration, this claim for alleged lien was not *bona fide*, and should be rejected.

Haley v. S.S. Comox (20 Ex. C.R. 86) referred to.

3. That, to determine the question of true ownership, the Court should not allow itself to be misled by documents, but will resort to all the evidence to extract the truth.

(See *Haley v. S.S. Comox* above).

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ACTION for arrears of wages claiming condemnation of the ship defendant.

STONE *et al.*

v.

THE S.S.
ROCHEPOINT
AND
OWNERS.

April 26th, 1921.

Reasons for
Judgment.

The case was heard before the Honourable Mr. Justice Martin, L.J.A. at Vancouver.

Martin L.J.A.

Hume B. Robinson for plaintiffs.

E. C. Mayers for mortgagees.

The facts are stated in the head-note and in the reasons for judgment.

MARTIN L. J. A. now (this 13th June, 1921) delivered judgment.

This is an action for wages by the master, mate and other seamen of the *Rochepoint*, a gasoline fishing vessel of about 76 tons gross, and the preferential lien that they claim is resisted by the mortgagees, the Columbia Salmon Company, which holds a mortgage on the vessel for \$4,000 for moneys advanced, dated the 9th of December, 1919, given by the registered owner, the West Coast Transportation Company, Ltd., and the payment of which is also personally guaranteed by W. J. Stone and S. S. Stone, her master and mate respectively, at that time, who signed a promissory note as collateral security for the mortgage, which they have not paid.

It was decided in the *Bangor Castle* (1), that the lien of a master for wages cannot be preferred against the claim of a mortgagee where the payment of the mortgage has been guaranteed by the master, (and see the *Edward Oliver* (2)), and so it was admitted that the master's claim here must give way to the

(1) [1896] 8 Asp. 156.

(2) [1867] L.R. 1 A. & E. 379.

mortgagees's. But it is submitted that the claim of the mate is in a different position because he is a seaman and the master is not in theory, (though I note he describes himself as such in his statement of claim) and hence the rule should not be extended to include seamen, who are specially protected or favoured as to exemption from attachments and the revocability of assignments of wages or salvage made "prior to the accruing thereof" by secs. 236-7 of the Canada Shipping Act, cap. 113, R.S.C. The position of the master as to his lien for wages and disbursements was considered by me in *Beck v. The Kobe* (1), and he is now upon the same basis in that respect as any seaman, though not a seaman in the technical use of that word, (though he is a "mariner"—the *Johathan Goodhue* (2)), and I am unable to see why a distinction should be drawn between two classes holding a lien of the same description simply because special protection in other respects is given to a seaman. It does not at all follow that because he may properly claim that specified statutory protection or privilege there is any principle which would otherwise entitle him to act less honestly than any other lien holder towards his creditor, and Dr. Lushington said in the *Edward Oliver case*, (3) p. 383, that in the case of a master "it would be manifestly wrong that in defeasance of his own contract he should not only not pay the bond himself, but obtain out of the proceeds of ship and freight payments of his own claims against the owners leaving the bottomry bond unpaid. Hence the rule by which the master's claim is liable, under those circumstances, to be postponed," and so I see no reason why the mate

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(1) [1915] 22 B.C. R. 169.

(2) [1859] Swab. 524, 527.

(3) [1867] L.R. 1 Ad. and Ecc. 379.

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should be less honest than the master in discharging his legal obligations, I am of opinion that the claim of the mate is within the same rule as that of the master and should likewise be postponed to that of their common creditor the mortgagee.

As to the claim of Chester R. Stone as engineer; having regard to all the unusual circumstances it is obviously open to grave suspicion as a lien in conflict with the unquestioned claim of the mortgagees, who, I am satisfied, were designedly kept in ignorance of these wage claims. After an examination, in the light of the other evidence, of the books, (if they can be dignified by that description) of the West Coast Transportation Company, Limited, I can only reach the conclusion that at time material at least the name of that company as the registered owner was being made use of as a cloak to carry on the operation of the vessel by the three Stone plaintiffs as partners behind the screen of registration. But to determine the question of the true ownership the court will not allow itself to be misled by the presence of documents but will resort to all the evidence to extract the truth, as I did recently in *Haley v. SS. Comox* (1). Therefore I am of opinion that this alleged lien is not *bona fide*, and is consequently rejected.

With respect to the claims of the three seamen, McKee, Rhodes and Knudsen, I am of the opinion that they are *bona fide* and the delay in asserting their lien has been satisfactorily explained and therefore judgment should be entered in their favour for the respective amounts due them of \$301.15; \$480.85 and \$816.20.

Judgment accordingly.

(1) [1920] 3 W.W.R. 325; 20 Ex. C.R. 86.