

1915
 June 29

QUEBEC ADMIRALTY DISTRICT.

ELECTRIC REPAIR & CONTRACTING CO., LTD.,
 PLAINTIFF.

v.

SS. "PREFONTAINE".....DEFENDANT

AND

FRANCIS C. LABERGE.....INTERVENANT.

Contract—Work on ship—Lighting apparatus—Rights in rem.

Where a contract for the installing of a lighting apparatus in a vessel has been performed, and the work has been accepted and a promissory note given for the contract price, the defendant, in an action for the contract price, cannot, certainly where he retains the apparatus, set up defective installation or that the work was not performed according to contract. The plaintiff's right in the res is not affected by a judicial sale of the vessel subsequent to his seizure.

ACTION against a ship for work done and materials furnished. Tried before Mr. Justice Duñlop, D.L.J., Quebec Admiralty District, at Montreal, June 21, 22, 1915.

Blair, Laverty & Hale, for plaintiff; *L. C. Meunier*, K.C., for SS. "Prefontaine"; *A. Decarie*, K.C., for intervenant.

DUNLOP, D. L. J. (June 29, 1915) delivered judgment.

In this case, the plaintiff by its statement of claim, alleges: That on April 1, 1914, the defendant, acting through one J. M. Malo, engaged plaintiff to install on the defendant steamer 1 engine, dynamo, 55 lights, and the necessary wiring to connect the same, the whole for the sum of \$300; that on or about April 3, 1914, plaintiff began the said work and finished same on May 11, 1914, the engine, dynamo, lamps and wiring being all properly installed and in good order and condition, after actual test made by plaintiff; that on or about May 28, 1914, defendant, acting through said J. M. Malo, accepted said

work and tendered to plaintiff his personal note for the said sum of \$300 payable 3 months after date, which plaintiff accepted, and plaintiff granted defendant 3 months' delay to pay said indebtedness; that on August 21, 1914, when said note matured, it was not paid and was protested and plaintiff returned said note to said Malo in whose hands it now is, and plaintiff prays for judgment against defendant for \$300, with interest and costs of suit.

The defendant, by his defence, in effect denies the material allegations of said statement of claim alleging that the works in question were not done according to the rules of art and that said installation had never worked properly; that defendant admits having given its note at a time when said works were not finished; that plaintiff has never finished its contract and that defendant had put plaintiff *en demeure* to do so and that under such circumstances plaintiff has no right to expect payment of the work done and materials furnished; that defendant has never accepted said work and offered to return the electric installation to plaintiff and reiterated said offer by its said plea;

For answer to the defendant's plea, plaintiff denies the material allegations thereof, and alleges that after the installation of the said lighting apparatus upon the defendant steamer, in the month of May last, plaintiff made a thorough test of said apparatus and it was found to be in perfect working order and giving sufficient light, that if defendant met with trouble in operating said apparatus, which is denied, the same was not due to any cause for which plaintiff was responsible, but to the fault and negligence of those who had charge of the vessel; that, in any event, the owners of the defendant steamer have not acted with the necessary diligence to justify the conclusions of its plea and to entitle defendant to refuse payment of plaintiff's claim, especially while retaining said lighting apparatus in its possession; that defendant's offer to return said apparatus cannot serve as a defence as defendant is not in a position to return same; that defendant's plea is unfounded in fact and in law and plaintiff prays for its dismissal, the whole with costs.

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Defendant furnished further particulars but plaintiff denies same, as amended.

The intervenant, by his intervention herein, alleges that on November 19, 1914, in a certain case bearing No. 4047 of the records of Superior Court, wherein the Westmoreland Company was plaintiff and said Malo was defendant, one of the officers of said Court sold to one J. B. Peloquin the said steamer "Prefontaine," who, on November 25, 1914, resold the said steamer to the intervenant herein; that said intervenant has an interest to intervene in the present cause and to continue it according to the last proceedings and prays that he should be allowed to do so, costs to follow suit.

Plaintiff contested said intervention at the trial.

Adjudicating, first, on said intervention, and considering that said alleged sale was made long after the institution of the present action against defendant and the seizure herein under said proceedings issued in the Admiralty Court; and further considering that said alleged sale cannot effect in any way the present proceedings and that the plaintiff has the right to proceed with its claim to judgment against the defendant steamer and its bail, in the present cause, as instituted, notwithstanding the said intervention, which is unfounded and must be dismissed, and is so dismissed by the present judgment, with costs.

Adjudicating on the merits of this cause, I find that the very voluminous evidence in this cause taken clearly establishes plaintiff's claim, and that plaintiff duly carried out and fulfilled the terms of its said contract and installed the said electric apparatus in the defendant steamer, and has the right to be paid for the same.

A very important fact is the giving of the note to plaintiff by defendant, acting through said Malo, who accepted said work, and in any event, the defendant has not acted with the necessary diligence to justify the conclusions of its plea, and to entitle it to refuse payment of plaintiff's claim, especially while retaining said lighting apparatus in its possession, and in my opinion, defendant's plea is unfounded in fact and in law and must be rejected.

And after a very careful examination of the evidence in this cause taken, I am of opinion that plaintiff's action is

well founded. The defendant steamer and its bail must pay to the plaintiff the sum of \$300 with interest and costs of suit, and an additional sum of \$10 further costs entailed by the re-opening of defendant's enquete, defendant having totally failed to prove any material facts after its enquete has been re-opened.

Judgment for plaintiff.

Solicitors for Plaintiff: *Blair, Laverty & Hale,*

Solicitor for ss. "Prefontaine;" *L. C. Meunier, K.C.*

Solicitor for Intervenent: *A. Decarie, K C.*

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