

NOVA SCOTIA ADMIRALTY DISTRICT

PERLEY McBRIDE ET AL.....PLAINTIFFS;

1920  
 Aug. 11.

AGAINST

THE SHIP AMERICAN

AND

JOHN S. DARRELL & CO.....INTERVENERS.

*Shipping and seamen—Disbursements incurred by Master—Maritime Lien.*

Besides wages the master claimed certain amounts alleged to have been paid for provisions and for accounts which he guaranteed to the ship's agents for money advanced by them to pay wages, provisions, etc. *M. & Son*, the ship's agents had been paying the bills, and drafts therefor were sent to *C. Bros.*, of New York, who were managing the ship as owners. These were not satisfactorily paid and *M. & Son* declined to make further advances unless the master became personally responsible, which he did. *M. & Son* were aware of the situation and the master was in constant and direct communication with the owners or those acting on their behalf and the liability incurred by him was made after the ship had been arrested by another claimant.

*Held*, that under the circumstances the master had no maritime lien to cover such disbursements; and that the master could not create a maritime lien in his own favour merely by adding his own liability to that of the owners for necessaries for the ship whether in the form of wages or otherwise.

ACTION IN REM for wages and for disbursements and liabilities incurred on behalf of the ship.

Halifax, August 5, 1920.

Action now tried before the Honourable Mr. Justice Mellish.

*L. A. Forsyth* for plaintiffs;

*W. C. Macdonald, K.C.* for John S. Darrell & Co., Interveners.

The facts are stated in the reasons for judgment.

MELLISH L.J.A., the 11th August, 1920, delivered judgment.

This is an action *in rem* by the master of the defendant ship for wages due him, and for disbursements and liabilities incurred by him on behalf of the ship.

Certain members of the crew have also been added as plaintiffs, and are asserting claims for wages due them. The crew and master have a maritime lien for such wages and there will be a decree accordingly.

1920  
 McBRIDE  
 v.  
 THE SHIP  
 American.  
 Mellish  
 L.J.A.

The master claims in addition for two items \$57.72 and \$14.60, which he paid for provisions, an account of \$86 which he guaranteed to R. B. Seeton & Co., and for further sums amounting in all to \$3,679.35, for which he has become responsible to I. H. Mathers & Sons for money advanced by them to pay wages, provisions and repair bills, etc., as per vouchers produced.

I do not think under the circumstances disclosed in the evidence that the master has a maritime lien to cover such disbursements and to protect him against the liabilities so incurred by him. Messrs. Mathers & Son had been acting as the ship's agents and apparently paying her bills. Their drafts on Caracanda Bros., of New York, who were managing the ship as owners were not satisfactorily met, and they declined to make further advances, unless the master became personally responsible which he did. Messrs. Mathers & Son made the master aware of the situation when he became so responsible. It does not seem, however, that Messrs. Mathers & Son relied solely on the master's credit, as they made drafts on Caracanda Bros. for the amounts advanced by them, which were apparently dishonoured. I do not think the circumstances were such as to make it the duty of the master as such to make the disbursements or incur the liability in question. The master was in constant and direct communication with the owners or with those acting on their behalf, and the liability incurred by him was made after the ship had been arrested by another claimant.

I do not think the master can create a maritime lien in his own favour merely by adding his own liability to that of the owners for necessaries for the ship whether in the form of wages or otherwise. The liability so incurred by the master was incurred with the knowledge and apparent assent of the owner's agents. *The Orienta* (1).

It is said, however, that the master has at least a statutory lien for the amount of such disbursements made, and liability incurred by him. In other words I suppose it will be said that the master is in the position of one who has a claim for *necessaries supplied* to the ship. The answer to

(1) [1895] P. 49 at p. 55.

this contention is, I think, that except as to the two items of provisions above referred to, the master did not supply such necessaries. Messrs. Mathers & Son, who, the master says made the advances on the credit of the ship, as well as himself, may have such a claim, but they are not before the court, and I give no definite opinion as to their rights.

It is no doubt established

that the person who pays for necessaries supplied to a ship has, as against that ship and her owners, as good a claim as the person who actually supplied them, and, further, that he who advances money to the person who thus pays, for the purpose of enabling him to pay, stands in the same position as the person to whom the money is advanced. See *Foong Tai & Co. v. Buchheister & Co.* (1).

Such a person is said to be in the position of one who has supplied necessaries to a ship on the credit of the ship. With some hesitation, however, I have come to the conclusion that the master cannot fairly be said to have supplied the necessaries for which Messrs. Mathers & Son paid. The same remarks apply to the account of Seeton & Co. for \$86 so far as relevant thereto.

There will be a decree in accordance with the foregoing and I will hear the parties as to costs.

*Judgment accordingly.*

· 1920  
McBRIDE  
v.  
THE SHIP  
*American.*  
Mellish  
L.J.A.  
—