

APPEAL FROM THE NOVA SCOTIA ADMIRALTY DISTRICT

WALTER W. HODDER COMPANY,
INCORPORATED (PLAINTIFF) } APPELLANT;

AND

THE SHIP *STRANDHILL* AND HER }
OWNERS (DEFENDANT) } RESPONDENT.

1929
June 18.
Oct. 2.

Shipping—Lien for necessaries—Vendee without notice—Interest—Costs—Judicial discretion

Held.—(Affirming the judgment appealed from) that the vendee of a ship without notice of a claim for necessaries against her, who offers to suffer judgment for the amount of such claim is not liable for interest upon the same.

2. The Court following the decision in the case of *The Young Sid* (1920) P. 190 refused to interfere with the exercise of the trial judge's judicial discretion in disallowing costs.

APPEAL from the decision of the Local Judge in Admiralty for the Nova Scotia Admiralty District rendered herein on the 7th May, 1929.

The appeal was heard before the Honourable Mr. Justice Audette at Halifax.

Alfred Whitman, K.C., for appellant.

C. B. Smith, K.C., for respondent.

The facts are stated in the reasons for judgment.

AUDETTE J., now (October 2, 1929), delivered judgment.

This is an appeal from the judgment of the Local Judge of the Nova Scotia Admiralty District pronounced on the 7th May, 1929, in an action for necessaries. The appeal is

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limited to the question of interest and costs upon the motion for judgment.

The appellant—pursuant to a notice to admit—admitted the following, as shown by the record, viz:—

I. That at the date of the commencement of this action, namely the 9th August, A.D. 1923, and at the date of the arrest of the said steamship *Strandhill*, William P. Cant was the owner of the said steamship *Strandhill* and that the said ship was then of British registry having on the 21st March A.D. 1923, been registered under Official Number 146328, at Glasgow, Scotland, in the name of William P. Cant.

Later on the respondent filed the following consent, viz:—

Take notice that William P. Cant, the owner of the ship *Strandhill*, the above mentioned defendant hereby consents that the formal judgment to be entered following the decision of His Lordship Mr. Justice Mellish herein shall be against the said William P. Cant, personally as well as against the said ship and her bail.

It therefore follows that the action *in rem* becomes also an action *in personam* against Cant, and he becomes liable for the full amount on this admission. Roscoe, 4th Ed., 35. By such admission, he introduces his own personal liability.

In the result, the facts of the case are really admitted.

The necessaries in question were supplied by the appellant to the ship on or about the 24th and 26th October, 1922. On the 27th October, 1922, the then owner, Fertitta, gave a note for \$1,000, for part of the price of these goods, and the note was endorsed by the Master. On the 11th December, 1922, this note was dishonoured.

The appellant now asks for interest from the date of presentation for payment, and as no payment was made, contends that interest should run from the date of dishonour.

The question of interest, a question of law, is one not free from difficulty in view of the numerous conflicting decisions.

But the question to be determined in this case, is not the broad question as to whether or not interest should, as a question of law, be allowed on necessaries, as was argued at bar on appeal. The question is whether the vendee of a ship without notice of such claim should be held liable for the interest upon the same. The question of the existence of the foreign lien for such necessaries and its recognition by our Courts has already been determined by the Supreme

Court of Canada, confirming the judgment of the trial judge. The ship *Strandhill* v. *Walter W. Hodder Company* (1).

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Now, the foundation upon which rests this case is thus well and clearly expressed in Maclachlan's Law of Merchant Shipping, 6 Ed., p. 86, viz:—

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If the owner, after ordering necessaries, sell and transfer the ship, the vendee is not liable, not even for such of the necessaries as were supplied after the transfer on the previous order. *Trewhella v. Rowe* (2). Nor would he be if the necessaries were ordered by the master, to whom at the time he had let the vessel. *Fraser v. Marsh* (3).

The law of the United States upon the question of interest in the case of a vendee without notice, if there is any, has not been proven.

The liability of the respondent, under the circumstances of the case, must be limited to the scope of his above recited admission and for the reasons mentioned by the trial judge, I am bound to confirm the conclusion he arrived at, and disallow the appeal for interest.

There remains the question of costs. On the consideration of this question in the light of the decision in *The Young Sid* (4), I am forced to the conclusion that the trial judge has exercised a judicial discretion in withholding costs upon which there is no appeal and I feel that I can do nothing else but confirm his judgment in that respect.

Therefore, there will be judgment dismissing the appeal with costs.

Judgment accordingly.

(1) (1926) S.C.R. 680.

(2) (1809) 11 East. 434.

(3) (1811) 13 East. 238.

(4) (1929) P. 190.