

1899

BRITISH COLUMBIA ADMIRALTY DISTRICT.

April 17.

A. J. BJERRE AND OTHERS.....PLAINTIFFS ;

AGAINST

SHIP "J. L. CARD."

*Admiralty law—Action for wages—Assignment—Rights of assignee—Action in rem.*The right of action *in rem* for wages cannot be assigned.*Rankin v. The Eliza Fisher*, 4 Ex. C. R. 461 followed.

THIS was an action for wages earned by the plaintiffs, one of whom was the master, and the others engineers, of the ship, "J. L. Card." The Bank of Montreal, the mortgagees of the ship, appeared and intervened.

At the trial, evidence was produced to show that the claims for wages had been assigned to one Mellon before action brought.

The action came on for trial on 8th April, 1899, before the Hon. A. J. McColl, Chief Justice, Local Judge of the British Columbia Admiralty District.

F. Peters, Q.C. and *W. A. Gilmour* for plaintiffs ;

C. Wilson, Q.C. and *G. E. Corbould, Q.C.* for Bank of Montreal (intervening).

Mr. Peters contended that the assignment not being absolute, but by way of security only for advances, the lien was not lost but could be asserted by plaintiffs for the benefit of the assignee.

MCCOLL, C.J., L.J. now (17th April, 1899), delivered judgment.

The plaintiffs before action, but after their wages had accrued due, assigned them to one Mellon by assignments absolute in form.

Evidence was given to show that Mellon or his firm had advanced to the plaintiffs, in different sums at various times, the full amount of their wages; and it was contended that because the plaintiffs are liable personally in respect of these advances, the assignments are not a bar to recovery in this action.

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 BIERRE
 v.
 THE SHIP
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 Reasons
 for
 Judgment.

The right of action *in rem* for wages is personal and cannot be assigned. *Rankin v. The Eliza Fisher* (1).

And I do not see how I can give effect to the plaintiffs' contention. The assignee, as it seems to me, is a necessary party to the action. It is admitted that he has indemnified the plaintiffs against the costs of this action and that it is for his sole benefit.

I find, lest it should be considered material in appeal, that the advances were made as claimed.

There will be judgment for the Bank of Montreal, intervening, with costs.

Judgment accordingly.

Solicitors for plaintiffs: *Tupper, Peters & Gilmour.*

Solicitor for mortgagees (intervening): *G. E. Corbould.*