

TORONTO ADMIRALTY DISTRICT

BETWEEN:—

H. GRANT DUFF..... PLAINTIFF;

AND

THE SHIP *PROGRESS*..... DEFENDANT

*Shipping and Seamen—Collision—Damage—Sale of ship after collision—  
Maritime Lien*

*Held:* That in an action for damages by collision, the sale of one of the ships by the owner does not disentitle him from enforcing a Maritime Lien on the other ship. Such a lien is in general, and in such a case as this, is unassignable.

This was an action for damage by collision brought by the owner of the ss. *Althea* against the ss. *Progress*, which collision took place in the Livingston Channel; the *Althea* being down bound and the *Progress* up bound.

1928

Apr. 16 & 17  
Apr. 18.

1928  
 DUFF  
 v.  
 THE SHIP  
 Progress.

The Action was tried before the Honourable Mr. Justice Hodgins at Windsor, on the 16th and 17th days of April, A.D. 1928.

*H. F. Hough* for plaintiff.

*F. Wilkinson* for defendant.

Part of the facts and the points of law raised are given in the reasons for judgment.

HODGINS L.J.A., now (18th April, 1928), delivered judgment:—

I find that a collision did take place in the Livingston Channel between the two vessels.

[The learned judge, after discussing the evidence, proceeded as follows:—]

Both vessels, I must therefore find, are to blame for the collision and each must bear an equal share of the blame and of the damages. Final judgment however will be reserved to ascertain whether the sale of the *Althea* by the plaintiff prevents him from enforcing a maritime lien on the defendant ship. I have little doubt that he has the right to enforce it, but as Mr. Wilkinson has raised the point, I shall consider it and I therefore defer giving my final judgment.

18th April, 1928: Upon the question raised by Mr. Wilkinson, I think the sale by the plaintiff of the *Althea* has no bearing upon his right to enforce his maritime lien. Such a lien is in general and in such a case as this, is unassignable, and any assignment would therefore be void. Had the *Althea* become a total loss the plaintiff's lien would have been maintainable.

There will be judgment for the plaintiff for one-half of the damages caused by the collision, but no costs, to either party, of course, as each is to blame. A reference to the Registrar in Toronto will be directed to assess the plaintiff's damages.

*Judgment accordingly.*

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