

M.R.R.M. Muthaya Chetti Vs. R.M.A.R.A.R. Muthaya Chetti and ors.

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Court : Chennai

Decided On : Apr-28-1882

Reported in : (1882)ILR5Mad334

Judge : Charles A. Turner, Kt., C.J. and ;Muttusami Ayyar, J.

Appellant : M.R.R.M. Muthaya Chetti;r.M.A.R.A.R. Muthaya Chetti and ors.

Respondent : R.M.A.R.A.R. Muthaya Chetti and ors.;m.R.R.M. Muthaya Chetti and anr.

Judgement :

1. The plaintiffs shipped goods on board the Helen Wallace for conveyance from Rangoon to Negapatam. Owing to stress of weather the ship sprang a leak, and the Captain found it necessary to put into Singapore that repairs might be effected.
2. The Captain, being unable to raise money on a bottomry-bond, sold a portion of the cargo, the property of the plaintiffs, to raise funds to meet the cost of repairs. The repairs were effected with the funds so provided, and the ship continued her voyage.
3. The ship was registered in the name of the second defendant, the agent of the first defendant; but the actual owners are the third defendant--who was also the Captain--and three other persons who are not before the Court, the first defendant being the mortgagee.

4. The Court of first Instance held that the plaintiffs could not recover from the first defendant personally, but were entitled to a personal decree against the third defendant and to a maritime lien on the ship which would take priority over the mortgage.

5. In appeal the plaintiffs contend they are entitled to a personal decree against either the first or the second defendant; and the first defendant contends that the plaintiffs have no maritime lien, or, if they have a lien, their claim is not entitled to priority over the mortgage. Although the mortgage was created by the transfer of the apparent ownership to the second defendant, and by a lease of the ship to the third defendant and his co-owners, it cannot be disputed that the first defendant was in fact a mortgagee, and that the vessel was left in the hands and at the disposition of the owners subject to the condition that the consent of the mortgagee should be procured if the ship was docked or repaired.

6. It appears to us clear that the plaintiffs have no right to a personal decree against the first or the second defendant. The Captain was not their agent to pledge their credit for moneys required for repairs. *Briggs v. Wilkinson* 7 B. & C. 30 *Myers v. Willis* 18 C.B. 886.

7. The second question presents greater difficulty, and we are not aware of any case in this country in which the point has been determined. The obligation created by the act of the Captain in converting cargo to raise funds for repairs has been described as a forced sale, *Powell v. Gudgeon* 5 M. & S. 436 *Duncan v. Benson* 1 Ex. 555.

8. As the Captain has power under the circumstances to hypothecate the ship and create a lien which would take precedence of a mortgage, it would not be unreasonable to hold that, in raising a forced loan from the owner of the cargo--a proceeding to which he is not authorized to resort if he can raise funds on a bottomry bond--the Captain must have intended to give whatever security it was in his power to create. But the ship was an English ship and owned by British subjects, and we cannot find that the Courts in England have recognized the owner of the cargo as entitled to a maritime lien on the ship. The only remedy which has been conceded to him is to obtain compensation from the owner of the

ship, *Hussey v. Christie* 9 East. 432.

9. The appeal of the first defendant must be allowed with costs, and the decree varied by omitting the direction of which the first defendant complains. The appeal of the plaintiffs is dismissed with costs. The third defendant has not appealed, and we, therefore, do not propose to interfere further with the decree.

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