

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Van Hasselt and another v. Sack, Bremer & Co., ship "Twentje," from a Judgment of the High Court of Admiralty; delivered 16th February, 1860.*

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Present :

LORD CRANWORTH.  
LORD CHELMSFORD.  
LORD KINGSDOWN.  
SIR EDWARD RYAN.

THIS is an Appeal from the Decree of the Judge of the High Court of Admiralty, pronouncing for the claim of the Respondents for necessaries supplied to the steam-ship "Twentje," and referring the accounts to the Registrar and Merchants.

The material facts which appear upon the proceedings, consisting of the act on petition, an answer, and a reply, and upon the proofs in the case, are the following :—

In the year 1856, the steam-ship "Twentje," then called the "West Friesland," belonging to the port of Kampen, in Holland, was owned by several persons, one of whom was Mr. M. F. Bremer, a partner in the firm of Sack, Bremer, and Co., the Respondents, and was engaged in trading voyages between Kampen and London. Sack, Bremer, and Co. were the sole agents and brokers of the ship at the port of London, and the Appellants, Messrs. Van Hasselt, were the sole managers for the owners at the port of Kampen. The Respondents, while acting as such agents, received the freights payable in London, and out of the proceeds paid the expenses incurred by the ship in England, and from time to time made out accounts, in which they placed the

sums so paid and received respectively to the debit and credit of each successive voyage, and sent these accounts to the Appellants, as the managers of the ship. Upon six of the voyages, between 20th June and 4th August, 1856, coals, necessary for the navigation, were supplied to the ship by coal merchants, upon orders given by the Respondents, as agents, and in their accounts with the owners, furnished after each of these supplies, and made out in the manner above described, and transmitted to the Appellants, the Respondents debited the voyage with the price of the coals so supplied. In four of these accounts there was a balance in favour of the Respondents; in two of them the balance was in favour of the Appellants: the result of the whole of the six accounts being a small balance of *1l. 4s. 6d.* against the Appellants. In the year 1858 the ship was sold by public auction, at Amsterdam, and purchased by the appellants, and her name was changed from the "West Friesland" to the "Twentje." In the month of November 1858, the Respondents having learnt that the ship had arrived within the jurisdiction of the Court, and was at the port of Hull, caused her to be arrested in this suit. Their claim was alleged to be for *195l. 8s. 7d.*, the balance due to them for the coals supplied to the ship for the above-mentioned six voyages. They arrived at this balance by taking the whole of their agency accounts with the owners during the years 1854, 1855, and 1856, down to the time when they ceased to be agents, and by excluding all the items in respect of the coals, there appeared to be a balance for the voyages above referred to, in favour of the owners, of *27l. 6s. 11d.* This balance they deducted from the sum of *225l. 15s. 6d.*, the total amount payable for the coals, and proceeded for the remainder against the ship.

The learned Judge decided that the Respondents were entitled to have recourse to the ship to obtain satisfaction of this demand, and directed the usual reference of the accounts.

This judgment has been appealed from upon three grounds:

1st. That the Respondents had no claim at all upon the ship, but that their only remedy was against the owners, to whom they were agents at the time when the coals were supplied.

2nd. That they had no right after the delivery of accounts, in which they specifically appropriated the sums which they received, to extract the items relating to the coals, in order to obtain a distinct subject of charge upon the ship. And

3rd. That even if they had been entitled originally to proceed in this manner against the ship, they had lost their remedy by her having passed into the hands of a *bonâ fide* purchaser without notice.

Very important questions of law have been raised upon each of these grounds of appeal, but their Lordships consider it unnecessary to express any opinion upon them, as, independently of all questions of law, it appears to them that there was no evidence of facts to justify the order in this case.

The order pronounces absolutely for the claim of the Respondents "with costs," and refers the claim to the Registrar "to report the amount thereof."

This order does not leave it open to the Appellants to show that "nothing whatever is due for supplies made by the Respondents to the ship," as the Respondents in their case, page 2, assert that it does.

When a ship is arrested on a specific demand, before a reference of the accounts can be directed, it ought at least to be shown to the Court that at all events something is due, although the actual amount may properly be the subject of inquiry. It is not like a Bill in Equity on an unsettled account, where the Court directs the account, leaving it to be shown by the result on which side the balance lies.

Now, the evidence in this case, if closely examined, seems to establish that at the time of the arrest of the ship nothing could have been due for the supplies of the coals in question, but, at all events, it fails altogether to show that anything was then due; for the trifling balance of *1l. 4s. 6d.* must, for the purpose of this suit, be considered to be the same as if nothing at all had been due upon them. The demand is stated to be for six parcels of coals supplied to the ship on six different occasions in the months of June, July, and August, 1856.

The answer to this demand is, that the Respondents were the agents of the ship in this country; that in that character they received the freight, and made payments, and furnished supplies in this

country on the credit of the captain and owners of the ship; that the six supplies of coals were made in the course of six separate voyages, and were included in accounts made out by the Respondents, and sent to the Appellants as managers for the owners, of the result of each of those voyages on which the receipts were credited on the one hand, and the payments including the supplies of coals were charged on the other, and on the whole of these six accounts the small balance of *1l. 4s. 6d.* was due to the Respondents. The Appellants distinctly swear that these accounts were sent to them as the agents of the owners, in Holland; and that they settled their accounts with the owners on the footing of the accounts thus rendered by the Respondents; the Respondents, therefore, had credit for, and have been satisfied in respect of, all the sums charged in these accounts. Now the Respondents nowhere deny that these accounts were rendered by them; they say, indeed, that they were only statements or accounts of sums received, or to be received, and of disbursements made or to be made, and that they were never settled and adjusted between them and the owners of the ship; but they do not deny that the accounts contain an accurate statement, or that the sums charged and credited in these accounts were actually received and paid. What they allege in support of their claim is, that they were agents for the ship in England, not merely at the times in question, but through the years 1854, 1855, and 1856, and that when they ceased to be agents, on balancing the sums actually received by them on account of the ship against the disbursements and supplies actually made by them on account of and to the ship (six of such supplies being for coals, made by them to the ship, amounting in value to the sum of *225l. 15s. 6d.*), there remained due and owing to them the sum of *195l. 8s. 7d.*; their receipts on account of the ship (exclusive of such supplies) exceeding their disbursements by the sum of *27l. 6s. 11d.*, which latter sum they accordingly place to the credit of the owners. The case of the Respondents depends entirely upon their right to deal with the accounts in this manner. They, say, in effect, that on taking an account, according to their own view, of all their dealings and transactions with the owners of the ship,

they find a balance in their favour of 195*l.* 8*s.* 7*d.*, and that in order to obtain a charge on the ship, they are entitled to select from the accounts the items which consist of charges for coals, and to attribute the balance specifically to those items. They thus propose to treat the sums received in respect of the six voyages, not as received on account of the disbursements made for each successive voyage, which would be the fair inference from the accounts then rendered, but as payments made in liquidation of a balance due on a previous account current. But there is no principle which can enable the Respondents thus to make the supplies of coals a distinct and separate account.

Their Lordships are therefore of opinion upon the facts, that the arrest of the ship by the Respondents for a general balance of accounts was unjustifiable, and that their claim cannot be supported. They have, therefore, agreed to recommend to Her Majesty to reverse the order appealed from, and to allow the appeal with costs.

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