

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Hayley v. Bartlett and others, from the Royal Court of the Island of Jersey; delivered the 15th March, 1861.*

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Present :

LORD KINGSDOWN.

SIR EDWARD RYAN.

THE MASTER OF THE ROLLS.

THE appeal in this case is brought against a Decree of the Royal Court of Jersey, confirming a Decree by the Inferior Court.

The ground of the appeal is that the Courts have refused to give effect to a mortgage security, under which the Appellant insists that he is entitled to a preference over the other creditors of the mortgagor, upon the proceeds of a ship sold under legal process.

It appears that in the years 1856 and 1857, one Edward Allen was engaged in building a ship in Jersey, and that he obtained from the Appellant a loan for the purpose of enabling him to carry on the work. The sum to be advanced was 1,000*l.*, and to secure the repayment with interest, a paper writing was signed by Allen, dated the 18th September, 1857, by which he engaged to pay the said sum of 1,000*l.*, with interest at 5 per cent., and, after reciting that the money was borrowed for the purpose of being applied to the construction of a ship then building, the instrument purported to assign over to the Appellant, as a security for his advances, the said ship, and all the materials then in the yard, or which might be used in the construction and completion of the ship. By this instrument the Appellant was to have the option of requiring, instead of payment of the sum of 1,000*l.*,

the replacement of 1,200*l.* stock of the Midland Railway Company.

This obligation (not noticing, however, the mortgage) was registered in the Royal Court of Jersey on the 21st September, 1857.

In April 1858, the Respondent, Bartlett, advanced a sum of money to Allen for the same purpose of completing the ship, and took a mortgage of the ship, with notice, however, as the Appellant alleges, of his former mortgage.

In May 1858 a further agreement was made between the Appellant and Allen, by which it was stipulated that, instead of the 1,000*l.*, the Appellant should receive a transfer of 1,200*l.* stock in the Midland Railway Company, and the transfer of these shares was secured by a mortgage of the ship.

On the 5th June, 1858, the two mortgages, or instruments purporting to create a mortgage in favour of the Appellant and Respondent respectively, were duly registered in the Royal Court.

Allen having become insolvent, the ship still incomplete was sold, and the various persons having claims upon the proceeds were invited to come in. In arranging the priority of payments amongst the claimants, the Court gave a preference, first, to the shipwrights who had been employed in the construction of the ship, whose rights are not now in controversy, and, secondly, to those who had contributed money or material to the construction of the ship, ranking in the same line the Appellant and Bartlett, and the other Respondents who had also made advances for the same purpose.

The Appellant insists that he is entitled to priority over all these parties, in respect of the earlier date of his mortgage.

This case was heard before us *ex parte*, no Counsel appearing for the Respondent; but we have inquired into the law of Jersey upon this subject, and we find, from a most satisfactory report, made to us by the Bailiff of Jersey, referring to the text of Terrien, and to two decided cases, that in that island, as in many other countries, the hypothec of moveables, unattended by possession, is not recognized, and that registration of a debt is material only as it affects immoveable property. The whole foundation, therefore, of the Appellant's case, in this respect, fails, and it is not necessary to consider how far, as

between himself and Bartlett, he could have maintained the priority which he insists upon.

He complains, however, further that he has not been allowed to stand upon an equal footing with the Respondents as against the proceeds of the ship for the whole of his demand; for that whereas he had obtained an order for payment by Allen 1,155*l.*, as the value of 1,200*l.* stock in the Midland Railway, and costs, yet he was admitted to share with the other creditors on the proceeds of the ship to the extent of only 1,000*l.*, and has been remitted, as to the remainder of his debt, to share with the general creditors of Allen.

The ground upon which this course was adopted appears to have been this:—The Court has recognized a right, on the part of all who have contributed to the building of the ship, to have the proceeds applied in discharge of their demand, as having, in effect, a lien on the ship.

Nothing has been offered to us, in argument, to show that this is not the law of Jersey, and, indeed, it is the sole foundation on which the Appellant can maintain the preference which he has actually obtained over the other creditors.

This being so, the Court seems to have thought that the Appellant's claim of preference must be limited to the sum which he had actually advanced for the purpose of building the ship, viz., 1,000*l.*, and that as to anything further which he was entitled to receive, in respect of the value of Midland Railway stock exceeding 1,000*l.*, that was a claim for which he had no lien on the proceeds of the ship.

Their Lordships cannot say that the Court was wrong in that view of the case, and they will humbly advise Her Majesty that the Decree complained of should be affirmed.

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