Snia Viscoha Societa Nazionale Industria Applicazioni Viscosa v. Yuri Maru (The)

Between
Snia Viscoha Societa Nazionale Industria Applicazioni Viscosa,
and The "Yuri Maru."
Can. American Shipping Co. Ltd., and SS. "Woron"

[1927] J.C.J. No. 8

[1927] 4 D.L.R. 69

Judicial Committee of the Privy Council

Viscounts Haldane and Sumner, Lords Shaw, Merrivale and Warrington

July 5, 1927.

Counsel:

Sir John Simon K.C. and *Wilfred Barton*, for first appellants.

W. Martin Griffin, for second appellants.

Porter K.C. and *W. Lennox McNair*, for first respondents.

Sir Leslie Scott K.C. and *Sir Robert Aske*, for second respondents.

The judgment of the Court was delivered by

1 LORD MERRIVALE:-- These appeals are brought against judgments of the Exchequer Court of Canada in Admiralty by plaintiffs who had sued out in the District Court of British Columbia writs *in rem* and warrants of arrest with a view to the trial at Victoria of claims for damages under charter parties made and alleged to have been broken outside the local area of jurisdiction by parties not resident within that area.

2 In the case of the "Woron" the arrest was in respect of damages stated at about $18,000. The plaintiffs are a Canadian company. The owners of the ship appear to be a joint stock company registered in England. The "Woron" was said to have been chartered for a voyage from ports in British Columbia to Yokohama and it was alleged that her master had wrongfully deviated upon the agreed voyage and thereby caused loss to the plaintiffs.

3 In the case of the "Yuri Maru" the plaintiffs are an Italian corporation. The vessel is Japanese, registered at Kobe, the property of owners domiciled in Japan, who have alleged *inter alia* that they became owners since the accrual of the alleged cause of action of the plaintiffs and that judgment in respect thereof had already been recovered by the plaintiffs against their predecessors in title. The claim of the plaintiffs in respect of which the arrest was made was $290,000 for damages for breaches of a charter party for 9 months made in December, 1919.

4 In each case the owners of the arrested ship moved to set aside the writ and warrant of arrest for want of jurisdiction These motions respectively were dismissed by Martin, L.J.Adm.. in the District Court, *Can. Am. Shipping Co. Ltd. v. SS. "Woron*," [1926] 4 D.L.R. 339, but upon appeal were allowed in the Exchequer Court of Canada ("Woron" case, [1927] 1 D.L.R. 138).

5 In view of the fact that the substantial question for argument was the same in each of the appeals, counsel for both appellants and both respondents were heard by their Lordships in the course of one hearing. The question which is immediately raised in both cases is whether, irrespective of residence of the defendant or place of origin of the alleged cause of action, a Court of Admiralty in the Dominion may by arrest of a vessel within its area be called upon to adjudicate upon all claims of plaintiffs suing under any charter party made in respect of the vessel.

6 Incidentally, the further question arises whether, throughout the Empire, there is a like right of litigants in Court of Admiralty jurisdiction of proceeding, by process *in rem*, in respect of like claims, under like circumstances of absence of local residence of parties impleaded and non-existence of any cause of suit arising within the local jurisdiction.

7 The claim of the appellants is that by virtue of the Colonial Courts of Admiralty Act, 1890 (Imp.), c. 27, which provides for the establishment in British possessions overseas of Courts of Admiralty jurisdiction in lieu of the Vice-Admiralty Courts theretofore existing, and the Canadian statutes which have brought that Act into operation in the Dominion and invested with Admiralty jurisdiction thereunder the Exchequer Court of Canada (Admiralty Act, R.S.C. 1906, c. 141, s. 3), whatever jurisdiction in Admiralty is from time to time exercisable in the High Court of Justice in England is exercisable in Canada in the Exchequer Court. The jurisdiction of the Exchequer Court of Canada in Admiralty is exercised in the maritime Provinces of Canada by district Judges, of whom the Judge sitting in British Columbia is one.

8 By the Act of 1890, s. 2(1), every Court of Law in a British possession which (*a)* is declared by the local Legislature to be a Court of Admiralty or (*b)* has unlimited civil jurisdiction, is constituted a Court of Admiralty, with the jurisdiction defined in the Act in terms the meaning of which is now in question. The Act provides further (s. 17) for the abolition, on the "commencement" of the Act in any British possession, of every Vice-Admiralty Court in the possession which theretofore had exercised Admiralty jurisdiction.

9 The due investment of the Exchequer Court of Canada in Admiralty with the jurisdiction defined in the Act of 1890 and the competence of the district Judge in British Columbia to exercise that jurisdiction axe not in dispute.

10 The jurisdiction in Admiralty of the High Court of Justice in England did not extend to claims upon charter parties at the time when the Colonial Courts of Admiralty Act, 1890, became law. Jurisdiction over such claims was given in the first instance by the Administration of Justice Act, 1920, (Imp.), c. 81, s. 5, in terms which have no apparent reference to Courts out of England, since a proviso in the section limits the costs of actions recoverable thereunder in certain events by the

amount of the costs, "to which he would have been entitled if the proceedings had been brought in a county court." The Act of 1920 was among the numerous jurisdictional statutes extending in date from 1873 onward which are consolidated in the Judicature (Consolidation) Act, 1925 (Imp.), c. 49. The jurisdiction so conferred on the High Court in England is that on which the appellants rely.

11 In the statutes of 1920 and 1925 there are no words indicative of any express intention on the part of the Legislature of conferring any extended jurisdiction on Admiralty Courts overseas.

12 The words for construction in the Act of 1890 are these (s. 2(2)):--

> The jurisdiction of a Colonial Court of Admiralty shall be over the like places, persons, matters, and things, as the Admiralty jurisdiction of the High Court in England, whether existing by virtue of any statute or otherwise.

13 The appellants claim that these words can only be understood as applying to conditions which are to come into being upon and after the passing of the Act. They offer, in effect, to make the meaning clear by reading into the sentence before the word "existing" the words "from time to time." The respondents on the other hand contend that the jurisdiction defined by the section is sufficiently and indeed unmistakably described as the jurisdiction of the High Court in Admiralty "existing" at the point of time when the Colonial Courts of Admiralty Act, 1890, became law.

14 Inasmuch as the use of words in the English tongue is not so rigidly governed by rule as to render impossible either of the alternative constructions of the parties, counsel on both sides properly discussed the subject matter, origin and scope and apparent policy of the Act of 1890, with a view to demonstrate the true intent of the language used.

15 The establishment, in the overseas dominions of the Crown, of Courts of Admiralty jurisdiction under one common system, in place of the pre-existent Vice-Admiralty Courts called into being as occasion dictated in course of two or three centuries at the discretion of the Home authorities, is the most prominent of the facts in question. In a material passage in the judgment of Martin, L.J. *Adm*, [1926] 4 D.L.R., at p. 343, in favour of the appellants, the view taken by the Judge as to the nature and scope and apparent intention of this transaction is thus stated:--

> The Vice-Admiralty Courts in Canada were abolished upon the coming into force of this Court as established under the Canadian Act of 1891, but if those former Courts were still in existence and exercising locally the jurisdiction of the High Court of Admiralty, it would, I apprehend, be clear that their jurisdiction would march with that of the said High Court and increase or decrease as the case might be in accordance with Imperial legislation affecting that Imperial Court. Such being the case, it follows, to my mind that the present Admiralty Court of Canada ... likewise marches in the same jurisdiction, and it would require clear language to the contrary to deprive it of the same continuous jurisdiction as is cumulatively possessed by the Imperial Court for the local exercise of whose jurisdiction it is in reality the local machinery and nothing more.

16 To appreciate the extent to which the jurisdiction of the old Vice-Admiralty Courts was subject to automatic enlargement in harmony with an expanding jurisdiction in the High Court of Admiralty in England it is necessary to bear in mind the relation of the Vice-Admiralty Courts to the High Court during their period of development, the circumstances under which the ambit of the au-

thority of the High Court and of the overseas Courts taken been enlarged, and the mode in which as to each the process of expansion has gone on.

17 The extension of the powers of the High Admiral and his lieutenants or deputies in order to meet the needs which resulted from the growth of the Empire does not need to be described with particularity. See 1 Marsden, Law and Custom of the Sea, p. xiii. Selden gives the early form of the commission of the High Admiral, when the jurisdiction had been centred in one officer of state under that title (Mare Clausum, p. 196). Marsden sets out the first commission which -- in 1643 -- extended beyond "England, Ireland and Wales and the Dominions and Isles of the same." It included "all the islands and English plantations within the bounds and upon the coasts of America." (Marsden, p. 531.)

18 The creation of Vice-Admiralty Courts overseas is also dealt with by Marsden (2 Marsden, Law and Custom of the Sea, pp. xiv, xv); and Browne's Civil Law and Admiralty, published in 1802, presents from the standpoint of a learned civilian a broad view of the then existing system of Vice-Admiralty, Courts constituted under commission of the High Admiral or the Lords Commissioners of the Admiralty. The substance of the matter as things stood before 1890, is concisely presented by an experienced public servant, Sir Henry Jenkyns, in these terms (Jenkyns on British Rule and Jurisdiction Beyond the Seas, p. 33):--

> In civil matters, the most important branch of extra-territorial jurisdiction, that of the Admiralty Court, was, until 1890, mainly exercised by Vice-Admiralty Courts established by an instrument under the seal of the office of Admiralty, issued in pursuance of authority given to the Commissioners of the Admiralty in England by a commission under the Great Seal of the United Kingdom. In practice, a judge of the Superior Court of the possession was always made judge of the Vice-Admiralty Court, but he held that office by virtue of an appointment from the British Admiralty, and not by virtue of his position as judge of the possession. His jurisdiction was vested in him personally, and not in the colonial court.

19 The jurisdiction exercised by the Vice-Admiralty Courts was commonly that of the High Court of Admiralty. The area of the exercise of the jurisdiction was enlarged as the Empire grew. Its juristic extent was not. For centuries that had been stabilised and strictly limited so far as the High Court of Admiralty was concerned by the vigilant supervision of the Court of King's Bench. The High Court of Admiralty never shared the inherent capacity for development which marked the English Courts of law and equity.

20 Great extensions of the Admiralty jurisdiction in England were made during the nineteenth century, before the passing of the Colonial Courts of Admiralty Act, 1890. Notable extensions had also been made during the same period by Acts of the Imperial Parliament in the jurisdiction of the Vice-Admiralty Courts. It would be wholly incorrect, however, to suppose that these were extensions of jurisdiction granted to the High Court of Admiralty here and thereupon automatically operative in the Courts overseas. Parliament made its separate grants to the High Court of Admiralty as an English Court. Dr. Lushington, as Judge of the Court, pointed out as early as 1859 that the extensions so made had no effect in the Vice-Admiralty Courts. (See "Rajah of Cochin" (1859), Swab. 473, 166 E.R. 1223.) At this Board in the same year the same conclusion was stated (*The Australia*

(1859), 13 Moo. 132, at p. 160, 15 E.R. 50). Parliament in fact legislated for the High Court and the overseas Courts by numerous unconnected statutes.

21 The Admiralty Court Acts of 1840 and 1861 conferred specific powers, carefully identified and limited, upon the High Court in England. The Vice Admiralty Courts Act, 1863 (Imp.), c. 24, and the Amending Act, 1867 (Imp.), c. 45, extended the powers of the Admiralty Courts overseas, not by reference to the powers of the High Court in England, but by scheduled statement of the causes of action in respect of which jurisdiction was newly conferred and specification of other amendments.

22 So far as the appellants' case rests upon a theory that without statutory action there was before 1890 a historic and progressive growth of Admiralty jurisdiction which was common to the High Court and the Vice-Admiralty Courts, or upon a supposition that any statutory enlargement of the jurisdiction of the High Court in England operated automatically to enlarge the jurisdiction of the Vice-Admiralty Courts, it cannot be sustained.

23 How then did Parliament, by the Colonial Courts of Admiralty Act 1890, deal with the condition of affairs which had grown up under the old law?

24 The Act has three outstanding characteristics. So far as the "instance" jurisdiction is concerned, its plain intent is the establishment as part of the machinery of self-government within each autonomous area of Courts locally constituted, wherein Judges locally nominated should exercise such a measure of jurisdiction in Admiralty within prescribed limits as the government on the spot might think convenient. Subject to specific reservations the statute applied to the Empire, and it provided that on the commencement of the Act in any British possession, and subject to its provisions, every Vice-Admiralty Court in the possession should be abolished.

25 By ss. 2(1) & 3, the Legislature of an overseas possession is enabled, at its will, to declare a Court of unlimited civil juris. diction within its area to be a Court of Admiralty; to limit territorially or otherwise the extent of the jurisdiction in Admiralty to be exercised in such Courts; and to confer partial or limited jurisdiction in Admiralty upon subordinate or inferior Courts. In the absence of local legislative action, a Court of "original unlimited civil jurisdiction" in any possession is constituted a Court of Admiralty. And by s. 2(1) "where in a British possession the Governor is the sole judicial authority, the expression 'court of law' includes such Governor."

26 Incidentally to the fact that the Act of 1890 empowers self-governing communities to decide for themselves within defined limits what shall be the ambit of the jurisdiction to be exercised by their Courts by means of process *in rem*, it is necessary to bear in mind that, even in England, conflict of opinion long existed as to the advantage of extending the availability of this process, and that the right of trial within a local jurisdiction of actions arising elsewhere is not always an unmixed benefit. Opinion may well differ between state and state as to whether, *e.g.*, a port which is chiefly a port of call will be benefited by the existence of a power in all and sundry to arrest vessels found within its limits in order that strangers may litigate in the local Court questions which have arisen elsewhere.

27 The Act of 1890 empowers the Legislature in any of the dominions to determine by its own statute, subject to the Royal Assent on the prescribed special reservation, what shall be the extent of the Admiralty jurisdiction of the Courts for which the local legislation provides. Yet, if the contention of the appellants in this case is sound, an Act of the Imperial Parliament, purporting on the face of it to apply to England and the High Court in London, has without any choice of the self-

governing states in the Empire peremptorily enlarged the jurisdiction of their Courts in Admiralty, subject only to a power in them under s. 3 of the Act of 1890 to limit such jurisdiction anew by a new local law, after compliance with the conditions of s. 4 whereby such a law unless previously approved by a Secretary of State, must be "reserved for the signification of Her Majesty's pleasure thereon, or contain a suspending clause."

28 The present case arises upon an enlargement by the Imperial Parliament of the Admiralty jurisdiction of the High Court in England. But the fact cannot be overlooked that during the last half century the distribution of business in the High Court in England has been the subject of very numerous enactments, and there is involved in the question now presented for determination the further question whether the withdrawal of any cause of action from Admiralty process in England would *ipso facto* operate a corresponding diminution in Admiralty jurisdiction in the Courts overseas. A construction of the statute of 1890, which would have the singular effect of introducing by an automatic process unmasked changes in the jurisdiction and procedure of the Courts of self-governing dominions, with possible power in the local Legislature by a cumbrous process to revoke an extension of jurisdiction *in rem*, but no power to undo an unwelcome abatement, manifestly could not be adopted unless the words of the statute should be found to leave no alternative.

29 Neither the early history of the overseas Courts, the course of modern legislation, continuity of policy, nor practical convenience appear to their Lordships to require that the jurisdiction defined in the Act shall be declared to be that "from time to time existing" in the High Court in England.

30 On the whole, the true intent of the Act appears to their Lordships to have been to define as a maximum of jurisdictional authority for the Courts to be set up thereunder, the Admiralty jurisdiction of the High Court in England as it existed at the time when the Act passed. What shall from time to time be added or excluded is left for independent legislative determination.

31 Their Lordships will humbly advise His Majesty that in their opinion these appeals fail.

32 The costs of the respondents must be paid by the appellants.

DOMINION
LAW REPORTS

CITED [1927] D.L.R.

REPORTS OF ALL REPORTABLE CANADIAN CASES FROM ALL THE COURTS OF CANADA INCLUDING ALL DECISIONS OF THE SUPREME COURT OF CANADA AND ALL CANADIAN DECISIONS OF THE PRIVY COUNCIL.

VOL. 2

[1927]

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ANNOTATED

Annotations or briefs, prepared by experts in their respective branches of law, covering the whole law of Canada are included in the D.L.R. to date. A consolidated table of Annotations is published at the beginning of each completed volume.

TORONTO
CANADA LAW BOOK CO. LIMITED
234 BAY STREET.
1927.

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Adm.
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EMPIRE STEVEDORING CO. v. "EMPRESS OF JAPAN."
Martin, L.J.Adm.

ceeding shall be invalidated, except so far as the Judge of the Exchequer Court may direct."

The sole ground upon which the motion is based is that the defendant ship is now being broken up in Vancouver harbour and is already reduced to the condition of a hulk which can only be moved by towing, and that "there is grave danger that the ship will be completely demolished before an appeal can be decided by the Exchequer Court of Canada:" the notice of appeal is given for a hearing to be had on May 17 next, but there is no information before me as to the certainty of its being heard on that date.

In reply an affidavit is fyled stating, in its conclusion, that:—

"3. The said ship 'Empress of Japan' will not be completely scrapped for at least six months and it will be at least five and one-half months until the value of the said ship has been reduced to the sum of $3500.00."

This statement, in the absence of any contradiction, must be taken to be true, and, if so, the appeal, if due diligence be observed, should, in the ordinary course, be determined long before that date, because the question at issue is one of fact simply. In such circumstances no authority has been cited that would justify an order of re-arrest or any direction being given out of the ordinary course, but this present view of the matter would not preclude a reconsideration of it should altered circumstances warrant a renewal of it hereafter and bring it within the principles governing my previous decisions in *The "Freiya"* v. *The "R.S."* (1921), 63 D.L.R. 687, 30 B.C.R. 132; and *Vermont SS. Co.* v. *The "Abbey Palmer"* (1904), 10 B.C.R. 383 (wherein the money was in Court); and see also *Williamson* v. *Grigor* (1912), 17 B.C.R. 334.

It is to be noted that the judgment here does not direct the payment of any damages, but costs only and, therefore, no question of repayment arises but even where the defendant is held answerable, as in *The Ratata,* [1897] P. 118, at p. 132, the Court of Appeal, *per* Lord Esher, M.R., held on a similar in part, application by defendant on appeal to the House of Lords, that, "it is a pure matter of discretion, depending on the particular circumstances of each case." (*Cf.* also *The Annot Lyle* (1886), 11 P.D. 114).

In the present case the defendants' solicitors are, and have always been, willing to give the usual undertaking to return any costs paid to them if the appeal shall be successful, and I do not think that more should be required of them in the present circumstances; and so this application should be dismissed with costs to the defendants in any event.

Application dismissed.

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Saskatchewan Court of Appeal, Haultain, C.J.S., Lamont, McKay and Martin, JJ.A. March 28, 1927.

Mechanics' Liens V—Adjoining parcels—Same owner—When not registrable against both.

A mechanics' lien claimed in respect of one parcel of land, cannot be registered against an adjoining parcel although standing in the name of the owner of the other land, where it appears that the two parcels were not operated as a single tract or unit, and for a common purpose and the house or building was not erected to facilitate such operation or purpose.

APPEAL by the lien claimants from the trial judgment vacating the registration of the lien against one of the two parcels on which it was registered. Affirmed.

H. J. Schull, K.C., for appellants.

A. C. Stewart, for respondents.

The judgment of the Court was delivered by

LAMONT, J.A.:—This action was brought to enforce a mechanics' lien, and the question involved in the appeal is:—Are the plaintiffs entitled to a lien upon the N.-E. ¼-36-28-4 as well as upon the S.-W. ¼-31-28-3-W./2nd?

The facts briefly are as follows. Prior to 1917 M. Anaka, the father of the defendants, owned the E. ½-36-28-4-W./2nd. In 1917 he transferred the N.-E. quarter to his son Wasyl—sometimes called William to induce him to remain at home and assist in the farming operations on the two quarters, Wasyl remained, and the farming operations were carried on by the father and his two sons, the defendants. In 1918 Wasyl wished to purchase the S.-W. ¼-31-28-3-W./2nd, which, although in another township, lay immediately east of the S.-E. ¼-36-48-4. The father agreed to assist in paying for the quarter, which was bought in Wasyl's name. In 1920 Wasyl erected a house upon the S.-W. ¼ of 31, and went there to live. The materials for the house he obtained from the plaintiffs. For the unpaid price of these materials, the plaintiffs, in April, 1922, registered their claim of lien against both the S.-W. ¼ of 31 and the N.E. ¼ of 36. In 1923 Wasyl transferred the N.-E. ¼ of 36 to his brother, J. Anaka. W. Anaka did not defend the action. J. Anaka however did, and he, in addition, counterclaimed to have the plaintiffs' lien removed from his land.

To establish their claim, the plaintiffs called W. Anaka. He testified that in 1920 he purchased the materials for his house from the plaintiffs; that he was then owner of the S.-W. ¼ of 31, and that the title to the N.E. ¼ of 36 was in his name. He also stated that in 1918, when it had been decided that the

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S.-W. ¼ of 31 should be bought for him and in his own name, the family arrangement was that he should transfer the N.-E. ¼ of 36 to his brother John. On that point his evidence is as follows:—

"In 1918 we had a chance to buy the south-west of 31 and it was decided to buy this land so we would each have a quarter and we did buy it. I selected the south-west of 31 and was to give the north-east of 36 to J. M. Anaka who was to stay and work for the old man. Up to this time we had worked all three farms together. The old man was the manager, but he could not talk English very well and he appointed me to do the business. Until 1923 I hauled the grain on all three quarters and sold it in my name. The old man always said how the money was to be paid. Father helped me in 1920 and in 1922 to pay up the Hawley farm (south-west of 31) . . . . From 1918 John had say what to crop on the north-east of 36, I, on the south-west of 31 . . . . I bought this lumber from Fey. He asked me what quarter-section the lumber was to be used on and I told him on the south-west quarter of 31. No other quarter was mentioned. The Hawley quarter was never farmed with the north-east of 36. They were separate farms. John and I helped each other farm. He had his own horses and machinery."

W. Anaka also testified that when he was building the house a man (presumably on behalf of the plaintiffs) came to him and asked for a statement; that the man asked if he owned the N.-E. quarter of 36, and that he replied that he did not, that it was in his name, but that he only held it in trust. There was no contradiction of this statement.

The defendant J. Anaka testified on his own behalf, and he corroborated Wasyl as to the family arrangement made in 1918, also as to their working the lands together until that date under the direction of the father, and that, since that time, he (John) had the say as to the operations to be carried on and the crops to be grown on the N.-E. ¼ of 36, while Wasyl gave directions as to the operations on the S.-W. ¼ of 31.

On this evidence the District Court Judge at Yorkton gave judgment in favour of the defendant J. Anaka. He held that the evidence established that the family arrangement made in 1918 was as testified to by the defendants, with the result that thereafter Wasyl was only a trustee of the N.-E. ¼ of 36 for his brother. He also held that the N.-E. ¼ of 31 was not land "occupied by or enjoyed with" the house erected out of the plaintiffs' materials, and therefore not subject to the lien. From that judgment the plaintiffs appeal to this Court.

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In my opinion the trial Judge was right on both points. The evidence amply supports the finding that the family arrangement made in 1918 was that Wasyl should hold title to the N.-E. ¼ of 36 for his brother John. Wasyl therefore had no lienable interest in the quarter-section.

That the quarter-section was not land occupied by or enjoyed with the house, is, I think, clear. The Mechanics' Lien Act, R.S.S. 1920, c. 206, s. 7(1) provides that a material-man supplying materials for any owner to be used in the erection of a building, etc., shall by virtue thereof have a lien for the price upon the building and "the lands occupied thereby or enjoyed therewith."

In numerous cases the Courts have been called upon to say whether or not certain lands were occupied by a building or enjoyed therewith.

In *Revelstoke Sawmill Co.* v. *Cabri S.D.*, [1924] 1 D.L.R. 472, 18 S.L.R. 52, the trustees of the school district owned Plot "S," which was one-half of Block 12, Cabri. In 1916 they purchased "for school purposes" the other half of the block, which had been subdivided into lots (9 to 24). A schoolhouse was erected on Plot "S," and plaintiffs registered a lien against Lots 9 to 24. This Court held that these lots were occupied by or enjoyed with the schoolhouse.

In *Clarke* v. *Moore and Simpson* (1908), 1 Alta. L.R. 49, the defendant Moore agreed to erect a house to the satisfaction of Simpson, and to sell him the house and two lots. The plaintiff, being entitled to a lien, was held to have a lien on both lots, although the house was situate on only one of them, because both lots were purchased by Simpson for his use with the house.

In *Jackson Water Supply Co.* v. *Bardeck* (1915), 21 D.L.R. 761, 8 Alta. L.R. 305, the defendant owned four quarter-sections of land, which he worked as one farm. The plaintiffs installed a water supply system on one of the quarter-sections. It was held that they had a valid lien on the other three quarter-sections. In that case, however, it was admitted that these three quarter-sections were enjoyed with the quarter on which the system had been installed.

In *Beseloff* v. *White Rock Resort Dev. Co.* (1915), 23 D.L.R. 676, 22 B.C.R. 33, the British Columbia Court of Appeal held that the lien for clearing certain blocks in a townsite subdivision, attached to two quarter-sections. The reason for so holding was, that the plaintiffs' contract was to clear the two quarter-sections, although there was a clause therein which gave the defendants a right to terminate the contract at any time on

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giving fifteen days' notice, and therefore the whole of the two quarter-sections must be considered as one tract, and further that both quarters had benefited by the work done. It must not be overlooked, however, that s. 6(2)(c) of the British Columbia statute (the Mechanics' Lien Act, R.S.B.C. 1911, c. 54, now R.S.B.C. 1924, c. 156) gave a lien on the building, work, etc., and "the lands occupied or benefited thereby or enjoyed therewith."

In *Wentworth Lbr. Co.* v. *Coleman* (1904), 3 O.W.R. 618, at pp. 618-9, Osler, J.A., said:—"It is in short, in general, a question of fact to what property the lien extends beyond that actually occupied by the building itself . . . . It appears that the whole block of land, a parcel of 53 acres, had been used in connection with an hotel thereon called the Brant House, and that it was bought by the defendants for the purpose of erecting thereon a new and modern hotel called the Hotel Brant and as grounds in connection therewith. A significant fact is that the contract between the parties for erection of that hotel is expressed to be for the erection of 'an hotel for the proprietors on lands and premises situate and known as the Brant House property.' I think it might well be concluded that the whole of this property was property enjoyed in connection with the new hotel within the meaning of the section [Mechanics' Lien Act, R.S.O. 1897, c. 153, s. 7(1), now 1923 (Ont.), c. 30, s. 6(1)]." In addition to the above, the following cases are instructive: *Davis* v. *Crown Point Min. Co.* (1901), 3 O.L.R. 69; *Orr* v. *Fuller* (1899), 172 Mass. 597; *Wirsing* v. *Pennsylvania Hotel etc. Co.* (1910), 26 L.R.A. 831.

These authorities seem to me to support the conclusion that, where land has been surveyed into plots or tracts, whether quarter-sections or subdivision lots, and a plan of such survey has been registered, if a building is erected on one of such surveyed plots, the whole of such plot is *prima facie* land occupied by the building or enjoyed therewith, within the meaning of the Mechanics' Lien Act. It is however open to an owner to show that the whole of such plot is not enjoyed with the building, as where a city lot, which, according to the registered plan runs from one street through to another, and the owner has employed separate contractors to erect a house, one on each end of the lot; in such a case it would be open to the owner to show that only part of the lot was occupied by or enjoyed with each house. On the other hand, it is open to a lienholder to show that more than one registered plot is enjoyed with the building, although such building stands wholly on one plot. Whether more than one plot is enjoyed with the building, is

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a question of fact in each case. One test to be applied in determining the question is, do the several plots upon which a lien is claimed, as used by the owner constitute a single tract or unit? Were they operated together, and for a common purpose, and was the building calculated to facilitate that common purpose and intended to benefit the whole? In the case at bar it cannot, in my opinion, be said that W. Anaka farmed the N.-E. ¼ of 36, and the S.-W. ¼ of 31 as one farm. As a matter of fact he did not farm the N.-E. ¼ of 36 at all; all he did was to assist his brother. The house built with the plaintiffs' materials was not intended to be of assistance to the farming operations on the N.-E. ¼ of 36, for it was not intended that J. Anaka, who directed the operations on that quarter, should live in it, or that it should in any way be common to the two quarters.

I therefore agree with the trial Judge that the N.-E. ¼ of 36 was not land occupied by or enjoyed with the house erected on the S.-W. ¼ of 31.

The appeal should be dismissed with costs.

Appeal dismissed.

Re ALLAN BROWN'S Ltd. and DRYALL.

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S.C.
1927.

Ontario Supreme Court, Middleton, J.A. March 2, 1927.

Companies IV E—Acquisition of land for undertaking—Sale—Time—Forfeiture.

A company which has purchased land for purposes of its undertaking and subsequently ceases to require the land, must under the Companies Act, R.S.O. 1914, c. 178, s. 26, sell the land within seven years after the land ceased to be necessary for its undertaking. If land is held longer than this the Crown can upon notice forfeit it, but the company still has six months in which to sell.

VENDOR and purchaser application.

F. C. Carter, for vendor; *C. M. Garvey*, for purchaser; *E. Bayley*, K.C., for Att'y-Gen'l for Ontario.

MIDDLETON, J.A.:—The vendor company purchased in 1916, during the war, certain lands upon which to erect housing accommodation for its employees, then numbering about 1,200 men, engaged upon the manufacture of copper and brass for war purposes. After the war was over, the number of employees was greatly reduced, and it was not found necessary to maintain this accommodation. In 1922 the business was sold,