

LENNOX, J.

OCTOBER 25TH, 1918.

HEINSTEIN & SONS v. POLSON IRON WORKS LIMITED.

Contract—Building of Ship—Completion—Delay—Price not Fully Paid—Delivery over upon Payment into Court of Balance Due—Injunction.

Motion by the plaintiffs to continue an injunction restraining the defendants, until the trial of the action or other final determination of the matters, from selling or otherwise interfering with or disposing of the steamship "Asp," except by delivery to the plaintiffs, and for delivery to the plaintiffs.

The motion was heard in the Weekly Court, Toronto.

J. H. Fraser, for the plaintiffs.

J. H. Moss, K.C., for the defendants.

LENNOX, J., in a written judgment, said that the contract for the building of the ship was made by the defendants with one Hannevig, whose interest had, by assignments, become vested in the plaintiffs: the contract price was \$415,000, and it had all been paid except the final instalment of \$41,500 and a sum of \$4,370 for insurance and extras.

The defendants refused to deliver the ship until payment was made to them of these two sums, and threatened to exercise a right of rescission provided for in the contract. The plaintiffs contended that, by reason of delay in completing the vessel and the provisions of the contract in reference thereto, they were entitled to immediate delivery upon giving security for or paying into Court \$45,870.

After setting out the facts and the provisions of the contract, the learned Judge said that there should be an order directing that the plaintiffs pay into Court to the credit of this action the sum of \$45,870, on or before the 29th October, and that, upon payment, the defendants do forthwith deliver to the plaintiffs' agent and their solicitors the vessel called the "Asp" and the certificates provided for by the contract.

The injunction should, if desired, be continued until the trial or determination otherwise of the questions in dispute; the plaintiffs to proceed to trial as rapidly as possible.

The costs of the injunction and of this motion should abide the event.