

EXCHEQUER COURT OF CANADA.

Nova Scotia.]

Jan. 20.

STRONG v. SMITH.

RE "THE ATALANTA."

*Maritime law—Action by owner of unregistered mortgage against freight and cargo—Jurisdiction.*

This was an appeal from judgment of McDONALD, C.J., local Judge of Nova Scotia Admiralty District.

A mortgagee, under an unregistered mortgage of a ship, has no right of action in the Exchequer Court of Canada, against freight and cargo; and unless proceedings so taken by him involve some matter in respect of which the Court has jurisdiction, they will be set aside.

Appeal allowed with costs.

C. H. Cahan, for appellants.

E. McLeod, Q.C., for respondents.

BURBIDGE, J.]

[Feb. 3.

ANDERSON TIRE CO. v. AMERICAN DUNLOP TIRE CO.

*Patent of invention—R.S.C., c. 61, sec. 37, and amendments—Importation after prescribed period—Sale, effect of.*

The defendants were the assignees of Patent No. 38284 for an improvement in tires for bicycles. They imported, after the period allowed by the Patent Act for importations of the patented invention to be lawfully made, some twenty-two tires in a complete and finished state, and fifty-nine covers that required only the insertion of the rubber tube to complete them. In the completed tires and in the covers in the state in which they were imported was to be found the invention protected by the said patent. These tires and covers were not imported by the defendants for sale, but to be given to expert riders to be tested, and for the purpose of advertising the tire so patented. However, one pair of such tires was sold through inadvertence or otherwise, but they were not imported for sale. The defendants had a factory in Canada where the invention patented was manufactured, and the value of the labour displaced by the importation complained of, only amounted to two dollars and eighteen cents.

*Held*, in accordance with the decisions in *Barter v. Smith*, 2 Ex. C. R. 455, and other cases upon the same enactment, which the Court felt bound to follow (*sed dubitanter*), that the facts did not constitute sufficient ground for cancellation of the patent under the provisions of the 37th section of the Patent Act.

Ross and Rowan, for the plaintiffs.

Lash, Q.C., Cassels, Q.C., and Anglin, for defendants.