

[In Chambers.]

MONTREAL, Oct. 13, 1880.

Ex parte LISÉ.

*Harbor Commissioners—Pilot.*

*The Harbor Commissioners of Montreal have authority, under their by-laws made under 36 Vict. c. 54, s. 18, ss. 6 & 7, to suspend the license of a pilot guilty of dereliction of duty.*

This case was before the Court, on a petition for a writ of certiorari, on the complaint of one Robert Brown, captain of the steamship Polyneesian, against petitioner. The petitioner was charged before the Harbor Commissioners of Montreal with being guilty of a breach and dereliction of duty on the 16th June, 1880, inasmuch as he, being in charge of the steamship, and it being then under his direction and management, by neglect of his duty, caused the steamship to be driven at too great and unnecessary speed, and thereby caused the steamship to run aground, &c.

On the 22nd July, petitioner was found guilty of the offence charged in the complaint against him, and the Harbor Commissioners suspended him from the exercise of his functions, and withdrew his license temporarily, namely, until the end of the 30th September.

This conviction was complained of, 1. Because it did not show any legal offence over which the Commissioners had jurisdiction. 2. Because it was not the same as charged in the complaint. 3. Because the penalty inflicted was not the one which the Commissioners had power to inflict when they sat in judgment on the acts of the pilots.

TORRANCE, J. I have compared the complaint with the conviction and find no variance between them. At the hearing I was informed that the conviction was under the by-laws of the Harbor Commissioners passed on the 26th January, 1875, and sanctioned on the 10th April, 1875. By article 91, upon any breach or dereliction of duty on the part of any pilot, it was competent for the Commissioners to suspend such pilot, and temporarily or permanently to withdraw his license. By 36 Vic. c. 54, the pilots are under the control of the Commissioners, and the latter are authorized to make by-laws to be approved by the Governor-General in council, which has been done here. S. 18, s.s. 6 & 7, gives the Commissioners power

to make the by-laws under consideration. If we look at the question of justice or injustice in this conviction, it would be much to be regretted if a pilot guilty of dereliction of duty were not answerable as he has been made to answer here. I see no irregularity or injustice in the conviction.

Application refused.

H. Abbott, for Harbor Commissioners.

S. Pagnuelo, for petitioner.

MONTREAL, Oct. 15, 1880.

FAIR ES qual. v. CASSIS et al.

*Amended declaration—Service.*

*A copy of an amended declaration must be served upon the defendant before he can be called upon to plead.*

This was a motion by defendants that the Court take off a foreclosure made by plaintiff of defendants from pleading. Plaintiff had obtained leave to amend his declaration, and when amended, he had notified the defendants to plead. They failed to do so. Hence the foreclosure.

L. N. Benjamin, moving, cited C.C.P. 142, and argued that he was entitled to a copy of the amended declaration before being called upon to plead.

R. Laflamme, Q. C., *à contra*, said that the service of the motion by which he asked for the amendment was a sufficient service.

TORRANCE, J., granted the motion to take off the foreclosure, holding that defendants were entitled to have a copy of the amended declaration served upon them before pleading to the amended declaration.

Motion granted.

R. Laflamme, Q. C., for plaintiff.

L. N. Benjamin, for defendants.

MONTREAL, Oct. 15, 1880.

CARTER v. FORD et al.

*Pleading—Special Replication—C.C.P. 148.*

*A special replication to a special answer may be filed without obtaining leave of the Court.*

This was a motion by plaintiff to reject a special replication filed by defendants to plaintiff's special answer, without asking leave of the Court.

S. Bethune, Q. C., moving, cited C.C.P. 148.