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RAFAN
MAHANTHI
v.
KHATOO
SAHOO.

British India; and this ruling has been accepted by the Secretary of State for India in Council, as appears from p. 119 of Vol. I of Mr. Aitchison's work entitled "A Collection of Treaties, Engagements and Sanads." Under ss. 229 (A) and 229 (B) of the Code, no decree by a Court in British India can be sent for execution into a territory such as Mayoorbhunj without prior notification in the *India Gazette* as specified in these sections. No such notification appears to have been issued. The Judge of the Small Cause Court at Balasore had therefore no jurisdiction to make the orders, which he did in this case. The view we take is in accordance with that expressed in the case of *Kastur Chand Gujar v. Parsha Mahar* (1).

The Rule is accordingly made absolute, and the order complained of is set aside with costs.

Rule made absolute.

(1) (1887) I. L. R. 12 Bom. 230.

ADMIRALTY JURISDICTION.

Before Mr. Justice Harington.

THE "TELENA."

1901.
Sept. 24, 25.

Admiralty Jurisdiction—Arrest of a steam-ship, application for—Damage done "by a ship"—Maritime lien for damage—Injury caused to one ship by wrongful act of another—Ship as "Instrument of Mischief"—Action in rem—53 & 54 Vict., Ch. 27.

To establish a maritime lien for damage against a ship, the damage must be the direct result of some unskilful or negligent conduct of those in charge of the ship which does the mischief, the ship herself being the "instrument of mischief."

The steam-ship *T.* while lying in dock discharged a large quantity of oil which, floating on the dock-water and becoming ignited, caused considerable damage to another steam-ship, *C.*, lying in the same dock. The charterers of the latter applied for the arrest of the former, alleging that they were entitled to bring an action *in rem* against the owners of the ship *T.*

The application for arrest of the ship *T.* was refused, she not being the direct cause of the damage, and the applicants not having an action *in rem* in the Admiralty Court against the owners of that ship.

The Vera Cruz, No. 2 (1), *Currie v. M'Knight* (2), referred to.

The Industrie (3), *The Batavier* (4), *The Clara Killam* (5), and *The Exergy* (6), distinguished.

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APPLICATION before the Judge at chambers by Mr. Edwards, of Messrs. Orr, Robertson and Burton, Solicitors, on behalf of the British India Steam Navigation Company, Limited, for a warrant of arrest of the steam-ship *Telena*.

The following are the material allegations contained in the affidavit filed in this matter:—

That on November 23, 1900, the steam-ship *Croydon*, which was chartered by the British India Steam Navigation Company, Limited, was lying in the Kidderpore Docks within the port of Calcutta.

That on the same date another steam-vessel, *Telena*, was also lying in the said dock, and on the morning of the same day a large quantity of refuse oil was discharged from the *Telena*. The oil floating on the dock-water and becoming ignited set fire to the *Croydon*, and thereby caused considerable damage to that ship, her furniture, apparel, stores, &c., and in consequence thereof great loss and damage were occasioned to the applicants, for which they demanded from the owners of the *Telena* compensation, which was refused.

That after the said fire the *Telena* left Calcutta and went to foreign ports; and did not return to Calcutta until September 20, 1901, and had since been lying at Budge-Budge within the port of Calcutta. And that as she was about to leave this port again, this application was made on September 24, 1901, before the vacation Judge at chambers, alleging that the British India Steam Navigation Company were entitled under the circumstances to bring an action *in rem* against the owners of the *Telena* and to have a warrant for her immediate arrest.

Mr. Edwards for the applicants. The crew of the *Telena* negligently discharged the oil which ignited, and thereby caused

(1) (1884) L. R. 9 P. D. 96.

(4) (1889) L. R. 15 P. D. 37.

(2) (1897) 1897 A. C. 97.

(5) (1870) L. R. 3 Ad. & Eccl. 161.

(3) (1871) L. R. 3 Ad. & Eccl. 303.

(6) (1870) L. R. 3 Ad. & Eccl. 48.

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considerable damage to the *Croydon*; for this wrongful act the British India Steam Navigation Company are entitled to bring an action *in rem* against the owners of the *Telena* and to a warrant for her arrest.

[HARINGTON J. You must show that the ship has, in maritime language, done the damage. And some authority must be shown that the damage as caused in the present case entitled the parties to proceed *in rem*.]

I submit that the words "damage done by a ship" mean the damage done by any negligent act or behaviour of those in charge of the ship; and, inasmuch as the damage in the present case has been occasioned by a negligent act on the part of the crew of the *Telena*, namely, the discharge of a large quantity of oil in the dock, I am entitled to a warrant for her arrest.

[HARINGTON J. Can you cite any case where a warrant of arrest was issued when the injury was not directly caused by the ship or her crew?]

In the present instance there was a direct wrongful act on the part of the crew of the *Telena*; and the injury was caused by the dangerous position in which the *Croydon* was placed: see *The Industrie* (1), *The Batavier* (2), *The Clara Killam* (3), and *The Energy* (4). These cases show that it is not essential that the vessel itself should be the immediate instrument or cause of the damage.

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HARINGTON J. This is an application made on behalf of the British India Steam Navigation Company for a warrant for the arrest of the steam-ship *Telena*. The circumstances giving rise to this application are to be found in the affidavit which has been filed. From that it appears that the *Telena* was lying in the Kidderpore Docks on the 23rd of November in the year 1900, and that on that day a large quantity of oil was negligently discharged from her into the dock: this floated on the water and became ignited, and did considerable damage to the steam-ship *Croydon*, of which the British India Steam Navigation Company were the charterers. Under these circumstances the British India Steam Navigation Company say that they are entitled to

(1) (1871) L. R. 3 Ad. & Eccl. 303. (3) (1870) L. R. 3 Ad. & Eccl. 161.

(2) (1880) L. R. 15 P. D. 37. (4) (1870) L. R. 3 Ad. & Eccl. 48.

bring an action *in rem* against the owners of the *Telena* and to have the *Telena* arrested.

Now the Admiralty Jurisdiction which is conferred on this Court by 53 and 54 Vict., Chap. 27, is expressed to be precisely similar to that exercised by the High Court in England in Admiralty, and that Court has jurisdiction over any claim for damage done "by any ship."

The question which I have to consider is whether this is damage done "by a ship," so as to give the Admiralty Court here jurisdiction.

The question whether the applicants are entitled to recover damages for negligence against the employers of the persons who negligently placed this oil in the dock is not a question which I have to consider. The only question before me is—Was this damage done "by the ship?" If it was done by the ship, a maritime lien arises, and on that lien being created, the right to have the ship arrested arises. *Mr. Edwards* on behalf of the applicants has founded his argument on cases in which it has been held that a maritime lien arises where one ship puts another in danger, and where the ship put in danger is injured in consequence of the dangerous position in which she has been placed. The cases which have been cited in support of this are the cases of *The Industrie* (1), *The Batavier* (2), *The Clara Killam* (3), and *The Energy* (4).

In these cases the injury was directly caused by the wrongful act of the ship against which the action *in rem* was brought. In the case of *The Batavier* (2), it was the disturbance made by the ship passing close to the boat that upset the boat. In the case of *The Clara Killam* (3) it was the fact that the ship entangled herself with a submarine cable, and that the cable was cut in clearing her, which was the direct cause of injury to the cable; and in the case of *The Industrie* (1), the act of negligently placing the ship across the channel was the direct cause of the injured ship being forced out of the channel fairway and damaged; and in the case of *The Energy* (4) the injury was directly due to the misconduct of the tug, which was towing the vessel that caused the collision.

(1) (1871) L. R. 3 Ad. & Eccl. 303.

(3) (1870) L. R. 3 Ad. & Eccl. 161.

(2) (1889) L. R. 15 P. D. 37.

(4) (1870) L. R. 3 Adm. Eccl. 43.

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I do not think that these cases go far enough to enable me to say that a maritime lien is created where a dangerous substance is placed in a dock, and the injury is caused not by the dangerous substance directly, but by the interposition of another agent, namely, fire which caused the dangerous substance to damage the ship of the plaintiffs. The question as to what is damage done by a ship has been considered in the English Courts in a number of cases, and, inasmuch as the jurisdiction is the same here as in England, these cases must be referred to as a guide.

In the case of *The Vera Cruz* (1), decided in 1884, the question arose, and Lord Justice Bowen, in interpreting the meaning of the expression "damage done by a ship," says that it means "damage done by those in charge of a ship, with the ship as a noxious instrument;" and the Master of the Rolls, in interpreting the same words, says:—

"The section indeed seems to me to intend by the words 'jurisdiction over any claim' to give a jurisdiction over any claim in the nature of an action on the case for damage done by any ship, or in other words, over a case in which the ship was the active cause, the damage being physically caused by the ship."

The question was also considered in the House of Lords in the case of *Currie v. M Knight* (2), decided in the year 1896.

That was a case in which the Master of a ship desiring to proceed to sea cut away the moorings of another ship to enable his ship to get clear and go on her voyage, and the question before the House of Lords was whether a maritime lien was created against the ship whose Master did this injury.

It was held that no such lien was created. It was said that the ship had done nothing, and the Lord Chancellor, in explaining the meaning of damage done by a ship, says that "the phrase that it must be the fault of the ship itself is not a mere figurative expression, but it imports, in my opinion, that the ship against which a maritime lien for damages is claimed is the instrument of mischief, and that, in order to establish the liability of the ship itself to the maritime lien claimed, some act of navigation of the ship itself should either mediately or immediately be the cause of the

(1) (1884) L. R. 9 P. D. 96.

(2) (1897) A. C. 97

damage;" and Lord Watson, in interpreting the same section, says:—

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"I think it is of the essence of the rule that the damage in respect of which a maritime lien is admitted must be either the direct result or the natural consequence of a wrongful act or manœuvre of the ship to which it attaches. Such an act or manœuvre is necessarily due to the want of skill or negligence of the persons by whom the vessel is navigated; but it is, in the language of maritime law, attributed to the ship, because the ship in their negligent or unskilful hands is the instrument which causes the damage."

In that case to which I have just referred and quoted passages, Lord Herschell sums up all the cases in which it has been held that maritime lien is created where damage is done by a ship, and I cannot do better than quote his words. He says:—

"In all the cases referred to, the damage had been caused either by a collision with the vessel which was to blame, or by that vessel having driven the other into collision with some third vessel or other object. The doctrine was originally asserted in cases of damage by collision with the vessel which was declared subject to the lien. It has since been applied in cases in which the damage did not result from a collision with the vessel in fault, but in which, owing to the negligent navigation of that vessel, the injured ship was driven into collision with some other vessel or object. Whether the circumstances have always warranted the conclusions arrived at, it is not necessary to inquire. I express no opinion upon it; but the ground of the decision was in all cases this, that the vessel on which the lien was enforced had, in maritime language, done the damage."

There are other cases to which it is unnecessary to refer, but the conclusion to be drawn from them all is that to establish a maritime lien, the damage must be due to the negligence or unskilful conduct of those in charge of the ship, which does the mischief, the ship herself being, as is described in the House of Lords, the 'instrument of mischief.' Now, in the present case, can it be accurately said that the *Telena* was the "instrument of mischief?" I do not think it can. She no doubt

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brought the dangerous substance into a place where it was the cause of danger to the plaintiffs' ship, but the direct cause of injury to the plaintiffs' ship was the fire which took place when this dangerous substance was ignited.

I do not see how it can be said that the fire was the direct act of the ship.

The cases in which ships have been held responsible for placing other vessels in positions in which they are damaged are confined to cases where the damage has been the direct result of some improper or negligent manoeuvre by the wrong-doing ship: to apply this to a case in which the injury is indirectly caused by the negligent discharge from the ship of a dangerous substance into a place where it may become capable of doing injury would be to extend the principle to a degree which is not warranted either by the words of the statute or by any of the cases which have been decided of recent years in Admiralty Courts.

For these reasons this application must be refused, but it must be understood that it does not follow because the owners of the injured ship have not an action *in rem* in the Admiralty Court that they may not have their remedy against the persons who may be responsible for the injury caused by the fire in an ordinary action founded on negligence.

[*Mr. Edwards.* Your Lordship has dealt with this matter as an admiralty action.]

HARINGTON J. Yes.

[*Mr. Edwards.* It may be that I will have to apply for the admission of a plaint and for an order to arrest the vessel.]

HARINGTON J. As to that I do not express any opinion.

Application refused.

Attorneys for the applicants: *Messrs. Orr, Robertson and Burton.*

B. D. B.