

1929

Aug. 6.
 Aug. 16.

 PRINCE EDWARD ISLAND ADMIRALTY DISTRICT

BRUCE STEWART & COMPANY, LTD....PLAINTIFF;

v.

 THE SHIP *AMLA*.....DEFENDANT.

Shipping—Practice—Jurisdiction—Material men

The *A.* was under arrest by process of the Court, in a joint action for master's and seaman's wages, when she was re-arrested by the plaintiffs, under three separate warrants, in actions for necessaries and supplies furnished to the *A.* in the port of Charlottetown, to which she belonged and the owners of which were domiciled in Canada.

Held,—That the ship being under arrest of the Court, this Court had jurisdiction in the matter, but that the issuing of warrants and the re-arrest was unnecessary.

Semble:—That where a ship has been sold and its proceeds are in Court, material men can bring their claim before the Court by petition, and the fact that the *A.* had not yet been sold afforded no ground for a different course.

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ACTION by plaintiff to recover for ships necessaries and supplies furnished to defendant ship.

The action was tried before the Honourable Mr. Justice Stewart at Charlottetown, P.E.I.

J. J. Johnston, K.C., for plaintiff.

Donald McKinnon, K.C., for defendant.

The facts are stated in the reasons for judgment.

STEWART L.J.A., now (August 16, 1929), delivered judgment (1).

These cases are brought by three several plaintiffs to recover ships necessaries and supplies furnished by them to the *Amla* in the port of Charlottetown, to which she belongs and the owners of which are domiciled in Canada.

This Court takes jurisdiction in the matter from the fact that the *Amla* had been before the commencement of this suit and still is under arrest by the process of this Court in the joint action of William Patrick Burke and others against the said ship for master's and seamen's wages.

The plaintiffs have made due proof before me of the necessaries which they severally supplied the *Amla*, as follows: The said Bruce Stewart & Co., Ltd., to the amount of \$631.24, which I allow; the said Joseph K. Stanley and others to the amount of \$97.05, which I allow; and the said Moore & McLeod, Ltd., to the amount of \$104.27, which I allow, and for which several sums with costs I give judgment against the said ship *Amla* and her proceeds when sold and paid into court after satisfying the judgment obtained against her in the said suit of William Patrick Burke and others.

In these three cases three several warrants were issued under all of which the ship *Amla* was arrested, although held under previous arrest in the Burke case.

The practice here followed is cumbrous and adds unnecessarily to the cost of the proceedings.

(1) Two other cases of Joseph E. Stanley and Moore & McLeod were tried at the same time, and a similar judgment given.

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The law under which the claims in these cases have been made is Sec. 4 of the Act of 1861, which reads:

The High Court of Admiralty shall have jurisdiction over any claim for the building, equipping or repairing of any ship if at the time of the institution of the cause the ship or the proceeds thereof are under arrest of the Court.

Apart from Sec. 4 the Court of Admiralty has no jurisdiction in the case of necessaries supplied to a ship in the port to which the ship belongs or where at the time of the institution of the cause the owner or part owner of the ship is domiciled in Canada. The arrest of the *Amla* in the action of Burke and others for seamen's wages alone permitted the plaintiffs in this case to invoke the jurisdiction of the Court to deal with their claims. These claims could have been brought to the attention of the court and enforced without the necessity of issuing summons and warrants for the arrest of the ship.

The filing of a petition embodying the claims, notice to the owners of the ship and the due proof of claims in Court would seem to be all that is necessary to safeguard the material men's rights.

If the ship had been sold and its proceeds in Court before the material men had begun their actions the practice to be followed would surely be by petition and proof and not by the issue of a warrant to arrest. The fact that the ship was still under arrest and unsold affords no grounds for a different course. I would suggest that the practice adopted in this case be not followed.

Judgment accordingly.