

NOVA SCOTIA ADMIRALTY DISTRICT

1946  
Apr. 13

BETWEEN:

THOMAS WHITE ..... PLAINTIFF;

AND

THE SHIP *FRANK DALE* ..... DEFENDANT.

*Shipping—International law—Vessel registered in United States—Vessel requisitioned by United States Government—Possession of vessel taken on behalf of United States Government—Vessel in Canadian port—Vessel arrested on behalf of private suitor—Motion allowed to set aside writ of summons, service thereof and warrant of arrest.*

MOTION to set aside a writ of summons, the service thereof and warrant of arrest of the ship *Frank Dale*.

The motion was heard before the Honourable Sir Joseph Chisholm, Deputy District Judge in Admiralty for the Nova Scotia Admiralty District, at Halifax.

*Russell McInnes, K.C., R. L. Stanfield and L. A. Kitz* for the motion.

*Donald McInnes, K.C.* contra.

Sir Joseph Chisholm, D.D.J.A., now (April 13, 1946) delivered the following judgment:

The plaintiff caused the ship *Frank Dale* owned by the United States of America, to be arrested in prosecution of a claim for damages for injuries sustained while working

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on board of her while she lay in Halifax Harbour. An appearance was entered under protest, and notice given to plaintiff to set aside the writ of summons, the service thereof and the warrant of arrest, principally on the ground that at the time of her arrest and at all relevant times she was the property of the Government of the United States of America and was in the possession of and was used by the said Government. She was and is operated under a charter party between the said Government and West India Sales Limited, and is and was used in commercial pursuits.

Mr. Donald McInnes, K.C., in support of the motion relies principally on the *Cristine* case, *Campania Novera Vascongado v. S.S. Cristine* (1). The *Cristine*, a trading ship registered in Bilboa, Spain, had been requisitioned by the Spanish Government and while lying in the port of Cardiff in Wales, the Spanish Consul at Cardiff acting under instructions from his government, went on board and took charge of the ship. The owners thereupon commenced proceedings *in rem* claiming possession of their property. The Spanish Government moved to set the writ aside and it was held that the Courts of England will not allow the arrest of a ship, including a trading ship, in the possession of and which has been requisitioned by a foreign sovereign State, inasmuch as to do so would be an infraction of the rule of international law that a sovereign State cannot directly or indirectly be impleaded without its consent.

Lord Akin summarized the law concisely in the course of his speech. He said:

1. The courts of a country will not implead a foreign sovereign, that is, they will not by their process make him against his will a party to legal proceedings whether the proceedings involve process against his person or seek to recover from him specific property or damages.

2. They will not by their process, whether the sovereign is a party to the proceedings or not, seize or detain property which is his or of which he is in possession or control. There has been some difference in the practice of nations as to possible limitations of this second principle as to whether it extends to property only used for the commercial purposes of the sovereign or to his personal private property. In this country it is in my opinion well settled that it applies to both.

In the *Cristine* case the Courts held that the immunity claimed extended and applied to ships engaged in trade and belonging to a foreign sovereign State. The desirability

(1) (1938) A.C. 485.

of modifying the accepted rule so far as it concerned trading ships was pointed out by some of their Lordships and particularly by Lord Maugham, but the House was of opinion that in the case the immunity was properly claimed. That seems to be the principle applied in the United States: *Berizzi Bros. Co. v. S.S. Pesaro* (2), and until changed must be accepted by our Court. The writ of summons, the service thereof and warrant to seize will be set aside with costs.

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*Judgment accordingly.*