

BRITISH COLUMBIA ADMIRALTY DISTRICT

1921

December 14.

In re:

MARTIN.....PLAINTIFF;

VS.

THE SEA FOAM.....DEFENDANT.

Shipping—Jurisdiction—Repairs—"Under arrest"—Sec. 13 Admiralty Court Act, 1861, c. 10.

The ship defendant was seized by the mortgagee when it was being repaired in plaintiff's yard. No proceedings of any kind had been instituted in the court when plaintiff took his present action.

Held: That the ship defendant was not "under arrest" within the meaning of sec. 13 of the Admiralty Court Act, 1861, c. 10, at the time plaintiff issued his writ herein and that the Court had no jurisdiction to entertain his action.

2. That the pursuance of a private remedy is not at all analogous to the taking of public proceedings in Court.

Action by plaintiff to recover for repairs done to the defendant ship and claiming a lien therefor.

The ship was under repairs by plaintiff when Balfour, Guthrie & Co. seized it under mortgage. It was sold by Balfour, Guthrie & Co. to one Cole. The defence claimed that the Court was without jurisdiction and that no lien attached.

December 14th, 1921.

Case heard before the Honourable Mr. Justice Martin at Vancouver.

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MARTIN
v.
THE
SEA FOAM.

Reasons for
Judgment.

Martin, L.J.A.

Hume B. Robinson and J. A. W. O'Neil for plaintiff;

D. N. Hossie for defendant.

The facts are stated in the reasons for judgment.

MARTIN L. J. A. now (this 14th December, 1921) delivered judgment.

It is clear to me after examining the authorities cited this morning and in the light of those cited yesterday that this Court has no jurisdiction to entertain this action, because the vessel was not "under arrest" within the meaning of sec. 13 of The Admiralty Court Act, 1861, ch. 10, at the time the writ was issued herein.

The cases of *The Northumbria* (1) and *The Normandy* (2) which Mr. Robinson has drawn to my attention are instructive, and if I must say so, the latter goes further than I am inclined to think it should have gone. It is an expansion of the principle laid down in *The Northumbria* to this extent, that sections 13 and 34 must be construed together, and so construed they show the purpose of the Legislature to have been to give jurisdiction to this Court whenever it was substantially seized of a suit against the vessel; and the learned Judge of the Admiralty Court goes on to explain his decision in *The Northumbria* by saying that:

There a caveat warrant having been issued, and the arrest of the vessel prevented, and bail having been given by the owners in pursuance of their undertaking, I held that, for the purposes of the present section, there was a constructive arrest,

(1) [1869] L.R. 3 A. & E. 24; (2) [1870] L.R. 3 A. & E. 152;
39, L.J. Adm. 24 & 18 W. Rep. 356. 39, L. J. Adm. 48; 18 W. Rep. 903.

and he proceeds to say that he is prepared though not till "after I confess, much hesitation, to take the step further," that he did take, subject to a condition which he imposed. In *The Northumbria* case he had observed that:

"Looking to the whole scope and tenor of the Act, this Court was intended to have jurisdiction in suits of this description, when it is in possession of the bail which represents the "Res", whether the "Res" has been released on the giving of bail after the arrest, or whether the arrest has been prevented, as in this instance, by such a caveat as has been issued in this case."

But all that has been done in the case at bar is that the vessel was seized by the mortgagee when it was being repaired in the plaintiff's yard and no proceedings of any kind have been instituted in this Court, and so I do not feel prepared to take still another step further and hold that the pursuance of a private remedy is at all analogous to the taking of public proceedings in this Court, and hence there is no jurisdiction to entertain this action in this Court and it must be dismissed.

Judgment accordingly.

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