

## BRITISH COLUMBIA ADMIRALTY DISTRICT,

1909  
 Feby. 18.

BARBER v. THE SHIP *NEDERLAND*.

*Shipping—Action for damages for personal injuries sustained on foreign ship—Jurisdiction—Dismissal of action.*

THIS was an action by the plaintiff for damages for personal injuries sustained whilst working on a foreign ship as a stevedore, such injuries being caused by the faulty construction of hatch coverings and beams supporting the same.

On 14th December, 1908, a motion was made on behalf of the ship to set aside a writ for want of jurisdiction, and alternately that the action is one *in personam* and not *in rem*.

*F. Peters, K.C.*, for ship, cites the *Admiralty Act*, 1861, c. 7. Ship must be active cause of damage. The *Theta* (1); *Currie v. McKnight* (2); the *Sylph* (3); the *Beta* (4); *Franconia* (5); *Vera Cruz* (6); the *Zeta* (7); the *Normandy* (8); the *Malvina* (9); *Vera Cruz* (10). Distinguishes *Wyman v. Duart Castle* (11).

No action *in rem* unless maritime lien of some sort or allowed by statute. *Currie v. McKnight*, *supra* (12).

Where ship under charter, owners cannot be held liable for action of some one not under their control.

*F. B. Gregory*, for plaintiff. The case of *Wyman v. Duart Castle* (11) is in our favour.

By section 35 of *Admiralty Act* of 1861, the remedy under sec. 7 can be pursued either *in rem* or *in personam*.

(1) [1894] P. 280.

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

(3) 2 L. R. Ad. &amp; Ec. 24.

(4) L. R. 2 P. C. 447.

(5) 2 P. D. 163.

(6) 10 A. C. 59.

(7) [1893] A. C. 468.

(8) [1904] P. at 200.

(9) Lush. 493.

(10) 9 P. D. 88 &amp; 96; Williams &amp; Bruce Ad. Pr. (3rd ed.) 76.

(11) 6 Ex. C. R. 387.

(12) See also Williams &amp; Bruce, p. 73, Note (a).

Being a foreign ship judgment against owners is of little value if obtained.

On 18th February, 1909, Mr. Justice MARTIN, Local Judge, allowed the motion to set aside proceedings.

Solicitors for plaintiff: *Fell & Gregory.*

Solicitors for ship: *Bodwell & Lawson.*

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BARBER  
*v.*  
THE SHIP  
NEDERLAND.  
Judgment