

**In Re: the telena**

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**Court :** Kolkata

**Decided On :** Sep-25-1901

**Reported in :** (1902)ILR29Cal402

**Judge :** Harington, J.

**Appellant :** In Re: the "telena"

**Disposition :** Application Dismissed

**Judgement :**

**Harington, J.**

1. 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.

2. 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.**

3. 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

4. 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* (1871) L. R. 3 Ad. & Eccl. 303., *The Batavier* (1889) L. R. 15 P. D. 37., *The Clara Killam* (1870) L. R. 3 Ad. & Eccl. 161., and *The Energy* (1870) L. R. 3 Ad. & Eccl. 48. These cases show that it is not essential that the vessel itself should be the immediate instrument or cause of the damage.

### **Harington, J.**

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

6. 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.'

7. 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.

8. 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* (1871) L. R. 3 Ad. & Eccl. 303., *The Batavier* (1889) L. R. 15 P. D. 37., *The Clara Killam* (1870) L. R. 3 Ad. Eccl. 161., and *The Energy* (1870) L. R. 3 Adm. Eccl. 48.

9. 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* (1889) L. R. 15 P. D. 37., it was the disturbance made by the ship passing close to the boat that upset the boat. In the case of *The Clara Killam* (1870) L. R. 3 Ad. Eccl. 161., 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* (1871) L. R. 3 Ad. & Eccl. 303., 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* (1870) L. R. 3 Adm. Eccl. 48. the injury was directly due to the misconduct of the tug, which was towing the vessel that caused the collision.

10. 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.

11. In the case of *The Vera Cruz* (1881) L. R. 9 P. D. 96., 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.

12. The question was also considered in the House of Lords in the case of *Currie v. M Knight* (1897) A. C. 97, decided in the year 1896.

13. 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.

14. 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 damage;' and Lord Watson, in interpreting the same section, says:

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 manoeuvre of the ship to which it attaches. Such an act or manoeuvre 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.

15. In that case to which I have just referred and quoted passages, Lord Hersehell 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.

16. 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 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.

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

18. 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 wrongdoing 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.

19. 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.

**Edwards, J.**

20. Your Lordship has dealt with this matter as mi admiralty action.

**Harington, J.**

21. Yes.

**Edwards, J.**

22. 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.**

23. As to that I do not express any opinion.

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