

## BRITISH COLUMBIA ADMIRALTY DISTRICT.

1912  
 June 19.

LETSON.....PLAINTIFF;

AGAINST

THE SHIP *TULADI*.

*Shipping—Action for necessities—Admiralty Practice—Affidavit to lead Warrant  
 —Rule 39—Discretion of Registrar—Review.*

Where the Registrar has exercised his discretion under Rule 39 to dispense with some of the prescribed particulars in an affidavit to lead warrant for the arrest of the ship in an action *in rem* for necessities, the Court will not review such discretion.

**MOTION** in an action *in rem* for necessities to discharge warrant for arrest of ship.

The ground upon which the application was made was that the affidavit to lead warrant did not contain all the particulars required by Rules 35, 36 and 37 of the Admiralty Practice, and that, therefore, the Deputy District Registrar at Vancouver had no authority to issue the warrant.

*W. J. Taylor*, K.C., for the motion.

*A. D. Macfarlane*, *contra*.

MARTIN, L. J., now (June 19th, 1912) delivered judgment.

These rules bear a close similarity to the corresponding English rules, Order V., Rules 16 and 17, but there is this important distinction, *viz.*: that while in England the power to dispense with "all the required particulars" is reserved for "the Court or a judge", in this Court the Registrar has the like power, rule 39 providing that:

“ 39. The Registrar, if he thinks fit, may issue a warrant, although the affidavit does not contain all the prescribed particulars, and in an action for bottomry, although the bond has not been produced, or he may refuse to issue a warrant without the order of the judge.”

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The affidavit here does not state the national character of the ship, or that the aid of the Court is required. The first omission is of importance, the latter is almost a matter of inference; in other respects I think the affidavit is sufficient. Were it not for Rule 39, I should have thought that as a whole there had not been a substantial compliance with the rules, but I see no escape from the fact that the Registrar has, for reasons which must be assumed to be valid, and which are not required to be disclosed on the record, “thought fit” to dispense with some of the prescribed particulars, and in such circumstances I cannot perceive in what respect I am entitled to review the exercise of that discretion any more than I should be under the English rule. I may say that I have searched carefully for any decisions which would throw light on the subject, as it is of much practical importance, but have been unable to find one.

The motion must be dismissed, with costs, payable to the plaintiff in any event.

*Order accordingly.*