

NOVA SCOTIA ADMIRALTY DISTRICT.

1911
 Nov. 21.

PETER JUDGE & SONS, PLAINTIFFS;

AND

THE SHIP *JOHN IRWIN*.

Shipping—Water supplied for engines and crew—Words “Equipping a Ship”—“Necessaries”—Admiralty Courts Act, 1861, s. 4—Jurisdiction of Court.

Water supplied to a ship for the use of her engines and crew is not “equipping a ship” within the meaning of s. 4 of the *Admiralty Courts Act, 1861*, which gives the Admiralty jurisdiction over any claim for the building, equipping or repair of any ship if at the time of the institution of the cause the ship or the proceeds thereof are under the arrest of the court. The scope of the Act is to protect material men who build, equip or repair a ship as a ship, and to extend a limited lien to men who furnish necessities in foreign ports, the latter term meaning anything necessarily supplied to the ship in the prosecution of her work.

THIS was an action brought by plaintiffs to recover the sum of \$171.00 for water supplied to the ship *John Irwin* between December 31st, 1909, and April 26th, 1911, for the use of her engines and crew.

At the time of the institution of the action, the ship or the proceeds thereof were under the arrest of the Court, and plaintiffs’ right to recover depended upon the question whether or not the supplying of water under these circumstances was “equipping a ship” within the meaning of s. 4 of the *Admiralty Courts Act, 1861*, so as to give the Court jurisdiction over the claim.

The cause was tried at Halifax, November 11th, 1911, before the Deputy Local Judge of the Nova Scotia Admiralty District.

Mr. *Bell*, K.C., and Mr. *Terrell* for plaintiffs.

Mr. *Mellish*, K.C., for defendant.

DRYSDALE, D. L. J. now (November 21st, 1911)
delivered judgment.

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Reasons for
Judgment.

The short point to be decided here is whether water supplied to a ship for the use of her engines and crew is equipping a ship within the meaning of sec. 4 of the Admiralty Courts Act, 1861, which gives the Admiralty jurisdiction over any claim for the building equipping or repairing of any ship if at the time of the institution of the cause the ship or proceeds thereof are under the arrest of the Court.

This 4th clause of the Act is immediately followed by sec. 5, which gives a lien under certain conditions only for necessaries supplied to any ship.

If the claim in this action is really one for necessaries supplied to the vessel it does not fall within sec. 5, and the claim if it can be considered in this court can only be supported under sec. 4, as coming within the meaning of equipping as mentioned in sec. 4.

I would think the scope of the Act is to protect material men who build, equip or repair a ship as a ship, and to extend a limited lien to men who furnish necessaries in foreign ports, the latter term meaning anything that is necessarily supplied to the ship in the prosecution of her work.

I do not think it can be successfully argued that the money advanced for sailors, or for the sugar or water in their tea, for the successful prosecution of a voyage can be considered equipping a ship as a ship within the meaning of sec. 4. There is a dearth of authority on the subject, but the decision of an American jurist on an American statute providing that vessels running on any navigable waters of the State shall be liable for all debts contracted by the owners in equipping such boats or vessels commends itself to my mind. There it was held that the statute did not mean such articles

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as might be daily consumed and constantly replaced, but such as went towards the building, repairing, fitting or equipping of the vessel.

Reasons for Judgment.

In my opinion sec. 4 contemplates such things as make up the ship as a machine ready for employment, and was not intended to cover expenses and necessaries daily consumed in the prosecution of a venture with the ship. In short that it was obviously intended to cover and protect material men who build, repair and equip a ship as a ship, and does not cover voyage necessaries that form no part of the equipment of the ship as a ship. Water for the engines or water for the crew, which is daily used and consumed, cannot, I think, be fairly construed as coming within the section, and in my opinion the action fails and must be dismissed.

Judgment accordingly.

Solicitor for Plaintiff: *J. Terrell.*

Solicitors for Ship: *McInnes, Mellish, Fulton and Kenny.*
