

1923
 April 18.

QUEBEC ADMIRALTY DISTRICT
 GEORGE HALL COAL CO. OF CAN- } PLAINTIFFS;
 ADA, LTD. }

AGAINST

The SHIP *BAYUSONA*.

Shipping—Damages due to collision—Practice—Motion to amend writ by increasing amount—Re-arrest—Costs

Plaintiffs by their action claimed \$4,000 damages, by reason of a collision between one of their barges and the *B*. The *B*. was arrested and the bail fixed at the said sum of \$4,000, the then estimated cost of the repairs. Later, but before trial of the action, it was found that the actual cost of the repairs amounted to \$5,512.94. The gross register tonnage of the *B*. was 1366.96 tons and the bond for \$4,000 was insufficient. Plaintiffs now move to amend their writ by adding to the amount claimed and for the issue of a warrant to re-arrest the *B*.

Held that the court may direct measures to be taken to do full justice to plaintiffs, and to that end may permit the amendment and the issue of a warrant for the re-arrest of the ship, but with costs of the motion and of the re-arrest against the plaintiff.

(The *Hero*, 1865 Br. & L. 447 followed.)

MOTION for leave to amend the writ herein by increasing amount of the claim and for a warrant to re-arrest the ship.

April 7th, 1923.

Motion heard before the Honourable Mr. Justice MacLennan at Montreal.

R. A. Holden K.C. for plaintiff.

Lucien Beaugregard for defendant.

The facts and questions of law are stated in the reasons for judgment.

MACLENNAN L. J. A., this (18th April, 1923), delivered judgment.

This is a motion by plaintiff for leave to amend the praecipe and writ of summons by altering the sum in which the action was entered from \$4,000 to \$6,500 and that a warrant be issued for the re-arrest of the SS. *Bayusona*.

By the action plaintiff claimed \$4,000 damages by reason of a collision between the plaintiff's barge *Frank D. Ewen* and a dock in the Lachine Canal which happened on or about 25th October, 1922, and which it is claimed was caused by the improper navigation of the SS. *Bayu-*

sona, which was arrested and subsequently released upon bail being furnished in the amount of \$4,000, which it was estimated at the time would be sufficient to cover the cost of the repairs to plaintiff's barge, compensation for her detention and costs of the action. The repairs have now been made and it is claimed that the damages sustained in consequence of the collision amount to \$5,512.94 apart from the costs of the action. The gross register tonnage by the *Bayusona* is 1366.96 tons and the bond for \$4,000 is insufficient, hence the demand for leave to amend by increasing the amount claimed and the re-arrest of the ship.

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Rule 9 of the General Rules regulating the practice and procedure in admiralty cases in this court provides that the Judge may allow the plaintiff to amend the writ of summons and endorsements thereon in such manner and on such terms as to the Judge shall seem fit. Counsel for defendant does not contest the application to amend by altering the sum claimed from \$4,000 to \$5,600, but submits that the Court has no power to grant a re-arrest for the same cause of action after the ship has been released on bail.

In the case of the *Hero* (1), in which the plaintiffs move for leave to amend by increasing the amount in which the action was entered and for a warrant for the re-arrest of the ship, Dr. Lushington, at page 448, said:—

I am of opinion that where application to increase the amount of the action is made before judgment has been pronounced, the court has power to direct measures to be taken to do full justice to the plaintiff.

I am of opinion, therefore, that the court has power to grant this motion, and that under the circumstances it is just and proper that the plaintiffs should be relieved from the mistake committed. I allow the re-arrest, but the plaintiffs must pay all the expenses arising from their mistake.

In that action the clerk of plaintiff's proctor by mistaking his instructions entered the action for one thousand pounds instead of twenty-six thousand pounds. The ship was accordingly arrested and bailed in that sum. The error was not discovered until about eight months later. The damages were estimated at two thousand and three hundred and fifty pounds and the gross register tonnage

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of the ship was 602 tons. It is important to observe that the leave to amend and re-arrest was obtained before trial.

In the *Flora* (1), re-arrest before trial was allowed to stand.

In the *City of Mecca* (2), Sir Robert Phillimore, at page 34, said:—

There have been several instances in which a ship has been arrested or re-arrested in consequence of the bail becoming insolvent.

The *Hero* was approved by Jeune, J. in the case of the *Dictator* (3).

Cases in which application for re-arrest was made after trial and final judgment are inapplicable on this application. The present motion is made under circumstances, in principle, similar to those which were before Dr. Lushington in the case of the *Hero*, in which he said that the Court had power to allow the re-arrest. To do full justice to the plaintiff the re-arrest should be allowed.

The motion will therefore be granted, plaintiff paying the cost of the motion and the costs of the re-arrest.

Judgment accordingly.

Solicitors for plaintiffs: *Messrs. Meredith, Holden, Hague, Shaughnessy & Heward.*

Solicitors for the ship: *Messrs. Atwater, Bond & Beauregard.*

(1) [1866] L.R. 1 Adm. & Ecc. 45. (2) [1879] L.R. 5 P.D. 28.

(3) [1892] P.D. 304, at p. 321.