# THE RIO TINTO :

# Laws and others v Smith

Privy Council

Lord Fitzgerald, Sir Barnes Peacock, Sir Robert Collier, Sir James Hannen and Sir Arthur Hobhouse.

21, 22 November 1883.

*Shipping — maritime lien — whether supply of necessaries creates maritime lien.*

The supply of necessaries to a ship does not create a maritime lien.

**Note:** The Vice-Admiralty Courts Act, 1863, was repealed by the Colonial Courts of Admiralty Act, 1890. This case is reported as authority for the law apart from statute.

**Cases referred to in the judgment**

*The Neptune,* (1835) 3 Knapp 94.
*The Alexander,* (1841) 1 Wm. Rob. 288.
*The Bold Buccleugh,* (1852) 7 Moore, P.C. 267.
*The Volant,* (1842) 1 Wm. Rob. 383.
*The West Friesland,* (1859) Sw. 454.
*The Ella A. Clark,* (1863) Brown & Lush. 32.
*The Two Ellens,* (1871) L.R. 3 A. & E. 345.
*The Skipwith,* (1864) 10 Jur. (N.S.) 445.
*The Pacific,* (1864) Brown & Lush. 243.
*The Mary Ann,* (1865) L.R. 1 A. & E. 8.

**Appeal**

This was an appeal from the judgment of the Vice-Admiralty Court, in which it was held that the supply of necessaries to a ship gave the supplier a right of, or equivalent to, maritime lien.

**9 February 1884: Sir James Hannen —**

The Rio Tinto, a British Steamer, of which George Hough was owner and master, was in the year 1879 engaged in the Mediterranean trade. In October of that year, she put into Gibraltar and, being in want of coal, obtained from a firm there, trading under the style of the London Coal Company, of which the respondent, W.J. Smith, was the managing partner, a supply to the amount of £72 10s. 9d., and, on subsequent occasions obtained further supplies, as follows:—

| | £ | s. | d. |
|---|---|---|---|
| 1879, November 13 | 107 | 11 | 8 |
| 1880, May 6 | 132 | 14 | 11 |
| 1880, July 10 | 56 | 6 | 1 |

In August 1880, she again required coals, but as the previous quantities had not been paid for, the agent of the London Coal Company refused to furnish more, but ultimately did so to the extent of £67 1s. 5d., upon a guarantee for that amount being given by the ship's broker in London. This sum was afterwards paid.

The Rio Tinto did not again put into Gibraltar while Hough remained owner or master. On 17 September 1880, Hough sold the vessel to one Baldwin, who, on 14 October 1881, sold it to the appellants. Both Baldwin and the appellants purchased without notice of any claim against the vessel in respect of the coals supplied by the respondent's firm.

On 27 December 1881, the Rio Tinto again put into Gibraltar, when she was arrested in the Vice-Admiralty Court of that place at the suit of the respondent for the coal supplied in October and November, 1879, and May and July, 1880.

At the hearing of the cause in February 1883, the learned judge of the Vice-Admiralty Court pronounced for the claim of the respondent for the coals as necessaries, holding that this claim created a maritime lien which attached to the ship from the time of the supply, into whosoever possession she might come, and could be enforced in the Vice-Admiralty Court as against a subsequent purchaser without notice, and he further held that the respondent had not by laches on his part lost the right to enforce his claim.

Several questions were raised by the appellants in the court below, which have been abandoned before their Lordships. It is not now disputed that the coals were supplied by the respondent on the credit of the owners, and it is admitted that the coals were necessary, but it is contended (1) that no maritime lien attached to the ship, and (2) that if it did, it was lost by laches.

The case in so far as it affects the jurisdiction of Vice-Admiralty Courts is of considerable importance, and as the decisions bearing on the subject are not uniform it may be advisable to review them with some minuteness.

It was long ago decided in the Courts of Common Law, and finally held by this tribunal, in the case of *The Neptune* [1], that material men never had any lien on the ship itself in respect of supplies furnished in England, and the language of Lord Tenterden in his treatise on shipping was adopted as correct. "A tradesman who has furnished ropes, sails, provisions, or other necessaries for a ship is not, by the law of England, preferred to other creditors, nor has he any particular claim or lien upon the ship itself for the recovery of his demands," and the reason of this, as the learned author states in an earlier passage, is because the law of England never had adopted the rule of the civil law with regard to necessaries furnished here in England. It has also been held by this tribunal that Vice-Admiralty Courts had not (apart from statute) more than the ordinary Admiralty jurisdiction, "that is, the jurisdiction possessed by Courts of Admiralty antecedent to the passing of the statute 3 & 4 Vict. c. 65, which enlarged it."

It follows, therefore, that (apart from statute) a Vice-Admiralty Court had not jurisdiction to enforce any claim by way of maritime lien on the ship itself for necessaries supplied in the circumstances of this case.

But it is contended for the respondent that such jurisdiction has now been conferred by the 10th section of the Vice-Admiralty Act, 1863 (26 & 27 Vict. c. 24), sub-s. 10, by which jurisdiction is given in respect of "claims for necessaries supplied in the possession in which the Court is established to any ship of which no owner or part owner is domiciled within the possession at the time of the necessaries being supplied."

Before considering the effect of this sub-section, it is necessary to examine some previous kindred enactments, and the first of these is the 3 & 4 Vict. c. 65, s. 6, "the High Court of Admiralty shall have jurisdiction to decide all claims and demands whatsoever in the nature of salvage for services rendered to or damage received by any ship or seagoing vessel, or in the nature of towage, or for necessaries supplied to any foreign ship or seagoing vessel, and to enforce the payment thereof, whether such ship or vessel may have been within the body of a county, or upon the high seas, at the time when the services were rendered, or damage received, or necessaries furnished, in respect of which such claim is made."

The effect of this enactment first came under consideration in *The Alexander* [2]. There necessaries were supplied to a foreign ship prior to the passing of the Act. Proceedings were subsequently taken under the 6th section, and it was held that the court had jurisdiction. Some remarks of Dr. Lushington have a bearing on the present question; he says, "In the first place the statute does not create a lien at all;" and after reading the section he proceeds, "the Court shall have jurisdiction; it simply gives the Court jurisdiction in any and every lawful mode which the Court has the power of exercising. I wish to draw attention particularly to the fact that no lien whatever is established by the Act."

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1 (1835) 3 Knapp, 94.

2 (1841) 1 Wm. Rob. 288; 1 Notes of Cases, 188.

The next case to which it is necessary to call attention is *The Bold Buccleugh* [1]. That was an action for damage done by a Scotch steamer to an English vessel in the Humber. The vessel was arrested at Hull, after sale, to a purchaser, without notice of the claim against her in respect of the damage, and it was held by this tribunal that damage creates a maritime lien on the ship causing the damage, and that such lien travels with the thing into whosesoever possession it may come, and when carried into effect by a proceeding in rem, relates back to the period when it first attached.

It is to be observed that this was a suit for damage, as to which there is now no doubt that it creates a maritime lien. Upon this point their Lordships remark, "But it is further said that the damage confers no lien upon the ship, and a dictum of Dr. Lushington, in the case of *The Volant* [2], is cited as an authority for this proposition. By reference to a contemporaneous report of the same case [3], it seems doubtful whether the learned judge did use the expression attributed to him by Dr. W. Robinson. If he did, the expression is certainly inaccurate, and being a dictum merely, not necessary for the decision of the case, cannot be taken as a binding authority." The decision, therefore, in *The Bold Buccleugh* that damage confers a maritime lien, valid against a subsequent purchaser without notice, and that this lien may be enforced under the 6th section of the 3 & 4 Vict. c. 65, does not govern the present case, where the question is whether the mere conferring upon Vice-Admiralty Courts jurisdiction over claims for necessaries in certain cases carries with it the creation of a maritime lien for such necessaries.

Some passages, however, in the judgment in *The Bold Buccleugh* appear to have led Dr. Lushington to the conclusion that he was bound by that decision to hold that the 6th section of the 3 & 4 Vict. c. 65, did create a maritime lien in the case of necessaries as well as in the case of damage. In *The West Friesland* [4] he held that coals supplied to a foreign steamship were necessaries, and that they created a lien under 3 & 4 Vict. c. 65, s. 6, which continued, notwithstanding the sale of the ship, if there were no laches. And in *The Ella A. Clark* [5] the same learned judge held that a claim for necessaries supplied to a foreign ship might be enforced by proceedings in rem under the 6th section, notwithstanding a subsequent and bona fide transfer to a British owner, and he says: "It is true that in *The Alexander* I am reported to have said that the Act of 3 & 4 Vict. did not create a lien, though it gave a remedy against the ship. I intended to state that there might be a distinction between a provision for proceedings by arrest of the ship and the express creation of a lien, and to leave all such questions open. The case of *The Bold Buccleugh* however renders the discussion of this matter useless."

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1 (1852) 7 Moore, P.C. 267.
2 (1842) 1 Wm. Rob. 383.
3 1 Notes of Cases, 508.
4 (1859) Sw. 454.
5 (1863) Brown & Lush. 32.

With regard to these cases their Lordships have only to repeat what was said of them in the judgment of this tribunal in the case of *The Two Ellens* [1]. "These decisions may be supported upon the ground that though it is perfectly true that the only words used in the section are 'that the High Court of Admiralty shall have jurisdiction' (which words seem hardly sufficient in themselves to create a maritime lien), yet, looking at the subject-matter to which that section relates, it appears designed to enlarge the jurisdiction which the Court of Admiralty already had in matters forming the subject of a maritime lien. There are strong grounds for holding that as respects salvage and as respects collisions, which already gave a maritime lien when they occurred on the high seas, it was intended that they should also when they occurred in the body of a county equally give a maritime lien; and that being so as to salvage and collision it might well be said that 'necessaries' immediately following, it was intended that the same rule should apply in the case of necessaries."

In the present case, however, it will be found that the creation of the alleged maritime lien is made to depend solely on the words "the High Court of Admiralty shall have jurisdiction," which as their Lordships in *The Two Ellens* pointed out, are not sufficient in themselves to create a maritime lien.

The Admiralty Court Act, 1861 (24 Vict. c. 10), and the decisions upon it must next be considered. By the 5th section it is enacted that the High Court shall have jurisdiction over any claim for necessaries supplied to any ship elsewhere than in the port to which the ship belongs, unless it is shewn to the satisfaction of the court that, at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales.

Dr. Lushington was at first disposed to hold, on the supposed authority of *The Bold Buccleugh,* that this section gave material men a maritime lien *(The Skipwith* [2]*)*, but he afterwards in *The Pacific* [3] gave a considered judgment to the effect that the 5th section of the Act of 1861 confers no maritime lien on the material men, but only the right to sue the ship. In *The Mary Anne* [4] he developed his views on the subject more fully. He there says (p. 11), "There is a clear distinction between a maritime lien and a claim the payment of which the court has power to enforce from the ship and freight. A maritime lien springs into existence the moment the circumstances give birth to it, as damage, salvage, and wages; but it does not follow that because a claim may by Act of Parliament be enforceable against the res that, therefore, it is created a maritime lien. Besides, looking at the whole Act, it is impossible to maintain that a maritime lien is created by every one of the numerous sections which commence with the words, 'The High Court of Admiralty shall have jurisdiction.' In some of the sections these words are accompanied by a proviso incompatible with a maritime lien, as is

1 (1871) L.R. 3 A. & E. 345.
2 (1864) 10 Jur. (N.S.) 445.
3 (1864) Brown & Lush. 243.
4 (1865) L.R. 1 A. & E. 8.

pointed out by Mr. Maclachlan in reference to the 4th section, and as the court has held with regard to the 5th section in the case of *The Pacific*. So, also, it could hardly be argued that it was intended to create a maritime lien by the 8th section, in favour of co-owners, or by the 11th section in favour of mortgagees. In my opinion, the words 'the High Court of Admiralty shall have jurisdiction,' mean only what they purport to say, neither more nor less, that is, that the court shall take judicial cognizance of the cases provided for. By themselves the words leave open the question whether or not a maritime lien is created. The answer to this question depends upon other considerations."

It appears to their Lordships that this reasoning, which was adopted by this tribunal in the case of *The Two Ellens,* is applicable to the question now under consideration. The 10th section of the Vice-Admiralty Act, 1863, is divided into eleven sub-sections. The 10th, relating to necessaries, is immediately preceded by one relating to claims between owners, as to which it cannot be supposed that it was intended to confer a maritime lien, yet the two sub-sections are equally governed by the same introductory words:—"The matters in respect of which the Vice-Admiralty Courts shall have jurisdiction are as follows."

It has been argued that a different construction to that which the 5th section of the Admiralty Act, 1861, has received, should be put on the 10th sub-section of the 10th section of the Vice-Admiralty Act, 1863, because by the latter the jurisdiction is made to depend on there being no owner domiciled in the possession at the time of the necessaries being supplied. But in the absence of a domiciled owner credit is probably given to the ship, and there is, therefore, in such a case reason for giving the Vice-Admiralty Court of the place jurisdiction, which would include the power to proceed in rem, but it does not suggest a reason why the fresh incident of a maritime lien should attach from the the time of the supply, a lien which is to travel with the ship into whosesoever hands she may pass, yet only capable of being enforced at one place.

Their Lordships are thus led to the conclusion that there is nothing from which it can be inferred that by the use of the words "the court shall have jurisdiction" the Legislature intended to create a maritime lien with respect to necessaries supplied within the possession. Adopting this view, it becomes unnecessary to determine whether or not, if such a lien had existed, it was lost by any laches on the part of the respondent.

Their Lordships will humbly advise Her Majesty that the judgment of the Vice-Admiralty Court be reversed, with the costs of this appeal and the costs in the courts below.