

[COLONIAL COURT OF ADMIRALTY OF CEYLON]

1969

*Present: Siva Supramaniam, J.*

NEW INDIA MARITIME AGENCIES PRIVATE LTD. (of Madras)  
*v. THE SHIP "BARUN" (now in the Port of Colombo) et al.*

*Action in rem No. 7 of 1968*

*Admiralty Court—Ship—Action in rem to enforce a claim for a sum of money—Jurisdiction—Requirement that the money claimed should be referable to supply of necessaries—Balance due on a general mercantile account—Unenforceability of claim by action in rem—Right of mortgagees of ship to intervene in the action—Admiralty Court Rules, Rule 78.*

The Colonial Court of Admiralty of Ceylon has no jurisdiction to entertain an action *in rem* against a ship in respect of a claim for a sum of money unless the amount claimed by the plaintiff is referable to the supply of necessaries to the defendant ship.

An action *in rem* for the supply of necessaries is not available to an agent against his principal when the sum claimed is based in fact on the balance due on a general mercantile account between the parties. The fact that the principal has consented to the ship being detained at any port until the agent's dues are paid cannot affect the question whether the claim is one which is enforceable by an action *in rem*.

A mortgagee of the ship against which an action *in rem* is instituted is entitled to intervene in the action and raise objections to the plaintiff's claim against the ship, even when the owner of the ship has not appeared to contest the plaintiff's claim.

THIS was an action *in rem* instituted by the plaintiffs against a ship "s.s. Barun" in order to enforce a claim for a sum of money due on a decree obtained by them in the High Court of Madras against the Hindusthan Shipping Co. Ltd. of Bengal and its Managing Director. The ship belonged to the Calcutta Steam Navigation Co. Ltd. The Hindusthan Shipping Co. Ltd. was the charterer by demise of the ship. Neither the owner nor the charterer entered an appearance to contest the

plaintiffs' claim in the action *in rem*. But two mortgagees, viz. (1) The Damodar Bulk Carriers Ltd. of Bombay and (2) The Shipping Development Fund Committee of India, intervened as added-defendants and moved for the release of the ship and the recall of the warrant of arrest.

*H. W. Jayewardene, Q.C.*, with *S. Mahadeva, Annesley Perera, M. Devasagayam* and *Gamini Dissanayake*, for the plaintiffs.

*C. Ranganathan, Q.C.*, with *K. N. Choksy, R. Gooneratne* and *S. C. Chandrahasan*, for the 1st intervenient added party.

*S. J. Kadirgamar, Q.C.*, with *J. W. Subasinghe* and *E. B. Vannitamby*, for the 2nd intervenient added party.

*Cur. adv. vult.*

February 28, 1969. SIVA SUPRAMANIAM, J.—

This is an action *in rem* instituted by the plaintiffs against the "s. s. Barun", which is now in the Port of Colombo, claiming a sum of Rs. 400,000 on the ground that the said sum represents (a) the value of necessaries supplied by the plaintiffs and/or (b) monies advanced by the plaintiffs and utilised to procure necessaries for the defendant. On 2nd December 1968 a writ of summons and warrant of arrest issued and on the same day the ship was arrested. The owners of the ship are the Calcutta Steam Navigation Co. Ltd. and during the period relevant to the transactions set out in the petition the Hindusthan Shipping Co. Ltd. of Bengal (hereinafter referred to as the Hindusthan Co.) was the charterer by demise of the said ship. The documents relied on by the parties do not disclose whether the charter is still in force or not. Neither the owner nor the charterer has entered an appearance to contest the plaintiff's claim. But two mortgagees of the ship, viz., The Shipping Development Fund Committee of India which is a first mortgagee of the ship for a sum of Rs. 1,600,000 and the Damodar Bulk Carriers Ltd. of Bombay which is a second mortgagee for a sum of Rs. 500,000, have intervened and have moved for the release of the ship and the recall of the warrant of arrest.

It is contended on behalf of the mortgagees that this Court has no jurisdiction to entertain this action by the plaintiffs and that the petition should be rejected. The contention is based on grounds both of fact and law. It is therefore necessary to examine in the first instance the relevant facts as disclosed in the petition of the plaintiffs and in the documents pleaded as part and parcel thereof.

The plaintiffs are a private limited liability company who carry on the business of Liner and Chartering agents and ship brokers. From September 1964 to November 1967 the plaintiffs were the steamer agents

of the Hindusthan Company "for all necessary purposes of paying ports and customs dues and for all requirements of the vessel (s. s. Barun) and its master." According to the petition, during the aforesaid period, the plaintiffs expended a sum in excess of Rs. 405,000 in respect of (a) necessaries required by the defendant and/or (b) monies advanced and utilised to procure necessaries for the defendant.

In April 1968 the plaintiffs instituted an action *in personam* in the High Court of Madras against the Hindustan Co. and its Managing Director claiming from them jointly and severally a sum of Rs. 420,421.96. On 22.6.1968 they consented to judgment in a sum of Rs. 400,000. The plaint and decree in the said case have been pleaded as part and parcel of the petition in the instant case. That decree remains unsatisfied. In the present petition the plaintiffs have prayed for judgment in a sum of Rs. 400,000 and interest thereon at six per cent. per annum from the date of the aforesaid decree. To the plaint in the said case was annexed a statement of account which disclosed an outstanding liability to the plaintiffs in a sum of Rs. 420,421.96 on the part of the Hindusthan Co. and its Managing Director. The said sum was made up of Rs. 396,947.99 as principal and Rs. 23,473.97 as interest. A copy of the said account, though not filed by the plaintiffs along with the other documents attached to the petition in the instant case, has been marked in evidence by learned counsel for the second mortgagee (2D1A).

It is common ground that this Court has jurisdiction to entertain the plaintiffs' claim only if the amount claimed or part thereof is due on account of either necessaries supplied to the defendant ship or monies advanced to procure necessaries for her.

It is urged by learned Counsel for the plaintiffs that the nature of the plaintiffs' claim will be established by evidence that will be led at the trial and that the question of jurisdiction based on the nature of the plaintiffs' claim cannot be determined *in limine* without the plaintiffs being given an opportunity of placing their evidence. Learned Counsel for the second mortgagee submits, on the other hand, that his objection is based on the facts contained in the documents annexed to the petition and, consequently, the need to lead further evidence does not arise.

The plaint in the Madras case (P15) which has been pleaded as part and parcel of the present petition sets out in detail the transactions the plaintiffs had with the Hindustan Co. in connection with the defendant ship. The documents filed therewith establish beyond any doubt that the claim which the plaintiffs seek to enforce in these proceedings is the identical one in respect of which decree was entered in the Madras case. But so long as that decree remains unsatisfied, it is no bar to the maintenance of these proceedings, provided, however, it is established

that the amount claimed is referable to the supply of necessaries to the defendant ship. (Vide the judgment of the President in *The Cella*<sup>1</sup> and *The Bengal*<sup>2</sup>.)

According to para. 4 of P15, the balance due to the plaintiffs as at 31st December 1966 on account of the disbursements made for the supply of necessaries and "for all requirements of the vessel" was Rs. 71,045·74. The vouchers P2 to P14, filed with the petition in the instant case, which related to the disbursements during the aforesaid period (although erroneously described as statements of accounts for the period September 1964 to 4th November 1967) showed the total disbursements to be Rs. 397,779·03, and the receipts to be Rs. 70,000. The statement of account 2D1A, however, discloses further receipts during that period exceeding a sum of Rs. 250,000 to which no reference has been made either in the documents P2 to P14 or in the petition.

The agreement entered into between the plaintiffs and the Hindusthan Co. in regard to the liquidation of the aforesaid debt of Rs. 71,045·74 and in regard to further advances of money was set out in the following terms in para. 5 of P15 :—

"By May 1967 the 1st defendant company ran into financial difficulties which affected their business. Thereupon, the second defendant, the Managing Director of the 1st defendant company acting, as represented by him, under the authority and on behalf of the said company, approached the plaintiff company to lend financial assistance for the purposes of that company and entered into an arrangement with the plaintiffs in and by which it was agreed between them that—

(i) *Plaintiffs should advance to the 1st defendant company up to the limit of Rs. Two Lakhs for the purposes of the said company including the existing liability of Rs. 71,045·74 referred to above, for a period of two years and the 1st defendant company was to give the plaintiffs a Demand Promissory Note for the said sum of Rs. Two Lakhs and the said liability was to be progressively reduced.*

(ii) The plaintiffs were to be irrevocably appointed and constituted as the General Agents of the 1st defendant company throughout the world to manage the employment and operations of the said vessel s. s. Barun, fixing cargoes, collecting freights and making all kinds of disbursements.

(iii) The plaintiffs were to receive as their remuneration for their services the following commissions :—

(a) Five per cent. on actual freight earnings plus one per cent brokerage, on all export cargoes.

<sup>1</sup> (1888) 13 Probate 82 at p. 85.

<sup>2</sup> *Jurist Reports* (1859) Vol. 5 p. 1085.

(b) Import Commission of one per cent. on freight earnings as per manifest : and

(c) A fixed sum of Rs. 2,500 for bulk cargoes consisting of full shipload of any particular commodity.

(iv) The plaintiffs were to deduct and pay themselves Rs. 20,000 towards the above loan from each freight collection from every port and the plaintiffs, after deducting the said Rs. 20,000 and all disbursements made by them, shall remit the balance of the freight collection on each trip to the defendants.

(v) The defendants were not to collect directly any freight for the vessel "Barun" under any circumstances and the same shall be payable directly to the plaintiffs.

(vi) In case of any dispute, the same was to be referred to an Arbitrator mutually appointed or else the Madras Courts were to have exclusive jurisdiction to decide the dispute. "

In terms of the aforesaid agreement, the Hindusthan Co. and its Managing Director granted to the plaintiffs a promissory note on 2nd May 1967 for Rs. Two Lakhs payable on demand with interest at 12% per annum. A composite agreement was also executed between the parties embodying all the terms and conditions referred to above.

Out of the loan of Rs. Two Lakhs agreed upon, the plaintiffs deducted a sum of Rs. 70,000 on account of the debt of Rs. 71,045.74 that was outstanding in respect of the supply of necessaries to the defendant ship up to 31st December 1966 and paid the Hindusthan company the balance sum of Rs. 130,000 in two instalments as follows :—Rs. 100,000 on 2nd May 1967 and Rs. 30,000 on 22nd May 1967. It would appear, therefore, that in respect of the disbursements set out in the documents P2 to P14 filed with the petition only a sum of Rs. 1,045.74 remained unpaid to the plaintiffs on 22nd May 1967. In the course of the hearing, however, learned Counsel for the plaintiffs marked in evidence vouchers P17 to P26 setting out the disbursements alleged to have been made on account of the defendant ship during the period 2.6.1967 to 4.11.1967. The total amount of disbursements on the documents P17 to P26 is Rs. 965,718.20. There are many items in these accounts which will not fall within the category of necessaries but I need not go into that question at this stage. I shall assume that the full sum of Rs. 965,718.20 represents disbursements in respect of necessaries.

According to para. 10 of P15, "subsequent to the aforesaid contract of agency, the Managing Director of the defendant company *made further requests for money on behalf of the company for its purposes, namely, repaying the company's old liabilities*". The plaintiffs, accordingly, "made further advances aggregating to Rs. 319,800 between 25.5.1967

and 23.10.1967, the total advances made by the plaintiffs thus coming to Rs. 520,845.74." This sum of Rs. 520,845.74 included the sum of Rs. 1,045.74 which was the balance due on the supply of necessaries up to 31.12.1966. If, however, the sum of Rs. 1,045.74 was added to the disbursements alleged to have been made on account of the defendant ship between 2.6.1967 and 4.11.1967, the resulting position was as follows : the amount payable as disbursements made on account of the ship up to 4.11.1967 was Rs. 966,763.94 and the cash advances to the Hindusthan Co. Rs. 519,800.

During the aforesaid period, the plaintiffs received as freight collections a total sum of Rs. 1,089,615.95. The Statement of Operation 2D1B and the statement of account 2D1A show clearly that the freight was collected at four ports. If the subsequent advances and disbursements were made on the same terms as those on which the initial loan of Rs. 200,000 was granted, the plaintiffs were entitled to deduct only a sum of Rs. 20,000 from each freight collection towards the loans and were under a duty to apply the balance towards the disbursements made on account of the ship. Any balance left over had to be paid to the Hindusthan company. On that basis, the plaintiffs were entitled to appropriate only a sum of Rs. 80,000 out of the freight collections towards the cash advances of Rs. 519,800, and they had in their hands a sum of Rs. 10,09,615.95 to meet the other disbursements which amounted to only Rs. 966,763.94. They still had a balance sum of Rs. 42,852.01 which was payable to the Hindusthan Co. If credit was given in this sum against the cash advances, the balance payable by the Hindusthan Co. was Rs. 396,947.99. The sum of Rs. 420,421.96 claimed in the Madras case was arrived at by adding to the said sum 12% interest on the sum of Rs. 200,000 for which the promissory note had been given.

It was submitted by learned counsel for the plaintiffs that the terms of the agreement set out in para. 5 of P15 applied only to the initial loan of Rs. 200,000 and not to the subsequent cash advances amounting to Rs. 319,800 and that the plaintiffs were therefore entitled to pay themselves that sum out of the freight collections before meeting the expenses incurred in respect of the ship. On the basis of that submission he argued that the outstanding balance or a substantial part of it represents disbursements made in respect of necessaries for the ship and that an action *in rem* therefore lies against the ship.

I am of opinion that the aforesaid submission is not tenable as it is clear from the averments contained in P15 and from an examination of the vouchers P17 to P22 that the plaintiffs made the subsequent advances too on the basis of the agency agreement set out in para. 5 of P15. In vouchers P17 to P22 the plaintiffs claimed agency commission in terms of the said agreement in respect of each of the six voyages set out in the Statement of Operation 2D1B. Apart from that, the plaintiffs

expressly averred in para. 16 of P15 that they "have kept alive the contract of agency and hereby signify their acquiescence in its continuance." It is not open, therefore, to the plaintiffs to contend at this stage that the subsequent advances were made by them on a different basis.

On the material contained in the documents filed by the plaintiffs and pleaded as part and parcel of their petition I find that the plaintiffs had sufficient funds out of the freight collections to pay themselves all expenses incurred by them in respect of the defendant ship, whether necessaries or not, and that the sum of money claimed in the Madras case as well as in the instant case represents the balance payable to the plaintiffs in respect of the monies advanced to the Hindusthan Co., for its own purposes and not for the purpose of procuring necessaries for the ship. An action *in rem* does not lie to enforce such a claim. As was stated by Dr. Lushington in *The Aaltje Willemina*<sup>1</sup> : "It is well known that the Court has no jurisdiction as to claims for money advanced, unless it is perfectly clear that the money was to be applied for the purchase of necessaries to be supplied for the use of the ship or crew."

It was further submitted that the plaintiff's claim is one by an agent against his principal for the balance due on a general mercantile account and an action *in rem* does not lie in such a case. A claim for necessaries by an agent has been the subject of several decisions by the Presidents of the High Court of Admiralty in England as well as by the Privy Council in appeal.

In the case of *The Megileff*<sup>2</sup> Hill J. reviewed all the earlier cases on this subject and stated : "There is nothing in the mere relation of principal and agent as between owner and agent which prevents the agent who has found money for the supply of necessaries to a ship from suing the owner, his principal, by a writ *in rem* and arrest of the ship to which the necessaries have been supplied." But he held that where a plaintiff is not in a position to say that he has a present right of action for the items of necessaries as a separate and distinct cause of action, and his claim is for the balance due on a mercantile account, an action *in rem* is not available to him.

In the instant case, the statement of account 2D1A filed by the plaintiffs is in two parts. The first is headed "True copy of accounts from 22nd September, 1964 to 31st December 1966—In account with Messrs Hindusthan Shipping Co. Ltd." and the second part "True copy of account from 2nd May 1967 up to 15th April 1968". In the account, a balance is struck as at 31st December 1966 and that balance is carried over to the second part. The second part contains on the debit side several items of loans made to the Hindusthan Co., as well as disbursements made on account of the ship in respect of the six voyages set out in the

<sup>1</sup> *Admiralty and Ecclesiastical Cases, Vol. 1 (1865-1867) p. 107.*

<sup>2</sup> *1921 Probate 236.*

Statement of Operations 2D1B. The vouchers attached give the details of the amounts debited as disbursements. On the credit side are set down the freight collections. A balance is struck as at 15.4.1968 according to which a sum of Rs. 396,947.99 is payable to the plaintiffs by the Hindusthan Co. To this sum is added 12% interest on a loan of Rs. 200,000 and the total debit is Rs. 420,421.96. The plaintiffs have restricted their claim to Rs. 400,000 which was the amount for which the Hindusthan Co., consented to judgment in the Madras case. The loans referred to in the account were not advances made to the Hindusthan Co., to pay for or to procure necessaries for the ship. The form of the account makes it clear that it is a general mercantile account and what the plaintiffs have claimed in this action is the balance due on that general account.

The facts in the instant case bear strong points of similarity to the facts in the cases of the "*Twentje*"<sup>1</sup> and "*El Salto*"<sup>2</sup>.

In the "*Twentje*", the plaintiffs were the agents in England of the owners of the ship which traded between London and Holland. They received the freights payable in London and out of the proceeds paid the expenses incurred by the ship in England and from time to time made out accounts in which they placed the sums so paid and received respectively to the debit and credit of each successive voyage and sent these accounts to the defendants who were the Managers of the ship. An action was instituted by the plaintiffs for £195 8s. 7d. as the balance due to them for coals supplied to the ship for six voyages. They arrived at this balance by taking the whole of their agency accounts with the owners for a period of three years down to the time when they ceased to be agents and by excluding all the items in respect of the coals. There was a balance for the voyages in question in favour of the owners, of £27 6s. 11d. This balance they deducted from the sum of £125 15s. 6d. the whole amount payable for the coal, and proceeded for the remainder against the ship. Dr. Lushington held that the plaintiffs were entitled to have recourse to the ship to obtain satisfaction of their demand. In appeal, the Privy Council reversed the finding and held that the arrest of the ship for a general balance of the accounts was unjustifiable. The Rt. Hon. Lord Chelmsford, in pronouncing the opinion of the Board said: "The case of the Respondents depends entirely upon their right to deal with the accounts in this manner. They say, in effect, that on taking an account, according to their own view, of all their dealings and transactions with the owners of the ship they find a balance in their favour of £195 8s. 7d. and that in order to obtain a charge on the ship, they are entitled to select from the accounts the items which consist of charges for coals and to attribute the balance specifically to those items. They thus propose to treat the sums received in respect of the six voyages, not as received on account of the disbursements

<sup>1</sup> 13 Moo. P. C. 185.

<sup>2</sup> 25 Times L. R. 99.



made for each successive voyage, which would be the fair inference from the accounts then rendered, but as payments made in liquidation of a balance due on a previous account current. But there is no principle which can enable the Respondents thus to make the supply of coals a distinct and separate account".

In the case of the "*El Salto*", the plaintiffs entered into an agreement with the owners of the ship whereby the plaintiffs were to open a credit for the ship's disbursements and were for a commission to do all the business of insurance, sale or purchase of steamers and chartering or coaling of steamers belonging to the owners. The agreement was terminable by three months' notice. Subsequently the amount of the credit was increased and the advances of the plaintiffs included other matters than ship's disbursements. When the account was finally closed after termination of the agreement, it included items amounting to £1000 for coal supplied to the ship. The plaintiffs sued *in rem* for that sum. But they had no immediate right upon the supply of coals to be paid for them. In dismissing the action, Sir Gerell Barnes said: "I feel myself bound by authority in this case, as soon as I come to the conclusion, as I do, that the claim I have to consider is really based upon a general mercantile account between the parties and I am satisfied that that is the true view to take of the case, given the provisions of the agreement between the parties".

The case of *the Underwriter*<sup>1</sup> in which the claim was allowed may also be noticed. In that case, the plaintiffs were agents of the owners, having had large transactions with them in respect of other vessels. They made advances for payment of repairs to the *Underwriter* and for other necessaries. They collected freights which were sufficient to pay for the ordinary disbursements but not for the repairs. Sir Robert Phillimore, in holding that they were entitled to sue *in rem* for the unsatisfied balance of their account said: "This suit is instituted, not to recover any particular or selected item of a general account, but the whole of the sum expended upon this particular occasion in payment of the necessaries required by the exigencies of the ship, and without which she could not have prosecuted her voyage."

In *Foong Tai v. Buchheister*<sup>2</sup> their Lordships of the Privy Council in affirming a decision in favour of the plaintiffs said: "No accounts, therefore, have been rendered in this case which in fact resemble ordinary mercantile accounts. But on an examination of the authorities to which their Lordships have been referred and especially of the cases of *the Twentje* and *the Underwriter*, it will be found that what they really decide is this—that, as necessaries supplied to a ship are *prima facie* presumed to have been supplied on the credit of the ship, and not solely on the personal credit of her owners (*The Perla* (1857) Swa. 230), the form in which accounts are rendered by an agent,

<sup>1</sup> 1 Asp. M. L. C. 127.

<sup>2</sup> 1908 A. C. 458.

who has supplied or paid for necessaries, to his principal is evidence to rebut that *prima facie* presumption and show that the agent looked for payment to the principal alone. There is nothing in the Act of 1861 to prevent an agent from suing for necessaries under S. 5, nor is there any rule or principle of law that an agent loses his right so to sue if in the account he furnishes to his principal for those necessaries he gives credit for sums received."

Unlike the accounts dealt with in *Foong Tai's case*, the *Underwriter* and the *Megileff*, the account rendered by the plaintiffs in the instant case brings the claim within the class of cases dealt with in the *Twentje* and *El Salto* and an action *in rem* is not available to enforce it. The fact that under the terms of settlement entered into in the Madras case, the Hindusthan Co. consented to the ship being detained at any port until the plaintiffs' dues were paid cannot affect the question whether the claim is one which is enforceable by an action *in rem*.

A large sum of money is undoubtedly payable by the Hindusthan Co. to the plaintiffs but the question I have to determine is whether the plaintiffs are entitled to enforce the claim by an action *in rem*. On this question, having regard to the authorities cited, I have no alternative but to rule against the plaintiffs.

In support of the motion that the petition be rejected, learned Counsel for the intervenients made also the following submissions: (a) that an action *in rem* does not lie where the claim is against the charterers and not against the owners (b) that the attorney of the plaintiffs has no authority to institute or maintain the present action under the Power of Attorney filed in this case and (c) that the plaintiffs are seeking to enforce in this Court the decree *in personam* entered in their favour in the Madras Court and this Court has no jurisdiction to enforce that decree. Several interesting questions of law were argued at length in connection with the above submissions, but in view of the conclusion I have already reached, it is unnecessary to express any opinion upon them.

Learned Counsel for the plaintiffs raised the question of the right of the mortgagees to intervene and raise objections to the plaintiffs' claim when neither the owners of the ship nor the Hindusthan Co. have appeared to contest the claim. It was submitted that only mortgagees in possession were entitled to intervene. Halsbury (3rd Ed. vol. 1 p. 80) while dealing with the topic "Who may appear" states: "Further, any person not named in the writ may intervene in an Admiralty action *in rem* and appear on filing an affidavit showing that he is interested in the *res* under arrest or in the fund in the Registry. Such persons are mortgagees etc". In the case of *the Orienta*<sup>1</sup> the defendants, the owners of the ship, did not appear but the first and second mortgagees who had made

advances and held registered mortgages on the ship were allowed to intervene and defend the action. They were not mortgagees in possession of the ship. I am of opinion that the mortgagees were entitled to intervene in the action.

Learned Counsel for the plaintiffs also submitted that, unless the action is frivolous or vexatious, the plaintiffs should not be shut out *in limine*. He relied on the following observations of Wilmer J., in *The St Elesterio*<sup>1</sup>:—"Suppose, for instance, following the argument of counsel for the defendants, that this Court comes to the conclusion, on the preliminary argument held at this stage of the action, that the action is not one that is sustainable in law, it will presumably set aside the writ and the warrant of arrest. It is possible (these things have been known to happen) that a higher Court might take a different view: but in the meantime the ship, which is a foreign ship, has been freed from arrest, has gone, and may never return to this country. It might be that in these circumstances the plaintiffs would have lost their right for ever to entertain proceedings *in rem* in this country". The preliminary objection in that case depended on the proper construction to be given to S. 3 (4) of the Administration of Justice Act, 1956—a matter which admitted of argument. In the instant case, on the other hand, the objection is based on facts on which the plaintiffs themselves rely in their petition. The question of further evidence, therefore, does not arise.

The averments contained in the petition and affidavit of the plaintiffs' attorney that the claim of Rs. 400,000 represented the value of necessaries and/or moneys advanced to procure necessaries and that the claim is supported by the vouchers P2—P14 are clearly not in accord with the facts. Had the statement of account 2DIA been filed along with the petition (as the plaintiffs should have done) and the true position in regard to the claim been made clear in the petition, the writ of summons and warrant of arrest would not have been issued by this Court in this case.

Under rule 78 of the Admiralty Court Rules (Subsidiary Legislation Vol. 1, p. 139) I rescind the order directing the issue of a writ of summons and a warrant of arrest. Let the writ and the warrant be recalled. The plaintiffs will pay the mortgagee-intervenients their costs of these proceedings.

*Action in rem dismissed. Writ of  
summons and warrant of arrest  
of ship rescinded.*