

charter, but he did not know the terms of the charter party. On the trial there was a conflict of testimony between the plaintiff on the one hand, and the master of the vessel, and the port captain or agent of the charterers on the other hand, as to whether or not the necessities were supplied on the order of the master on the credit of the vessel and owners, or on his order or that of the port captain on the credit of the charterers. The learned judge by whom the case was tried found that the necessities were supplied on the order of the master and the credit of the vessel and owners, and he held the vessel liable therefor.

Held, on appeal, that the plaintiff ought under the circumstances to have the benefit of the finding in his favour, but that as the master was the servant and agent of the charterers and not of the owner, he had no authority to pledge the latter's credit, and that as the owner was not liable for such necessities the vessel could not be made liable.

An action for necessities at the suit of the person who supplies them cannot be maintained against the ship if the owner of the ship is not the debtor.

Where the owner of the ship is the debtor the action cannot be maintained against her if the necessities are supplied at the port to which the ship belongs; or if at the time of the institution of the action any owner or part owner of the ship is domiciled in Canada: Admiralty Courts Act 1861, s. 5; Colonial Courts of Admiralty Act 1890, s. 2 (3) (a).

Where by the charter party the owner transfers the possession and control of the ship to a charterer and the latter appoints the master and crew and pays their wages and other expenses, the master in incurring a debt for necessities is the agent and servant of the charterer and not the agent or servant of the owner. In such a case the owner is not the debtor, and an action for such necessities cannot be maintained against the ship.

The want of notice of the terms of the charter party in such a case is not material, notice of the charter party not being essential where the owner completely divests himself of the possession and control of the ship: *Bramwell &c. Scheibler v. Furness*, [1893] A.C. 8.

J. B. Kenney, for appellant. *R. G. Code*, for respondent.

Province of British Columbia.

SUPREME COURT.

Full Court.] NIGHTINGALE v. UNION COLLIERY COMPANY. [April 9.
Negligence—Railway company—Passenger—Mere licensee—Duty of company—Verdict—No evidence to support—Setting aside.

Action by the widow and administratrix of Richard Nightingale for compensation for his death caused while travelling on the defendants' railway by reason of the train falling through a bridge. Nightingale had a