

1975
June 16

ALMYR
MARITIME S.A.

v.

THE CARGO ON
BOARD THE
SHIP
«ALMYRIA»

[A. LOIZOU, J.]

ALMYR MARITIME S.A.,

v.

THE CARGO ON BOARD THE SHIP "ALMYRTA" NOW
IN THE PORT OF LIMASSOL CONSISTING OF
2900 METRIC TONS OF CEMENT,

Plaintiffs.

Defendants.

(Admiralty Action No. 15/75).

Admiralty—Sale pendente lite of cargo under arrest—Rules 74 to 77, 203 to 205 and 215 of the Cyprus Admiralty Jurisdiction Order, 1893—Grounds on which a sale may be ordered—Continuing and mounting expenses of arrest and deterioration of the goods with consequential depreciation of their value—Paramount consideration the preservation of the goods or their equivalent in money—Order for sale subject to appraisalment.

This was an application for the sale *pendente lite* of cargo under arrest. The cargo consisted of 58,000 pieces of six-ply kraft paper bags of fifty kilogrammes each, Hellenic type Portland cement, plus an additional amount of 1,740 empty paper bags. The value of the cargo as stated in the invoice and bill of lading, was U.S. dollars 84,825.

A survey of the cargo was carried out on the 9th May, 1975 and the relevant report was as follows:-
"Due to the fact that the commodity tends to deteriorate with age usually due to absorption of moisture and carbon dioxide from the air which may not be detected visibly, the cement depreciates considerably in value and later on might only be sold for flooring etc. Although it seems that the deterioration of the cement is right now not in a critical state, the disposal of the cement is highly recommended soonest in order to avoid severe depreciation of its value".

Held, (1) Among the good reasons which a Court may consider in ordering the property to be sold are

the continuing and mounting expenses of arrest and the fact that goods are deteriorating. (See Halsbury's Laws of England, 4th ed. Vol. 1, paragraph 434 and the authorities cited therein; Roscoe's Admiralty Practice, 5th ed. p. 351; and British Shipping Laws, Vol. 1, Admiralty Practice, 1964, paragraph 276).

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(2) In cases as the present one, the paramount consideration is to preserve the goods or their equivalent in money, for the benefit of the person or persons who are ultimately to be found to be entitled to them, rather than to preserve the goods themselves but completely perished.

(3) It will be in the interest of all concerned to make an order for the sale of the cargo in question but not without appraisement, the purpose of which is to prevent the sale of the res on too low a price. Consequently, it is hereby ordered that the said cargo under the arrest of the Court, be appraised and sold.

Application granted.

20 Ex Parte Application.

Ex parte application for the sale *pendente lite* of a cargo which was under arrest.

Ch. Mylonas, for the plaintiffs-applicants.

The following ruling was delivered by :-

25 A. LOIZOU, J. : This is an application for the sale *pendente lite* of the cargo under arrest. The cargo in question consists of 58,000 pieces of six-ply kraft paper bags of fifty kilogrammes each, Hellenic type Portland cement, plus an additional amount of 1,740 empty
30 paper bags. It was loaded on the vessel "Almyrta" according to Cargo Manifest of 10th November, 1974 in Thessalonika, Greece, with the final destination of Port Harcourt, Nigeria. It had been on board the vessel for almost five months, when a warrant of its arrest was
35 issued by this Court on the 2nd April, 1975 and its discharge and storing at the Co-Operative Carob Market Union Ltd. Warehouses was completed by the 14th April, 1975.

The arrest was issued on an ex-parte application sup-

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ported by a lengthy affidavit setting out therein, in detail, the claims of the plaintiffs in this action in rem and I do not propose to go into that aspect of the case at this stage.

The present application is based on the Cyprus Admiralty Jurisdiction Order, 1893, rules 74 to 76, 203 to 205 and 215. Rule 74 reads as follows :- 5

“It shall be lawful for the Court or judge, either before or after final judgment on the application of any party and either with or without notice to any other party, by its order to appoint the marshal of the Court or any other person or persons to appraise any property under the arrest of the Court, or to sell any such property either with or without appraisal, or to remove or inspect and report on any such property or to discharge any cargo under arrest on board ship”. 10 15

Rules 74 to 77 seem to contain in effect, in a combined way—without this meaning that they are identical—what is provided for in England by Order 50, rule 2 and Order 51, rules 14 to 16 of the pre 1962 Rules, now Order 29, rule 4 and Order 75, rules 12 and 23 of the new Rules of the Supreme Court (Revision), 1965. Guidance, therefore, in interpreting rules 74 to 77 may be derived from the manner the said English Orders were applied. As pointed out in a note to Order 50, rule 2 in Roscoe’s Admiralty Practice, 5th ed. at p. 351 — 20 25

“Under this rule it is that the Court will order the sale of a vessel which remains under arrest and against which expenses are accumulating, and which is deteriorating, if in the interests of all parties a speedy sale would appear to be desirable: *The Louisa* (1905), Fo. 307; *The Carl Hindric* (1903), Fo. 468; *The Reigate* (1905), Fo. 309. In the case of perishable articles an order for sale should be made rather than an injunction; *United Fruit Co. v. Frederic Leyland & Co., Ltd., and Others* (1930), 47 T.L.R. 33.” 30 35

Furthermore, as stated in British Shipping Laws, Vol. 1, Admiralty Practice, 1964 at paragraph 276, after 40

stating in the preceeding paragraph that the words "goods, wares or merchandise" to be found in Order 50, rule 2, are wide enough to cover a ship, it is said that —

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5 "Typical grounds for an application are that a ship is costing a disproportionate amount in daily expenses, e.g., of dock dues, shipkeepers, etc., or that she is deteriorating owing to being under arrest for a long period, or that a cargo is perishable."

10 The continuing and mounting expenses of arrest and the fact that goods are deteriorating, are among the good reasons which a Court may consider in ordering the property to be sold. (See also Halsbury's Laws of England, 4th ed., Vol. 1, paragraph 434 and the authorities cited therein).

15 A survey on the cargo was carried out on the 9th May, 1975 and the conclusions to be found in that report, are as follows:- "Due to the fact that the commodity tends to deteriorate with age usually due to absorption of moisture and carbon dioxide from the
20 air which may not be detected visibly, the cement depreciates considerably in value and later on might only be sold for flooring etc. Although it seems that the deterioration of the cement is right now not in a critical state, the disposal of the cement is highly recom-
25 mended soonest in order to avoid severe depreciation of its value".

30 The value of the cement, as stated in the invoice and bill of lading, was U.S. dollars 84,825 and the freight was U.S. dollars 83,375. The cost of storage, including insurance against fire, theft and burglary, comes to about £10 daily. Of course, compared with the value of the goods in question, these costs could not by themselves be considered as mounting expenses justifying the making of an order for the sale of the
35 cargo *pendente lite*, though they are not to be lightly discarded. However, what has particularly weighed with my mind in the exercise of my discretion in the matter, is the risk of deterioration with the consequential depreciation in its value.

40 In cases as the present one, the paramount consideration is to preserve the goods or their equivalent in

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money, for the benefit of the person or persons who are ultimately to be found to be entitled to them, rather than to preserve the goods themselves but completely 5
perished. In my opinion, it will be in the interest of all concerned to make an order for their sale but not without appraisal, the purpose of which is to prevent 10
the sale of the res on too low a price. Consequently, it is hereby ordered that the said cargo under the arrest of the Court, be appraised and sold. For this purpose, 15
the marshal of the Court is appointed to appraise the said property, and authorized and commanded to choose one or more experienced persons to be sworn to appraise the said cargo according to the true value thereof and such value having been certified in writing by him or 20
them, to cause the said cargo to be sold under his supervision by Messrs. S. Ch. Ieropoulos & Co. Ltd., of Limassol by private treaty, but at not less than the authorized value or at less than three-fourths of the value stated in the invoice and bill of lading, *i.e.* U.S. 25
dollars 84,825, whichever is the higher of the two, unless the Court, on the application of Messrs. S. Ch. Ieropoulos & Co. Ltd., and/or marshal, allows it to be 30
sold at a lesser price.

It is further directed that the said sale be advertised twice in three local newspapers, one of which published 25
in the English language. Needless to point out that if the cargo is to be sold locally, such sale shall be subject to any Laws, Regulations and Orders imposing 30
restrictions and/or prohibitions for the importation of cement and also subject to any restrictions relating to exchange control, as well as the prior obtaining of any 35
permit regarding such matters.

It is further ordered that immediately upon the sale being completed, to pay the proceeds thereof into Court and to file the certificate of appraisal signed by the 35
marshal and the appraiser or appraisers and an account of the sale signed by Messrs. S. Ch. Ieropoulos & Co. Ltd. and the marshal showing the amount of the money so paid into Court and the amount of the fees, costs, 40
charges and expenses payable to or incurred by the marshal and Messrs. S. Ch. Ieropoulos & Co. Ltd., of

Limassol in carrying out the order of the Court, together with all vouchers necessary showing the aforesaid.

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Costs of the present application to be costs in cause.

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Application granted.

Costs in cause.

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