[A. LOIZOU, J.]

ALGEMEEN VRACHTKANTOOR B.V. AND OTHERS,
Applicants,

v.

SEA SPIRIT NAVIGATION COMPANY LIMITED,
Respondents.

(*Civil Application No.* 2/76).

Merchant Shipping (*Registration of Ships, Sales and Mortgages*) *Law,* 1963 (*Law No* 45 *of* 1963)—*Prohibition of dealing with ship—Section* 30 *of the Law—The words "interested person" in the said section must be read in conjunction with the words "ship or any share therein"—And they must refer to a person having interest, legal or beneficial in the ship—They do not include a person who is a mere creditor seeking to preserve the status quo for the purpose of securing the execution of a judgment to be obtained*—Tokio Marine and Fire Insurance Co. Ltd. *v.* Fame Shipping Co. Ltd. (*reported in this Part at p.* 333 ante).

Admiralty—Practice—Lis alibi pendens—Proceedings started in Cyprus and Holland—Order in Cyprus, under s. 30 *of the Merchant Shipping* (*Registration of Ships, Sales and Mortgages*) *Law,* 1963—*And action in Holland against the same ship whose arrest was secured pending determination of the Action—No difference that no bail was given for release of ship—Oppressive to let order under s.* 30 *go on—Discharged.*

Merchant Shipping (*Registration of Ships, Sales and Mortgages*) *Law,* 1963 (*Law No.* 45 *of* 1963)—*Order prohibiting dealing with ship in Cyprus—Section* 30 *of the Law—Action in Holland against the same ship and its arrest secured pending determination of Action—Order under the said section* 30 *being a conservatory measure, at that, discretionary should not be granted or should be discharged, if it would cause extreme inconvenience or if it is superfluous or places the users of the ship in an unduly disadvantageous position when, as in this case, the ship continues to be under arrest or when after arrest bail or security has been furnished and the ship's release has been purchased—Oppressive to let order under section* 30 *go on—Order discharged.*

On the *ex-parte* application of the applicants an order was

made, under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63) prohibiting any dealing with the Ship "Captain Theo" or any share therein until the hearing and final determination and settlement of applicants' claim or action in Rotterdam against the respondents, for an amount equivalent to D. Fl. 800,000 for damages to the applicants' cargoes.

Prior to obtaining the order under s. 30 the applicants had brought an action against the said Ship in Holland and secured its arrest pending its determination. They also took validation proceedings, which meant that if they are successful in Holland the arrest will be turned into an arrest under execution. The respondents have not contested that arrest and no bail was given to secure release of ship.

The respondents applied for the discharge of the order and they contended that:

(a) The applicants were not interested persons within the meaning of section 30 of Law 45/63, as they had no legal or beneficial interest in the Ship herself or any share therein.

(b) That as the applicants have brought an action against the respondents in Holland where they secured the arrest of the Ship pending its determination, the order under s. 30 was vexatious, oppressive and an abuse of the powers of the Court because applicants had already sufficient security in the same country in which they had instituted their action and because the order of this Court was hindering them.

(c) That in view of the action in Holland and the arrest of the Ship there, the order made by this Court under s. 30 was vexatious, oppressive and an abuse of the powers of the Court as applicants had sufficient security in the same country in which they had instituted their action and that the order of this Court was hindering them from giving the security required to obtain the release of the vessel from arrest.

Held, (1) the words "interested person" in section 30 of Law 45/63 must be read in conjunction with the words "ship or any share therein" to be found in the said section and they must

refer to a person having interest, legal or beneficial in the Ship and do not include a person who is a mere creditor seeking to preserve the status quo for the purpose of securing the execution of a judgment to be obtained (*Tokio Marine and Fire Insurance Co. Ltd.* v. *Fame Shipping Co. Ltd.* (reported in this Part at p. 333 *ante*, followed).

(2) It makes no difference to the nature of the legal proceedings that no bail was given for the release of the ship. After all, bail is the equivalent of the res and if in the instance of giving bail it is highly improper that another action should be allowed to go on against the res in any other place, by analogy, it may be said that once a ship has been arrested in one country and proceedings are proceeded with for its validation, it should be considered as also highly improper to proceed in this country by an application with an order under the said section 30 (see *Ionian Bank Ltd.* v. *Couvreur* [1969] 2 All E.R. 651 at p. 655).

(3) If, as stated in the *Ionian Bank* case (*supra*), "it would obviously be oppressive to let the second action go on", why not treat on the same footing and consider as equally oppressive to let an order under section 30 remain undischarged against dealings with the same ship. This remedy, a conservatory measure, at that, is discretionary and should not be granted or should be discharged, if it would cause extreme inconvenience or is superfluous or places the owners of the ship in an unduly disadvantageous position when the ship continues to be under arrest or when after arrest bail or security has been furnished and the ship's release has been purchased. Needless to say that the arrest of the ship does not make the applicants "interested person" within the meaning of section 30 of the Law.

For these reasons as well, the order under section 30 should be discharged.

Order accordingly.

Cases referred to:

Eastern Mediterranean Maritime Ltd. v. *Nava Shipping Co. Ltd.* (1975) 5 J.S.C. 666;

Beneficial Finance Corporation v. *Price* [1965] 1 Lloyd's Rep. 556;

La Blanca and El Argentino [1908] 77 L.J.P. 91;

Tokio Marine and Fire Insurance Co. Ltd. v. *Fame Shipping Co. Ltd.* (reported in this Part at p. 333 *ante*);

The Ship "Georghios C" v. *Mitsui Sugar Ltd. and Another* (reported in this Part at p. 105 *ante*);

Reederei Schulte and Bruns Baltic Schiffahrts v. *Ismini Shipping Co. Ltd.* (1975) 1 C.L.R. 433;

The Christiansborg [1885] 54 L.J.S. 84;

The Soya Margareta [1960] 2 All E.R. 756;

The Mansoor [1968] 2 Lloyd's Rep. 218;

Peruvian Guano Co. v. *Bockwoldt* [1883] 23 Ch. D. 225;

Ioanian Bank Ltd. v. *Couvreur* [1969] 2 All E.R. 651, at p. 655;

The Marinero [1955] 1 All E.R. 676;

Hadji Athanassiou v. *Parperides* (1975) 1 C.L.R. 401;

Karydas Taxi Company Ltd. v. *Komodikis* (1975) 1 C.L.R. 321;

Re F. (a minor) [1976] 1 All E.R. 417.

Application.

Application under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63) for an order prohibiting any dealing with the ship "Captain Theo" or any share therein until hearing and final determination and settlement of applicants' claim or action in Rotterdam against the respondents, for damage to applicant's cargoes.

L. Papaphilippou, for the applicants.

E. Montanios with *M. Cleopa* (*Mrs.*), for the respondents.

Cur. adv. vult.

The following judgment was delivered by:–

A. LOIZOU, J.: On the *ex-parte* application of the applicants an order was made under section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63) "prohibiting any dealing with the Ship 'Captain Theo' or any share therein until hearing and final determination and settlement of applicants' claim or action in Rotterdam against the respondents, a navigation company having its registered offices in Limassol, Cyprus, for an amount equivalent to D.Fl. 800,000 for damage to the applicants' cargoes" which was made returnable on the 30th January, 1976 at 9.30 a.m.

On the date on which the order was returnable, counsel appearing on behalf of the respondents, opposed the application. After successive adjournments for reasons that appear on the record, a notice of opposition was filed, supported by an affidavit in which it was stated that the applicants were not

interested persons "within the meaning of section 30 of Law 45/63, as they had no legal or beneficial interest in the ship herself or any share thereof". They also confirmed the allegation contained in the applicants' affidavit that the said ship had been arrested and in fact still is under arrest, and claimed that the said order was vexatious, oppressive and an abuse of the powers of the Court as applicants already had sufficient security in the same country in which they had instituted their action for damages against the respondents and that the order of this Court was hindering them from giving the security required to obtain the release of the vessel from arrest.

It has been the case for the respondents in support of their claim for the discharge of the order in question that –

(a) In law an order under section 30 can only be made for the benefit of a person who has an interest, legal or beneficial, in the ship herself and that the interpretation given in the *Eastern Mediterranean Maritime Ltd.* v. *Nava Shipping Co. Ltd.* (1975) 5 J.S.C. 666 was wider than warranted by the wording of the said section.

(b) If it is found that the *Nava* case (*supra*) was correctly decided, then the Court in the exercise of its discretion under section 30, should not maintain this order on the ground that the applicants have already ample security by having the vessel under arrest and that in the circumstances by the order the respondents are placed in a disadvantageous position.

(c) As a matter of proper exercise of judicial discretion the order in this particular case should not have been made as it has not been shown by the applicants that they have a good cause of action with a serious probability of success.

(d) That the order should have been made valid only for a specified time.

I have had the benefit of extensive argument by learned counsel for the respondents on the true meaning and effect of section 30 and in particular the correct meaning of the term "interested person" to be found therein, "on whose application the Court may make an order prohibiting for a time specified any dealing with a ship or any vessel therein...". In

that respect, reference has been made to the case of *Nava* (*supra*) the decision in which was based on two cases, the *Beneficial Finance Corporation* v. *Price* [1965] 1 Lloyd's Rep. 556 and *La Blanca* and *El Argentino* [1908] 77 L.J.P. 91.

Since the conclusion of the hearing of this application judgment has been given in Admiralty Action No. 14/75 between *Tokio Marine and Fire Insurance Company Ltd.* v. *Fame Shipping Ltd. of Limassol** and H.H. Malachtos, J. discharged the order made earlier by him under section 30 of the Law for the reasons given therein and after dealing extensively with the few relevant authorities that can be traced, said,

> "No doubt, the applicants in both the *La Blanca* and the *Beneficial Finance Corporation*, (*supra*) were creditors of the shipowners but were interested in the ship herself. They were not mere creditors of the owners of the ship. In all cases either before or after the 1894 Act where an Order prohibiting any dealing with a ship was made by the Court, the applicant was interested in the ship herself.
>
> I am now, therefore, of the view, that section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, does not apply to mere creditors or claimants of damages against the owners of the ship and that 'interested person' in this section means a person who is interested in the ship herself. He may be a legatee or heir or a creditor. Whether he is an interested person within the meaning of the said section, is a question depending on the facts of the particular case.
>
> In view of the above I must say that it seems to me that in interpreting section 30 of the Law in both *Nava* and the *Lamant* cases, I went too far in holding that section 30 applies also to mere creditors of the owners of the ship.
>
> In the case in hand the claim of the applicants against the respondents owners of the ship 'Aegis Fame' is for damages only and is not connected with any claim in the ship herself."

I agree with this new approach of the learned trial Judge.

In the *Beneficial Finance Corporation* case the corresponding

* Reported in this Part at p. 333 *ante*.

provision to section 30 was invoked on behalf of claimants who were unregistered mortgagees but its ratio decidendi turned on different issues than those before me. In the *La Blanca* case the applicants seeking an order under section 30 of the corresponding English Act of 1894, were claiming the benefit of a mortgage being the holders in due course of certain bills of exchange.

Examining, therefore, section 30 of our Law in its proper context and within the scope of the law itself, the words "interested person" must be read in conjunction with the words "ship or any share therein" to be found in the said section and they must refer to a person having interest, legal or beneficial in the ship and do not include a person who is a mere creditor seeking to preserve the status quo for the purpose of securing the execution of a judgment to be obtained.

For this purpose and for the purpose of showing also the judicial approach to section 30 by our Courts, so far, it may be useful to refer to two civil appeals, namely, Civil Appeal No. 5518 *The Ship "Georghios C"* v. *Mitsui Sugar Ltd. and another of Japan* (reported in this Part at p. 105 *ante*) and Civil Appeal No. 5535, *Reederei Schulte and Bruns Baltic Schiffahrts* v. *Ismini Shipping Co. Ltd.* (1975) 1 C.L.R. 433. The Full Bench, however, did not consider the exact ambit of section 30, as the matter was not argued before it for the purposes of these appeals. In the "*Georghios C*" case, in view of the clear wording of section 30 and in the light of all relevant considerations in that case the order made which was until further order was varied so as to limit its application for a period of forty days from the date of the judgment and the question to what extent and in what circumstances a creditor, such as the respondents in that case, would be entitled to obtain an order under section 30 was left open, with the observation that our Case Law in that respect was still in the process of developing.

In *Reederei Schulte and Bruns Baltic Schiffahrts* v. *Ismini Shipping Co. Ltd.* (1975) 1 C.L.R. 433, the learned trial Judge discharged the order made under section 30 because of new facts that had come to light since the making of the order which in effect were that the ship in that case had been arrested and released on giving security by its owners to the extent of its value. The learned trial Judge (H.H. Hadjianastassiou, J.) in his elaborate judgment referred to a number of authorities including the *Christiansborg* [1885] 54 L.J.S. 84, *The Soya*

Margareta, [1960] 2 All E.R. 756, the *Mansoor* [1968] 2 Lloyd's Rep. 218 and the *Peruvian Guano Co.* v. *Bockwoldt* [1883] 23 Ch. D. 225. He also referred to the recent case of the *Ionian Bank Ltd.* v. *Couvreur* [1969] 2 All E.R. 651 where the Court of Appeal considered the question of stay of proceedings in England when proceedings had been started also in France.

The underlying principle of all these authorities is that there is nothing, generally speaking, to prevent a litigant from prosecuting a suit in two countries. But of course the situation is different when plaintiffs bring an action in one country and arrest a ship and the defendants in order to get the ship released give security on the understanding that the action is to be continued in the country where it was arrested and afterwards the plaintiffs bring another action and arrest the ship or a sister ship in England which in effect was the gist of the *Christiansborg* case (*supra*) and the *Marinero* [1955] 1 All E.R. 676.

Mr. Justice Hadjianastassiou in the exercise of his discretion and considering that had he been aware of all the facts that he then knew he might have found himself in a different frame of mind discharged the said order, because the facts and circumstances of the case were within the principle formulated in the *Christiansborg* case and because in his view "the giving of the bail is the release of the ship and certainly it means that the ship is released from the effect of the collision, but even if the effect of the guarantee was not equivalent to bail, it may be considered as a private agreement so that the release has been definitely purchased by the guarantee."

On appeal the Court relied on the fact that by an agreement entered into between the parties in Germany and as a result of which the ship, subject matter of that arrest was released after security of D.M. 600,000 had been lodged, the parties had agreed "not to levy at present or at any time the execution against the said ship" and faced with the question of review of the exercise of discretionary judicial powers—reference in that respect was made to three recent decisions of this Court *HadjiAthanassiou* v. *Parperides and others* (1975) 1 C.L.R. 401 and *Karydas Taxi Company Ltd.* v. *Komodikis*, (1975) 1 C.L.R. 321 and *in Re F.* (a minor) [1976] 1 All E.R. 417—it reached the conclusion that it was not a proper case in which the Court should interfere with the decision of the trial Judge. It stressed that the result of lodging the security by agreement between the parties

in Germany in effect enabled the plaintiffs-appellants to have this security in the place of a res which they had arrested. It then, went on to distinguish the case of *Christiansborg* (*supra*) on the ground that the issue in that case was whether a subsequent action filed in England after the ship had been released on bail in the proceedings in Holland, was to be allowed to continue and that the Court was not faced with the same situation, inasmuch as in the *Reederei* case (*supra*) the matter had been settled by express agreement.

The applicants in the instant case have brought an action against the said ship and secured its arrest pending its determination. They took validation proceedings, which means that if the plaintiffs are successful in Holland the arrest will be turned into an arrest under execution. The respondents have not contested that arrest, and in my view, it makes no difference to the nature of the legal proceedings that no bail was given for the release of the ship. After all, bail is the equivalent of the res and if in the instance of giving bail it is highly improper that another action should be allowed to go on against the res in any other place, by analogy, it may be said that once a ship has been arrested in one country and proceedings are proceeded with for its validation, it should be considered as also highly improper to proceed in this country by an application with an order under section 30 of the Merchant Shipping etc. Law. As stated by Lord Denning in the *Ionian Bank Ltd.* v. *Couvreur* [1969] 2 All E.R. 651 at 655, after referring to the *Christiansborg* and the *Marinero* cases (*supra*)–

> "But those were very different. In each case plaintiffs brought an action in Holland and arrested a ship there. The defendants, in order to get the ship released, gave security on the understanding that the action was to be continued in Holland. Afterwards the plaintiffs brought another action and arrested the ship, or a sister ship, in England. The defendants sought to stay the English action and succeeded. It would obviously be oppressive to let the action go on in England. The defendants had already bailed the ship out in Holland. They ought not to be compelled to bail it out again in England. Those cases are very different. There was here only the saisie conservatoire in France. I see nothing oppressive in the English action. I think that the Judge was right in refusing to stay the English action".

If, therefore, it would be obviously oppressive to let the second action go on, why not treat on the same footing and consider as equally oppressive to let an order under section 30 remain undischarged against dealings with the same ship. This remedy, a conservatory measure, at that, is discretionary and should not be granted or should be discharged, if it would cause extreme inconvenience or is superfluous or places the owners of the ship in an unduly disadvantageous position when the ship continues to be under arrest or when after arrest bail or security has been furnished and the ship's release has been purchased. Needless to say that the arrest of the ship does not make the applicants "interested person" within the meaning of section 30 of the law, as claimed in this case. For these reasons as well, the order should be discharged.

In the result, the order made under section 30 on the 22nd January, 1976 is hereby discharged with costs in favour of the respondents. This makes unnecessary the examination of the remaining two grounds relied upon by counsel for the respondents, although it is clear from the wording of the section and what was said in the *Reederei* case (*supra*) by the Full Bench that if an order is made under section 30, it should be made for a specified period.

Order accordingly.