1983 May 27

[TRIANTAFYLLIDES, P., L. LOIZOU, HADJIANASTASSIOU, MALACHTOS, SAVVIDES, JJ.]

PILEFS LIMITED AND OTHERS,

Appellants-Judgment Creditors.

v.

THE COMMERCIAL BANK OF THE NEAR EAST, LTD., OF LONDON.

Respondents-Plaintiffs.

(Civil Appeal No. 5900).

Admiralty—Ship—Creditors' priorities—They are independent proceedings—Mortgagee—Necessaries men—No maritime lien for necessaries—Priority of mortgagees—Lien for necessaries a statutory lien which is attached only after the institution of an action in rem—Action of necessaries men after the mortgage was entered into—Their claim cannot take priority over that of the mortgagee—Whether discharge of one co-surety discharges the other guarantors—Doctrine of marshalling of securities—Applies only where the mortgagor of the two properties is the same person.

This was an appeal against an order* of priorities made by a Judge of this Court, sitting in the first instance, on an application on behalf of the respondents-plaintiffs in Action No. 300/77. The appellants were the plaintiffs judgment-creditors in Actions 364/77, 237/77, 410/77 and 205/77.

The following issues arose for consideration:

(a) Whether proceedings for determining priorities are independent proceedings;

(b) whether a release of one co-surety without the consent of the other amounts to a release of the remaining surety;

* Reported in (1978) 1 C.L.R. 597.

(c) whether the claims of necessaries men take priority over that of a mortgagee; and

(d) whether the equitable doctrine of "marshalling of securities" is applicable in this case.

Held, (1) that proceedings for determining priorities are independent proceedings.

(2) That a release of one co-surety without the consent of the other does not amount to a release of the remaining surety (see section 96 of the Contract Law, Cap. 149).

(3) That necessaries men have no prior equity over mortgagees because a lien for necessaries is a statutory lien and it is not attached until the institution of an action in rem; that since the statutory lien in these actions did not attach until such actions were brought, which was long after the mortgage was entered into, necessaries men have no prior equity over that of a mortgagee.

(4) That the doctrine of marshalling of securities applies only where the mortgagor of the two properties is the same person; that in the present case this doctrine has no application as the two mortgages are not mortgages of one and the same debtor but two separate ones by different debtors.

Appeal dismissed.

Cases referred to:

Commercial Bank of the Near East Ltd. v. The Ship "Pegasus III" (1978) 1 C.L.R. 1;

Lancy v. Duches of Atho [1742] 2 Atk. 444;

Liverpool (No. 2) [1963] P. 64 at p. 84;

Re Plummer, 41 E.R. 552 at pp. 553, 554;

Ex parte Bennett, 2 Atk. 527;

Ex parte Goodman, 3 Mad. 373.

Appeal.

Appeal by the judgment-creditors against the order of a Judge of the Supreme Court of Cyprus (A. Loizou, J.) dated

the 15th December, 1978, (Admiralty Actions Nos. 364/77, 237/77, 410/77 and 205/77) whereby the priorities of the claims against the defendant ship "Pigasos III" were determined in Adm. Action No. 300/77).

M. Vassiliou with *C. Hadjioannou*, for appellants - judgment-creditors in Adm. Act. 237/77.

P. Sarris, for appellant - judgment - creditor in Adm. Act. 364/77.

A. Vladimirou with *A. Neocleous*, for appellants - judgment - creditors in Adm. Act. 410/77 and 205/77.

St. McBride with *E. Constantinidou* (*Mrs.*), for respondents-plaintiffs in Adm. Act. 300/77.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by Mr. Justice Savvides.

SAVVIDES J.: This is an appeal against an order of priorities made by a Judge of this Court sitting in the first instance on an application on behalf of the respondents-plaintiffs in Action 300/77. The appellants are the plaintiffs, judgment-creditors in Actions 364/77, 237/77, 410/77 and 205/77 who were some of the parties who opposed the application of the respondents for determination of priorities alleging that their claims rank in priority to that of the respondents.

The facts of the case are shortly as follows:

The respondents brought an action in rem against the ship "PEGASOS III" as mortgagees under a first preferred mortgage on the said vessel, dated 18th February, 1977. The judgment was entered by consent after the plaintiffs had filed their petition in the action on the 15th October, 1977 and on the same day an order was made for the appraisement and sale of the ship by public auction or private treaty. On the 11th January, 1978, the Marshal applied for directions so that the order for sale be varied and leave be granted to him to sell the ship at less than the appraised value, that is, at the price of C£103,000 which was the highest bid obtained at a second public auction held on the 4th January, 1978. The Marshal's application was

granted on the 13th January, 1978 and the ship was sold for C£103,000 in compliance with the directions of the Court (see, in this respect, the *Commercial Bank of the Near East Ltd. v. The Ship "PEGASOS III"* (1978) 1 C.L.R. p. 1). In the meantime, claims had been made against the ship and the proceeds of the sale were subjected to numerous caveats. On the 18th January, 1978 the respondents filed an application praying for an order of the Court determining the priorities of the several claims against the defendant ship. The application was opposed by plaintiffs in Actions Nos. 364/77, 382/77, 237/77, 410/77, 205/77 and 24/78. Pending the hearing of the application the Court made directions for an interim payment out of the proceeds of the sale of the ship as follows:

"In the circumstances and in view of the total amount realised by the sale of the ship and the urgency of the matter in relation to the payment of the crew who are out of the vessel and their departure from Cyprus should be facilitated the soonest possible, I make an interim order regarding the priorities as follows:

(a) That the Marshal's expenses be paid in respect of all items, except items 9, 10, and 14 for which, items, further consideration will be given in due course.

(b) That the costs for the arrest of the ship incurred in Action No. 203/77 and the costs for the arrest of the ship in Action No. 300/77, be also paid forthwith, in view of their respective priority, upon filing a proper account with the Registrar and the total amounts approved by the Court.

(c) That the claims of the crew, with the exception of the claim of Constantopoulos in respect of which there is the said assignment, be paid forthwith, as per judgments.

With regard to the remaining claims the determination of their respective priorities is deferred until the conclusion of pending litigation and the determination of legal matters raised in respect thereof.

By this order, the application for the payment of the crew's claims in Action No. 206/77 is also disposed of accordingly.

Copy of this order to be included also in the file of Action No. 206/77.

We are left, therefore, with the examination of the remaining issues in Action No. 300/77, the hearing of which is adjourned to the 4th February, 1978, at 9.30 a.m.

In the meantime each party to file what may be described as a notice of opposition to the application, setting out the order of priority claimed for their respective claims."

The items which were left for further consideration under para. (a) of the above directions were: Item (9) on the Marshal's list, a claim for import duty on short landed goods in respect of which it was conceded on behalf of the Customs Authorities at the hearing of this application that they could not be treated part of Marshal's expenses ranking in priority to the mortgage. Item 10, a claim for expenses which were incurred at the request of the Marshal for discharging the cargo and which were finally paid out of the proceeds of the sale of the cargo. Item 14, the departmental charges of the Marshal amounting to C£776.300 mils which the learned trial Judge following the established practice, treated as Marshal's expenses, ranking in priority to any other claim against the defendant ship.

On the 7th March, 1978, an application was filed on behalf of a number of opponents to the applicants' (respondents in this appeal) application for priorities, praying for an order of the Court directing that the alleged mortgage and guarantee and/or any other mortgage and guarantee securing debts be produced and proved in evidence. On the 20th March, 1978, the Court gave its decision dismissing the application on the following grounds:

"As, therefore, we have not reached the stage of hearing the application for priorities, I am of the opinion that I should not exercise, at present, my powers under Rule 113 (supra) and direct, on the strength thereof, the applicants to produce the mortgage or in any way decide for them the manner in which they should establish the priority they claim under the said mortgage. So far, the several claimants rely on affidavits and the records of the proceedings

in the files of their respective actions against the defendant ship or the proceeds of its sale, and they are, moreover, at liberty to adduce any oral or documentary evidence they deem necessary in order to support their claims or in order to disprove the claim of any other party to the proceedings." (see *Commercial Bank etc. v. The Ship "PEGASOS III"* (1978) 1 C.L.R. 375 at pp. 380, 381).

Subsequently, in the course of the hearing of this application, copies of the loan agreement dated 19th November, 1976, the deed of guarantee dated 18th February, 1977, the mortgage deed executed in London on 18th February, 1977 and authenticated by the Consul General of Panama on 25th February, 1977 and a certificate of the General Directory of Public Registry of Panama showing that the mortgage in question was a first mortgage on the defendant ship were produced by consent at the request of counsel for appellants and were marked exhibits 'A', 'B', 'C' and 'E' respectively) Also, the files of the actions against the ship were produced as exhibit 'D'. No oral evidence was adduced at the hearing and none of the affiants was called for cross-examination.

The trial Court after having heard lengthy argument by counsel on behalf of all parties concerned and with all material before it, made an order for priorities as follows:

" (a) Marshal's charges and expenses, as herein above determined.

(b) The applicants' mortgage debt as per the judgment given in their favour on 15th October, 1977, in Action No. 300/77; and

(c) The claims of all opponents which should rank pari passu inter se and all other claims, not coming under categories (a) and (b) above."

It is against such order that the present appeal was lodged.

The grounds of appeal relied upon by counsel for the appellants are the following:

"1. The trial Court has failed to determine whether, in these independent proceedings for the priority of claims against the proceeds of sale of a res (a ship), it can go be-

hind the judgments held by the claimants in order to verify the validity of the claims and establish their precise nature.

2. The trial Court erred in law and/or fact in holding that the mortgage in question is not discharged and/or is valid and legally binding in the premises:

(a) The reasoning behind its finding that there is consideration supporting the mortgage is defective and/or not warranted by the evidence adduced.

(b) The trial Court's finding that there are no co-guarantors is wrong in law and/or fact and/or further the trial Court wrongly failed to decide the effect of the non execution of the guarantee by the co-surety.

(c) The trial Court has failed to determine the effect of the substantial departure from the terms of the loan agreement by the applicants without the surety's and mortgagor's consent.

3. The trial Court was wrong in law and/or fact in holding that assuming that the mortgage is valid and legally binding there are no special circumstances in the present case to justify a departure from the usual order for priorities. In the premises:

(a) The trial Court was wrong in Law in confining the term 'equities' to liens only and holding that claimants in Action No. 237/77 have no prior equity.

(b) The trial Court was wrong in law and/or fact in not taking into account that assuming the mortgage is valid and legally binding, the applicants would definitely be paid either by the principal debtor or the other mortgagor if not satisfied in these proceedings while the opponents will remain unpaid if not satisfied.

4) Any further grounds will be given in due course."

On the date of the hearing, the appeal on behalf of the plaintiffs in Action 205/77 was withdrawn, as no judgment had been obtained in such action. In arguing the case on behalf of the remaining appellants, counsel informed the Court that the appeal was limited to such part of the order directing respon-

dents' claim to be paid in priority to that of the appellants and that the order for priority of payment of Marshal's expenses under paragraph (a) of the order was not disputed.

In dealing with his first ground of appeal counsel for appellants submitted that proceedings for determining priorities are independent proceedings and the Court is not bound by the judgments in favour of parties to such proceedings because, such judgments constitute, as regards the other parties, a res inter alias acta and not a res judicata, and, therefore, in such proceedings the nature of such claims falls to be decided.

It is clear from the record of the proceedings that the learned trial Judge both in his decision of the 20th March ((1978) 1 C.L.R. 375) and in his final decision in the application for priorities had treated the proceedings as independent proceedings. He had this to say in this respect:

> "No-one disagrees with the argument that these proceedings for the determination of priorities are independent proceedings. In England provision is usually made in the judgment for priorities to be reserved. There are of course instances, as in the case of the master and crew suing for wages and the only other plaintiffs are merely necessariesmen and there are no other claims pending and no caveats against release and payment, in which case the priority of the plaintiff is clearly unassailable and payment out may be ordered. When, however, priorities are reserved the matter has to be determined in Court by the Judge on a motion for determination of priorities and payment out. At the hearing of the motion any other party may be heard in opposition, provided he has either entered a caveat against release and payment or has intervened in the action, in which the motion is brought on for hearing."

The learned trial Judge, then, went on to consider all matters raised by counsel for appellants touching the validity and the alleged discharge of the mortgage and also whether such mortgage had priority over the claims of the appellants. The fact that the learned trial Judge has dealt with such matters appears in his elaborate judgment (see (1978) 1 C.L.R. 597) and is also manifested by the allegations of the appellants on the second ground of appeal which are directed against the findings of the

trial Court on the validity of the mortgage, lack of consideration, material breach of the agreement etc.

The first ground of appeal, therefore, fails.

In dealing with part (a) of ground 2 of the appeal, counsel for appellants submitted that the trial Court was wrong in finding that there was consideration for the mortgage. He contended that the consideration for which the guarantee was granted has neither been alleged nor proved. The guarantee, counsel submitted, was given for monies to be advanced to the principal debtor and the liability of the guarantor extended to so much of the monies as would be advanced to the principal debtor and in the present case, no evidence to that effect was adduced. He concluded that in the circumstances there is lack of consideration for the guarantee and mortgage.

The learned trial Judge in dealing with such ground, bearing in mind the evidence before him and in particular the contents of the mortgage deed "exhibit 'C'", read together with the loan agreement "exhibit 'A'", came to the conclusion that there existed consideration for the guarantee and the mortgage. Under paragraph 2(A) of "exhibit 'C'", the guarantee secured by the mortgage deed was given "IN CONSIDERATION of the premises and for the purposes of securing the payment of the Outstanding Indebtedness and to secure the performance and observance of and compliance with the covenants terms and conditions herein and the other Security Documents, the owner hereby executes and constitutes a first and absolute mortgage on the Ship ..... " The learned trial Judge concluded as follows on the question of indebtedness:

> "Moreover, the petition as drafted discloses the existence of a mortgage and its registration with the Panamanian authorities, which is not disputed, and that it was validly executed in Panama and there was an outstanding indebtedness and default on the part of the owners of the defendant ship, the mortgagors, which constituted a cause of action and which entitled them to the proceedings in rem against the ship on that mortgage."

We have not been persuaded by counsel for appellants that the findings of the trial Court on this issue were wrong or not warranted by the evidence before it.

In dealing with parts (b) and (c) of ground 2, counsel contended that -

(a) The trial Court failed to decide the effect of the non-execution of a guarantee and mortgage by a co-surety under the provision of paragraph 2(A) (ii) of the loan agreement which provided that in addition to the guarantee of the owners of "PEGASOS III" the loan was to be secured by the guarantee of Stravon Compania Naviera S.A. supported by a First Mortgage on the whole of the vessel "ANASTASIA" as an additional guarantee.

(b) The trial Court failed to decide the effect of substantial departure from the terms of the loan agreement without the surety's consent.

The respondents, counsel submitted, by accepting only one mortgage, contrary to an express term of the loan agreement that the loan was to be secured by two mortgages, they have departed from the terms of the agreement without the knowledge and consent of the surety. Such departure was a material one and, therefore, the surety is released from his liability under the mortgage. The fact that the co-surety was released and/or the fact that a guarantee was not executed by him, in the circumstances of the present case, releases also the surety.

The non-execution of the guarantee by the co-surety, counsel submitted, may be inferred from the fact that the respondents, though repeatedly asked to produce such guarantee, refused to do so.

The learned trial Judge in answering the points raised by counsel for appellants and on which parts (b) and (c) of ground 2 are based had this to say in his judgment:

> "The other two points raised by learned counsel are also sufficiently answered by the allegations in the pleading and the contents of the loan agreement, the mortgage and the guarantee, Exhibits 'A', 'B' and 'C', as well as by the fact that the mortgage was registered as such as per Exhibit 'E'. If anything, clause 2 of the guarantee shows that there is no question of any co-surety, the guarantee not being a joint guarantee with anybody else and even if there had been a co-surety a discharge of such surety or any

facility given to him would not and could not discharge the guarantors under clause 2 of the guarantee, Exhibit 'B'. This disposes of the claim of the opponents that the mortgage has been discharged."

Counsel for appellants has expounded at some length on his argument in support of parts (b) and (c) of ground 2. We find it unnecessary to go into detail with all points argued by him.

As to his contention of the creation of joint guarantee we find ourselves unable to agree with him on such contention. It is clear from paragraph 2(A) of the loan agreement, exhibit 'A', that what was contemplated by the principal debtor and the respondents was that the principal debtor was to secure the debt by providing two independent guarantees and mortgages on two different ships. The first guarantee, exhibit 'B' was provided by the owner of the defendant ship who signed such guarantee as sole guarantor and not jointly with any other guarantor. We, therefore, agree with the finding of the learned trial Judge that no question of joint guarantee and co-suretyship arises in the present case. But assuming that it was a case of co-suretyship the learned trial Judge, very rightly, found that discharge of a co-surety could not discharge the other guarantors in view of clause 2 of the guarantee signed by the owners of the defendant ship.

Clause 2 of exhibit 'B' reads as follows:

"(2) The Bank may at all times without exonerating the undersigned grant to the Principal or to any other person any time or indulgence or renew any bills, promisory notes or other negotiable or non-negotiable instruments or securities or give up deal with exchange vary realise release or abstain from perfecting or enforcing any guarantees liens bills notes mortgages securities or other rights which the Bank may now or hereafter have from or against the Principal or any other person; determine vary or increase any credit or facilities to or the terms or conditions in respect of any transaction with the Principal in any manner whatever or compound with discharge release or vary the liability of the Principal or any other person or concur in accepting or varying any compromise arrangement or settlement or omit to claim or enforce payment of any

dividend or composition when and in such manner as the Bank may think fit. Notwithstanding any of the foregoing this Guarantee shall remain binding upon the undersigned as if originally liable as principal debtor for the moneys and liabilities payment whereof is hereby guaranteed."

Furthermore, whereas under the English Law of Contract a release of one co-surety without the consent of the other amounts to a release of the remaining surety, under our law such release has no such effect. Section 96 of our Contract Law, Cap. 149, provides as follows:

"Where there are co-sureties, a release by the creditor of one of them does not discharge the others; neither does it free the surety so released from his responsibility to the other sureties."

Such provision corresponds verbatim to section 138 of the Indian Contract Law. In the notes to such section in Pollock and Mulla, Indian Contract and Specific Relief Acts, 9th Edition at p. 635, we read the following:

"Release of one of several sureties. - This section is a necessary consequence of the principle laid down in s. 44, and must be taken as a deliberate extension of a rule which in the common law is limited to the case of co-sureties contracting severally and not jointly. Only where co-sureties have contracted jointly - that is, where the joint suretyship of the others was part of the consideration for the contract of each - does a release of one of them by the creditor discharge the others. 'The release of a surety discharges a joint co-surety, but not a co-surety severally bound'.

The present section appears to abolish this distinction."

We, therefore, find that parts (b) and (c) of ground 2, fail.

The contention of counsel for appellants under ground 3(a) was that the claimants in Action 237/77 had a prior equity to the mortgage and that the trial Court wrongly concluded to the contrary. The necessaries in the said action having been supplied on the 20th October, 1976, about five months before

the attachment of the mortgage deeds, had, counsel contended, a prior equity over the mortgage. The learned trial Judge in dealing with this issue, had this to say:

"But necessariesmen have no prior equity because a lien for necessaries is a statutory lien and it is not attached until the institution of an action in rem. In *Halsbury's Laws of England* (supra) volume 35 p. 736 para. 1211, it is stated:

'Statutory lien. A statutory lien attaches when property is arrested in an action in rem in the Admiralty jurisdiction of the High Court'.

And at p. 792, para. 1221 it is stated:

'1221. *Necessaries.* The statutory lien for necessaries as a general rule ranks after maritime liens but takes priority over a master's lien for wages and disbursements when supplied by the order of a master who is part owner of the ship. It is postponed to a mortgage, to execution creditors at whose instance the sheriff has seized the res before the necessariesman has arrested it, and to the solicitor's costs in defending an action brought against the ship before the necessaries were supplied. Where there are several claims for necessaries they rank equally and are paid pro rata, provided the holder of the lien is not guilty of laches in prosecuting his claim, because when a ship is sold the court holds the property not only for the first plaintiff, but for all creditors of the same class who assert their claims before an unconditional decree is pronounced. A claimant who supplies necessaries to a ship which is already under arrest obtains no right to priority over other claimants for necessaries, unless the necessaries which he supplies are supplied with the sanction of the court'.

On the aforesaid authorities the lien of the judgment creditors in action No. 237/77 and in fact any other statutory lien did not attach until such action was brought, which was long after the mortgage was entered into. (See *The Two Ellens* [1872] L.R. 4 P.C.

161). This argument therefore also fails."

We agree with the conclusions of the trial Court on this issue. In the result, ground 3(a) fails.

In arguing ground 3(b), counsel for the appellants submitted that assuming that the mortgage is valid and legally binding and that there was compliance with the loan agreement and an additional guarantee was given by the owners of vessel "Anastasia" coupled with a first mortgage on such ship, the respondent could, if not satisfied in these proceedings, resort to the other guarantee coupled with the mortgage of vessel "Anastasia", whereas there was no other fund available to the appellants. "They are sure to get their money from the principal debtor" counsel suggested "and they are not losing anything by not receiving their claim from these proceedings because they still have a claim against two other people. They will get their money from the mortgage of the ship 'Anastasia' and the fourth security is the guarantee of Stravon Compania Naviera S.A. These securities must be presumed to have been executed if it is accepted that the mortgage was valid ab initio". Counsel said that such submission was based on equity the principles of which are applicable in the present case as the respondents have two funds to satisfy their claim and they could resort to the other mortgage.

Such equitable doctrine, known as the doctrine of "marshalling of securities" was expounded as early as 1742 by Lord Hardwicke in *Lancy* v. *Duches of Atho* (1742) 2 Atk. 444, as follows:

> "It is the constant equity of this Court, that if a creditor has two funds, he shall take his satisfaction out of that fund upon which another creditor has no lien."

The doctrine, however, of marshalling applies only where the mortgagor of the two properties is the same person. The Courts will never, where A and B have both mortgaged properties to C and B has also mortgaged his property to D, compel C to resort primarily to A. (see *Ex p. Kendall* (1811) 17 Ves. 514).

In the *Liverpool No.* 2 [1963] P. 64 it was held at p. 84:

"It is a well known rule in bankruptcy that a creditor having a security against the estate of the debtor must either surrender his security and prove for the whole debt, or value his security and prove for the balance, *but it has never been the law that a creditor having a security against a third party for his debt must give credit for that when proving in the bankruptcy:* see, for instance, *In the matter of John Plummer and William Wilson* (1841) 1 Ph. 56, 59".

(the underlining is ours).

In *Re Plummer* which was followed in the above case (see 41 E.R. 552 at pp. 553, 554) the Lord Chancellor (Lyndhurst) had this to say:

"Upon these facts the question submitted to this Court is, whether George Joad, being a separate as well as joint creditor of the bankrupts, is entitled to prove his whole debt against their separate estates; or whether he is entitled to prove only for the balance which shall remain due to him after realising the security which he holds upon their joint estate.

Now, what are the principles applicable to cases of this kind? If a creditor of a bankrupt holds a security on part of the bankrupt's estate, he is not entitled to prove his debt under the commission, without giving up or realising his security. For the principle of the bankrupt laws is, that all creditors are to be put on an equal footing, and, therefore, if a creditor chooses to prove under the commission, he must sell or surrender whatever property he holds belonging to the bankrupt; but, if he has a security on the estate of a third person, that principle does not apply: he is in that case entitled to prove for the whole amount of his debt, and also to realise the security, provided he does not altogether receive more than 20s. in the pound.

That is the ground on which the principle is established; it is unnecessary to cite authorities for it, as it is too clearly settled to be disputed; but I may mention *Ex parte Bennett* (2 Atk. 527), *Ex parte Parr* (1 Rose 76), and *Ex parte Goodman* (3 Mad. 373), in which it has been laid down.

The next point is this. In administration under bankruptcy, the joint estate and separate estate are considered as distinct estates: and accordingly it has been held that a joint creditor, having a security upon the separate estate, is entitled to prove against the joint estate without giving up his security; on the ground that it is a different estate. That was the principle upon which *Ex parte Peacock* proceeded, and that case was decided first by Sir J. Leach and afterwards by Lord Eldon, and has since been followed in *Ex parte Bowden* (1 Dea. & Ch. 135). Now, this case is merely the converse of that, and the same principle applies to it.

On these grounds I am of opinion that the creditor is entitled to prove his whole debt, without giving up his security, that security being no part of the estate under administration; and, therefore, that the order of the Court below was right."

In the present case the doctrine of marshalling the securities has no application as the two mortgages are not mortgages of one and the same debtor but two separate ones by different debtors. Therefore, ground 3(b) of this appeal fails.

We agree with the learned trial Judge that in the circumstances of the present case the order for priorities should be, as found by him, as follows:

(a) Marshal's charges and expenses.

(b) The applicants' mortgage debt as per the judgment given in their favour on 15th October, 1977 in Action No. 300/77; and

(c) The claims of all opponents which should rank pari passu inter se and all other claims, not coming under categories (a) and (b) above.

In the result, this appeal fails and is hereby dismissed with costs in favour of respondents.

Appeal dismissed. Order for costs in favour of respondent.