1983 December 22

[SAVVIDES, J.]

CYPRUS TELECOMMUNICATION AUTHORITY,
Plaintiffs,

v.

THE SHIP "MARIA" NOW LYING IN LIMASSOL HARBOUR.
Defendant.

(*Admiralty Action No.* 188/82).

*Admiralty—Jurisdiction—Action in rem in respect of radio-maritime services rendered to defendant ship—No maritime lien in respect of such services given to plaintiffs enabling them to invoke admiralty jurisdiction in an action in rem under s.*3(3) *of the Administration of Justice Act,* 1956—*Nor can the jurisdiction under section* 3(4) *of the same Act be invoked because plaintiffs failed to discharge the burden of proving that at the time of the institution of the action the ship was beneficially owned as respects all shares therein by either of the two companies for whose account the services were rendered—Section* 1(1)(*f*) *of the Act of* 1956 *not applicable —No action in rem lies against the defendant ship.*

By means of an action in rem the plaintiffs claimed against the defendant ship the sum of C£1,335.366 mils in respect of radio-maritime services rendered to the defendant ship during the months of January to June, 1982 at the request of the owners and/or the master of the ship and/or his servants or agents. The defendant ship was since the 26th of February, 1982 under arrest in Limassol port by virtue of a warrant of arrest in Admiralty Action 59/82.

By leave of the Court the plaintiffs in Admiralty Action 59/82 under which the ship was arrested, were allowed to join these proceedings as interveners for the purpose of protecting their interest in the res. By their answers both the defendant ship and the interveners raised a preliminary objection to the effect that the Court had no jurisdiction to hear the present action on the ground that the claim did not fall within section 1 of the

Administration of Justice Act, 1956, the provisions of which were applicable in Cyprus. They also denied that such services were rendered at the request of the ship but at the request of third persons, namely, N. and J. Vlasopoulos and/or Vlasopoulos Shipping Enterprises S.A. of Piraeus, Greece and/or their agents and not on behalf of the defendant ship.

Counsel for the plaintiffs submitted that the Court had jurisdiction by virtue of section 1(1)(h) and (m)* and 3(1) (2) (3) and (4)** of the Administration of Justice Act, 1956.

Held, (1) that though the words of para. (h) of section 1(1) of the Administration of Justice Act, 1956 are wide enough their effect is to make such paragraph applicable to claims whether in contract or tort arising out of any agreement relating to the carriage of goods in a ship and not to the provision of radio-maritime service as in the present case.

(2) That subsections (1) and (2) of the Administration of Justice Act, 1956 are not applicable; that for sub-section (3) to apply there must exist a maritime lien or other charge on a ship; that persons who equip or provide a ship with necessaries do not acquire any lien over the ship and cannot institute proceedings in rem against the ship; that the law does not give to the plaintiffs a maritime lien in respect of the services rendered to enable them to invoke the Admiralty jurisdiction of this Court in an action "in rem" under sub-section (3) of section 3 of the Administration of Justice Act, 1956.

(3) That for the jurisdiction of the Court to be invoked under section 3(4) of the Administration of Justice Act, 1956 the plaintiffs had to prove that the ship at the time when the action was brought was beneficially owned as respects all shares therein by the person who would be liable on the claim when the cause of action arose; that once the question of ownership of the ship was in issue the burden was upon the plaintiffs to prove that at the time of the institution of the action the ship was beneficially owned as respects all shares therein by either of the two companies for whose account the services were rendered, and the plaintiffs could not rely on an information supplied by the

* Section 1(1)(h) and (m) is quoted at p. 831 post.

** Section 3(1)(2)(3)(4) is quoted at pp. 831-832 post.

radio operator of the ship and which may be deemed as hearsay evidence to prove ownership of the ship; that once the plaintiffs have failed to discharge such burden, they cannot invoke the jurisdiction of this Court against the defendant ship by an action in rem under sub-section (4) of section 3 of the Act of 1956; and that, therefore, the action must fail as no action in rem lies against the defendant ship.

Action dismissed.

Cases referred to:

The St. Elefterio [1957] 2 All E.R. 374 at p. 375, 376;

The Alexander, 1 W. Rob. 346;

The Sophie, 1 W. Rob. 368;

The Contessa de Freqeville, Lush. 329;

The Riga [1872] L.R. 3 A & E 516 at pp. 519, 522;

Victoria Machinery Depot Co. Ltd. v. *S.S. "Canada" and SS. "Triumph"* [1913] 15 Ex. C.R. 136;

Altershat Contractors Equipment Rentals v. *SS. "Protostatis"* (1968) D.L.R. (2d) 174 at p. 178;

The Mogileff [1921] P. 236;

The Heinrich Bjorn [1885] L.R. 10 P.D.44; [1886] 11 A.C. 270 (H.L.);

The Two Ellens (*Johnson* v. *Black*) [1871-1873] Law Rep. Vol. 4 at p. 169;

Paschalis v. *The Ship "Tania Maria"* (1975) 1 C.L.R. 162 at p. 176, 179, 180, 187.

Admiralty action.

Admiralty action for C£1,335.366 mils in respect of radio-maritime services rendered by the plaintiffs to the defendant ship.

C. Hjiloannou, for the plaintiffs.

M. Eliades with *A. Skordis*, for the defendant ship.

M. Montanios with *P. Panayi* (*Miss*), for the interveners.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The plaintiffs are the Cyprus Telecommunications Authority, of Nicosia and by this action in rem they claim against the defendant ship

the sum of C£1,335.366 mils in respect of radio-maritime services rendered to the defendant ship during the months of January to June, 1982 at the request of the owners and/or the master of the respondent ship and/or his servants and/or agents. According to their petition, such services were necessay for the maintenance of the said ship and were rendered on the express and/or implied promise that such services would be paid off. The amount claimed was converted into Cyprus Pounds from Gold Francs on the basis of which the charge for the services was made. Such Gold Francs is the international Gold Franc which is taken as measure for the payment of the said services and its value in Cyprus Pounds is fixed by the plaintiffs per year by taking into account the value of the U.S. Dollar to Gold Franc.

Such services, according to the statements of account produced, were rendered during the period 26th January, 1982 to 7th June, 1982 whilst the defendant ship was lying in the port of Larnaca and later in the port of Limassol. The defendant ship was, since the 26th of February, 1982, under arrest in the Limassol port, by virtue of a warrant of arrest issued in Admiralty Action 59/82. The amount of the services rendered till the date of the arrest of the ship was C£106.477 mils and the balance was for services rendered after such date and amounting to £1,228.899 mils.

By leave of the Court the plaintiffs in Admiralty Action 59/82 under which the ship was arrested, were allowed to join these proceedings as interveners for the purpose of protecting their interest in the res. By their answers both the defendant ship and the interveners raised a preliminary objection to the effect that the Court has no jurisdiction to hear the present action on the ground that the claim does not fall within section 1 of the Administration of Justice Act, 1956, the provisions of which are applicable in Cyprus. They also deny that such services were rendered at the request of the ship, but at the request of third persons, namely, N. and J. Vlasopoulos and/or Vlasopoulos Shipping Enterprises S.A. of Piraeus, Greece and/or their agents and not on behalf of the defendant ship. They further allege that once the defendant ship was under arrest, such services were not necessary for the maintenance of the defendant ship, and furthermore, in the answer of the defendant ship,

it is alleged that such expenses could not be a burden on the ship but they should have formed part of Marshal's expenses as same were made, or charged after the issue of the warrant of arrest.

The only witness who testified in this case is P.W.1, an employee of the plaintiffs in the radio-maritime accounts. Such witness produced these statements of account in respect of each month from January to June, 1982, setting therein the particulars of the services rendered. According to his evidence, such accounts were issued in the name of N. & J. Vlasopoullos and or Shipping Enterprises, S.A. as owners of the defendant ship at the request of the radio operator of the ship. They were debited accordingly in the name of the said companies. Although nothing was paid when the first statement of accoun for the month of January was sent to the address given to them, they continued rendering such services till June, 1982 and they ceased to do so when they came to know that the ship was under arrest since February, 1982. According to the evidence of this witness in cross-examination, as soon as the plaintiffs were notified that the ship was under arrest on the 5th June, they sent a telex to the Marchant Shipping Department that the ship was owing the amount claimed, and requested their assistance for the collection of this amount. No reply was sent by the Marshal to such request for assistance.

In addressing the Court counsel for plaintiffs submitted that such services were rendered to the ship, irrespective of who were the owners, and that there was no dispute as to the amount of such services or to the fact that such services were rendered. He submitted that such services were rendered for the maintenance and operation of the ship and, therefore, they come within the general provision of sub-section (1) of s.1 of the Administration of Justice Act, 1956. It is an agreement, counsel submitted, relating to the use of the ship and taking into consideration the provisions of Cap. 293, the Merchant Shiping (Wireless Telegraphy) Law, which makes it obligatory for a ship over 1600 tons to have satisfactory telephone installation and that such installation should be in order and usable, such services are incidental to the activities covered by section 1(1)(m) of the Administration of Justice Act, 1956.

Counsel for the defendant ship contended that this action

could not be brought in rem against the defendant ship, as the claim does not fall within the provisions of section 1(1)(h) or (m) of the Administration of Justice Act, 1956 and that plaintiff could not invoke such provisions to derive jurisdiction in the matter. This is not a claim, counsel submitted, relating to the use of the defendant ship under section 1(1)(h). In any event, they do not fall within sub-section (m) which relates to goods or materials supplied to a ship for her operation or maintenance. Furthermore, counsel contended, there is no evidence before the Court that such services were necessary either for the maintenance or operation of the defendant ship. The plaintiff rendered such services after a request from the operator of the wireless of the defendant ship on behalf of the owners and they were debited in the name of the person on whose behalf such services were requested. The only action that could be brought in respect of such services could have been an action in personam against the owners of the defendant ship and not against the ship in rem. In conclusion, he submitted, that plaintiff had failed to prove that such services were renderd to the owners of the defendant ship or that they were rendered upon their express instructions. The persons to whom exhibit 1 refers are not the onwers of the ship and in debiting the accounts to the name of the persons in whose name they were debited, they acted, according to their evidence on what they had been told, as to who the owners were, without having made any effort to ascertain whether such persons were the owners or not.

Counsel for the intervener also contended that the present action in not maintenable as it does not fall within the jurisdiction of the Court in actions in rem as defined by section 3 of the Administration of Justice Act, 1956. This is not one of the cases mentioned in sub-section (1) of section 1. Therefore, once such claim does not fall within any of the provisions of section 1(1) and in particular section 1(1)(h) and (m) on which counsel for plaintiffs sought to rely, the admiralty jurisdiction of this Court could only be invoked by an action in personam and not by an action in rem.

Under the provisions of the Courts of Justice Law 1960 (Law 14/1960) the law applicable by our Supreme Court in the exercise of its Admiralty jurisdiction is the law which was applied

by the High Court of Justice in England in the exercise of its Admiralty jurisdiction on the day preceding the Independence Day (15th August, 1960) as might be modified by any law of the Republic. In view of the fact that no legislation to that effect has been enacted in Cyprus, eversince, the law applicable is to be found in the provisions of the English Administration of Justice Act, 1956. The Admiralty jurisdiction of the High Court is set out in section 1(1) of the Act which enumerates under paragraphs (a) to (s) the questions or claims in respect of which the Admiralty jurisdiction of the High Court may be invoked. Material for the present action are paragraphs (h) and (m), on which counsel for plaintiffs sought to rely, which read as follows:

"(h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship;

. . . . . .

(m) any claim in respect of goods or materials supplied to a ship for her operation or maintenance".

The mode of exercise of Admiralty jurisdiction, is given in section 3 of the Act, the material part of which for the purposes of the present action is as follows:

"3(1) Subject to the provisions of the next following section, the Admiralty jurisdiction of the High Court, the Liverpool Court of Passage ..... may in all cases be invoked by an action in personam.

(2) The Admiralty jurisdiction of the High Court may in the cases mentioned in paragraphs (a) to (c) and (s) of subsection (1) of section 1 of this Act be invoked by an action in rem against the ship or property in question.

(3) In any case in which there is a maritime lien or other charge on any ship, aircraft or other property of the amount claimed, the Admiralty jurisdiction of the High Court, the Liverpool Court of Passage ..... may be invoked by an action in rem against that ship, aircraft or property.

(4) In the case of any such claim as is mentioned in paragraphs (d) to (r) of subsection (1) of section 1 of this

Act, being a claim arising in connection with a ship, where the person who would be liable on the claim in an action in personam was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship, the Admiralty jurisdiction of the High Court and (where there is such jurisdiction) the Admiralty jurisdiction of the Liverpool Court of Passage ..... may (whether the claim gives rise to a maritime lien on the ship or not) be invoked by an action in rem against—

(a) that ship, if at the time when the action is brought it is beneficially owned as respects all the shares therein by that person; or

(b) any other ship which, at the time when the action is brought, is beneficially owned as aforesaid".

Though the words of para. (h) are wide enough their effect is to make such paragraph applicable to claims whether in contract or tort arising out of any agreement relating to the carriage of goods in a ship and not to the provision of radio-maritime services as in the present case. In *The St. Elefterio (Schwarz & Co. (Grain) Ltd.*, v. *St. Elefterio ex Arion (Owners)*) [1957] 2 All E.R. 374, at p. 375, Willmer, J., in construing section 1(1)(h) of the Act had this to say:

"It is argued, first, that s.1(1)(h) is by its terms narrower than the corresponding provision contained in s. 22(1)(a)(xii) of the Supreme Court of Judicature (Consolidation) Act, 1925, because whereas the former Act made specific provision for jurisdiction in tort in respect of goods carried, the paragraph in the new Act makes no corresponding provision. So far as that point goes I do not feel able to accede to the defendants' argument. In my judgment the words of s.1(1)(h) of the Act of 1956, which I agree are materially different from the corresponding clause in the Act of 1925, are nevertheless wide enough to cover claims whether in contract or in tort arising out of any agreement relating to the carriage of goods in a ship".

By his petition, counsel for plaintiffs, alleges that such services were necessary for the maintenance of the defendant ship. In his address counsel contended that the claim is of a nature maintenable in the Admiralty jurisdiction of the High

Court as it is in the nature of "necessaries" consisting of maritime services necessary for the maintenance of the ship.

Paragraph (m) of section 1(1) of the Administration of Justice Act 1956 does not make any mention of the word "necessaries". Such word used to appear in section 6 of the Admiralty Act, 1840, which was repealed, and which provided that the Court could, in certain cases, adjudicate, on claims for services and "necessaries" supplied to any foreign ship or sea going vessel, although not on the high seas. The word "necessaries" is no longer used in the English Administration of Justice Act 1956 sections 1–8 or to the County Courts Act 1959 section 56 in which provision is made as to the Admiralty jurisdiction of the High Court and the County Courts. There is a line of authorities of the English Courts as to the meaning of the word "necessaries" which though no longer in use, may still be useful in determining whether goods or materials were supplied to a ship "for her operation or maintenance".

In the case of *The Alexander* (1 W. Rob. 346) Dr. Lushington observed:

> "And here I may observe, that when the recent statute conferred upon this Court a jurisdiction in these matters, or rather perhaps revived an ancient jurisdiction long prohibited, it never was nor could be intended to alter the law, but merely to give a new remedy which was rendered necessary in the peculiar cases of foreign ships, and is confined to that necessity. I will state in one sentence what I apprehend to be the condition necessarily imposed upon the Court. It is this: that the Court must not make owners of a foreign ship liable for the supply of any articles which, under similar circumstances, if resident here, they were not to be responsible in a Court of common law".

In *The Sophie* (1 W. Rob. 368) the Court said:

> "It is absolutely necessary, when the owner is abroad, to prove not only that the articles supplied, were necessaries, but that they were actually wanting for the service of the ship at the time when they were made. The technical meaning of the term 'necessaries' I have already explained, as strictly applying to anchors, cables, rigging and matters of that description; at the same time I consider myself

at liberty to enlarge the term 'necessaries', so as to include money expended upon necessaries; but in such cases I must be satisfied that the necessaries were wanting, and that the money was bona fide advanced for the purpose of procuring them".

In *The Contessa de Fregeville* (Lush. 329) Dr. Lushington said:

"On the other hand, it has been urged that the term 'necessaries' ought to receive the same liberal construction as in cases of bottomry. This construction would include every requisite for a voyage, for there are many articles allowed to be covered by a bottomry bond, which would be very difficult to comprise within any ordinary meaning attached to the word 'necessaries'. Unless enabled by superior authority, I cannot venture to adopt so comprehensive a meaning for this enactment. It appears to me that the most convenient course I can follow is to take an intermediate one, to make a distinction between the ship and the voyage; I shall hold that 'necessaries' means primarily indispensable repairs,—anchors, cables, sails, when immediately necessary; and also provisions: but on the other hand, does not include things required for the voyage as contradistinguished from necessaries for the ship".

In *The Riga* [1872] L.R. 3 A & E 516 Sir Robert Phillimore said at pp. 519, 522:

"This is a motion to reject a petition in a cause of necessaries instituted by a London shipbroker against the Norwegian vessel Riga and her freight. The ground of the motion is, that the items set forth by the plaintiff in the petition do not fall under the legal category of 'necessaries', according to the construction put upon that term by my predecessor in this Court.....I must come to the conclusion that there is no distinction as to necessaries between the cases in which by the common law a master has been holden to bind his owner and suits for necessaries instituted in the Court.....I am unable to draw any solid distinction (especially since the last statute (Admiralty Court Act 1840 (section 6)) between necessaries for the ship and necessaries for the voyage; and I shall follow the doctrine

of the common law as laid down by the high authority of Lord Tenterden in the case of *Webster* v. *Seekamp* ((1821), 4 B. & Ald. 352). In that case he says: 'The general rule is, that the master may bind his owners for necessary repairs done or supplies provided for the ship. It was contended at the trial that this liability of the owners was confined to what was absolutely necessary. I think that rule too narrow, for it would be extremely difficult to decide, and often impossible, in many cases, what is absolutely necessary. If, however, the jury are to inquire only what is necessary, there is no better rule to ascertain that than by considering what a prudent man, if present, would do under circumstances in which the agent, in his absence, is called upon to act. I am of opinion that whatever is fit and proper for the service on which a vessel is engaged whatever the owner of the vessel, as a prudent man, would have ordered if present at the time, comes within the meaning of the term 'necessaries', as applied to those repairs done or things provided for the ship by the order of the master, for which the owners are liable' ".

That decision was applied in Canada in the Admiralty Court in British Columbia in the case of *Victoria Machinery Depot Co. Ltd.* v. *SS. "Canada" and SS. "Triumph"* [1913], 15 Ex.C.R. 136, when Mr. Justice Martin, as Local Judge in Admiralty, found that the alterations in the structure and equipment of a vessel in order to change her from one style of fishing craft into another, are necessaries within the meaning of section 5 of the Admiralty Court Act of 1861. In support of this he quoted the rule laid down by Lord Tenderden and approved in the decision of Sir Robert Phillimore in the case of *The Riga.*

In the Canadian case of *Aldershot Contractors Equipment Rentals* v. *SS. "Protostatis"* (1968) 67 D.L.R. (2d) 174, Wells, D.J.A., at page 178 had this to say about "necessaries',:

"The Act of 1934 in Canada is not restrictive when it describes 'necessaries' in the words 'any claim for necessaries supplied to a ship', and in view of the subsequent juridical decisions, which all tended to liberalize the treatment of the expanded jurisdiction given by the Act of 1861,

I think it is quite clear that anything that is necessary for the purposes of the ship may come under the class of necessaries".

Finally in *The Mogileff* [1921] P. 236, Hill, J., expressed the opinion that necessaries supplied to a ship must be of such nature that without them, she could never have been prepared for or prosecuted the intended voyage. He had this to say at p. 241:

"Various items of disbursements since the arrest in August, 1920, are added. It may be a question whether this last group is recoverable as necessaries or as costs, and as to some of the other items, for instance, moneys paid for insurance, there is certainly a question whether they are necessaries supplied to a ship within the meaning of the Admiralty Court Acts. The details of the claim are for the registrar and merchants. But it is apparent that a large proportion of the items in the plaintiffs' claim clearly relate to necessaries supplied to the ship, and that, without them, she could never have been prepared for or prosecuted the intended voyage. Of such a kind in principle are the alterations and repairs, and outfit, wages, stores, provisions, coals, port charges, Suez Canal dues, and so forth, all necessary either for fitting out the ship or for working her. They are in the nature of necessaries supplied to the ship, within the meaning of the Admiralty Court Acts, 1840, s. 6, and 1861, s. 5.

It is well settled that moneys advanced for the procuring of necessaries stand on the same footing as necessaries supplied. See, to go no further back, *The Riga*; *The Heinrich Bjorn*".

Leaving aside for the moment the question whether the services rendered are of such nature as to fall within the provision of section 1(1)(m) of the 1956 Act, I shall proceed to examine whether, assuming that such services are cognizable in the Admiralty jurisdiction of this Court, an Admiralty action "in rem" could be brought against the defendant ship.

The mode in which the Admiralty jurisdiction of the Court may be invoked is set out in section 3 of the Action of 1956,

to which reference has already been made. The material parts of section 3, in relation to the present action, are sub-sections (1)-(4). Sub-section (1) applies to actions in personam and sub-section (2) only in the cases mentioned in paragraphs (a) to (c) and (s) of sub-section (1) of section 1 of the Act. Therefore, what is left to be examined is whether the claim falls within the ambit of sub-sections (3) and (4) of section 3. For sub-section (3) to apply, there must exist a maritime lien or other charge on a ship, and for sub-section (4) it has to be proved that the res was the property of the debtor at the time of the institution of the action.

It is well settled by a long line of decided cases that persons who equip or provide a ship with necessaries do not acquire any lien over the ship and cannot institute proceedings in rem against the ship.

In *The Heinrich Bjorn* (*Northcote* v. *Owners of the Heinrich Bjorn*) [1886] 11 A.C. 270 (H.L.) which was an action in rem for necessaries, against a foreign ship, *Lord Watson* had this to say at p. 278:

> "I do not think it necessary to refer to authorities for the purpose of establishing that by the law of England persons who equip or provide necessaries to a ship in an English port have no preference over other creditors, and have no lien upon the ship itself for recovery of their demands. The law upon that point is clear".

and at p. 279 in dealing with a submission by counsel for the appellants that it must be inferred that the legislature meant that a right of lien should also be recognised in the case of a claim for necessaries, he expressed his opinion as follows:

> "In my opinion it is impossible to derive that inference from the terms of the clause except by assuming, as Dr. Lushington seems to have done in the case of *The Flecha*[1], that the main object of the Act was to assimilate the law of England to 'the general law of the maritime states of Europe'.

As I have already indicated, that appears to me to be

1. 1 Ecc. & Ad (Spinks), 430

an assumption inconsistent alike with the title and preamble of the Act and with the character of its provisions. Many foreign states, whose systems of jurisprudence are based on the civil law, admit a maritime lien for necessaries, but the ground upon which the Courts of England have declined to recognise such a lien is not, in my opinion, that it is opposed to some rule or principle peculiar to English law. but that it is contrary to the general principles of the law merchant. The law of Scotland is to a great extent founded upon the civil law; yet in the case of *Wood* v. *Hamilton*[1] the Court of Session held that no hypothec existed for repairs or furnishings in a home port, being of opinion that the question ought to be determined not according to the civil law, but, as in England, upon general principles of commercial law, and the judgment was, on appeal, affirmed by this House. To my mind it is scarcely conceivable that the legislature, if it had been their intention to assimilate our commercial law to that of the foreign states referred to by Dr. Lushington in the case of The *Flecha*, should have endeavoured to effect that object by confining the assimilation to suits instituted in the English Court of Admiralty".

As to the difference between the position of a creditor who has a proper maritime lien and that of a creditor in an unsecured claim the judgment at p. 277 reads as follows:

"The position of a creditor who has a proper maritime lien differs from that of a creditor in an unsecured claim in this respect,—that the former, unless he has forfeited the right by his own laches, can proceed against the ship notwithstanding any change in her ownership, whereas the latter cannot have an action in rem unless at the time of its institution the res is the property of his debtor. In the present case there was a change in the ownership of the Henrich Bjorn between March 1882 and the time when this suit was instituted. Accordingly it is not matter of dispute that the action must be dismissed, if the appellants have not a maritime lien for the amount of their advances, which attached to and followed the ship, from and after the time when these advances were made".

1. 3 Paton, Sc. App. Cas. 148.

In the case of *The Two Ellens* (*Johnson* v. *Black*) Law Rep. Vol. 4 (1871-1873) the Privy Council rejected the contention that when the legislature gave a proceeding in rem then, at the same time, it created a maritime lien, and held that the respondent, the Assignee of the Mortgage, was entitled to have his mortgage debt satisfied before the appellants were paid the amount of their claim. As to the nature of a maritime lien, the judgment reads as follows at page 169 (per Mellish, L.J.)—

> "A Maritime lien must be something which adheres to the Ship from the time that the facts happened which gave the Maritime lien, and then continues binding on the ship until it is discharged, either by being satisfied or from the laches of the owner, or in any other way by which, by law, it may be discharged. It commences and there it continues binding on the ship until it comes to an end".

Fry, L.J. in delivering the judgment of the Court of Appeal in *Henrich Bjorn* (supra) [1885] L.R., 10 P.D. 44 which was affirmed by the House of Lords [1886] 11 A.C. 270 said at p. 60:

> "It appears to us that upon the whole the current of authorities is against the existence of the lien; but the most important result, in our opinion, is the negative one that there has been no settled or uniform current of authority or of practice in the Admiralty Court in favour of the lien, and that the question is therefore properly open for decision on principle.
>
> In our opinion the two statutes of 1840 and 1861 ought (notwithstanding the observations of Mellish, L.J., in *The Two Ellens*) to be construed as in pari materia, and we think that the decision of the Privy Council in that case lends confirmation to the conclusion at which we arrive, namely, that whilst the statute of 1840 has enabled the material man to enforce his claim in the Admiralty Court, and as one means has given him a right to arrest the ship, it has given him no maritime lien and consequently no right against the ship till action brought".

As to the provision in section 3(4) of the Administration of Justice Act, 1956, in *The St. Elefterio* [1957] 2 All E.R. 374, at pp. 376-377, it was judicially construed as follows:

"In my judgment that proposition rests on a misconception of the purpose and meaning of s.3(4). As it appears to me, that sub-section, so far from being a restrictive provision, is a sub-section introduced for the purpose of enlarging the Admiralty jurisdiction of the Court. As I view it, its purpose is to confer for the first time in England the right to arrest either the ship in respect of which the cause of action is alleged to have arisen or any other ship in the same ownership. That is an entirely new right so far as the law of England is concerned, although it previously existed in other countries including Scotland. The reason for conferring that right now is for the purpose of bringing this country into line with other countries as a result of an international convention. In my judgment the purpose of the words relied on by counsel for the defendants, that is to say the words 'the person who would be liable on the claim in an action in personam', is to identify the person or persons whose ship or ships may be arrested in relation to this new right (if I may so express it) of arresting a sister ship. The words used, it will be observed, are 'the person who would be liable' not 'the person who is liable', and it seems to me, bearing in mind the purpose of the Act, that the natural construction of those quite simple words is, 'the person who would be liable on the assumption that the action succeeds'. This action might or might not succeed if it were brought in personam. That would depend on the view which the Court ultimately took of the various contentions raised by counsel for the defendants. But clearly, if the action did succeed, the person or persons who would be liable would be the owner or owners of the steamship St. Elefterio. In such circumstances, in the absence of any suggestion that the action is frivolous or vexatious, I am satisfied that the plaintiffs are entitled to bring it and to have it tried, and that, whether or not their claim turns out to be a good one, they are entitled to assert that claim by proceeding in rem".

Section 3 of the Act of 1956 was considered by our Supreme Court in the case of *Paschalis* v. *The Ship Tania Maria* (1975) 1 C.L.R. 162 in which Hadjianastassiou, J., after reviewing the relevant case law on the matter, had this to say at p. 176:

"Having regard to the contention of counsel on behalf

of the defendant ship that the plaintiff's cause of action gave him no maritime lien and no right in rem, I think I ought to state that the maritime liens recognised by English Law are those in respect of bottomry and respondentia bonds, salvage of property, seamen wages and damage, but a maritime lien has been held not to exist in respect of towage or necessaries".

Also at pp. 179–180:

"Having had the occasion to go through the two claims of the plaintiff referred to in exhibits (a) and (b), I have no doubt at all, that those expenses were not disbursements made by the master of the ship in order to make himself liable for, in respect of necessary things for the ship for the purpose of navigation. But, in any event, even if I am wrong, then in the light of the authorities I have quoted earlier, the law does not give to the plaintiff a maritime lien in respect of necessaries for a foreign ship because he cannot have an action in rem, unless at the time of its institution the res is the property of his debtor in this case. As I said earlier, there was a change in the ownership of the 'Constantis Fotinos' long before the institution of this action on the 15th January, 1973 and, therefore, the action must be dismissed regarding those two claims, once the plaintiff has not a maritime lien for the amounts of his advances which could be attached to and follow the ship from and after the time when those advances were made.

I think I must make it quite clear that the position of a creditor who has a proper maritime lien differs from that of a creditor in an insecure claim in this respect, that the former, unless he has forfeited the right by his own laches, can proceed against the ship notwithstanding any change in her ownership".

and concluded as follows at page 187:

"I, therefore, feel bound to conclude that once the plaintiff did not acquire any maritime lien for the amount of his advance to the master, which attached to and followed the ship from and after the time when this advance was made, he cannot have an action in rem once at the time of its

institution the res was no longer the property of his debtor, having been sold to the owners of Rosade Lines of Beirut before this action".

In the light of the above authorities it is clear that the law does not give to the plaintiff a maritime lien in respect of the services rendered to enable him to invoke the Admiralty jurisdiction of this Court in an action "in rem" under sub-section (3) of section 3 of the Administration of Justice Act, 1956.

For the jurisdiction of the Court to be invoked under section 3(4) the plaintiff had to prove that the ship at the time when the action was brought was beneficially owned as respects all shares therein by the person who would be liable on the claim when the cause of action arose.

According to the evidence adduced by the plaintiffs and the invoices produced the services were rendered at the request of the radio operator for the account of the persons whose names appear in the invoices, as the owners of the defendant ship. In the invoice for March, 1982, the owner is described as Vlassopoulos Shipping Enterprises S.A. and in the rest, J. & N. Vlassopoulos Ltd. The defendant and the interveners denied that the ship belonged to anyone of the said companies and alleged that the owner was Laertis Shipping Enterprises Special Shipping S.A. who mortgaged the ship to the interveners. Once the question of ownership of the ship is in issue and in particular in view of the fact that as it appears from the invoices the plaintiff whether Vlassopoulos Shipping Enterprises S.A. (whose name appears on the one invoice) or J. & N. Vlassopoulos Ltd. (whose name appears on the remaining invoices) was the owner of the defendant ship, the burden was upon the plaintiffs to prove that at the time of the institution of the action the ship was beneficially owned as respects all shares therein by either of the two companies for whose account the services were rendered, and the plaintiffs could not rely on an information supplied by the radio operator of the ship and which may be deemed as hearsay evidence to prove ownership of the ship. Once the plaintiffs have failed to discharge such burden, they cannot invoke the jurisdiction of this Court against the defendant ship by an action in rem under sub-section (4) of section 3 of the Act of 1856.

In the result plaintiffs' action fails as no action in rem lies against the defendant ship in the circumstances of the case and for the reasons I have tried to explain

Having found as above, I find it unnecessary to conclude as to whether services of the nature rendered by the plaintiffs to the defendant ship fall within the provision of paragraph (m) of section 1(1) of the Act

For the above reasons the action is hereby dismissed with costs in favour of the defendant and the interveners

Costs to be assessed by the Registrar

Action dismissed with costs in favour of defendant and interveners