

1988 March 29

(TRIANAFYLLIDES, P. A. LOIZOY, MALACHTOS, DEMETRIADES,
STYLIANIDES, JJ.)

CYPRUS TELECOMMUNICATIONS AUTHORITY,

Appellants-Plaintiffs,

v.

THE SHIP «MARIA» NOW LYING IN LIMASSOL HARBOUR,

Respondent-Defendant.

(Civil Appeal No.6671).

Admiralty — Action in rem — Necessaries, claim for — In order to bring the case within section 3(4) of the Administration of Justice Act, 1956 the plaintiff should prove who are the owners of the ship.

5 *Admiralty — Necessaries — The Administration of Justice Act, 1956, section 1(1)(m) — Operation or maintenance of ship — What are considered as necessaries — Radio maritime service to ship lying in port under arrest — In the circumstances the claim is not a claim for necessaries.*

10 The action of the appellants for money due in respect of radio maritime services rendered to the defendant ship, while she was under arrest at the port of Limassol, was dismissed by a Judge of this Court on the ground that the plaintiffs-appellants failed to prove ownership of the ship.

Hence this appeal.

15 Held, dismissing the appeal: (1) 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, unless it comes within the ambit of section 3(4) of the Act of 1956 under which proof of ownership is necessary to invoke the jurisdiction of the Court. In
20 this case the appellants failed to prove ownership.

(2) This Court should proceed and decide whether the services in question fall within section 1(1) (m) of the same Act, i.e. whether they were supplied «for her operation or maintenance». Though in accordance with section 4 of the Merchant Shipping (Wireless
25 Telegraphy) Law, Cap. 293, it is obligatory for all ships of 1600 tons gross tonnage or upwards to have a radio telegraph installation, a

distinction must clearly be made between such requirements for the purpose of the safety of the ship such as for emitting distress calls, or relating to navigation movements and other needs of a ship, or for obtaining official meteorological reports etc., and generally for communications for the purposes of the ship's operation and maintenance, and between the use of the ship's communications equipment for other purposes not related to the ship's operation or maintenance, such as private or personal calls of the crew, as it is the present case of a ship under arrest, which cannot transform such service into a necessary service.

Appeal dismissed with costs.

Cases referred to:

The Alexander (I.W. Rob 346),

The Riga [1872] 26 L.T. 202;

The NR Gosfabrick (1856) 166 E.R. 1160;

The Sophie, 166 E.R. 610;

Christie v. The Karu (1927) 27 SRNSW 443.

Appeal.

Appeal by plaintiffs against the judgment of a Judge of the Supreme Court of Cyprus (Savvides, J.) dated the 22nd December, 1983 (Admiralty Action No. 188/82) whereby their action against the defendant ship for radio maritime services rendered to the defendant Ship, while under arrest in Limassol harbour was dismissed.

A.C. Hadjioannou, for the appellants.

M. Eliades with A. Skordis, for the respondent.

M. Montanios with S. Panayi (Miss), for the respondents interveners.

Cur. adv. vult.

TRIANTAFYLLIDES P.: The judgment of the Court will be delivered by H.H. A. Loizou, J.:

A. LOIZOU J.: This is an appeal from the judgment of a judge of this Court whereby the action of the appellant/plaintiff Authority against the respondent/defendant ship in respect of radio maritime services rendered to the defendant ship, while under arrest in the Limassol harbour, was dismissed with costs.

As the factual background to this appeal appears extensively in the judgment of the learned trial Judge (reported in (1983)1 C.L.R. 825), it is not necessary for us to repeat it. We shall only deal, therefore, with the effect of the judgment.

5 It was held therein by the learned trial Judge, without, however, deciding whether the services in question were of such nature as to fall within provisions of section 1(1) (m) of the Administration of Justice Act 1956, on the assumption that such services were within
10 the ambit of such section, that the plaintiff upon whom the burden was 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, could not invoke the jurisdiction of this Court against the defendant ship by an action in rem under subsection (4) of section
15 3 of the Act of 1956. This was so because they had failed to discharge such burden, as they could not rely to prove ownership on information supplied by the radio operator of the ship as to the names of its owners (whose names also appeared on the invoices produced) since such was considered as hearsay evidence. The
20 defendant and the interveners on the other hand, alleged that the owners were another company which had mortgaged the ship to the interveners.

The main argument of the appellant Authority was that the trial Court wrongly dismissed the action on the issue of jurisdiction
25 which in fact had not been raised in the pleadings and in respect of which it was wrongly decided that the present appellant had an obligation to prove who the owners of the defendant ship were. It was contended that they had in fact been informed as to who the owners were by the Master of the ship who is the authorized agent
30 of the shipowners, therefore the trial Court wrongly held that they failed to prove ownership. But irrespective of this, it was further contended that such services had in fact been rendered at the request of the Master of the ship, through the radio operator, who is the authorized agent of the shipowners.

35 Finally it was submitted that in any event the radio maritime services in question came within the meaning of section 1(1)m of the 1956 Act being services which can be termed as necessaries in the sense of being supplied to the ship «for her operation or maintenance» as defined therein.

On the issue of jurisdiction extensive reference has been made by the learned trial Judge to the law applicable, so we need not repeat it again. Suffice it for us to say 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 unless it comes within the ambit of section 3(4) of the Act of 1956 under which proof of ownership is necessary to invoke the jurisdiction of the Court. This the appellant Authority failed to do and we find that the findings of the learned trial Judge on this point are duly warranted by the evidence adduced. On the one hand the evidence of the radio operator being hearsay is of no probative value, but even if it were not so, the appellant has failed to establish the actual owner of the ship, since this is what proof of ownership means.

We agree therefore with the learned trial Judge that the appellant Authority having failed to discharge the burden cast upon them, cannot invoke the jurisdiction of this Court against the respondent ship by an action in rem under section 3(4) of the Act of 1956.

Though the next issue was not decided by the trial Court, we feel that in the circumstances we should proceed to consider as to whether the radio services supplied fall within the provisions of section 1(1) (m), that is whether they were so supplied «for her operation or maintenance».

The learned trial Judge has extensively referred to numerous authorities on what is regarded as «necessaries» and what is not.

As held in «*The Alexander*» (l. W. Rob. 346), the onus of proof is on the person making such advances to prove that they were necessary for the use, operation and maintenance of the ship.

The general rule is that necessaries are deemed to be things fit and proper for the service of the ship such as a prudent owner would have ordered. See «*The Riga*» (1872) 26 L. T. 202.

The following have inter alia been considered as necessaries: repairs to a ship, anchors, cables, rigging, provisions for crew on board (butcher's meat), (*The NR Gosfabrick* (1958) 166 ER 1160); stevedoring, copper sheathing, coals, money expended upon necessaries though in such cases the Court must be satisfied that the necessaries were wanting and that the money was

advanced bona fide for the purpose of procuring them, - (*The Sophie*, 166 ER 610).

- In considering what goods or services supplied to a ship are «necessaries» so as to enable the person supplying them to maintain an action in rem in the Admiralty Court it is not essential that such goods or services should have been supplied in some sudden emergency or to meet some urgent need but the test is what a prudent owner would have considered reasonable in the circumstances. (*Christie v. The Karu* (1927) 27 SRNSW 443).
- 10 Of course it has correctly been so argued by the appellant Authority, in accordance with section 4 of the Merchant Shipping (Wireless Telegraphy) Law, Cap. 293, it is obligatory for all ships of 1600 tons gross tonnage or upwards to have a radio telegraph installation. Also the English Merchant Shipping (Radio) Rules, 15 1965, impose particular standards with regard to radio telegraph or radio telephone equipment to be carried by ships depending on their size and function. However, we believe, a distinction must clearly be made between such requirements for the purpose of the safety of the ship, such as for emitting distress calls, or relating to 20 navigation movements and other needs of a ship, or for obtaining official meteorological reports etc., and generally for communications for the purposes of the ship's operation and maintenance, and between the use of the ship's communications equipment for other purposes not related to the ship's operation 25 or maintenance, such as private or personal calls of the crew, as it is the present case of a ship under arrest, which cannot transform such service into a necessary service. From the authorities it does not transpire and we are unable to reach a conclusion that the claim in question is a claim for necessaries as we consider that it 30 does not come within the provisions of section 1(1)(m).

For all the above reasons we have come to the conclusion that the learned trial Judge rightly decided as he did. This appeal therefore fails and is hereby dismissed with costs.

Appeal dismissed with costs