

[VASSILIADES, J.]

COSTAS STYLIANOU,

Plaintiff,

v.

1. THE FISHING TRAWLER "NARKISSOS",
2. VASSILIS YANNOUDAKIS, OWNER OF THE SAID FISHING TRAWLER "NARKISSOS".
3. VASSILIS YANNOUDAKIS,

Defendants,

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(Admiralty Action No. 3/63)

Admiralty—Seizure and sale of ship in execution—Proceeds from sale contested between several creditors—Determination of the priorities—Foreign claimants—Law governing parties' substantive rights as distinguished from priorities.

Admiralty—Supreme Court of Cyprus—Jurisdiction—Law applicable in admiralty jurisdiction is still the English law in force on the 16th August, 1960; and not the French or the Ottoman law.

This is a consolidated proceeding for priorities in Admiralty Actions 3/63 and 4/63, by the Naftikon Apomachikon Tameion (Seamen's Pension Fund: known as N.A.T.); and by the Agrotiki Trapeza tis Ellados (The Agricultural Bank of Greece: known as A.T.E.), contested between four creditors and concerning an amount of £2,951.750 mils, being the net proceeds from the seizure and sale of the m/v "Narkissos" a fishing trawler, under writ No. 1/63 in Action No. 4/63.

M/v "Narkissos" a fishing trawler, was found in financial difficulties while in Famagusta harbour, in February, 1963.

Held, (1) on the question of jurisdiction:

(1) It is common ground, I believe, that this Court derives its jurisdiction and powers from the Administration of Justice (Miscellaneous Provisions) Law, 1964 (No. 33/1964); and in particular from section 9 (a) which, as regards admiralty jurisdiction, brings into play the provisions of section 19 (a) and section 29 (2) (a) of the Courts of Justice Law, 1960 (No. 14/1960).

(2) This Court as the Admiralty Court of the Republic, is vested with the jurisdiction and powers of the High Court of Cyprus, as they existed on the 9th July, 1964, when Law 33

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of 1964 came into force (*vide* section 9 (a)) ; and this proceeding having been transferred here, by operation of section 18 of the Law in question, has to be determined accordingly.

(3) The admiralty jurisdiction of the High Court was expressly, specifically and exclusively, in my opinion, provided for, in section 29 (2) (a) of the Courts of Justice Law, 1960 ; which provides that the law applicable by that Court, was the law "applied by the High Court of Justice in England, in the exercise of its admiralty jurisdiction, on the day preceding Independence Day", as it might be "modified by any law of the Republic". This is the law which I think that I must apply in the present case.

(II) *on the merits :*

(1) I am inclined to the view that, in the circumstances of this case, the claim of the execution-creditor must rank first on the distributable amount from the execution of the writ.

(2) Next after the claim of the second suitor, I think that the claim of the third suitor has a clear priority over that of the first and fourth suitors.

(3) Between the claims of the first and the fourth suitors, that of the latter must stand in priority to the claim of the former. The first suitor is an unsecured creditor, who in this case extended credit to the ship's master, knowing of the mortgage-charges. Such knowledge was inferred in this case, from the surrounding circumstances. If he shut his eyes to the risk of such charges existing against the ship at her Registry, this should only affect his position ; not that of the mortgagee, who lent money for equipment now sold as part of the ship, and who had a mortgage for such loans, duly registered.

(4) In the result, the claims of these four judgment-creditors for priority in the satisfaction of the respective judgments out of the net proceeds from the sale of the ship in question, are, in the circumstances and for the reasons stated above, decided to rank in the following order ; first, the judgment in action 4/63 in favour of the second suitor ; second, the judgment in action 6/63 in favour of the third suitor ; third judgment in action 7/63 in favour of the fourth suitor ; and last, the judgment in action 3/63 in favour of the first suitor. There will be an order accordingly, with directions to the Chief Registrar to pay out of the amount brought into Court, the sum required to satisfy the amount payable under the writ in action

4/63, in favour of the second suitor ; out of the balance, to make payment in satisfaction of the judgment in action 6/63 in favour of the third suitor; and to pay the balance against the claim of the fourth suitor under the judgment in action 7/63.

(5) For the large part of the mortgagee's claim which shall still remain unpaid, as well as for the claim of the first suitor under the judgment in action 3/63, these creditors may, of course, pursue their other remedies.

(6) As to costs, I take the view that in the circumstances of this case, each party should bear their own costs in the priority proceedings. There will be no order for costs therein.

Judgment in terms. No order for costs in the priority proceedings.

Priority Proceedings.

Priority proceedings between four creditors (plaintiffs-judgment creditors in 4 separate admiralty actions) concerning an amount of £2,951.750 mils, being the net proceeds from the seizure and sale of the m.v. "Narkissos", a fishing trawler, under Writ No. 1/63, in admiralty action No. 4/63.

A. Tziros, for the claimants (first party in the consolidated proceedings).

M. Houry, for the execution-creditor (second party).

Cur. adv. vult.

The facts sufficiently appear in the following judgment of :

VASSILIADES, J.: M.v. "Narkissos", a fishing trawler, was found in financial difficulties while in Famagusta harbour, in February, 1963. Her master and part-owner, Vassilis Yannoudakis, (the second defendant herein) was in charge of the vessel, as she was lying idle in the harbour for lack of funds.

On February, 14th, 1963, the above-named plaintiff (hereinafter referred to as the first suitor) filed action 3/63 in the Admiralty Court against the ship, her owners, and her master, claiming £1,401.858 mils for goods and materials supplied to the ship for "her operation and/or maintenance", or "disbursements" alleged to have been made by the plaintiff as agent, for the ship's account ; and admitted in writing by her master, two days before the filing of the action, *viz.* on 12.2.63.

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Together with his action, this first suitor applied for the arrest of the ship to prevent her from sailing away and hold her as security for the satisfaction of his claim. The ship was thus arrested on the following day, February 15th ; and a day later, February 16th, the parties were before the Court, represented by their respective advocates, who agreed that matters be left in that position, until the writ of summons was returnable a month later, on March 16, 1963.

On February 21st, 1963, *vis.* a week after the filing of the first action (3/63) another creditor (hereinafter referred to as the second suitor) filed Admiralty Action 4/63 against the same defendants as debtors and the first suitor as their guarantor, claiming £466.930 mils for goods and materials supplied to the ship through her said master, according to an acknowledgment in writing dated the 14th December, 1962, guaranteed by the first suitor, on the 4th February, 1963. The writ in this second action was made returnable on the 30th March, 1963.

On March 16, the parties in the first action appeared in Court, through their advocates, and applied for pleadings under r. 82, agreeing at the same time, that the arrest of the ship be maintained.

About two weeks later, on March 30th, 1963, the parties were again before the Court in connection with the second action. Mr. Mavronicolas, who was then acting for the defendants in both actions, admitted the money-claims in the two actions and submitted to judgments, in the presence of the ship's master, as follows :

- (a) In the first action (3/63) judgment for plaintiff against all defendants, for £1,401.858 mils, with legal interest from judgment, and costs ; and
- (b) In the second action (4/63) judgment against the ship and her master for £466.930 mils, with costs ; reserving plaintiff's claim against the guarantor.

It was further agreed by the parties, that the arrest of the ship be maintained for three more weeks, pending steps in execution. Consent-judgments with costs were entered accordingly in both actions on March 30, 1963.

On April 10, 1963 the second suitor, now a judgment-creditor in action 4/63, applied for a writ of execution ; and had one issued on the same date, for seizure and appraisalment according to the rules ; and for the sale of

the vessel in due course, in execution of the judgment in that action (No. 4/63). Similar writ for execution was obtained on the same day (10.4.63) in action 3/63 and went to the Marshal of the Admiralty Court, following the first writ (Nos. 1/63 and 2/63) respectively).

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In the meanwhile on March 14, 1963, a third action (No. 6/63) was filed against the ship and her owners, by Mr. Tziros on behalf of the Seamen's Pension Fund (Naftikon Apomachikon Tameion ; known as N.A.T.; hereinafter referred to as the third suitor) with a claim of £1,927 contributions to the Fund in arrear, payable to the plaintiffs in respect of seamen's salaries. And on the following day, March 15, 1963, a fourth action (No. 7/63) was filed against these defendants by Mr. Tziros again, on behalf of the Rural Bank of Greece (Agrotiki Trapeza tis Ellados ; known as A.T.E.; hereinafter referred to as the fourth suitor) with a claim of £11,582 payable on three mortgages on the ship. In both these actions there was also a claim for the sale of the ship in satisfaction.

On April 20, 1963, when both writs were returnable, the ship's master appeared, and admitting the claims on behalf of all the defendants, submitted to judgments as claimed, with an order in each case, for the seizure and sale of the ship, in satisfaction. Judgments were entered accordingly on the same day (20.4.63) ; office-copies of these judgments were admitted in the present proceedings, and are found on the record as exhibits 5 and 6 respectively.

On receipt of the two writs of execution referred to above (No. 1/63 in action 4/63 ; and No. 2/63 in action 3/63) on April 11, 1963, with directions to proceed with execution as provided in the relative legislation, the Marshal of this Court had the ship duly seized ; and arranged for her appraisalment. This was done in the presence of the ship's master, by two qualified men, holding official posts ; one as the Harbour Master and Senior Pilot, and the other as the Port Officer and Pilot, Famagusta. Official copies of the Certificate of Appraisalment dated 20th April, 1963, signed by the Marshal and the two officers in question, were filed in due course, and show the appraised value of the ship at £2,500 (not including the radio-telephone, claimed by the fitters as their own property under a written contract).

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In the sheet accompanying the appraisal, the following particulars are, I think, relevant in connection with these proceedings :—

The ship was built in Canea, Crete, in 1950.

She was registered in that port under No. 64 ; and at all material times she still carried that same registration. Her international markings are S.X.F.G.

Gross Registered Tonnage (G.R.T.) : 62.25.

Nett Registered Tonnage (N.R.T.) : 39.

Cost of vessel when new : £6,000.

Equipped with new 180 H.P. engine in 1950, at the cost of £7,000.

Equipped with cold storage.

Equipped with echo sounder and radio telephone, in 1955.

Last slipped for repairs, overhauling and painting in November, 1962.

The detailed official inventory of over eighty items, prepared and checked when the vessel was first arrested on the 14th February, 1963, constitutes a fuller description of the property seized and sold in execution for whom it may concern, in this proceeding. And while on this point, I may add that, after an abortive sale on the 20th July, 1963, the trawler "Narkissos" was sold by the Court's Marshal, in Famagusta harbour on the 28th August, 1963, by public auction (duly advertised, both here and in Greece) for the sum of £3,210 and was handed over to the buyer in due course. Representatives of all parties concerned, attended the sale, having been granted all reasonable credit facilities in case any one of them wished to buy the ship at the auction. After deducting the expenses incidental to the seizure and sale, amounting to £258.250 mils (including £210 for guarding the vessel from the date of seizure in April, till sale and delivery to the buyer) the Marshal paid into Court on the 5th September, 1963, the balance of **£2,951.750 mils**, accompanied with all relative vouchers and other documents.

This is the amount contested between the four creditors in question, in the present proceeding for priorities, which originated from the seizure of the ship referred to above under writ No. 1/63 in action 4/63.

Soon after seizure, *i.e.* on April 16, 1963, Mr. Tziros filed claim-*notices* in both executions, under rr. 177-182 of the Cyprus Admiralty Rules on behalf of his clients, the third and fourth suitors, whose actions (No. 6/63 and No. 7/63 respectively) had already been filed about a month earlier. The third suitor's notice claimed priority by virtue of maritime lien for the payment of £1,927 contributions to the seamen's fund in respect of seamen's salaries (as claimed in action 6/63); and the fourth suitor's notice claimed priority as mortgagee, by virtue of three maritime mortgages amounting to a total of £11,582 (as claimed in action 7/63).

Both these claims came up for hearing on May 4, 1963, in both executions (No 1/63 in action 4/63; and No. 2 in action 3/63). In the meantime, as already stated, the third and fourth suitors had become judgment-creditors in their respective actions (No. 6/63 and No. 7/63) as from the 20th April, 1963.

The ship's master representing all the judgment-debtors, admitted, for what it may be worth, the priority claims of the third and fourth suitors; but Mr. Houry on behalf of the execution-creditors strongly contested them. To facilitate matters, all interested parties, after a hearing in Court agreed on that day (May 4, 1963) to an order directing—

- (a) consolidation of the proceedings regarding priorities, the claimants having the conduct of the proceedings as the first party;
- (b) exchange of pleadings and filing of affidavits in support, or in opposition of the priority-claims; and
- (c) authorizing the Marshal to accept credit-buyers with a Bank-guarantee, to facilitate the sale.

On counsel's suggestion, all parties agreed in Court, as the record shows, that the sale be proceeded with, for whom it may concern, and the proceeds be brought into Court for distribution according to the parties' priorities.

The position resulting from the written pleadings filed in the consolidated proceeding, may be summarized as follows:

the first party, consisting of the third and fourth suitors (The N.A.T. and the A.T.E. respectively) joined front in the hands of Mr. Tziros, and claim priority

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over the second party, consisting of the first and second suitors, who likewise joined front in the hands of Mr. Houry. The first party's claim for such priority is based on the allegation that the third suitor (the N.A.T.) is entitled to a maritime lien for the satisfaction of a privileged claim under the law of the ship's flag ; and the fourth suitor (the A.T.E.) is entitled to priority over unsecured creditors, as mortgagee of the ship and her apparel, by virtue of mortgages duly registered under the law of the ship's flag. As between themselves, the mortgagee (the A.T.E.) admits the priority of the maritime lien of the third suitor (the N.A.T.).

The second party deny the alleged maritime lien and mortgages claimed by the first party ; they deny that the latter have ever acquired any rights in rem over the ship and her apparel ; and they claim priority over the first party as execution-creditors ranking according to their respective writs.

The evidence adduced by the first party consists of---

- (i) an affidavit sworn by Mr. Tziros on July 22, 1963, with the three mortgages in favour of the fourth suitor (the A.T.E.) referred to, in paragraph 5 of the affidavit attached thereto, marked : 1(a) ; 1(b) ; 1(c) ; 2(a) ; 2(b) ; 2(c) ; 3(a) ; 3(b) ; 3(c) ;
- (ii) an affidavit sworn in Pireus on October 16, 1963, by Mr. Ioannis Vassiliou Lycouris, an advocate of Areios Pagos (the Highest Court in Greece) stating the Greek law on the subject of maritime liens and mortgages.
- (iii) the oral evidence of another Greek lawyer, Mr. Regas Tsimbris, specialising in commercial law, who gave evidence at the hearing, on the Greek law governing the matter ; and produced the texts of the relative enactments and legislative provisions, received in evidence as exhibits 1, 2, 3 and 4.
- (iv) office-copies of the judgments in actions 6/63 and 7/63 herein, received as exhibits 5 and 6 respectively.

The second party in the consolidated proceeding, adduced no evidence ; and closed their case on the material on

record. At the opening of the trial, Mr. Houry made admissions as to the ship's flag, at all material times ; and as to her registration and Greek ownership.

The case for the first party, as presented by Mr. Tziros, may be summarised as follows :—The creditors' rights are governed by the law of the ship's flag. In this case the Greek law, as proved in evidence. Priorities in execution, are governed by domestic law (*lex fori*). The third suitor (the N.A.T.) is clearly entitled, counsel submitted, to a maritime lien under Greek law ; and the fourth suitor (the A.T.E.) is entitled to rank as a mortgagee, duly registered. The domestic law governing priorities, is the law applicable under section 29 of the Courts of Justice Law, 1960 (Law 14/1960) ; that is the English law in force at the time of the establishment of the Republic (16.8.60) subject to any constitutional provisions which may be bearing on the matter. In the present case, counsel submitted, the third suitor (the N.A.T.) as holder of a maritime lien, ranks before the mortgagee (the A.T.E.) ; and the latter ranks before the unsecured creditors.

The case for the second party, as presented by Mr. Houry, is that section 29 of the Courts of Justice Law, 1960, must be read and construed subject to the provisions in Article 188 of the Constitution saving the law in force in Cyprus as at the time of the establishment of the Republic (16.8.60). Part of the law so saved, counsel submitted, is the Ottoman Maritime Code, in so far as it does not conflict with any provisions of the Merchant Shipping Act, 1894. (Section 33(1) (b) of Cap. 8 at p. 32 in Volume I of the Laws of Cyprus 1959 Ed.). Section 5 of the Ottoman Maritime Code, counsel argued, sets the priorities of "privileged" creditors ; and this is the domestic law (*the lex fori*) governing priorities in the present case. Under this law, Mr. Houry submitted, the creditors constituting the second party rank in priority before those of the first party.

On the evidence before me, I find *the relevant facts* as follows :—

M.v. Narkissos, a fishing trawler, of about 62 tons gross registered tonnage, was built in Greece, in 1950, and was registered under No. 64, in the port of Canca (Greece) in that same year, as a Greek ship, the property of a general partnership in Canca, trading under the name Vassilis Yannoudakis & Co. This firm was managed by defendant Vassilis Yannoudakis a Greek subject (one of the defendants in these actions) who was also the principal part-owner and master of the ship in question, at all material times.

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The ownership of the vessel is not in dispute in this litigation ; and for the sake of convenience Vassilis Yannoudakis may be considered, for the purposes of this judgment, as representing at all material times, the owners of the ship.

To equip the vessel with the necessary engine, the owners contracted a loan of \$18,000 U.S.A. dollars from the Agricultural Bank of Greece (the fourth suitor herein ; the A.T.E.) in December, 1948, while the ship was still being built. The loan was contracted under the terms and conditions in exhibit 1 (a) (a formal document consisting of 6 typed pages) the relevant provisions of which were, *inter alia*, that the amount was to be turned into a bank-credit in U.S.A. dollars to be used exclusively for the purchase of a new marine engine of 175-200 H.P. (cl. 2, p. 2) ; that it was to be repaid in seven equal annual instalments of 2,765 dollars each, including interest @ 5% p.a., the first payment on 30.11.1950 (cl. 4, p. 2) ; that vessel and equipment were to be kept duly insured for the benefit of the creditor (cl. 7, p.3) ; and that for purposes of greater security, the creditor-Bank would be entitled to register a mortgage on the ship and a pledge on the equipment thereof, according to the relative maritime legislation, as security for the payment of any amount payable under the loan in question (cl. 10, p. 4).

The ship was in fact duly fitted with a new Alpha (Burmeister and Wain) 180 H.P. engine, in 1950, at the cost of £7,000 ; the engine with which the ship was registered as a motor vessel, and went to sea in 1950 ; and the engine with which "Narkissos" was sold in Famagusta harbour by the Court's Marshal on 28.8.63.

The mortgage of the ship and the pledge of her equipment were denied by Mr. Houry ; but on the evidence before me, and particularly on the certificate for the registration of such mortgage, produced in support of the claim of the fourth suitor, in action 7/63, and marked exhibit "C" therein, duly pleaded for the first party in the consolidated proceeding, and confirmed by the mortgager's admission and by the judgment in exhibit 6 herein, I find as a fact that the ship and her equipment were duly mortgaged to the fourth suitor, under Greek law as alleged.

Moreover, from the fact that the ship was duly mortgaged ; that the mortgage was duly registered ; and that under the law of the ship's flag (as proved in evidence by witness Tsimbris and exhibit 1) the master was under a statutory obligation to keep on his ship the necessary records showing the existence of such charge of the vessel, I draw

the inference that the required records were in fact kept on the ship at all material times ; including the time when subsequent credits were made to the ship's master by the first and second suitors herein, constituting the second party in the consolidated proceeding.

In September, 1949, the shipowner contracted a further loan from the same Bank (the said fourth suitor) of an amount of eighteen hundred (\$1,800) U.S.A. dollars, on the terms and conditions in exhibit 2 (a), for the purpose of acquiring an echo-sounding apparatus, to be fitted on the ship "Narkissos". The instrument was acquired and fitted accordingly ; and was on the ship when sold in execution. Under cl. 16 of the contract in exhibit 2 (a), the Bank was entitled to register this loan as a charge on the ship ; I find as a fact that this mortgage also was duly registered, under the law of the ship's flag, and that it appeared on the ship's records.

In February, 1950, the shipowners borrowed a further sum of \$4,667 U.S.A. dollars from the same Bank (the said fourth suitor) on the terms and conditions in a third elaborate formal contract, exhibit 3 (a) herein, for the purpose of fitting fishing trawler "Narkissos" with cold storage. This contract also contained similar provisions for the registration of the debt as a charge on the ship (cl. 16) ; and I likewise find that the ship was duly fitted (inventory p. 2) ; and that this third charge on her, was also duly registered accordingly, and appeared in the ship's records.

About five years later, on June 16, 1955, the mortgagor-shipowners and the mortgagee-Bank, signed three further agreements in writing, one for each of the three transactions described above, all on the same day (1 (b) ; 2 (b) ; and 3 (b) respectively) under which the amount now payable on each loan, was ascertained and re-stated ; it was made payable in fourteen (14) annual instalments thereafter (instead of the original eight) ; at a reduced rate of interest (4%) ; the debtor undertaking to make payments from the income earned by the mortgaged ship. Each of these contracts was expressly made part of the contract covering the respective original transaction.

After a further period of about five years, on February 3, 1960, the mortgagor-shipowners and the mortgagee-Bank (the said fourth suitor) again renewed their three contracts in question, by re-stating the amount payable at that time under each one of them ; reducing again the rate of interest from 4% to 2 1/2% p.a. ; and making the debt in each case,

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payable in eleven future equal, yearly instalments, as now refixed in the respective contract. Each of these three new contracts (exhibits 1 (c) ; 2 (c) ; and 3 (c)) contained similar undertakings on the part of the shipowner to make payments from the ship's earnings ; and was likewise expressly annexed to the respective original contracts and made part thereof (cl. 4 and 5 in each of the exhibits).

It was stipulated in each of the original contracts that in case of default in the payment of any of the instalments therein provided, the creditor-Bank would be entitled to claim and recover the instalments in arrear ; or, to claim and recover the whole of the debt still remaining unpaid (cl. 13 of the original contracts).

In March, 1955, the Greek State enacted Law No. 3170, published in the official *gazette* of the 28.3.55, to make provision for the establishment and operation of a Retiring Seamen's Fund for Greek seamen. The text of this legislation is before the Court as exhibit 4, produced by Mr. Tsimbris, the Greek lawyer who gave evidence on the Greek law affecting this case. The object of Law 3170, as stated in its section 2 (2) is to provide for social insurance for Greek seamen against incapacity from accidents in their employment, or old age ; and to provide for their dependants in case of death. This is the Naftikon Apomachicon Tameion, the third suitor herein, referred to as N.A.T. It is a State-controlled institution, depending on funds and contributions as provided in section 16 at p. 472 of the relative statute. All Greek seamen and all Greek ships are made subject to the provisions of this Law (section 1 and section 3). The registered crews of all Greek ships, according to the ship's papers (section 18) have to contribute a percentage from their salaries, as fixed by the statute, depending on the ship's size ; and all shipowners of such ships, contribute a corresponding percentage on the pay of each seaman, again as fixed by the statute (section 18 (1) (a), (b) *et seq.*). Shipowners, charterers, managers, and masters have the statutory duty to collect the contributions payable by salaried seamen employed on their ships, for payment into the Fund ; and may deduct them from the seamen's pay, for that purpose (section 18 (9)). They are answerable to the N.A.T. for all such collections (section 22 (3)).

The benefits to seamen are described in sections 29-36 inclusive ; and I am only making reference to them here, in order to lay stress on their great importance to beneficiaries ; and by reflection, to shipping in the State. Cor-

responding safeguards are provided in the statute ; one of these is a maritime lien or privileged claim on ship and freight, as provided in article 239 of the Greek Commercial Code (corresponding to the "*dettes privilégiées*" of the French Code) free from any time limitations (section 19 (7) at p. 474).

Such a statutory social insurance scheme, is by no means peculiar to the Greek State ; or, the Greek Law. It is found in several other European maritime States, as far as I know, with extensive similarities in the corresponding provisions. It is a growing development in the general law of the sea, to meet present day conditions, the importance of which needs no description here.

As to what is the Greek law regarding maritime liens, or privileged claims in general ; the kind of lien claimed by the third suitor herein (the N.A.T.) ; maritime mortgages and other charges on ships and their equipment ; and the claims of unsecured creditors, I accept the unchallenged evidence in the affidavit of Mr. Lycouris, sworn in Greece on October 16, 1963, and filed herein on November 27, 1963; and the evidence of Mr. Tsimbris, the Greek lawyer called by the first party. I also accept as the Greek law in force at the material time, Law No. 3170 in exhibit 4 ; Law No. 3816 in exhibit 1 ; and the articles in the Codes, exhibits 2 and 3 (The Greek Merchant Shipping Act and the Greek Civil Code, respectively) referred to by the witness in the course of his evidence.

There is no evidence as to the exact time m.v. "*Narkisos*" came to fish in Cyprus. But in December, 1962, her master and agent of her owners, was already heavily indebted to creditors in this country. And there is no doubt in my mind, that before he ran into debt in Cyprus, he was badly in arrear of instalments on all his debts to the fourth suitor (the A.T.E.) ; and well in arrear of his statutory obligation to pay to the third suitor (the N.A.T.) the contributions collected (or deducted) from the salaries of seamen employed on his ship, and the corresponding contributions payable by the shipowners, all under his management and control.

Considering the amounts of the claims in actions 6/63 and 7/63, as they appear in exhibits 5 and 6 herein (admitted by the debtor) I reach the conclusion that at least one of the reasons that the debtor sailed out of the jurisdiction of the State of his ship's flag, and came to fish within, or near, the territorial waters of another State, may be those arrears.

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In the claim in action 4/63 of one of the creditors constituting the second party in the consolidated proceedings, there is an allegation that the " fishing trawler in question " was " pledged " to this creditor under a contract in writing dated the 22.5.62. This indicates that as early as May, 1962, one of the creditors of the shipowners, sought security for his money on the ship. The contract signed in that connection is not before the Court. There is no allegation that any attempt was made to register a charge on the ship in favour of this creditor. The statement, however, in his claim about such a pledge, coupled with the surrounding circumstances which create the need for such credits, leads me to the conclusion that the question of credit and security was discussed before such credits were allowed to develop in Cyprus and before the supplies claimed were made.

Now having reached this conclusion, I find myself faced with the question : Have these two Limassol creditors in the circumstances, failed to take the reasonable and obvious step of enquiring from the ship's master and his official papers, whether the ship was subject to any earlier charge ? The question remains without a direct answer from the parties. But it helps me in dealing with the equities of the different claims. In the absence of any allegation or complaint to that effect, I think that I am entitled to take it that none of these credits was obtained on false pretences. And I draw the inference that before these credits were allowed to develop to any substantial sum, the two Cyprus creditors came to know at least of the mortgage-charge on the ship.

On the 14.12.62, the second suitor herein (and execution-creditor in the consolidated proceeding) obtained the debtor's acknowledgment for his claim of £466.930 mils ; and about seven weeks later, on 4.2.63, he obtained the guarantee of the first suitor, ten days before the latter filed his own action against the debtor (No. 3/63, on the 14.2.63) with a claim of £1,401.858 mils for necessaries, acknowledged in writing by the debtor only two days earlier (on the 12.2.63).

And here again, in connection with equities in the priority-claims, the question arises : under what circumstances did the first suitor agree to become the debtor's guarantor for a substantial sum, a few days before his own (the guarantor's) action against the debtor for a large credit, was filed ? This question also remains unanswered by the parties concerned.

Before I finish with the factual aspect of the case, I think I must add that besides the description in the writs of the first two actions, that the claim is made "in respect of goods and/or materials supplied to the said fishing trawler for her operation and/or maintenance and/or being a claim by the plaintiff as agent for disbursements made on account of the said fishing trawler", and besides the debtor's admission of the amount of the respective claims, there is nothing before me to show the nature of the "goods", or "materials", supplied, and the reason of the "disbursements" made, so as to enable me to say whether they were "necessaries", the supply of which has in any way, benefited the other creditors. The value of big supplies, for instance, of whisky; or champagne; or cashmere cloth; or advances of cash to the master for his own personal use; or, disbursements for the payment of hotel-bills, could hardly constitute a claim for necessaries against the ship (in rem) even if the amount be admitted by the master. And such claims could hardly be entitled to priorities as claims for necessaries, against a mortgagee; or, against other creditors for supplies actually necessary to the ship for the benefit of all parties concerned.

There is one more fact which I must add in connection with the equities of the priority claims. The ship was lying idle in Famagusta harbour when these actions were brought, and the creditors had the ship arrested. She must have been in financial difficulties for some time before that. There is no evidence to indicate for how long did the master and his ship have to depend on the Limassol creditors (the second party in the consolidated proceeding) for their absolute necessaries; real necessaries in the maritime sense of the word. But there must have been such a period; and there must have been "supplies" or "credits", or "disbursements" necessary for the safety and maintenance of the ship and a skeleton crew, for the benefit of all concerned, including the first party in the consolidated proceeding.

I can now proceed to deal with the *legal aspect* of the case before me.

It is common ground, I believe, that this Court derives its jurisdiction and powers from the Administration of Justice (Miscellaneous Provisions) Law, 1964 (No. 33/1964); and in particular from section 9 (a) which, as regards admiralty jurisdiction, brings into play the provisions of section 19 (a) and section 29 (2) (a) of the Courts of Justice Law, 1960 (No. 14/1960).

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Mr. Houry argued that as the admiralty jurisdiction of the Court is "civil" jurisdiction, within the meaning of that term in section 29 (1) of the Courts of Justice Law, article 5 of the Ottoman Maritime Code, is law "saved" by the provisions of Article 188 of our Constitution, being the law "in force on the date of the coming into operation of the Constitution". And surprising as it may appear to be, counsel submitted, this was the law governing priorities in Cyprus at the time of the establishment of the Republic (16.8.60); and this is the law governing priorities today, as no "other provision has been made" in this connection "by a law made under the Constitution" (section 29 (1) (b)). Learned counsel then referred me to paragraph 5 of article 5 of the Ottoman Maritime Code, which is almost literal copy, he said, of article 191 of the French Maritime Code promulgated by Emperor Napoleon in 1807, as amended in France in July 1885. He read to me these provisions of the French law as found at p. 150 of the *Code de Commerce*, of the *Petite Collection Dalloz*; and referred me in this connection to p. 2279 of Volume 3 of Nicolaides' work on the Ottoman Laws.

Interesting as Mr. Houry's submission may be, I find myself entirely unable to accept it. This Court as the Admiralty Court of the Republic, is vested with the jurisdiction and powers of the High Court of Cyprus, as they existed on the 9th July, 1964, when Law 33 of 1964 came into force (*vide* section 9 (a)); and this proceeding having been transferred here, by operation of section 18 of the Law in question, has to be determined accordingly.

The admiralty jurisdiction of the High Court was expressly, specifically and exclusively, in my opinion, provided for, in section 29 (2) (a) of the Courts of Justice Law, 1960; which provides that the law applicable by that Court, was the law "applied by the High Court of Justice in England, in the exercise of its admiralty jurisdiction, on the day preceding Independence Day", as it might be "modified by any law of the Republic". This is the law which I think that I must apply in the present case.

Mr. Tziros submitted that in such a case, the rights of the parties should be determined as a matter of substantive law, on the law applicable to their contract; while their priorities in execution, should be determined as a matter of remedy or procedure, by the *lex fori*. In support of his submission, learned counsel referred me to Professor Cheshire's *Private International Law* (5th

Ed. 1957) where under the heading : Priorities a matter of the *lex fori*, at p. 665 one reads :

“ It has consistently been held that the order in which property in the possession of the Court is distributable among creditors, must be governed by English law. The priority of creditors in such a case is a procedural matter that is determinable by the *lex fori*. It forms no part of the transaction under which a creditor has acquired his right.”

In the same paragraph, over in the next page (666) the learned author proceeds :

“ It is the same in the case of liens. Where, for instance, two or more persons prosecute claims against a ship that has been arrested in England, the order in which they are entitled to be paid is governed exclusively by English law.”

This is followed by the next paragraph in the same page under the heading : Distinction between question of substance and of priorities, which reads :

“ In the case of a right in rem such as a lien, however, this principle must not be allowed to obscure the rule that the *substantive right of the creditor depends upon its proper law. The validity and nature of the right, must be distinguished from the order in which it ranks in relation to other claims*”.

With all respect, I take that as a correct statement of the English law on the point. And I accept Mr. Tziros' submission in this connection. Professor Cheshire proceeds with a further statement in the same paragraph, which I also, respectively, adopt :

“ Before it can determine the order of payment, the Court must examine the proper law of the transaction upon which the claimant relies in order to verify the validity of the right and to establish its precise nature. When the nature of the right is thus ascertained, the principle of procedure then comes into play and ordains that the order of payment prescribed by English law for a right of that particular kind, shall govern.”

In this light, the rights of the four suitors in the present case, stand out clearly, in my opinion, as follows :

1. The first suitor is a judgment-creditor (in action 3/63) with a judgment against the ship, her owners

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and her master, for **£1,401.858 mils** and costs ; alleged by the plaintiff, and admitted by the defendants, to be for the supply of necessaries ; but not specified or ascertained in Court. For the satisfaction of this creditor's judgment a writ of execution against the ship (No. 2/63) reached the Marshal, but was not proceeded with, and was later returned unexecuted, because the ship had already been seized, and later sold for whom it may concern, by an earlier writ of execution (No. 1/63).

2. The second suitor is a judgment-creditor (in action 4/63) with a judgment against the ship, and her master for **£466.930 mils** and costs ; alleged by the plaintiff and admitted by the defendants, to be for the supply of necessaries ; but not specified or ascertained in Court. In execution of this creditor's judgment, the ship was seized and sold for whom it may concern by writ No. 1/63. The proceeds of the sale, amounting to **£2,951.750 mils** (after deduction of the costs of execution) are now deposited in Court, and constitute the subject-matter of this proceeding for priorities.

3. The third suitor is a judgment-creditor (in action 6/63) with a judgment against the ship and her owners, for **£1,927** and costs, for arrears of statutory contributions to the plaintiffs, in respect of seamen's salaries to a social insurance fund under State control, for the benefit of seamen and their dependants. For the satisfaction of this creditor's claim, the law of the ship's flag creates a maritime lien on the ship the running of which, gave rise to the claim. The validity of the right to such a lien, (determined as a matter of substantive right according to the law of the ship's flag under which it was created) has already been declared and recognised in this creditor's judgment, and in the order contained therein, for the sale of the ship and her equipment in satisfaction. (*Vide exhibit 5*).

4. The fourth suitor is a judgment-creditor (in action 7/63) with a judgment against the ship, her owners and their representatives for **£11,582** with costs, upon three maritime mortgages, duly registered under the law of the ship's flag. The loans secured by these mortgages, were expressly made for the equipment of the ship. Such equipment was in fact acquired ; and was sold together with

and as part of the ship. The rights of this creditor under the maritime mortgages in question, constituting substantive rights, and, likewise, determined by the law of the ship's flag, have been declared in this creditor's judgment and in the order contained therein, for the sale of the mortgaged ship in satisfaction.

The circumstances under which these four claims were prosecuted by the four actions in question, leave no room for doubt that all parties concerned, were aware of these actions against the ship, prior to judgment in each case ; but none has intervened before judgment. Having heard no argument on this point, I shall not pursue it further. I shall proceed to determine the priorities of the parties' claims, upon their rights as they stood at the time of the arrangement made between counsel in Court on the 4th May, 1963, when the third and fourth suitors intervened in the execution of the second suitor's writ, claiming priority-rights.

After presentation of the claimants' case by Mr. Tziros in the proceeding taken on behalf of the third and fourth suitors under rr. 177 *et seq.*, Mr. Houry, acting on behalf of the execution-creditor, and in order to avoid delay and incidental expense, moved the Court to direct that the ship under seizure, be sold by the Marshal in execution of his client's writ, and that the proceeds be deposited in Court until the priority-claims be finally adjudicated upon.

Mr. Tziros agreed that it would be in the interest of all concerned, if the Marshal proceeded with the appraisal and sale of the ship for whom it may concern, the proceeds being brought into Court for distribution "to the party or parties entitled thereto according to their legal priority".

So there are now under the Court's control £2,951.750 mils cash (nett proceeds from the ship's sale) for distribution among these four creditors (the four suitors in question) according to their respective priorities, as they stood on May 4, 1963 :

The first suitor is a judgment-creditor for unspecified necessities.

The second suitor is the execution-creditor for necessities. He was then in possession through the Marshal.

The third suitor, is a judgment-creditor entitled to a maritime lien originating in seamen's wages.

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The fourth suitor is a judgment-creditor in respect of registered maritime mortgages.

I have already given my reasons for holding that the law applicable by this Court in its admiralty jurisdiction, is still the English law as in force on the 16.8.1960 ; and not the French, or the Ottoman law, as submitted on behalf of the second party in the consolidated proceeding.

I am inclined to the view that, in the circumstances of this case, the claim of the execution-creditor must rank first on the distributable amount from the execution of the writ. The circumstances which weighed most in my mind in this connection are :

- (a) the necessities (including probably cash) supplied for the safety and maintenance of the ship and crew, while she was lying idle prior to seizure, must have come, I believe, from her Limassol creditors ; the first and second suitors herein ;
- (b) all creditors were benefited by the supply of such necessities for the safety and maintenance of the ship during this last period ;
- (c) the amount of the second suitor's claim does not appear to be entirely out of proportion with the value of such necessities ;
- (d) satisfaction of the second suitor's claim, directly benefits both first and second suitors as the former is a guarantor of the latter's claim, as stated earlier.

Next after the claim of the second suitor, I think that the claim of the third suitor has a clear priority over that of the first and fourth suitors. Under English law, same as under the law of the ship's flag as proved in this case, the rights of mortgagee and, a *fortiori*, of unsecured creditors are deferred to those of persons having a maritime lien. (Halsbury's Laws of England, 3rd Edition, Volume 35, paragraph 141 at p. 104 under the heading : " Priorities " ; and paragraph 1213 at p. 788, under the heading : " Priority of liens generally " , in the chapter dealing with Shipping and Navigation).

A maritime lien under English law is a privileged claim enforceable in the admiralty Courts by setting in motion the machinery available for the satisfaction of such a claim. It is the equivalent, as far as I know, of the privileged claims upon ships, provided in maritime codes framed on the lines of what is described in English law as " the

general law of the sea". And it is now as important as ever that this "general law of the sea", be as general and as uniform as possible ; and be respected and sustained as widely as possible, amongst nations. The Mortgages and Liens Convention signed in Brussels in 1926 was a big step in this direction.

Between the claims of the first and the fourth suitors, that of the latter must stand in priority to the claim of the former. The first suitor is an unsecured creditor, who in this case extended credit to the ship's master, knowing of the mortgage-charges. Such knowledge was inferred in this case, from the surrounding circumstances. If he shut his eyes to the risk of such charges existing against the ship at her Registry, this should only affect his position ; not that of the mortgagee, who lent money for equipment now sold as part of the ship, and who had a mortgage for such loans, duly registered.

In the result, the claims of these four judgment-creditors for priority in the satisfaction of their respective judgments out of the nett proceeds from the sale of the ship in question, are, in the circumstances and for the reasons stated above, decided to rank in the following order : first, the judgment in action 4/63 in favour of the second suitor ; second, the judgment in action 6/63 in favour of the third suitor ; third the judgment in action 7/63 in favour of the fourth suitor ; and last, the judgment in action 3/63 in favour of the first suitor. There will be an order accordingly, with directions to the Chief Registrar to pay out of the amount brought into Court, the sum required to satisfy the amount payable under the writ in action 4/63, in favour of the second suitor ; out of the balance, to make payment in satisfaction of the judgment in action 6/63 in favour of the third suitor ; and to pay the balance against the claim of the fourth suitor under the judgment in action 7/63.

For the large part of the mortgagee's claim which shall still remain unpaid, as well as for the claim of the first suitor under the judgment in action 3/63, these creditors may, of course, pursue their other remedies.

As to costs, I take the view that in the circumstances of this case, each party should bear their own costs in the priority proceedings. There will be no order for costs therein.

Judgment in terms. No order as to costs in the priority proceedings.

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