INTERCON MANAGEMENT S.A.,

Plaintiff.

v.

1. THE CARGO EX THE SHIP "PITRIA SPIRIT",
2. THE REPUBLIC OF THE LEBANON THROUGH ITS MINISTRY OF ECONOMICS & COMMERCE OF BEIRUT LEBANON,

Defendants.

(*Admiralty Action No.* 44/76).

Admiralty—Jurisdiction—Mode of exercise—Action in rem against cargo—And action in personam against its owners—Claim arising out of breach of charter parties for carriage of said cargo from Cyprus to foreign port—Cargo transported to Cyprus by a vessel not belonging to, or in any way connected with, plaintiffs—Court not vested with jurisdiction in rem against cargo—Plaintiffs' claim not coming within the maritime claim as defined in Article 1 *of the Brussels International Convention relating to Arrest of Sea-going Ships,* 1952—*Sections* 1(1)(*h*) *and* 3(4) *of the English Administration of Justice Act,* 1956.

Administration of Justice Act, 1956 (*English*)—*Construction of sections* 1(1)(*h*) *and* 3(4) *of the Act.*

Brussels International Convention relating to Arrest of Sea-going Ships, 1952—*Maritime Claim—Articles* 1, 2 *and* 3 *of the Convention.*

Jurisdiction—Admiralty—Action in rem against cargo.

Cargo—Action in rem against—Jurisdiction.

By means of an action in rem against defendant 1 and an action in personam against defendants 2, filed on the 13th April, 1976, the plaintiffs claimed against both defendants an amount of U.S. $ 250,000, for freight, demurrage and expenses, arising out of two charter parties entered into between the plaintiffs and defendants 2, for the carriage of the defendant cargo from Limassol to Beirut or to any other Lebanese port.

On the same date the plaintiffs by means of an ex parte appli-

cation, applied for an order of arrest of the defendant cargo. Plaintiffs alleged that when they offered to load their two ships, "Baghis" and "Jutland", as per the provisions of the two charter parties the second defendants in breach of their obligations were unable and/or avoided and/or refused to allow the goods to be loaded on the said ships, thus causing the plaintiff loss and damage; and that the said goods or part thereof were still at Limassol, and in case the warrant applied for was not granted, the said goods may be removed in which case the plaintiffs' damage would be irreparable.

The Court granted the order of arrest of the cargo on the 14th April, 1976. On the following day the defendants applied for an order setting aside and/or varying the order for the arrest of the cargo on the following grounds.

(a) That the Court cannot order arrest of cargo for which the plaintiffs have not and do not and cannot claim a lien;

(b) The action and/or the plaintiff's ex parte application is frivolous;

(c) The grounds relied upon by plaintiff do not warrant the arrest of the cargo and same are vague and insufficient;

(d) The Court lacks jurisdiction.

Defendants' main contentions were that the def ndant cargo was transported to Cyprus through M/S "PITRIA SPIRIT" which is not owned or in any way connected with the plaintiffs, and this transportation was effected under a charter party with the owners of "PITRIA SPIRIT" which was duly executed and paid for. Moreover, neither under the charter party nor otherwise did the plaintiff at any time have anything to do with the said cargo, or its transportation or any lien or claim thereon.

Plaintiff relied on sections 1(1)(h)* and 3(4)** of the Administration of Justice Act, 1956 and the whole case rested on the construction of these sections.

After dealing with the question of jurisdiction of the Supreme Court and the mode of its exercise (pp. 146–147 *post*) and finding

* p. 146 *post*.

** p. 147 *post*.

that the claim sought to be enforced by the plaintiffs was a claim against the cargo *ex* the ship "PITRIA SPIRIT" the Court:

Held, (1) the claims covered by paragraph (a)-(h) of s. 1(1) of the 1956 Act refer exclusively to ships and have nothing to do with arrest of a cargo.

(2) The ship referred to in paragraph (h) of s. 1(1), in so far as such paragraph is concerned with "any claim arising out of an agreement relating to the carriage of goods in a ship", *must be the ship in which the goods are carried in pursuance of the agreement*. As the ship referred to in the writ of summons is the ship "PITRIA SPIRIT" which has nothing to do with the case in hand, the claim of the plaintiffs does not fall within the combined effect of sections 1(1)(h) and 3(4) of the 1956 Act (pp. 155–156 *post*) (see Brussels International Convention relating to Arrest of Sea-going Ships, 1952 Articles 1, 2 and 3).

(3) The Court has no jurisdiction in rem in such a case; the writ of summons is set aside because the plaintiff cannot invoke the jurisdiction in rem against defendant 1 in so far as it relates to a claim against defendant 1. The warrant of arrest of the property of defendants 2 is also set aside.

Order accordingly.

Cases referred to:

Paschalis v. *Ship "Tania Maria"* (1975) 1 C.L.R. 162, at pp. 172–173 and 178–179;

Heinrich Bjorn [1885] 10 P.D. 44; [1886] 11 App. Cas. 270;

The Beldis [1936] P. 51 at pp. 71–72;

The Banco Owners motor vessel Monte Ulia v. *Owners of the Ships Banco and Others* [1971] 1 All E.R. 524;

St. Merriel [1963] 1 All E.R. 537;

The Jade [1976] 1 All E.R. 441;

Greaves v. *Tofield* [1880] 14 Ch. D. 563 at p. 571.

Application.

Application by defendants for an order setting aside the warrant of arrest of the defendant cargo which had been made earlier on the *ex parte* application of the plaintiffs.

T. Papadopoulos with *P. Ioannides*, for the applicants.

D. Liveras with *C. Velaris*, for the respondents.

Cur. adv. vult.

The facts sufficiently appear in the judgment of the Court.

HADJIANASTASSIOU, J.: In this action in rem and in personam the plaintiffs, the Intercon Management S.A. of Greece, in their writ of summons dated April 13, 1976, claimed against both defendants an amount of U.S. $ 250,000, arising out of two charter parties entered between the plaintiffs and defendants 2, dated January 30–31, 1976, for freight, demurrage and expenses until the filing of the writ of summons and/or damages.

On the same date, the plaintiffs made an *ex parte* application seeking an order of a warrant of arrest of property, *viz.* the cargo ex the ship "Pitria Spirit" consisting of 4,200 metric tons of sugar or such quantity thereof as is now in the bonded stores of Mr. Nicos K. Pattichis in Limassol, the property of defendant 2, the Republic of Lebanon. This application was based on the Cyprus Admiralty Jurisdiction Order 1893, rules 50 & 51, and also under the inherent powers of the Court of Admiralty.

In support of this application, the affiant, a certain Xenofon Georghiou, employed by Messrs. S. Kyprianou & Co., advocates of Nicosia, and who was authorized by the plaintiffs to swear the affidavit, alleged that the two charter parties entered into and concluded between the plaintiffs, the shipowners, and the second defendant, the former undertook to carry the said cargo on behalf of the latter from Limassol to Beirut or any other Lebanese port. The said charter parties made also provision for demurrage and in compliance with the said terms of the charter parties, the shipowners sent to Limassol their ships "Baghis" and "Jutland" to carry the said goods. But when the plaintiffs offered to load the said ships as per the provisions of the said charter parties, the second defendants in breach of their obligations, were unable and/or avoided and/or refused to allow the said goods to be loaded on the said ships, thus causing the plaintiffs loss and damage. The affiant further alleged that the said goods or part thereof were still at Limassol, and in case the warrant applied for is not granted, the said goods may be removed in which case the plaintiff's damage will be irreparable.

On the following day, the same affiant made a supplementary affidavit alleging that the cargo in question was also the subject matter of a dispute between the defendants and the owners

of m/v "Pitria Spirit" and according to their information, nagotiations were being held between defendant 2 and the owners of the said ship for a settlement and that the said cargo would be removed out of the jurisdiction of the Court.

Pausing here for a moment, I think that it is clear that what the plaintiffs are now alleging is that the said cargo of sugar was not transported by their ships but by m/s "Pitria Spirit", a vessel belonging to other shipowners which has nothing to do with and is not connected in any way with the ships of the plaintiffs. It is not before me whether the freight was paid in advance to the owners of the "Pitria Spirit", but one thing is clear, that the cargo of sugar which has been stored in the bonds in Limassol, for reasons connected with the crisis in Lebanon, was unloaded in Cyprus.

On April 14, 1976, having read the contents of the application and the affidavits before me, and in view of the urgency of the matter, I have granted an Order for the issue of a warrrat for the arrest of the said cargo of sugar exercising my jurisdiction under rule 54 of the Cyprus Admiralty Jurisdiction Order 1893, imposing the condition that the applicants should file in Court to the satisfaction of the Registrar an amount of £20,000 to be answerable in damages to the respondents in case the claim will not succeed.

On April 15, 1976, the defendants, apparently having been served, gave notice to the plaintiffs opposing the applications and applied for (a) an order setting aside and/or varying the order for the arrest of the cargo; and (b) an order against the plaintiffs for furnishing a bank guarantee for an amount of £200,000. The grounds relied upon were the following:-

"(a) The Hon. Court cannot order arrest of cargo for which the plaintiffs have not and do not and cannot claim to be entitled to a lien;

(b) The above action and/or the plaintiff's *ex parte* application is frivolous and vexatious.

(c) The grounds relied upon by the plaintiffs do not warrant the arrest of defendant's cargo and same are vague and insufficient.

(d) This Court lacks jurisdiction."

In support of the opposition, the affiant, a certain Hamdi El

Hajj of Beirut made a long affidavit and I propose reading some of the paragraphs only which throw light as to what has happened with regard to the cargo of sugar; his allegation that both the action and the *ex parte* application are frivolous and vexatious, and also his stand that the plaintiffs have no claim or lien on the cargo, and as a result the Court has no jurisdiction to entertain the action. The affiant, who is the Director of the Ministry of Economics and Commerce of Lebanon, has been authorised by his Government to make that affidavit and alleged that:-

"3. The cargo was transported to Cyprus through m/s 'Pitria Spirit' a vessel not owned or in any way connected with the plaintiffs, respondents in this application under a charter party with the owners of 'Pitria Spirit' which was duly executed and paid for. Neither under the charter party nor otherwise did the plaintiffs respondents at any time have anything to do with the said cargo, or its transportation or any lien or claim thereon.

4. A few days ago I was informed by the Embassy of Lebanon that plaintiffs'-respondents advocate had addressed a letter to the Embassy claiming on behalf of the plaintiffs-respondents an amount of 250,000 U.S. Dollars allegedly as damages for breach of contract or charter parties which were never executed. At the suggestion of the Embassy, I met plaintiffs'-respondents advocate and without admitting any liability I have asked the said advocate to supply me with documentary or other evidence in support of the claim but until today none was given to me. The said advocate was asking me to commence what he termed negotiations for the settlement of, what he termed, as the claim of his clients suggesting that unless I was agreeable to such course measures would be taken for the preventation of the lifting from Cyprus of the said cargo. On 13.4.76 the Embassy of Lebanon received a notification of the present action and an *ex parte* application having been filed but plaintiffs-respondents' advocates refused to supply me or our advocate Mr. Tassos Papadopoulos with a copy of the action and application documents.

5. I am informed by the Ministry of Economics of Lebanon that they strongly contest this or any other claim of the plaintiffs and that in any event they cannot and do not have any claim or lien on this cargo.

6. I am advised by counsel and verily believe that the plaintiffs-respondents' claim is groundless vexatious and unjustified and the application made on 14.4.76 *ex-parte* is in law and in form unfair and unjustified and clearly made with the purpose of exercising pressure on the defendants-applicants to make payments to plaintiffs-respondents before the plaintiffs-respondents prove their claim or get a judgment or the alleged and claimed damages which are unconnected with the said cargo are assessed.

7. I am further advised by counsel and verily believe that the alleged claim of the plaintiffs is at best a claim for damages for breach of contract and that the Cyprus Courts have no jurisdiction to try that claim.

8. I am further advised by counsel and verily believe that under Cyprus Law no interim Order such as the one issued by the Hon. Court on 14.4.76 is possible in respect of this cargo.

9. The said cargo, of which defendants No. 2 are the sole and undisputed owners is intended for use by the people of Lebanon who are urgently needing supplies of sugar and was stored in Cyprus until such time as the situation in Lebanon would make it possible to be transported there. Now it is so possible but if the applicants are restrained from lifting and transporting it urgently in a few days it will be impossible to so transport it, the people of Lebanon will be deprived of the use of such a necessary for life, alternative supplies at tremendous cost and inconvenience will have to be found making the use of the cargo unnecessary and thereby defendants No. 2 will suffer irreparable damage.

10. In the meantime the cargo is stored in the private bonded warehouse of Messrs. K. Pattichis Finance Co. Ltd., and a charge of U.S. Dollars 7,000 per week is made for such storage. Two small vessels have been chartered for the transportation of the cargo to Lebanon and freight has already been paid. The said vessels are on their way to Cyprus where they arrive to-morrow and demurrages of about U.S. Dollars 3,000 for each vessel will be paid for each day the said vessels will remain idle in Limassol port awaiting loading of the said cargo. Other expensive arrangements with vehicles, loading workers and dock

workers have already been made for the transportation of the said cargo from the stores to the docks for onloading on the vessels and substantial payments will have to be made for such arrangements if they have to be cancelled as a result of the interim Order given and the people of Lebanon will suffer immeasurable deprivation.

11. Since the storage of the cargo in the said stores in Cyprus, the said cargo was never removed from the said stores and never, either before or since, has it been shipped or transported through any of the plaintiffs vessels and the plaintiffs were never in any way involved in the actual transportation of the cargo.

12. Even if facts alleged by plaintiffs in the affidavit in support of their *ex parte* application regarding execution of charter parties and arrival of vessels at Limassol for loading are correct, an allegation which defendants 2 categorically reject I am advised by counsel and verily believe that plaintiffs-respondents have no right to arrest the cargo nor have they any lien on it for any freight, demurrages or other expenses, allegedly due to them.

13. I am advised by counsel and verily believe that the Court could not order arrest of cargo on the grounds relied upon by the plaintiffs-respondents.

14. The alleged charter parties were allegedly executed in Greece between a Greek company and the Republic of Lebanon, and I am advised by counsel and verily believe that this Hon. Court lacks jurisdiction to entertain the plaintiffs-respondents claim.

15. As a consequence of the arrest now under dispute the defendants No. 2 are suffering great loss and irreparable damage. Further the purpose for which the sugar cargo was bought is rendered meaningless and if the Order is allowed to subsist even for a few days no full and proper justice may be rendered for defendants No. 2 at a later stage.

16. I verily believe and I am advised by counsel that the above action and the *ex parte* application are frivolous and vexatious and the facts on which plaintiffs based their application in the affidavit do not disclose a good cause and lawful base for the making of the application."

The said application was based on the Admiralty Jurisdiction Rules, particularly Order 165–167, O. 204, O. 205, O. 211, the Courts of Justice Law, 1960 (Law No. 14/60), and especially ss. 19, 29 and 0.48(4) of the Civil Procedure Rules, and on the inherent powers of the Court.

There was a further *ex parte* application by the defendants on April 15, praying for an Order abridging the times prescribed by the Rules and to fix the application for hearing as quickly as possible in view of the great urgency of the matter.

Having carefully considered the affidavits before me and because I have realized that time in this case is of the utmost importance, I have granted the application abridging the times provided by the Rules and I have set down for hearing of the applications on the morning of Saturday, 17th April, 1976.

Before dealing with the arguments of both counsel, I would state at the outset that the plaintiffs, in their action before me seek to bring themselves within one paragraph only of s.1(1)(h) of the Administration of Justice Act, 1956. Furthermore, I think I ought to observe that in the present case, not only are the proposed defendants foreign, but also are the plaintiffs who invoked the jurisdiction of the Court because of the two charter parties made in Greece.

With this in mind, I now turn to consider the jurisdiction of this Court, exercising Admiralty Jurisdiction. The Supreme Court of Cyprus as it has been said in a number of cases, is vested with the same powers and jurisdiction as those vested in or exercised by the High Court of Justice in England in its Admiralty Jurisdiction on the day immediately preceding Independence Day. (See *Paschalis* v. *Ship "Tania Maria"* (1975) 1 C.L.R. 162 at pp. 172–173).

The jurisdiction of the High Court in Admiralty matters is now defined by s.1(1) of the Administration of Justice Act, 1956 in terms which so far as relevant to the present proceedings are as follows:–

> " The Admiralty jurisdiction of the High Court shall be as follows, that is to say, to hear and determine any of the following questions or claims (d) any claim for damage done by a ship; ..... (g) any claim for loss of or damage to goods carried in a ship; (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".

Then I turn to the mode of exercise of such Admiralty Jurisdiction which is prescribed by s.3 of the 1956 Act, the relevant provisions of which are as follows:–

> "(1) Subject to the provisions of the next following section, the Admiralty jurisdiction of the High Court ..... may in all cases be invoked by an action in personam .....
>
> (4) In the case of any such claim as is mentioned in paragraphs (d) to (r) of subsection (i) of section one 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 ... 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."

It is true that in addition to the ordinary rights of personal action for breaches of the contract of carriage or for wrongful acts done against the goods, freighters and shipowners may also, in certain cases, enforce their claims by proceeding in rem against the property of the other party. This brings me to a consideration of the decision of the House of Lords in the *Heinrich Bjorn* [1886] 11 App. Cas. 270, affirming the Court of Appeal. In the opening paragraph of his speech, Lord Watson used the following words with regard to the meaning of an action in rem at pp. 276, 277:–

> "The action is in rem, that being, as I understand the term a proceeding directed against a ship or other chattel in which the plaintiff seeks either to have the res adjudged to him in property or possession, or to have it sold, under the authority of the Court, and the proceeds, or part thereof, adjudged to him in satisfaction of his pecuniary claims. The remedy is obviously an appropriate one in the case of a plaintiff who has a right of property or other real interest in the ship, or a claim of debt secured by a lien which the law recognises. We have been informed that under the

recent practice of the Admiralty Court the remedy is also given to creditors of the shipowners for maritime debts which are not secured by lien; and in that case the attachment of the ship, by process of the Court, has the effect of giving the creditor a legal nexus over the proprietary interest of his debtor, as from the date of the attachment.

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". See also *Paschalis* v. *The Ship Tania Maria*, (*supra*) at pp. 178–179.

In *The Beldis*, [1936] P. C.A., p. 51 the President (Sir Boyd Merriman) dealing with the decision of the House of Lords in the *Heinrich Bjorn* case (*supra*) made these observations about the passage just quoted of Lord Watson at pp. 71–72:–

> " In this passage Lord Watson, while stating that a maritime lien does give rise to an action in rem, and recognizing that an action in rem is also available in respect of maritime debts which are not secured by lien, is engaged in showing that in the one case the action survives, and in the other case does not survive, change of ownership of the ship. This statement is not of course quite exhaustive, because under neither heading need the res necessarily be a ship: It may be the cargo or the proceeds of the ship or cargo, and arrest of the cargo may include arrest of the freight. But it is quite plain that in stating the modern practice of the Admiralty Court Lord Watson is regarding the res as being the very thing in respect of which the maritime debt, or the maritime lien, as the case may be, has arisen. There is not a hint in the passage quoted of the bringing of a maritime action against anything other than that which gives rise to the cause of action. It is quite true

that in the House of Lords, as in the Court of Appeal, it was unnecessary, once it was decided that there was no maritime lien for necessaries, to discuss all possible aspects of the action in rem. But of the two statements of the law, both of which are obiter, this is by the higher tribunal. Even if it does not purport to be exhaustive, I am convinced that it is correct as a statement of Admiralty jurisdiction and practice in recent times and I propose to follow it."

The *Beldis* case (*supra*) was an action in rem brought in a County Court having Admiralty jurisdiction, by the plaintiffs against the defendants, the owners of the Norwegian s.s. Beldis for 27*l.* 4s. 6d. payable by the defendants to the plaintiffs under an arbitrator's award in respect of overpayment of chartered freight. The arbitration was held by virtue of a clause in a charterparty relating, not to the Beldis, but to s.s. Belfri, another ship belonging to the defendants. The County Court Judge decided in favour of the plaintiffs upon a dictum of the Court of Appeal in regard to procedure in rem in the *Heinrich Bjorn*, [1885] 10 P.D. 44, 54, (1) that "the arrest need not be of the ship in question but may be of any property of the defendant within the realm". The interveners appealed and it was held, after a full review of the authorities that "the dictum in the Heinrich Bjorn was obiter, was not therefore, binding, and was erroneous; that the procedure in rem either in the Admiralty Court or in the County Court does not permit the arrest of a ship or other property of a defendant unconnected with the cause of action; and that the appeal must be allowed".

The dictum of the Court of Appeal delivered by Fry L.J. in the *Heinrich Bjorn*, 10 P.D. 44, 54 was disapproved.

The President of the Court of Appeal in criticising that passage of Fry, L.J. said at pp. 65, 66:–

> " In other words, when once the question whether the particular agreement amounted to a bottomry bond, which for present purposes is irrelevant, was out of the way, the only question remaining for decision was whether the supply of necessaries gave rise to a maritime lien. If not, the arrest of the Heinrich Bjorn could not be justified, since at the material date—namely, the commencement of the action, although she was the res in relation to which the cause of action arose, she was not a res belonging to the defendant owner. It follows that it was quite unneces-

sary to consider whether property of the owner, other than the ship itself, was liable to arrest in an action in rem. The passage relied upon cannot, therefore, be regarded as a binding statement of existing law on this point, though naturally a statement of the law by a Court, composed as that Court of Appeal was, must carry great weight."

Counsel on behalf of the plaintiffs contended that the 1956 Act, particularly subsection 4 of section 3, not only fills in a vacuum in the earlier Acts, but radically alters the law, in line with that of other countries, by enabling an action in rem to begin by the arrest of the property which is connected with the subject matter of the action; or by the arrest of any vessel, whether or not that concerned in the action. I, therefore, propose to inquire into the jurisdiction of the Court of Admiralty in England. I can do no better than quote from the case of *The Banco Owners motor vessel Monte Ulia* v. *Owners of the Ships Banco and Others*, [1971] 1 All E.R. 524, where Lord Denning, M.R. in a lucid language dealt with the same point and said at p. 531:–

> "Long years ago, in the seventeenth and eighteenth centuries, the ordinary mode of commencing a suit in Admiralty was by arrest, either of the person of the defendant or of his goods. Not only could the offending ship be arrested, but the other ships of the defendant could be arrested also, and any other goods that belonged to him, so long as they were within the jurisdiction. The object was to make the defendant put up bail or provide a fund for securing compliance with the judgment, if and when it was obtained against him: See Clerke's Practice of the Court of Admiralty[1] in 1973 quoted in the Dictator[2] and the Selden Society's Select Pleas in the Court of Admiralty[3]. In this respect the Court of Admiralty in those days exercised a jurisdiction which obtained in foreign countries too, and still prevails in many of them to-day.
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> The Courts of common law were, however, jealous of the jurisdiction of the old Court of Admiralty and issued prohibitions against it. They succeeded in cutting down its jurisdiction a great deal. So much so that its jurisdiction in rem to arrest goods became limited to a jurisdiction

1. Praxis Curiae Admiralitatis of Clerke, Simpson Edn, 1743.
2. (1892) p. 304 at 311, [1891-94] All E.R. Rep. 360 at 363.
3. Fol. 1 p. IXiii.

to arrest the offending ship itself. The right to arrest was conterminous with the maritime lien. Where there was a maritime lien, the right to arrest the ship existed. Where there was no maritime lien, there was no right to arrest the ship. A maritime lien, of course, existed only in respect of the offending ship. It lay for such claims as salvage, wages and collision damages. The claimant had a right to arrest the offending ship for his claim, whenever he could get hold of her. Even if she had been sold to an innocent purchaser for value, still he could arrest her for any claim in respect of which he had a maritime lien: See *The Bold Buccleugh, Harmer* v. *Bell*[1]. Later on the right to arrest was extended beyond the extent of a maritime lien so as to cover necessaries: See The Heinrich Bjorn[2]. But it only applied to arresting the ship itself for which the necessaries were supplied. It did not apply to any other ship. Finally, in 1935, this Court held that the procedure in rem to arrest a ship only applies to the ship to which the cause of action relates. It does not apply to a ship or other property of the defendant unconnected with the cause of action: See The Beldis[3].

.....

Such was the state of the law when Parliament enacted the Administration of Justice Act 1956. But, before I come to it, I would tell of the international convention[4] which preceded it. It is now fully established that when an Act of Parliament is passed so as to give effect to an international convention, we can look at the convention so as to help us to construe the Act: See *Salomon* v. *Comrs. of Customs and Excise*[5] and *Post Office* v. *Estuare Radio Ltd.*[6]; and this is so even though the Act of Parliament does not mention the convention. In 1952 there was an international convention[7] held at Brussels. It was held because of the different rules of law of different countries about the arrest of sea-going ships. Some countries, like

1. (1852) 7 Moo P.C.C. 267, [1843–60] All E.R. Rep. 125.
2. [1885] 10 P.D. 44.
3. [1936] P. 51, [1935] All E.R. Rep. 760.
4. International Convention relating to the Arrest of Seagoing ships (Cmd 8954).
5. [1966] 3 All E.R. 871.
6. [1967] 3 All E.R. 663.
7. International Convention relating to the Arrest of Sea-going Ships (Cmd 8954).

England did not permit the arrest of any ship except the offending ship herself; whereas many continental countries permitted the arrest, not only of the offending ship, but also of any other ship belonging to the same owner. In the result a middle way was found. It was agreed that one ship might be arrested, but only one. It might either be the offending ship herself or any other ship belonging to the same owner; but not more. This was an advantage to plaintiffs in England because it often happened previously that, after a collision, the offending ship sank or did not come to these shores. So there was nothing to arrest. Under the convention the plaintiff could arrest any other ship belonging to the same owner whenever it happened to come to England."

Then, after referring to some of the Articles of the convention, Lord Denning M.R., said at p. 532–533:–

" I need not set out all the Articles of the convention, I need only set out those which are particularly apposite:

Article 1(I) defines a Maritime Claim. It includes 'damage caused by a ship either in collision or otherwise'. Then:

'1(2) 'Arrest" means the detention of a ship by judicial process to secure a maritime claim, but does not include the seizure of a ship in execution or satisfaction of a judgment'.

Articles 3 provides:

'(1) ..... a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship .....

(2) Ships shall be deemed to be in the same ownership when all the shares therein are owned by the same person or persons.

(3) ..... if a ship has been arrested in any one of such jurisdictions, or bail or other security has been given in such jurisdiction ..... any subsequent arrest of the ship or of any ship in the same ownership by the same claimant for the same maritime claim shall be set aside, and the ship released .....'

That convention makes it clear that only one ship of the same owner may be arrested."

Then the Master of the Rolls in construing s. 3(3) & (4) of the 1956 Act, said:–

" At any rate, Parliament in this country in 1956 did pass an Act to give effect to the convention. It is the statute which we have to construe. It is the Administration of Justice Act 1956. Section 3(3) states that, in any case in which there is a maritime lien on any ship for the amount claimed the Admiralty jurisdiction may be invoked by an action in rem against that ship.

Section 3(4) is the important one for our purpose. It provides, so far as material, that in the case of any claim (*inter alia*) for damage done by a ship, the Admiralty Jurisdiction:

' ..... 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 the action is brought, is beneficially owned as aforesaid.'

The important word in that subsection is the word **'or'.** It is used to express an alternative as in the phrase 'one or the other'. It means that the Admiralty jurisdiction in rem may be invoked either against the offending ship or against any other ship in the same ownership, but not against both. This is the natural meaning of the word 'or' in this context. It is the meaning which carries into effect the international convention. It is the meaning which on high authority we ought to give it. In *Morgan* v. *Thomas*[1] Sir George Jessel M.R. said:

'You will find it said in some cases that 'or' means 'and'; but 'or' never does mean 'and'; unless there is a context which shews that it is used for 'and' by mistake.'

So also in *Re Diplock, Wintle* v. *Diplock*,[2] Sir Wilfrid Greene M.R. said: 'The word 'or' is *prima facie*, and in

1. [1882] 1 Q.B. 643 at 645, 646.
2. [1941] 1 All E.R. 193 at 200.

the absence of some restraining context, to be read as disjunctive.....'

Shortly after the Act was passed, Willmer J. in *The St. Elefterio*[1], said that the purpose of the Act is to confer:

'..... 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 clearly right. There is no doubt about it. I would add that the word 'ship' in the phrase 'any other ship', means 'ship' and not 'ships'. Although the Interpretation Act 1889 states that words in the singular include the plural, that does not apply when the contrary intention appears. The contrary intention does appear here. The jurisdiction may be invoked against either the offending ship or any other ship in the same ownership, but not more than one."

See also the judgment of Megaw L.J. and Cairns L.J. concurring with the judgment of Lord Denning. Also the *St. Muriel* [1963] 1 All E.R. 537 where the relevant passage of Willmer, J. at pp. 376–7 was quoted with approval by Hewson, J.

That we can look to the convention so as to help us to construe the Act of 1956, I find further support from a judgment of Sir Gordon Willmer in *The Jade*, [1976] 1 All E.R. 441, where at p. 455 he says:

" ..... since Part I of the 1956 Act was passed for the purpose of giving effect to the International Convention relating to the Arrest of Sea-going Ships[2], it is permissible to look at the terms of the Convention where phrases used in the Act are thought to be capable of more than one meaning. This arises particularly in relation to s. 3 of the 1956 Act, which governs rights of arrest and is presumably intended to give effect to Article 3 of the convention."

With this in mind, I turn now to s. 1(1) of the 1956 Act. It is safe to infer according to the accepted principle of statutory interpretation (see *Greaves* v. *Tofield* [1880] 14 Ch. D. 563 at

1. [1957] 2 All E.R. 374 at 377;
2. (1952) Cmd 8954.

p. 571), that claims specified by the 1956 Act in language the same as that of previous statutes should be given the same meaning. No doubt, the extent of the Admiralty jurisdiction, as the cases show, is the subject of a considerable case law interpreting statutory provisions that over the years have become well-known.

Turning now particularly to s. 1(1)(h) "any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of the ship" I think I ought to reiterate that in the writ of summons the claim sought to be enforced by the plaintiffs is a claim against the cargo ex the ship "Pitria Spirit", a ship which has no connection at all with the plaintiff, but for a breach of the two charter parties alleged to have been made between the plaintiffs and defendant 2. In construing, therefore, paragraph (h) of s. 1(1) of the 1956 Act, which has been invoked in this case, it is important to state that the claims covered by paragraphs (a)–(h) refer exclusively to ships and had nothing to do with the arrest of cargo. This paragraph (h) to my mind, it is directed to two eventualities in so far as it is concerned with a claim arising out of an agreement relating to the carriage of goods in a ship, the ship referred to must be the ship in which the goods are carried in pursuance of the agreement. With respect to counsel for the plaintiffs, nothing arises in this case in relation to this part of the paragraph, but the latter part of the paragraph refers to a claim arising out of an agreement relating to the use or hire of a ship, and such a claim does not necessarily have anything to do with the carriage of goods, for a ship can well be hired or used for other purposes. It seems to me, therefore, that the ship to which the writ of summons referred to is the ship "Pitria Spirit" which has nothing to do with the case in hand. But I would go further and state that even if I am wrong, the position is not remedied when one looks to the provisions of s. 3 of the said Act. The mode of the exercise of Admiralty jurisdiction was not the subject of comprehensive enactment until, as I said earlier, following the Brussels Convention when s. 3 was enacted. Case law on the section (save as to its application to sister ships) is almost non-existent, not only in England but also in Cyprus. This section makes clear that Admiralty jurisdiction may exist and be exercisable by action in personam without an action in rem being available. The action in rem may be invoked only in the cases mentioned in subsections (2) and (5). One of the reasons for thus limiting the availability of the action in rem is, I have no

doubt, that the Brussels Convention provides by Article 2 that a ship of a contracting state may not be arrested save in respect of one of the maritime claims set out in Article 1.

Pausing here for a moment, I would state that I have looked to see whether the claim of the applicants can be by any stretch as coming within maritime claim set out in paragraph 1 within the convention, but regretfully I was unable to do so. I think, put briefly the convention permits the arrest of ships in respect of the maritime claims specified in Article 1, but in respect of no other claims. (See Article 2). It further permits of course the arrest of a sister ship when the ship in respect of which the claim arises has passed out of the ownership of the defendant, (see Article 3), but again this has nothing to do with the present case.

I should have added that whilst some of the maritime claims in respect of which a ship may be arrested do not give rise to a maritime lien, each one of them is concerned with either services rendered to a ship or damage arising from the use of a ship or with problems concerned with rights of ownership, possession or mortgage of a ship. That I am right as to the stand I have taken, and that the claim of the plaintiffs does not fall within the combined effect of s. 1(1)(h) of s.3(4) of the 1956 Act, I find further support from the judgment of Scarman L.J. who, in the *Jade* case (*supra*) says at p. 453:–

> " In every case covered by the convention there is a clearly defined link between the claim and the ship sought to be arrested, a link such as makes it just and reasonable that the claimant should be permitted to look to the ship (or in a proper case its 'sister ship') as security for the satisfaction of his claim. So far as accidental damage is concerned, the convention identifies the claims that justify arrest by reference not to ships that receive or suffer damage but to ships that cause damage."

Then Lord Scarman, in construing the provisions of s.3(4) of the 1956 Act, said:–

> " Section 3(4) is to be presumed to give effect to the convention and should be construed accordingly. The sub-section deals with claims of damage or for services rendered, *i.e.* those mentioned in paragraphs (d) to (r) of s.1(1) of the 1956 Act. It declares the circumstances in which such a claim, 'being a claim arising in connection with a ship',

may be pursued by an action in rem against that ship (or its 'sister ship'). No action in rem is available unless the claim is shown to be a claim against a ship. To establish, therefore, the availability of an action in rem it is not enough merely to ascertain whether the claim is one of those mentioned in paragraphs (d) to (r) of s. 1(1) of the 1956 Act. It is also necessary that the claim should relate to a ship which has caused damage or in respect of which services have been rendered or money disbursed. It does not follow that because there is Admiralty jurisdiction to entertain a claim, an action in rem may be invoked to enforce it. The existence of jurisdiction depends on s.1 of the 1956 Act; but the availability of an action in rem depends on s.3. When s. 3(4) provides that an action in rem can be invoked only if the claim is 'a claim arising in connection with a ship', it is referring, in my judgment, to a ship in respect of which a maritime claim as specified in the convention arises."

Finally he said:–

" Taking the view that I do of the scope of s. 3(4), I think these appeals should be dismissed. Each plaintiff may invoke the jurisdiction by action in rem; for each of them, shipowner and cargo owner, can formulate a claim under paragraphs (d) or (h), citing the Rotesand as the ship in connection with which the claim arises."

On appeal to the House of Lords from the decision of the Court of Appeal in the *Jade* case (see Times of April 5, 1976,), *the House of Lords held that:–*

" ..... two actions in rem begun by foreign shipowners and cargo owners against a vessel, arrested within the jurisdiction of the English Court and owned by salvors having no place of business in England, claiming damages for negligent salvage off the coast of Spain, were within the Admiralty jurisdiction to entertain actions in rem under Part I of the Administration of Justice Act, 1956, and in conformity with the International Convention Relating to the Arrest of Sea-going Ships, to which the United Kingdom is a party.

Their Lordships dismissed interlocutory appeals by the salvors, owners of the salvage tug Rotesand, and her sister ship the Jade, from the Court of Appeal (Lord Justice

Cairns, Lord Justice Scarman and Sir Gordon Willmer) ([1976] 1 W.L.R. 339), which had affirmed Mr. Justice Brandon (The Times, June 20, 1974; [1975] 1 W.L.R. 83), who had refused to strike out the writs in the actions."

Lord Diplock, in dismissing the appeal, in his speech with which Lord Simon, Lord Kilbrandon, Lord Salmon and Edmund Davies agreed, said:–

"The Admiralty jurisdiction of the High Court and the mode in which it could be exercised was regulated by Part I of the 1956 Act. Part I was passed to enable the United Kingdom to ratify and comply with the international obligations of parties to the Convention, signed on behalf of the United Kingdom in 1952, the purpose of which was to provide uniform rules on the right to arrest seagoing ships by judicial process to secure a maritime claim against the owner of the ship.

The Admiralty jurisdiction of the High Court had always been statutory. What distinguished it from the other civil jurisdiction of the High Court was that it was exercisable in proceedings in rem. The right of arrest of a ship in an action in rem in the English Courts had been brought into conformity with the Convention (a) by section 1 of the 1956 Act which substituted for earlier lists a fresh list of claims falling within the Admiralty jurisdiction; and (b) by section 3, which regulated the right to bring an action in rem against a ship by reference to the claims so listed.

As the Act was passed to enable her Majesty's government to give effect to international obligations on ratifying the Convention, the rule of statutory construction laid down in *Salomon* v. *Customs and Excise Commissioners* [1967] 2 Q.B. 116 and *Post Office* v. *Estuary Radio Ltd.* [1968] 2 Q.B. 740 was applicable; if there was any difference between the language of the statutory provision and that of the corresponding Convention provision, the statutory language should be construed in the same sense as that of the Convention if the statutory words were reasonably capable of bearing that meaning.

Article 3 of the Convention made the subject of the arrest 'the particular ship in respect of which the maritime claim arose' or one of her sister ships. Section 3(4) of the Act made it clear that to be liable to arrest a ship must

not only be the property of the defendant to the action but also identifiable as the ship 'in connexion with' which the claim made in the action arose (or a sister ship of that ship). The nature of the 'connexion' in the subsection and in the Convention must have been intended to be the same. So one had to look at the description of each of the maritime claims in the section 1(1) list in order to identify the particular ship in respect of which a claim of that description could arise. It was sufficient to dispose of the appeal that the claims should fall within any of the paragraphs.

Neither Mr. Justice Brandon nor the Court of Appeal had any doubt that both the claims fell within paragraph (h), as a claim arising out of an 'agreement relating to the ..... use ..... of a ship'—the Rotesand. His Lordship agreed. The salvage agreement was entered into by the master of the Erkowit on behalf of both cargo owners and shipowners. The primary contractual obligation of the salvor under the Lloyd's open form was to use his best endeavours to bring the vessel and her cargo to a place of safety, providing at his own risk, in the time-honoured phrase, 'all proper steam and other assistance and labour'. The only possible way in which the salvors could perform their contract was by taking the Erkowit in tow and using the Rotesand, which had been sent to the scene of the casualty for that very purpose.

On any ordinary meaning of the words the salvage agreement was 'an agreement relating to the use of a ship' the Rotesand—for the purpose of salving the Erkowit and her cargo and bringing them to a place of safety, La Coruna. The claims were for damages for negligent performance of that agreement; and in so far as the negligence alleged included an averment that the Erkowit was towed by the Rotesand on a course which beached her on a dangerous shore, the claim arose out of the negligent performance of that part of the agreement for which a ship was to be used. His Lordship would therefore hold that both claims fell within paragraph (h); that they were claims in connexion with the Rotesand; and that they were enforceable under section 3(4) by an action in rem against the Rotesand or any of her sister ships".

In the light of those weighty judicial pronouncements to

which I have referred at length, and having regard to the construction I have place on s. 1(1)(h) and taking the view that I do of the scope of s. 3(4), I have come to the conclusion that I have no jurisdiction in rem in such a case as that which is now before me, and, therefore, I am bound to set aside the writ of summons because the plaintiff cannot invoke the jurisdiction in rem against defendant 1 so far as it relates to a claim against defendant 1.

I would also set aside the warrant of arrest of the property of defendant 2 which, in my view, is unconnected with the cause of action of the plaintiffs. Order accordingly, costs in favour of defendant 2 against the plaintiffs.

Order accordingly.