

1978 January 31

[MALACHTOS, J.]

GRADE ONE SHIPPING LIMITED,

*Plaintiffs,*

v.

THE CARCO ON BOARD THE SHIP "CRIOS II"  
NOW LYING IN THE PORT OF LARNACA,

*Defendant.*

(Admiralty Action No. 83/76).

5 *Admiralty—Jurisdiction—Action against cargo with a claim for a lien thereon—Arrest of cargo—Cancellation of order of arrest—Does not automatically oust the jurisdiction of the Court to deal with an application relating to the fixing of the expenses incidental to the discharge and custody of the cargo—Lien of warehousemen on cargo—Section 499 of the Merchant Shipping Act, 1894—Section 1 (1) (h) of the Administration of Justice Act, 1956—And sections 19 (a) and 29 (2) (a) of the Courts of Justice Law, 1960.*

10 The applicants are owners of cargo which was, on the 9th June, 1976, arrested by order of this Court and placed in the custody of the respondents (Messrs. Frangoudi & Stephanou) who were appointed by the Court to discharge same and place it in safe warehouses. The respondents, acting pursuant to the above order, discharged the cargo and placed it in bonded  
15 warehouses; and on the 4th September, 1976, they filed their accounts in connection with their expenses.

20/ The order of arrest was made at the instance of the plaintiffs in this action who instituted legal proceedings against the defendant cargo claiming an amount of 286,095.79 U.S. Dollars for freight and a declaration of the Court that they were entitled to a lien on the defendant cargo.

The warrant of arrest was on the 29th October, 1976 cancelled as regards a certain part of the cargo.

By the present application the applicants apply for an order fixing the expenses payable to the respondents in respect of discharging and other expenses incurred by them by acting in pursuance to the aforesaid order of the Court for the arrest of the defendant cargo; and for an order directing the plaintiffs and/or the said respondents to make discovery of all documents in their possession to support all items of the accounts filed in Court on the 4th September, 1976. 5

The respondents opposed the application and contended that the Court had no jurisdiction or power to deal with the application because the warrant of arrest was set aside; and since the cargo is not any more under arrest it is not any more under the control or power of the Court and so the Court has no jurisdiction in the matter. Moreover, the true construction of section 1 of the Administration of Justice Act, 1956, by no means brings the present application within the jurisdiction of this Court. Respondents further contended that their costs had already been approved by this Court. 10 15

*Held*, (1) the fact that the warrant of arrest was set aside does not automatically oust the jurisdiction of this Court, because though the warrant of arrest was set aside the action of the Shipowners claiming a lien on the cargo is still pending; and the respondents, who have a lien on the goods for storages and other incidental expenses, (see section 499 of the English Merchant Shipping Act, 1894) and may claim the protection of the law, cannot allege that this Court has no jurisdiction. 20 25

(2) The submission of the respondents that the accounts have been approved by the Court cannot stand as there is no record in the file showing that they have ever been approved.

Respondents are, therefore, ordered to make discovery by affidavit within three weeks of all documents named in the application. 30

*Order in terms.*

Cases referred to:

"*The Energie*" (*Miedbrodt v. Fitzsimon*) [1875] 44 L.J. Ad. 25 at p. 32. 35

#### **Application.**

Application for an order directing the plaintiffs and/or Messrs. Frangoudi and Stephanou Ltd. to make discovery of

certain documents in their possession and for an order fixing the expenses payable to the said Messrs. Frangoudi and Stephanou Ltd. in respect of discharging expenses, storages and insurance pursuant to an order of the Court dated 9th June, 5 1976, for the arrest and discharge of the defendant cargo.

C. *Eratokritou*, for applicants (owners of the defendant Cargo).

L. *Papaphilippou*, for respondents Frangoudi & Stephanou Ltd.

10 The following judgment was delivered by:-

MALACHTOS. J.: The applicants cargo owners under bills of lading Nos. 1, 3, 4 from Rejekka to Jeddah and Nos. 1, 2, 4 5, 6, 7, 8, 9, 10, 11, 12, 13, 18, 23, 24, 26 and 27 from Marina di Carrara to Jeddah ex CRIOS II by the present application 15 apply for:

(a) An Order of the Court fixing the expenses payable to Messrs. Frangoudi & Stephanou Ltd. in respect of discharging expenses, storages and insurance for each of the said bills of lading pursuant to the Order of the Court dated 9th June, 1976; and 20

(b) An Order of the Court directing the plaintiffs and/or Frangoudi & Stephanou Ltd to make discovery of all books, papers, letters, invoices, receipts, vouchers, insurance policies and other writings and documents 25 in their custody, possession or power containing any entry, memorandum or minutes and all other documents to support all items of the accounts filed in Court on 4th September, 1976.

The facts relevant to this application are as follows

30 On the 9th June, 1976, the plaintiffs, a shipping company formed and incorporated in Cyprus, instituted legal proceedings against the defendant cargo on board their ship CRIOS II anchored at the time in the port of Larnaca claiming an amount of 286,095.79 US Dollars for freight, demurrages and/or expenses 35 by virtue of a charter party dated 26th November, 1975 and a declaration of the Court that they are entitled to a lien on the defendant cargo. At the same time by an *ex parte* application the plaintiffs obtained an Order of this Court for the arrest of the cargo and the appointment of Messrs. Frangoudi &

Stephanou Ltd., the present respondents, who are shipping agents in Larnaca, to discharge the said cargo and place it in a safe warehouse until further Order of the Court. The respondents pursuant to the above Order of the Court discharged the cargo and placed it in bonded warehouses in Larnaca and Nicosia and filed their accounts in Court in connection with their expenses on the 4th September, 1976. 5

In the meantime the cargo owners had applied to the Court by applications dated 21.7.76 and 10.8.76, for an Order cancelling the Order for the arrest of the cargo dated 9th June, 1976, which application after a long and bitterly contested hearing, resulted on 29th October, 1976, to an Order of the Court by which the Order of arrest was cancelled as regards that part of the cargo covered by bills of lading which were stamped "freight prepaid". 10 15

In the affidavit in support of the present application sworn by a certain Pilal Adel Hallak of Beirut, Lebanon, dated 15th September, 1977, it is stated that the affiant contacted the respondents and requested them to give him detailed accounts of the expenses, particularly, for bills of lading Nos. 9, 26 and 27, for payment so that the cargo covered by the said bills be released. He also states that he inspected the accounts filed in Court on the 4th September, 1976, by the respondents, and that the amounts claimed are excessive and beyond the usual tariffs. In most of the items in the accounts the respondents are not entitled to charge the cargo. He further alleges that the respondents by telex dated 29th August, 1977, informed Messrs. C. P. Erotokritou & Co., advocates for the applicants, that the total expenses until 31st August, 1977, excluding insurance until 19th September, 1977, for the goods covered by the three bills of lading in question, were £7,373.437 mils, but even on the contents of same the rate of storages is different than the one mentioned in the accounts filed in Court on 4th September, 1976. 20 25 30

On the other hand, respondents in their opposition allege that the Court has no jurisdiction or power to deal with the application of the applicants and, furthermore, that the costs of the respondents have already been approved by this Court on 1st June, 1977 and the 5th July, 1977. 35

On the question of jurisdiction counsel for the respondents submitted that the Court has no jurisdiction to deal with the application on two grounds:

- 5 (a) that the warrant of arrest was set aside on the 29th October, 1976 without any provision as regards the appointment of the respondents and so after the above date the respondents ceased to act under the Order of the Court. Since the cargo in question is not any more under arrest it is not under the control or power  
10 of the Court and so the Court has no jurisdiction in the matter.
- (b) that the true construction of section 1 of the Administration of Justice Act 1956, by no means brings the present application within the jurisdiction of this  
15 Court.

Counsel for the respondents also submitted that since the accounts of the respondents in connection with the discharge of the cargo which were filed on the 4th September, 1976, were approved by the Court on the 1st June, 1977 and 5th July, 1977, then this application is an abuse of the process of the  
20 Court.

I have carefully considered the argument of counsel for the respondents on the question of jurisdiction and I must say that I find no merit in it. The fact that the warrant of arrest was set aside does not automatically oust the jurisdiction of this  
25 Court.

The writ of summons in the action, which is still pending before this Court, was issued by the shipowning company against the defendant cargo on board their ship "CRIOS II",  
30 which was anchored at the time in the port of Larnaca, claiming among other remedies a declaration of the Court that the plaintiffs are entitled to a lien on the said cargo in respect of freights and demurrages amounting to U.S. Dollars 286,095.79 by virtue of a Charter Party dated 26th November, 1975.

35 The action was brought before this Court in its Admiralty Jurisdiction by virtue of section 1 (1) (h) of the English Administration of Justice Act 1956, which reads:

" 1. Admiralty Jurisdiction of the High Court –

- (1) The Admiralty Jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims: (a) ..... (b) ..... (c) ..... (d) ..... 5  
(e) ..... (f) ..... (g) ..... (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."

This Act is applicable in Cyprus by virtue of section 29 (2) (a) of our Courts of Justice Law 1960, which is as follows: 10

- " 29 (2) The High Court in exercise of the jurisdiction –  
(a) conferred by paragraph (a) of section 19 shall apply subject to paragraphs (c) and (d) of subsection (1), the Law which was applied by the High Court of Justice in England in the exercise of its Admiralty Jurisdiction on the day preceding Independence Day as may be modified by any Law of the Republic". 15

And section 19 (a) reads:

- " 19. The High Court shall, in addition to the powers and jurisdiction conferred upon it by the Constitution, have exclusive original jurisdiction – 20  
(a) as a Court of Admiralty vested with and exercising 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". 25

The cargo in question was on the 9th June, 1976, by Order of this Court arrested and placed in the custody of the respondents and although the warrant for the arrest of the cargo was set aside on 29th October, 1976, the action of the ship owners claiming a lien on the goods for freight and demurrages is still pending before this Court. But even if the action were withdrawn by the plaintiffs or determined against them by the Court, this would not have ousted the jurisdiction of this Court to deal with the present application. 30 35

By virtue of section 499 of the Merchant Shipping Act 1894, which Act is also applicable in Cyprus, the respondents have a

lien on the goods for storages and other incidental expenses  
This section reads as follows:

5 "499. Whenever any goods are placed in the custody of  
a wharfinger or warehouseman, under the authority of this  
Part of this Act, the wharfinger or warehouseman shall be  
entitled to rent in respect of the same, and shall also have  
power, at the expense of the owner of the good., to do all  
such reasonable acts as in the judgment of the wharfinger  
or warehouseman are necessary for the proper custody and  
10 preservation of the goods, and shall have a lien on the  
goods for the rent and expenses."

The lien created by this section is distinct from that of the  
shipowners for freight and other charges "*The Energie*" (*Mied-  
brodt v. Fitzsimon*) [1875] 44 L.J. Ad. 25 at page 32).

15 Therefore, one who claims the protection of the Law as in  
the case of the respondents, who at a given time may claim a  
lien on the goods in their custody for storages and incidental  
expenses, cannot allege that this Court has no jurisdiction for  
the matter in hand.

20 I now come to consider the other submission of counsel for  
the respondents, namely, that the costs of the respondents  
were approved by this Court on the 1st June, 1977 and the 5th  
July, 1977, and, therefore, the present application is an abuse  
of the process of the Court.

25 As it appears from the file the respondents on the 4th Septem-  
ber, 1976, filed their accounts in Court in connection with the  
discharge and storage of the cargo in question. In these  
accounts, which consist of 32 items, the total expenses up to  
that date, including the storage fees and insurance premiums  
30 amount to £53,155.785 nails. Having gone carefully through  
the file I found nowhere any record to the effect that either on  
the 1st of June, 1977 or, the 5th July, 1977, or at any time after  
the said accounts were filed, were approved by the Court.

35 As regards the 1st June, 1977, there is nothing in the file to  
show that this Court dealt with any matter in this case. As  
regards the 5th July, 1977, there is recorded that this Court  
dealt with an *ex parte* application filed by the plaintiffs in this  
action and issued an Order directing that an amount of

£6,231.359 mils, which was deposited in Court, being the proceeds of sale of the goods covered by bills of lading 15 and 20, after deducting all relevant expenses, be paid to the advocates for the plaintiffs. The said goods were appraised and sold by Order of this Court dated 25th January, 1977, in satisfaction of a judgment obtained by the plaintiffs for the sum of £8,153.081 mils against the goods covered by the said two bills of lading, for freight and demurrages, which were the only bills stamped "freight payable at destination." 5

It is recorded that the Court made the above Order after inspecting the accounts filed by the Registrar in connection with the said two bills of lading. So, the accounts approved on that date were those filed by the Registrar of this Court in connection with the appraisal and sale of the goods covered by bills of lading 15 and 20 and not the accounts of the respondents in connection with bills of lading referred to in the present application. 10 15

Therefore, the other submission of counsel for the respondents cannot stand either.

In view of the above, the respondents are hereby ordered to make discovery by affidavit within three weeks as from today, of all the books, papers, letters, invoices, receipts, vouchers, insurance policies and other writings and documents in their custody, possession or power containing any entry, memorandum, or minutes and all other documents to support all items and accounts filed in Court on the 4th September, 1976. 20 25

The application is adjourned to 28th February, 1978 for mention and any further directions of this Court, if necessary, such as the appointment of one or more assessors under rule 132. 30

*Order accordingly.*