

1980 May 26

[SAVVIDES, J.]

GEORGHIOS VOUMVLINOPOULOS,

Plaintiff.

v.

1. DOROTHEA SHIPPING CO. LTD.,
2. THE SHIP "AYIA MARINA",

Defendants.

(Admiralty Action No. 454/78).

Admiralty—Shipping—Master—Disbursements—Meaning—Expenses incurred by the master for the supply of provisions to the crew and for customs overtime, transportation expenses from and to the ship, telexes, and agency fees—Amount to disbursements—Section 44(4) of the Merchant Shipping (Masters and Seamen) Law, 1963 (Law 46/63). 5

Admiralty—Shipping—Master—Wrongful dismissal—Damages—Termination of employment through sale of ship by public auction—Unjustified failure of owners to pay master's wages—He is entitled to reasonable compensation—Sections 37(3) and 45 of the Merchant Shipping (Masters and Seamen) Law, 1963 (Law 46/63)—Sections 25(2) and 37(1) of the Law not applicable. 10

Admiralty—Shipping—Master—Contract of service—Arrest and sale of ship—Termination of services—Claim for wages and other emoluments, maintenance expenses, repatriation and other traveling expenses—See Karakiozopoulos and Others v. Ship "Ayia Marina" and Vlachos and Others v. Ship "Ayia Marina" (1980) 1 C.L.R. 19 and 113, respectively. 15

Admiralty—Shipping—"Seaman" excludes the "master"—Definition of "seaman" in section 2(1) of the Merchant Shipping (Masters and Seamen) Law, 1963 (Law 46/63). 20

This was an action by the master of defendant 2 ship for wages and other emoluments, subsistence and repatriation expenses, damages for wrongful dismissal and disbursement expenses

incurred for the benefit and/or on behalf of the defendants on account of the said ship.

5 The facts and the legal issues arising therefrom appear in *Karakiozopoulos v. Ship "Ayia Marina", Vlachos and Others v. Ship "Ayia Marina" and Theofanous and Another v. Ship "Ayia Marina"*, (1980) 1 C.L.R. 19, 113 and 176, respectively, and they will not be repeated herein, because they were adopted by the Court, mutatis mutandis, for the purposes of this action. This head-note, will, therefore be restricted to those issues which
10 were not present in the aforequoted cases, namely

(a) Disbursement expenses incurred for the benefit and/or on behalf of the defendants on account of the defendant
2 ship.

(b) Damages for wrongful dismissal.

15 The plaintiff's claim under (a) above amounted to £2,250.— and the disbursements consisted of provisions to the crew amounting to £914. The balance consisted of customs overtime, transportation expenses from and to the defendant ship, telexes, hire of a pump for taking the water out and agency fees. All
20 these provisions and services and other necessary expenses were made by "Selene Shipping Agencies Ltd.," at the request and on the instructions of the plaintiff and on his undertaking to pay for them.

25 Plaintiff's claim under (b) above did not arise from termination of employment by the owners or their authorised agents but arose out of the termination of employment due to the sale of the ship by public auction; furthermore it was a claim based on the failure of the owners to pay wages lawfully due and the consequences of such failure.

30 *Held*, (1) (after dealing with the meaning of "disbursements" vide pp. 291–92 post) that the expenses in question were necessary expenses incurred for the maintenance of the crew and for enabling the ship to anchor and remain in the Limassol port; and that the expenses incurred by the plaintiff-master amount
35 to disbursements which he is entitled to recover (see section 44(4) of the Merchant Shipping (Masters and Seamen) Law, 1963 (Law 46/63), Halsbury's Laws of England, 3rd ed. Vol 1, p. 59 para. 118 and *The Orienta* [1885] P. 49).

(2) (*On the plaintiff's claim for damages for wrongful dismissal*) that as the plaintiff is not a "seaman" because the definition of "seaman" as given in section 2(1) of Law 46/63 excludes the master, he is not entitled to the remedies provided by sections 25(2) and 37(1) of this Law; that taking into consideration the fact that wages were due to the plaintiff not as a result of any act or omission on his part or due to any reasonable dispute as to the obligation of the owners of the ship to pay such wages, he is, under the provisions of section 45* of Law 46/63, entitled to a reasonable compensation, which in the circumstances of this case is assessed at one month's salary; and that, accordingly, such amount is awarded to the plaintiff (see, also, section 37(3) of Law 46/63).

Judgment accordingly.

Cases referred to:

- Karakiozopoulos and Others v. The Ship "Ayia Marina"* (1980) 1 C.L.R. 19;
- Vlachos and Others v. The Ship "Ayia Marina"* (1980) 1 C.L.R. 113;
- Theofanous and Another v. The Ship "Ayia Marina"* (1980) 1 C.L.R. 176;
- Karamailis (No. 1) v. Pasparo Shipping Co.* (1972) 1 C.L.R. 1;
- Karamailis (No. 2) v. Pasparo Shipping Co.* (1972) 1 C.L.R. 72;
- The Orienta* [1885] P. 49 at p. 55;
- The Elmville (No. 2)* [1904] P. 422 at p. 426.

Admiralty Action.

Admiralty action by the master of the Ship "Ayia Marina" defendant No. 2, for wages and other emoluments, subsistence and repatriation expenses, damages for wrongful dismissal and disbursement expenses incurred for the benefit and/or on behalf of the defendants on account of the said ship.

P. Sarris, for the plaintiff.

M. Vassiliou, for the intervener-mortgagee.

Cur. adv. vult.

SAVIDES J. read the following judgment. Plaintiff was the master of the ship "AYIA MARINA", defendant 2 in this

* Quoted at p. 295 *post*.

action and his claim is for wages and other emoluments, subsistence and repatriation expenses, damages for wrongful dismissal and disbursement expenses incurred for the benefit and/or on behalf of the defendants on account of the said ship.

5 This is a mixed action in rem against the defendant ship (defendant 2) and in personam against its owners (defendants 1). The defendant ship is flying the Cyprus flag. In the course of the hearing the action against defendants 1 was withdrawn and was dismissed. The present action is one of a series of actions
10 brought against the defendant ship in which judgments have already been delivered (*Karakiozopoulos and others v. The Ship "AYIA MARINA"* (1980) 1 C.L.R. 19, *Vlachos & others v. The ship "AYIA MARINA"* (1980) 1 C.L.R. 113 and *Theofanous and another v. The ship "AYIA MARINA"* (1980) 1 C.L.R. 176
15 which concerned a number of claims of members of the crew). The defendant ship whilst in Limassol port, was arrested on the 17th October, 1978 by virtue of a warrant of arrest issued in Action No. 402/78 and was subsequently sold by public auction on 20.12.1978.

20 The claim in the present action though similar to the claims in all other actions referred to hereinabove, it presents different legal aspects in some respects, due to the difference in the position of a master and that of a seaman. The definition of "seaman" as given in section 2(1) of the Merchant Shipping
25 (Masters and Seamen) Law, 1963 (Law 46/63), excludes the master. Such section reads as follows:

30 "Ναυτικός" περιλαμβάνει πάντα όστις (έξαιρουμένων τών πλοιάρχων, πλοηγών και τών προσηκόντως μισθωθέντων και ναυτολογηθέντων μαθητευομένων) εργάζεται ή ύπηρετεί ύφ' οίανδήποτε ιδιότητα επί τινος πλοίου".

("Seaman" includes every person (except masters, pilots and apprentices duly indentured and registered) employed or engaged in any capacity on board any ship").

35 In this respect vide *Pandelis Karamailis (No. 1) v. Pasparo Shipping Co.* (1972) 1 C.L.R. p. 1 (upheld on appeal under the title *Pandelis Karamailis v. Pasparo Shipping Co.* (1972) 1 C.L.R. p. 72. Furthermore, the action includes a special claim for £4,582.700 mils for disbursement expenses incurred by the master for the benefit of the defendant ship including necessary

services and provisions to the crew rendered by a shipping agency in Limassol at the request of the master and on his personal undertaking to pay for them.

No appearance was entered on behalf of the defendant ship and her owners took no steps in defending the claim. The claim was disputed by the mortgagee of the ship who by leave of the Court was joined as an intervener and in such capacity he defended the action for safeguarding his own interests under the mortgage.

The intervener-mortgagee in his answer which is a cyclostyled copy of the answer filed in all other actions, subject to certain alterations concerning the amounts due, denies plaintiff's claim. The intervener-mortgagee alleges that the master has nothing to receive and in fact overpayment was made to him of an amount of 35,202 drachmas which is owned by him to the ship owners. The same allegations are also advanced, which have already been dealt with in the other actions, to the effect that there was a conspiracy between the plaintiff and the crew to deviate the ship from Tripoli, Lebanon, where it was unloading, to Limassol port, contrary to the instructions of the owners, for the purpose of having the ship arrested and thus blackmail the owners to pay exorbitant claims; also, that the plaintiff wrongfully deserted the ship on 7.10.1978 and in consequence he is not entitled to any wages after such date.

There is no express denial in the answer of the intervener-mortgagee specifically denying plaintiff's allegation as to the amount claimed by him for disbursement expenses under paragraph 6(a) of the petition, other than a general denial under paragraph 3 of the answer denying all allegations contained in the petition which, as I have already mentioned, is included in all cyclostyled similar answers in all other actions.

The plaintiff gave his evidence as preparatory to the hearing. On the date fixed for continuation of the hearing the following statement was made by counsel appearing for the parties in this action:

"Both counsel state that the following facts are admitted subject to the legal issue as to whether they are entitled to:

(a) £169.- expenses for four necessary trips to Greece

alleged by the Captain and one trip for his repatriation. These trips are calculated at £33,800 mils each.

- 5 (b) The amount concerning necessary supplies to the ship which was mentioned in the evidence of the Captain as being supplied to the ship on his undertaking, according to his evidence, is £2,250.—

Both counsel further adopt the evidence which was given by Roussos and Koutroumbas.

10 *Vassiliou*: I adopt my address in Actions 451, 452 & 453/78 and I have nothing more to add.

Sarris: I also adopt my argument. In connection with the disbursement account for supplies to the ship I wish further to cite Halsbury's Laws of England, 3rd Ed. vol. 35 at pp. 135, 136 and 183."

15 In view of such statement no other evidence was called in the present action and the evidence of the intervener mortgagee and that of Koutroumbas given before me in Actions 451/78-453/78, was deemed as evidence given also for the purposes of the present action. Also, the addresses of both counsel in the said actions
20 were adopted for the purposes of the present action, with the addition of what is referred in the statement made by counsel as above.

In his petition the plaintiff alleges that he was employed on the 1st March, 1978 to serve as a master of the defendant ship
25 for an indefinite period commencing on the 1st March, 1978 at the agreed remuneration of 70,000 drachmas per month. The intervener-mortgagee by his answer, admits that the remuneration of the plaintiff is as stated in the petition; so, the height of such remuneration is not in issue. In view of the fact that
30 counsel by their joint statement adopted the evidence in Actions Nos. 451/78-453/78 (*Vlachos and others v. The ship "AYIA MARINA"*) as evidence given also for the purposes of the present action, I consider it unnecessary to deal in length with the facts of the case and my findings on such facts and the
35 reasons given therein, which need not be repeated in this judgment but are adopted mutatis mutandis for the purposes of the present action and should be deemed to form part of the present action. I, therefore, find that the intervener-mortgagee

failed to prove that there was any conspiracy between the master of the ship and the crew or that the master wrongfully deviated the ship to Limassol port, contrary to the instructions of the owners to blackmail them for exorbitant claim, nor that he deserted the ship as alleged by the intervener-mortgagee. The whole conduct of the owners of the ship, prior to her arrest as well as after the arrest and till the sale of the ship by public auction, proves the contrary. Defence witness Koutroumbas who was holding a responsible post in the employment of the owners of the defendant ship, admitted in his evidence that after the ship sailed to Limassol, plaintiff went to Greece on several occasions, in an effort to arrange payment of the wages due to the crew and that advances were made to him for such purpose. Also that after the arrest of the ship this witness came to Cyprus and called the crew in the presence of the plaintiff, as master of the ship, in an effort to find an amicable settlement. On this occasion, he left with the plaintiff a sum of money for payment against the wages of the crew which is an indication that the plaintiff was still the master of the ship and he had not wrongfully deserted her, as alleged by the intervener-mortgagee. Furthermore, it was never put to the plaintiff when giving evidence that he acted contrary to the instructions of the owners by bringing the ship to Limassol or that he conspired with the crew to deviate the ship to Limassol for the purpose of having the ship arrested and thus to blackmail the owners to pay exorbitant claims. On the contrary, the evidence of the plaintiff, which I accept as truthful and reliable evidence, clearly shows that upto the last moment he was sparing no effort to secure from the owners settlement of the wages due and thus have the ship released from arrest and her subsequent sale, which the owners never took any steps to avoid. I do not accept the evidence of the intervener-mortgagee and that of defence witness Koutroumbas in support of their allegations and I consider such evidence unreliable.

Having found as above, I come now to consider the various claims of the plaintiff which are set out in the petition. Such claims may be summarised under the following headings:

- (a) Wages and emoluments due till the date of the sale of the ship.
- (b) Disbursement expenses amounting to £4,582.700 mils.

- (c) War zone bonuses.
- (d) Maintenance expenses.
- (e) Repatriation expenses.
- (f) Claim in respect of leave.
- 5 (g) Two months' salary as damages for wrongful dismissal and/or otherwise.

I shall deal with the above claims in the above order.

(a) *Wages and other emoluments due till the date of the sale of the ship.*

- 10 It is in evidence by the master that he remained in the employment of the defendant ship till the 20th December, 1978 when the ship was sold by public auction as a result of which his services were terminated. The evidence of the master in this respect, stands uncontradicted. The evidence of witness 1,
- 15 Koutroumbas, called by the intervener-mortgagee, proves that the master was in the employment of the ship when this witness came to Cyprus, about the end of October to negotiate with the crew their claims and such negotiations were carried out in the presence of the master. Furthermore, this witness
- 20 admitted that the master went to Athens several times to discuss the question of the wages due to the crew and that on several occasions advances were made to the plaintiff for payment to the crew.

- I am, therefore, satisfied that plaintiff has proved his claim
- 25 for wages till 20.12.1978 when the ship was sold by public auction and that after he left Cyprus on the 20th November, 1978 for Greece, he was still in the employment of the defendant standing by at the offices of the owners, expecting them to make arrangements for the release of the ship and for the instructions
- 30 to sail the ship back to Piraeus after her release.

- According to the wages account prepared by him and which is *exhibit* 16, the balance of wages due to him till 20.11.1978 amounts to 202,333 drachmas. Furthermore, he is entitled to one month's wages as from 20.11.1978 when this *exhibit*
- 35 was prepared, till 20.12.1978 when the ship was sold, another 70,000 drachmas, which makes a total of 272,333 drachmas. Certain deductions, however, have to be made out of this

amount. According to plaintiff's evidence, when the intervener-mortgagee's witness 1 came to Cyprus, he paid to him 1,400 U.S. dollars, out of which plaintiff retained 300 U.S. dollars, he paid 600 U.S. dollars to the suppliers of provisions against their bill, and the rest to members of the crew. In fact, in the various wages accounts produced in the other actions and in particular *exhibits* (12), (13), (15), (16) and "A", various amounts are shown as having been paid to the members of the crew by plaintiff and deducted from their respective claims, totalling to 140,000 drachmas. Out of this amount, 100,000 drachmas were paid to the master whilst he was in Athens, according to his evidence and that of Koutroumbas and the rest, obviously, was paid out of the amount of U.S. dollars 1,400 left with him by witness Koutroumbas. The whole line of cross-examination of the plaintiff was to the effect that only 300 U.S. dollars were retained by him on account of his wages. Therefore, the amount of 300 U.S. dollars has to be deducted from what is due to him for wages.

(b) *Disbursement expenses.* In the course of the hearing it was agreed by counsel that the amount of disbursements was £2,250 as against the amount originally claimed in the petition. Such disbursements appear in *exhibit* 17 (A-Z) and they consist of provisions to the crew amounting to £914, and the balance consists of customs overtime, transportation expenses from and to the ship, telexes, hire of a pump for taking the water out, agency fees, e.t.c. All these provisions and services and other necessary expenses were made by "Selene Shipping Agencies Ltd" at the request and on the instructions of the plaintiff and on his undertaking to pay for them. By going through the various items appearing in *exhibit* 17, I find that all these expenses were necessary expenses incurred for the maintenance of the crew and for enabling the ship to anchor and remain in the Limassol port. No other invoices were produced by the master as due or paid by him. It has been admitted by the plaintiff that a sum of 600 U.S. dollars was paid to him by the owners of the defendant ship for payment against these invoices. Such amount does not appear as having been deducted from the invoices produced. Therefore, in any event the sum of 600 U.S. dollars has to be deducted.

I come now to consider what amounts to "disbursements" and whether the master is entitled to such a claim. In Halsbury's

Laws of England, Third Ed. Vol. 1, p. 59 under para. 118 it reads as follows:-

5 “ ‘Disbursements’ include all proper expenditure by the master for which he makes himself liable in respect of necessary things for the ship for the purposes of navigation which he, as master of the ship, is there to carry out— necessary in the sense that they must be had immediately— and when the owner is neither able to give the order, nor so near to the master that the master can obtain his authority, and the master is therefore obliged to render himself 10 liable in order to carry out his duty as master”.

The cases referred to in support of this, are *The Orienta*, [1885] P. 49, C.A. at p. 55; *The Elmville* (No. 2) [1904] P. 422, at p. 426. In the *Orienta* case Lord Esher, M.R. at pp. 54, 55 had this to 15 say:

“For a century or more it has been common knowledge that the master is only authorized to pledge his owner’s credit for what may be called ‘things necessary’ for the ship; that is to say, he can pledge his owner’s credit if 20 he is in a position where it is necessary, for the purposes of his duty, that these things should be supplied, and he cannot have recourse to his owners before ordering them, just as he can give a bottomry bond on the ship where the necessity arises in the sense which I have just stated.

25 But then there came these Acts of Parliament, which say he should have a lien for disbursements. Now, if he should have a lien upon the ship, then the ship is bound to him; but the master cannot bind the ship to himself by ordering goods which he was not authorized to order at 30 all, so as to pledge his owner’s credit for them.

The real meaning of the word ‘disbursements’ in Admiralty practice is disbursements by the master, which he makes himself liable for in respect of necessary things for the ship, for the purposes of navigation, which he, as 35 master of the ship, is there to carry out—necessary in the sense that they must be had immediately—and when the owner is not there, able to give the order and he is not so near to the master that the master can ask for his authority, and the master is therefore obliged, necessarily, to render himself liable in order to carry out his duty as master.” 40

This citation was referred to with approval in *The Elmville* (No. 2) by Sir F.H. Jeune as a well established principle. There is also provision in our legislation in the Merchant Shipping Laws (1963–1976) (Law 46/63–Law 24/76) under section 44 sub-section (4) which reads as follows:

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“ (4) ‘Ο πλοίαρχος καὶ πᾶν ἕτερον πρόσωπον ὅπερ νομίμως ἀναπληροῖ τοῦτον ἐν περιπτώσει θανάτου ἢ ἀνικανότητος τοῦ πλοίαρχου ἐκ τινος ἀσθενείας, ἐφ’ ὅσον ἐπιτρέπεται ὑπὸ τῶν περιπτώσεων, κέκτηται τὰ αὐτὰ δικαιώματα, δύναται νὰ προσφύγῃ εἰς τὰ αὐτὰ δικαστικὰ μέτρα καὶ ἔχει τὸ αὐτὸ ναυτικὸν προνόμιον ἀναφορικῶς πρὸς τὴν διεκδίκησιν τῶν προσηκόντως γενομένων ὑπ’ αὐτοῦ δαπανῶν, ἀναληφθεῖσων ὑποχρεώσεων διὰ λογαριασμὸν τοῦ πλοίου ἐν τῇ ιδιότητι αὐτοῦ ὡς πλοίαρχου ὡς καὶ ὁ πλοίαρχος διὰ τὴν διεκδίκησιν τῶν μισθῶν του.’”

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(“ (4) The master of a ship, and every person lawfully acting as master of a ship by reason of the decease or incapacity from illness of the master of the ship, shall, so far as the case permits, have the same rights, liens and remedies for the recovery of disbursements or liabilities properly made or incurred by him on account of the ship as a master has for the recovery of his wages.”)

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In the result I find that the expenses incurred by the master under this heading amount to disbursements which he is entitled to recover. I find that amount as being £2,250.– less 600 U.S. dollars paid to him on the 20th October, 1978.

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(c) *War zone bonus.* Plaintiff, in the course of the hearing, abandoned this claim, therefore, I need not deal with it.

(d) *Maintenance expenses.* I find that plaintiff is entitled to such expenses which, according to his evidence, amount to 10,000 drachmas.

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(e) *Repatriation and other travelling expenses.* This amount has been agreed at £169.– according to the joint statement of counsel which appears in this judgment. This amount includes four necessary trips to Greece and back to Cyprus (two return-trips) and one one-way trip from Cyprus for his return to Greece. I consider this claim as justified, as these trips were incurred for the purpose of enabling the master to get in touch

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with the owners of the ship in his efforts to have the wages of the crew settled and the ship released.

5 (f) *Leave.* Though the master gave evidence in respect of the other members of the crew that they did not get any leave, he has not mentioned in his evidence as to what leave is due to him and whether he made use of any such leave during his trips to Athens after the arrival of the ship in Limassol. I, therefore, find that plaintiff failed to prove this claim.

10 (g) *Damages:* S.10 of the Merchant Shipping (Masters and Seamen) Law (Law 46/63) makes provision as to the manner of employing a master and the consequences of termination of employment by the ship's owners or their authorised representatives. S.10(2) provides as follows:-

15 “(2) Πάσα τοιαύτη σύμβασις δύναται νά καταγγελθῆ ὑπὸ τοῦ πλοιοκτῆτου ἢ τοῦ προσηκόντως ἐξουσιοδοτημένου ἀντιπροσώπου αὐτοῦ χωρὶς νά ἀπαιτῆται οἰαδήποτε προειδοποίησις, ἢ καταβολή ἀποζημιώσεως, ἐκτὸς ἐὰν ἡ σύμβασις διαλαμβάνη ρητῶς ρήτραν περὶ τοῦ ἀντιθέτου.”

20 (“(2) Any such agreement may be repudiated by the shipowner or his duly authorized agent without any notice or payment of any compensation unless express provision is made therein to the contrary.”)

25 The present case however is not one of termination of employment by the owners or their authorized agents but is a case of termination of employment due to the sale of the ship by public auction. Furthermore it is a claim based on the failure of the owners to pay wages lawfully due and the consequences of such failure.

30 Under section 37(1) of Law 46/63 provision is made for the payment of wages after the termination of employment of a “seaman” as a result of the sale of the ship by public auction as follows:-

35 “37.—(1) Ἐὰν ἡ ὑπηρεσία ναυτικοῦ ὑπηρετοῦντος ἐπὶ Κυπριακοῦ πλοίου τερματισθῆ πρὸ τῆς προβλεπομένης ἐν τῇ συμβάσει ἡμερομηνίας, λόγῳ ναυαγίου, ἀπωλείας ἢ τῆς διὰ δημοσίου πλειστηριασμοῦ πωλήσεως πλοίου, οὗτος θὰ δικαιούται νά λαμβάνη δι’ ἐκάστην ἡμέραν καθ’ ἣν οὗτος

είναι ἐν τῇ πραγματικότητι ἄνευ ἐργασίας διαρκούσης τῆς περιόδου τῶν δύο μηνῶν ἀπὸ τῆς ἡμερομηνίας καθ' ἣν ἐτερματίσθη ἡ ὑπηρεσία αὐτοῦ, τοὺς μισθοὺς εἰς οὓς ἐδικαιούτο μέχρι τῆς ἡμερομηνίας ταύτης.”

(“37.–(1) When the service of a seaman employed on a Cyprus ship terminates before the date contemplated in the agreement, by reason of the wreck, loss or sale at public auction of a ship, he shall be entitled, in respect of each day on which he is in fact unemployed during a period of two months from the date of the termination of the service, to receive wages at the rate to which he was entitled at that date.”).

As I have already said earlier in this judgment the definition of “seaman” does not include a master. In consequence section 37(1) would have no application to a master. By the provision however of section 37(3) the word “seaman” is extended for the purpose of section 37 to include not only the persons defined as seamen under section 2(1) but also any person employed on the ship in any capacity whatsoever. Section 37(3) reads as follows:—

“37.–(3) Ἐν τῷ παρόντι ἄρθρῳ ‘ναυτικός’ περιλαμβάνει πᾶν πρόσωπον ἐργαζόμενον ἢ ὑπηρετοῦν ὑφ’ οἰανδήποτε ιδιότητα ἐπὶ πλοίου, εἰς τὴν περίπτωσιν ὅμως πλοίου οὕτινος ἡ χωρητικότης δὲν ὑπερβαίνει τοὺς πενήτηκοντα κόρους, δὲν περιλαμβάνει πρόσωπα ἅτινα δικαιούνται εἰς ἀντιμισθίαν μόνον διὰ συμμετοχῆς εἰς τὰ ἐκ τῆς ἐκμεταλλεύσεως τοῦ πλοίου προκύπτοντα κέρδη, ἢ διὰ συμμετοχῆς εἰς τὰς ἀκαθαρίστους εἰσπράξεις αὐτοῦ.”

(“37.–(3) In this section, ‘seaman’ includes every person employed or engaged in any capacity on board any ship, but, in the case of a ship which does not exceed fifty tons burden, does not include any person who is entitled to be remunerated only by a share in the profits or the gross earnings of the working of the vessel.”).

There is further provision for the payment of compensation to the master in case of arrears of wages under section 45 which provides as follows:—

“45. Εἰς πᾶσαν ἀγωγήν ἐγερθεῖσαν ὑπὸ τοῦ πλοιάρχου,

5 ἢ εἰς πᾶσαν ἑτέραν δικαστικὴν διαδικασίαν ἀρξαμένην ὑπ' αὐτοῦ, πρὸς διεκδίκησιν παντὸς ποσοῦ ὀφειλομένου αὐτῷ δίκην μισθοῦ, τὸ δικαστήριον ἐὰν κρίνῃ ὅτι ἡ καθυστέρησις εἰς τὴν πληρωμὴν τῶν μισθῶν δὲν ὀφείλεται εἰς πρᾶξιν ἢ
 10 παράλειψιν τοῦ πλοιοάρχου, ἢ εἰς εὐλογόν τινα διαφορὰν περὶ τὴν ὑποχρέωσιν πρὸς καταβολὴν αὐτῶν, ἢ εἰς ἑτέραν αἰτίαν, ἀλλ' εἰς ἄδικον πρᾶξιν ἢ παράλειψιν τοῦ ὑπόχρεου πρὸς καταβολὴν αὐτῶν προσώπου, δύναται νὰ διατάξῃ τὸ πρόσωπον τοῦτο ὅπως καταβάλλῃ ἐπιπροσθέτως τοῦ ὀφειλομένου τῷ πλοιοάρχῳ ποσοῦ διὰ μισθοῦς, δικαίαν ἀποζημιώσιν διὰ τὴν χωρήσασαν καθυστέρησιν, ἄνευ ἐπηρεασμοῦ οἰασδήποτε ἄξιώσεως ἣν ὁ πλοιοάρχος ἤθελε προβάλλει διὰ ταύτην.”

15 (“45. In any action or other legal proceedings by the master of a ship for the recovery of any sum due to him... on account of wages, the Court may, if it appears to it that the payment of the sum due has been delayed otherwise than owing to the act or default of the master, or to any reasonable dispute as to liability, or to any other cause
 20 not being the wrongful act or default of the person liable to make the payment, order that person to pay, in addition to any sum due on account of wages, such sum as it thinks just as damages in respect of the delay, without prejudice to any claim which may be made by the master on that
 25 account.”).

Section 25(2) under which in case of arrears of payment of wages without reasonable cause, a seaman is entitled to payment of two days' wages for every day that his wages are due with a maximum of 20 days' wages (10 days double wages) under which
 30 the plaintiffs in the other actions have recovered, does not apply in this case as it provides for “seamen” only and does not extend to the master.

Taking into consideration the fact that wages were due to the plaintiff not as a result of any act or omission on his part or
 35 due to any reasonable dispute as to the obligation of the owners to pay but as a result of the unjustified failure of the owners of the ship to pay such wages, I find that under the provisions of section 45 of Law 46/63 plaintiff is entitled to a reasonable compensation, which, in the circumstances of this case, I assess

at one month's salary and I award such amount to the plaintiff.
In the light of the above, I find that plaintiff is entitled to:

- (a) 272,333 drachmas less U.S. dollars 300 paid on account.
- (b) £2,250.- less U.S. dollars 600 for disbursement expenses. 5
- (c) 10,000 drachmas maintenance expenses.
- (d) £169.- repatriation and travelling expenses.
- (e) 70,000 drachmas as compensation under section 45 of Law 46/63.

In the result, I give judgment for plaintiff against the defendant ship accordingly. 10

Concerning the amounts referred to in drachmas and dollars the judgment will be in the equivalent in Cyprus Pounds at the rate prevailing on 20.11.1978 such date for conversion having been agreed by counsel representing the parties in these proceedings. 15

Defendant 2 also to pay to plaintiff the costs of this action to be assessed by the Registrar.

The action as against defendants 1 stands, as already dismissed, with no order for costs. 20

*Judgment and order for costs
against defendant 2 as above.
Action against defendants 1
dismissed.*