

THE TOKIO MARINE AND  
FIRE INSURANCE COMPANY LTD.,

*Plaintiffs,*

v.

FAME SHIPPING COMPANY LTD.,

*Defendants.*

TOKIO MARINE  
AND FIRE  
INSURANCE  
COMPANY LTD.  
v.  
FAME  
SHIPPING  
COMPANY LTD.

(Admiralty Action No. 14/75).

*Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45 of 1963)—Prohibition of dealing with ship—Section 30 of the Law—Does not apply to mere creditors or claimants of damages against the owners of the ship—“Interested person” in the said section means a person who is interested in the ship herself—He may be a legatee or heir or a creditor—Whether he is an “interested person” within the meaning of the section, is a question depending on the facts of the particular case—Eastern Mediterranean Maritime Ltd. v. Nava Shipping Co. Ltd. (1975) 5 J.S.C. 666 and Verolme Dock and Shipbuilding Co. Ltd. v. Lamant Shipping Co. Ltd. (1975) 11 J.S.C. 1618 reconsidered.*

By an admiralty action, filed against the defendants, the applicants—plaintiffs claimed the sum of C£90,000 by way of compensation for damages caused to a cargo of sugar, during its transportation by defendants' ship “Aegis Fame” to the Japanese port of Chiba, which damage was allegedly due to the negligence of the defendants' servants. The above sum was paid by the plaintiffs to the consignees of the cargo.

At the same time, the plaintiffs on an *ex parte* application, based solely on section 30\* of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law No. 45 of 1963) obtained an order against the defendants prohibiting any dealing with the said ship “Aegis Fame” until further order of the Court.

On the date when the said order was made returnable the defendants opposed it and contended that: The plaintiffs were not entitled to obtain an order under the said section 30, as

\* Vide p. 335 *post*.

they were not interested persons within the meaning of the said section; and that an order under section 30 can only be made when the applicant has a proprietary interest in the ship herself and does not cover a mere creditor or claimant of damages against the owners of the ship as in the present case. 5

*Held*, (1) section 30 of the Law does not apply to mere creditors or claimants of damages against the owners of the ship and that “interested person” in this section means a person who is interested in the ship herself. He may be a legatee or heir or a creditor. Whether he is an interested person within the meaning of the said section, is a question depending on the facts of the particular case (*Eastern Mediterranean Maritime Ltd., v. Nava Shipping Co. Ltd.* (1975) 5 J.S.C. 666 and *Verolme Dock and Shipbuilding Co. Ltd. v. Lamant Shipping Co. Ltd.* (1975) 11 J.S.C. 1618, *reconsidered*). 10 15

(2) In the case in hand the claim of the applicants against the respondents owners of the said ship is for damages only and is not connected with any claim in the ship herself. Therefore, the order prohibiting any dealing with the ship is hereby cancelled. 20

*Order accordingly.*

Cases referred to:

- Beneficial Finance Corporation Ltd. v. Price* [1965] 1 Lloyd’s Rep. 556;
- Eastern Mediterranean Maritime Ltd. v. Nava Shipping Co. Ltd.* 25 (1975) 5 J.S.C. 666;
- Verolme Dock and Shipbuilding Co. Ltd. v. Lamant Shipping Co. Ltd.* (1975) 11 J.S.C. 1618;
- La Blanca and El Argentino* [1908] 77 L.J. (P.) 91;
- Roy v. Hamiltons & Co.* [1867] 5 M. 573; 30
- M’ Phail v. Hamilton* [1878] 5 R. 1017.

**Application.**

Application under s. 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45 of 1963) prohibiting any dealing with the ship “Aegis Fame” belonging to the defendants. 35

*L. Papaphilippou*, for applicants–plaintiffs.

*E. Montanios with M. Cleopa (Mrs.)*, for respondents–defendants.

*Cur. adv. vult.* 40

The following judgment was delivered by:-

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5 MALACHTOS, J.: The applicants, an insurance company of Tokyo, on 31.3.75, instituted the present proceedings against the defendants, a company formed and incorporated in Cyprus with limited liability, as owners of the ship "Aegis Fame", which is registered in Cyprus, claiming the sum of C£90,000.—  
10 by way of compensation for damage caused to the cargo of sugar during its transportation by the said ship to the Japanese port of Chiba, which damage was due, as alleged, to the negligence of the defendants' servants. The above sum was paid by the plaintiff company to the consignees of the cargo.

15 At the same time, the plaintiffs on an *ex parte* application, based solely on section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963 (Law 45/63), accompanied by affidavit, obtained an order against the respondents prohibiting any dealing with the ship "Aegis Fame" until further order of the Court.

This section is as follows:

20 " 30. The High Court may, if the Court thinks fit (without prejudice to the exercise of any other power of the Court), on the application of any interested person make an order prohibiting for a time specified any dealing with a ship or any share therein, and the Court may make the order on any terms or conditions the Court may think just, or  
25 may refuse to make the order, or may discharge the order when made, with or without costs, and generally may act in the case as the justice of the case requires; and the Registrar, without being made a party to the proceedings, shall on being served with an official copy thereof obey  
30 the same."

35 On the date when the said order was made returnable the respondents appeared and opposed it by filing an opposition supported by affidavit. The main argument of counsel for the respondents at the hearing was that the applicants were not entitled to obtain an Order under section 30 of the Law, as they were not interested persons within the meaning of the said section. He submitted that an Order under section 30 can only be made when the applicant has a proprietary interest in the ship herself and does not cover a mere creditor or claimant  
40 of damages against the owners of the ship as in the present case. In the present case the claim of the applicants against

the respondents is a claim for damages and has nothing to do with any proprietary interest in the ship herself.

In the case of the *Beneficial Finance Corporation Ltd. v. Price*, an Australian case of the Supreme Court of New South Wales, reported in [1965] 1 Lloyd's Rep. 556, Mr. Justice Moffitt analyses and deals extensively with the history and application of section 30 of the English Merchant Shipping Act, 1894, which is identical to section 30 of our Law. That was an application under section 30 of the Merchant Shipping Act, 1894 by Beneficial Finance Corporation Ltd. unregistered mortgagee of the vessel "Lolita", for an order against the respondent, Mr. John Hamilton Farren Price owner of the "Lolita" restraining him for such time as the Court thought fit from dealing with the vessel or the respondent's share therein. The respondent undertook to perfect his title as registered owner of the ship and do what was necessary to enable the mortgage to be registered as a condition of the payment to him but he neglected to execute the declaration necessary to enable the ship to be registered in his name, and thereafter to enable the mortgage in question to be registered. In this case it was held that section 30 of the Law was not to be limited as alleged by the respondent to sales under the Court's supervision of ships or interests therein passing by transmission to persons not entitled to own a British ship. At page 560 of this report we read:

" For the purpose of this submission reliance is placed upon the grouping of section 30 with the sections 24 to 29 under the heading 'Transfers and Transmissions' and, in particular, with section 28 which makes provision for the Court making orders in respect to the sale of a British ship which has been transmitted on marriage, death, bankruptcy or otherwise, to a person not qualified to own a British ship. Basic to the submissions was reliance on two decisions of the Court of Session given under the Maritime Shipping Act, 1854, section 65, which corresponds to section 30 of the 1894 Act; *Roy v. Hamiltons & Co.*, [1867] 5 M. 573; *M'Phail v. Hamilton*, [1878] 5 R. 1017. As a result of an analysis of section 65 and other sections in the 1854 Act corresponding with sections 24 to 29 of the 1894 Act it was held that the power to make orders under section 65 was limited to cases where there was a transmission to a person not qualified to own a British ship, such power being merely in aid of the powers of the Court in relation to

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5 sales in such cases. In *Roy v. Hamiltons & Co., supra*, it was decided that the section 65 was not applicable where a creditor of a shipowner sought an order to prevent a dealing with the ship contrary to his rights. In *M'Phail v. Hamilton, supra*, it was decided that section 65 was not applicable where a person having an interest in the ship herself sought an order prohibiting a dealing in violation of his rights.

10 Although it appears the jurisdiction has been exercised in England by single Judges on a wider basis but apparently without objection or argument (see cases collected in Temperley British Shipping Laws Vol. 11 (1963), p. 57) the two decisions carry the weight of the reasoned opinions of five members of the Court of Session which opinions are  
15 *not only of great persuasion but in my view a correct conclusion upon the 1854 Act. Although generally speaking the sections under consideration in the 1894 Act do correspond there are material differences and with this I agree. Section 65 of the 1854 Act and section 30 of the 1894 Act in general follow each other except in procedural matters but with the important exception that whereas the phraseology in the 1854 Act necessarily ties section 65 to the earlier sections there is a significant variation in the 1894 Act where there are substituted words with no such tie. Thus in the 1854 Act, section 62 (corresponding to section 28(1) and (2) of the 1894 Act) refers to 'a Ship or share in a Ship' which is then linked with section 63 which refers to 'Every Order for a Sale made by such Court as aforesaid' and 'the Ship'. Section 64 is likewise linked with the previous section and section 65 is likewise linked by relating the power to 'such Ship or Share'. The debate in the earlier of the Scottish cases turned upon the presence of the word 'such' in section 65, this being held to be the principal factor linking section 65 with the earlier sections. It is worthy of note that in the second of the two cases there was a strong dissent by Lord Shand. He took the first step necessary to this dissent by treating the words 'such Ship' as referring to a British ship rather than linking it with section 62, but then proceeded ([1878] 5 R., at p. 1021):*  
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..... 'I am unable, with deference to the opinions of your Lordships, to concur in this limited view of the statute,

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which would restrict its operation to a single case of a most exceptional character, and to one point of time only in the proceedings for the sale of a vessel. The Legislature has provided a means of promptly obtaining an order prohibiting dealings with a ship at the instance of any interested person by application directly to this Court, thus avoiding an appeal and procedure which might occur in the Bill-Chamber. A remedial provision of this kind should, according to all ordinary rules of construction, have a liberal interpretation—an interpretation which will cover all the cases which can fairly come within the meaning of the language used.’

Although the scheme of the sections when the Act was revised in 1894 was to some degree retained, the use in section 30 of the significantly different words ‘a ship or any share therein’ must be taken to have been a deliberate generalizing of the power in favour of a view such as that expressed by Lord Shand. This view is further confirmed by the rearrangement of some of the other sections, in particular section 29 which corresponded with the old section 63, such section having been previously linked in with section 62 above referred to. Section 29 is now put towards the end of the group of sections and commences, ‘Where any Court, whether under the preceding sections of this Act or otherwise...’.

Then comes section 30 with the change to which I have referred. It seems clear, therefore, that the Scottish authorities are not applicable to section 30 of the 1894 Act. (And see now *La Blanca* and *El Argentino*, [1908] 77 L.J. (P.) 91). I therefore reject the submission that section 30 should be limited as submitted and find the words of Lord Shand quoted in *M’Phail v. Hamilton*, *supra*, appropriate.”

The application of section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, was first considered by this Court in the case of the *Eastern Mediterranean Maritime Ltd. v. Nava Shipping Co. Ltd.* (1975) 5 J.S.C. 666, where it was decided that the application of section 30 should not be limited to cases where the applicant has a proprietary or beneficial interest in a ship but it should be given liberal interpretation so as to cover cases where a person is generally interested. This was a case where the applicants

brought an action against the respondents claiming damages for wrongful withdrawal of their vessel from the service of the plaintiffs and for breach of a charter party. In the subsequent case of *Verolme Dock and Shipbuilding Co. Ltd. v. Lamant Shipping Co. Ltd.* (1975) 11 J.S.C. 1618, it was again decided by this Court that the application of section 30 covers cases of mere creditors of the owners of a ship.

In spite of the fact that this section 30, former section 65 of the 1854 Act, has been in the Statute Book for so many years, yet, there are only a few cases decided in relation to its application.

Upon a careful review of these cases it is obvious that before the coming into operation of the 1894 Act in the very few cases decided under section 65 of the 1854 Act it was held that the power to make Orders under this section was limited to cases where there was a transmission to a person not qualified to own a British ship. It was not applicable where a creditor of a shipowner sought an Order to prevent a dealing with the ship contrary to his rights. Also, it was not applicable where a person having an interest in the ship herself sought an order prohibiting a dealing in violation of his rights. (See *Roy v. Hamiltons* and *M'Phail v. Hamilton, supra*).

After the coming into force of the 1894 Act we have the *La Blanca* case where section 30 of the Act was applied. The facts in that case were as follows:

“ A limited company, the builders of two ships, had taken bills of exchange for the cost of building, together with first mortgages on the ships; the first bill was about to fall due shortly, and the owners of the ships who had accepted the bills of exchange were in financial difficulties, the building company had gone into liquidation, and the liquidator had taken possession of one of the ships and was negotiating for her sale. On an *ex parte* application by certain bankers and others, who had discounted most of the bills of exchange and who on this account claimed the benefit of the mortgages as holders in due course under the Bills of Exchange Act, 1882, an order was made by the Court in the Probate, Divorce, and Admiralty Division, under section 30 of the Merchant Shipping Act, 1894, restraining the owners, mortgagees, or any other persons from dealing with the ships until further order.”

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No doubt, the applicants in both the *La Blanca* and the *Beneficial Finance Corporation, supra*, were creditors of the shipowners but were interested in the ship herself. They were not mere creditors of the owners of the ship. In all cases either before or after the 1894 Act where an Order prohibiting any dealing with a ship was made by the Court, the applicant was interested in the ship herself.

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I am now, therefore, of the view that section 30 of the Merchant Shipping (Registration of Ships, Sales and Mortgages) Law, 1963, does not apply to mere creditors or claimants of damages against the owners of the ship and that “interested person” in this section means a person who is interested in the ship herself. He may be a legatee or heir or a creditor. Whether he is an interested person within the meaning of the said section, is a question depending on the facts of the particular case.

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In view of the above I must say that it seems to me that in interpreting section 30 of the Law in both the *Nava* and the *Lamant* cases, I went too far in holding that section 30 applies also to mere creditors of the owners of the ship.

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In the case in hand the claim of the applicants against the respondents owners of the ship “Aegis Fame” is for damages only and is not connected with any claim in the ship herself.

For the above reasons the Order of this Court made on 31.3.75 against the respondents prohibiting any dealing with the ship “Aegis Fame” until further Order of the Court, is hereby cancelled.

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On the question of costs, the respondents are entitled to their costs to be assessed at the end of the proceedings.

*Order accordingly.*

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