1980 February 26

[SAVVIDES, J.]

GEORGHIOS VLACHOS AND OTHERS,

Plaintiffs,

v.

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

Defendants.

(*Admiralty Action Nos.* 451-453/78).

Admiralty—Shipping—Seamen—Foreign seamen—Contract of service—Action in rem for wages and other emoluments—Arrest and sale of ship—Whether contract of service terminated by issue of writ—And whether judgment can be given for wages accruing after issue of writ—Claims for "short-hand money", wages and other emoluments, war-zone bonus, accommodation and provisions, repatriation expenses and leave to which they were entitled and which they did not get—Karakiozopoulos and Others *v.* The Ship "Ayia Marina" (1980) 1 *C.L.R.* 19 *followed.*

Admiralty—Shipping—Seamen—Foreign seamen—Wrongful dismissal—Damages—Arrest and sale of ship—Services of seamen not terminated by owners of ship but they left the ship before her sale—Not entitled to damages under section 37(1) *of the Merchant Shipping (Masters and Seamen) Law,* 1963 (*Law* 46/63)*—But entitled to ten days double wages as a result of the unjustified failure of owners to settle their wages within a reasonable time—Section* 25(2) *of the above Law.*

Conflict of Laws—Foreign Law—Should be pleaded and proved—Actions by foreign seamen for wages and other emoluments against ship flying the Cyprus flag—Absence of evidence as to foreign Law—Cyprus Law applicable.

Admiralty—Shipping—Seamen—Foreign (Greek) seamen working on board Cyprus ship under contracts of service—Actions against ship for wages and other emoluments—"Collective agreement"

applicable to crews serving on board Greek cargo vessels—Not applicable in this case because defendant ship a Cyprus ship and because there was no expert evidence as to the application of the Greek Law and as to the legal effect under Greek Law of any collective agreement made under Greek Marine Law—Moreover there was no allegation in the pleadings that the contracts were subject to any collateral collective agreement.

The plaintiffs in these actions, who were members of the crew of the defendant ship "AYIA MARINA", a ship flying the Cyprus flag, brought actions against the defendants for balance of wages and other emoluments, war zone bonuses, repatriation and maintenance expenses, compensation for termination of employment, and wages in respect of leave to which they were entitled but they did not get.

The facts which gave rise to these claims are the same as those in the previous case of *Karakiozopoulos and Others* v. *The Ship "Ayia Marina"*, reported in (1980) 1 C.L.R. 19, which dealt with similar claims of other members of the crew against the defendant ship; and they will not be repeated herein because in dealing with the legal issues arising out of the present claims the Court adopted its exposition of the Law as set out in the above case. This head-note will, therefore, be restricted to those matters which have not arisen and have, thus, not been dealt with in the *Karakiozopoulos* case (*supra*).

The defendants entered no appearance but the Court on 14.12.1978, granted leave to the mortgagee of the defendant ship to join in the proceedings as an intervener and in such capacity he defended the action for safeguarding his own interests under the mortgage.

Counsel for the intervener-mortgagee put in by consent a booklet under the title "New Collective Agreement concerning crews serving on board Greek Cargo Vessels, over 4,500 D.W.T." and submitted that the terms of employment of the plaintiffs were subject to the Greek collective agreement. This booklet was not an official document or authoritative text, but it was purported to have been issued by booksellers in Athens and was described as including, *inter alia*, the provisions relating to the Master and the crew of the ΚΙΝΔ Κώδιξ Ἰδιωτικοῦ Ναυτικοῦ Δικαίου ("Code of Private Marine Law"). There was no

allegation in the pleadings that the contracts of service were subject to any collateral collective agreement.

The services of the plaintiffs in these actions, contrary to what took place in the *Karakiozopoulos* case (*supra*), were not terminated by the owners of the defendant ship but they left the ship some time before her sale by public auction.

On the question whether

(a) *The Intervener-mortgagee could rely on the said "collective agreements",*

(b) *Foreign-Law was applicable,*

(c) *The plaintiffs were entitled to two months' wages as damages for wrongful dismissal:*

Held, (1) that on the face of it the collective agreement in question concerns crews serving on board Greek cargo vessels over 4,500 D.W.T., whereas the defendant ship is not a Greek cargo vessel but a ship flying the Cyprus flag; that such collective agreement is applicable to ships over 4,500 D.W.T. and no evidence has been called as to the D.W.T. of the defendant ship; that no expert evidence was called as to the application of the Greek Law and particularly what is referred to as ΚΙΝΔ and by virtue of which and subject to the provisions of which the collective agreements are made, nor as to the legal effect under the Greek Law, of any collective agreement made under the Greek Marine Law; that, moreover, there is no allegation in the pleadings that the contracts were subject to any collateral collective agreement; and that, consequently, the intervener-mortgagee cannot introduce this evidence and seek to rely on it without amending his pleadings.

(2) That Foreign Law has to be pleaded and proved as a fact; that there was no allegation in the pleadings of this material fact nor any expert evidence has been called to prove such Law; that, therefore, in view of the fact that the defendant ship is a ship flying the Cyprus flag, in the absence of any evidence as to Foreign Law, the Cyprus Law regulating the relations of seamen working on ships under Cyprus flag is the law applicable; and, that, accordingly, these actions in so far as the legal aspect is concerned, have to be determined on the same principles as already explained in the other actions concerning the same ship (see *Karakiozopoulos* case (*supra*)).

(3) That the services of the plaintiffs were not terminated by the owners of the defendant ship but they left the ship some time before the sale of the ship by auction when their services would have automatically been considered as terminated under section 13(1)(d) of the Merchant Shipping (Masters and Seamen) Law, 1963 (Law 46/63); that when the services of a seaman are terminated under section 13(1) he becomes entitled to be paid his wages for a period of two months after such termination, so long as he remains out of work during such period (see section 37(1) of Law 46/63); that section 37(1), however, applies where a seaman remains on the ship till his services are terminated by the sale of the ship, whereas, the plaintiffs left the ship at their own free will before the date of the occurrence of such event; that, furthermore, they have not given any evidence to the effect that as from the date they left the ship for Greece, they were out of employment for any period or if employed that their services were less than what they were paid on the defendant ship; and that, therefore, the plaintiffs are not entitled to their claim for damages for wrongful dismissal.

(4) That plaintiffs are entitled to recover an amount equal to ten days double wages (that is, for 20 days) by virtue of section 25(2)* of Law 46/63, as a result of the unjustified failure of the owners of the defendant ship to settle the wages due within a reasonable time and an amount in respect thereof is awarded to the plaintiffs.

Judgment accordingly.

Cases referred to:

Karakiozopoulos and Others v. *The Ship "AYIA MARINA"* (1980) 1 C.L.R. 19;

Georghiades & Son v. *Kaminaras* (1958) 23 C.L.R. 276;

The "*Arosa Star*" [1959] 2 Ll.L.R. 396 at pp. 402, 403;

The Westport (No. 4) [1968] 2 Ll.L.R. 559 at p. 562;

The Board of Trade v. *The Sailing Ship Glenpark Ltd.* [1904] 1 K.B. 682;

Kyrmizoudes v. *Ship "Philipoupolis"* (1978) 1 C.L.R. 526;

First National Bark Chicago v. *Ship "Blockland"* (1977) 1 C.L.R. 209;

Mogileff and Freight [1921] 7 Ll.L.R. 130;

The General Serret [1925] 23 Ll.L.R. 14.

* Quoted at p. 132 *post*.

Admiralty actions.

Admiralty actions by the members of the crew of the defendant ship "Ayia Marina" for their wages, war-zone bonuses and other emoluments, repatriation and maintenance expenses and compensation for termination of employment.

P. Sarris, for the plaintiffs.

M. Vassiliou, for the intervener-mortgagee.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The plaintiffs in these actions were members of the defendant ship "AYIA MARINA" and they claim for balance of wages and other emoluments, war zone bonuses, repatriation and maintenance expenses and compensation for termination of employment. These actions were originally consolidated with a number of other actions brought by other members of the crew of the defendant ship but were later deconsolidated on the application of the parties and left to be heard separately. In view of the fact, however, that they involved common questions of law and fact, they were heard together and in consequence, though not consolidated, my judgment will be in respect of all of them.

The writ of summons was issued against Dorothea Shipping Company Limited, of Limassol, as defendant No. 1, and the ship "AYIA MARINA", as defendant No. 2, which, for the purposes of this action, will be referred to as "the defendant ship". Prior to the hearing, the action against defendant No. 1 was withdrawn and dismissed.

The defendant ship is registered in Cyprus and is flying the Cyprus flag. Whilst in the port of Limassol, she was arrested by warrant of arrest dated 17.10.1978 issued in Admiralty Action No. 402/78 and was finally sold by public auction on 20.12.1978. No appearance was entered by the owners of the defendant ship, nor did they take any part in defending these proceedings. Leave was granted on 14.12.1978, prior to the sale of the ship by public auction, to the mortgagee of the defendant ship to join in the proceedings as an intervener and in such capacity he defended the action for safeguarding his own interests under the mortgage.

The intervener mortgagee by his answer to the petition does not deny the employment of the plaintiffs, as alleged by them, but

he alleges that certain advances were made against their wages and that the balance due is not as alleged by them. He alleges by his pleadings that the plaintiffs on the 7th October, 1978 wrongfully deserted the ship and in consequence they are not entitled to any wages as from such date. It is further alleged by him that there was a conspiracy between the master of the ship and the crew with the object of black-mailing the owners to pay exorbitant claims to the plaintiffs and in furtherance of such object, they brought the ship to Limassol to arrest same. As a result of such conduct, they forfeited any claim for wages. He further alleges that the proper place and time of payment of outstanding claims was the place where the ship owners have, in fact, their principal place of business. In a long judgment delivered by me in Consolidated Actions Nos. 402/78-417/78, brought by other members of the crew, (*Karakiozopoulos & Others* v. *The Ship "AYIA MARINA"*, unreported*), I have dealt extensively with the facts of the case as coming out from the evidence of the master of the ship which, evidence, was taken preparatory to the hearing in those actions, as well as the present action and, therefore, I shall, for the purposes of these actions, deal rather briefly with the material facts:

The plaintiffs were engaged by the owners of the defendant ship by contracts of service made at Piraeus, Greece, to serve in various capacities on the defendant ship for indefinite periods, the commencement of which varied in each case. Their terms of employment, according to the evidence of the master and also as appearing on the Wages Accounts issued by the master on 20.11.1978 (*exhibits* 12, 13 and 14) and the contracts signed by the plaintiffs, photocopies of which were produced by consent (*exhibits* 'L', 'M' and 'N') were as follows:

Plaintiff in Action No. 451/78 was employed on 15.8.78 as an Electrician, at the monthly salary of 36,000 Drachmas.

Plaintiff in Action No. 452/78 was employed on 18.8.78 as a Cook, at the monthly salary of 35,000 Drachmas.

Plaintiff in Action No. 453/78 was employed on 6.7.78 as First Mechanic, at the monthly salary of 65,000 Drachmas.

* See now (1980) 1 C.L.R. 19.

A booklet under the Greek title "Συλλογική Σύμβασις και Θέματα Ναυτικῆς Ἐργασίας" with its translation in English under the title "New Collective Agreement concerning crews serving on board Greek Cargo Vessels, over 4,500 D.W.T.", was produced at the instance of the intervener–mortgagee and put in by consent, in view of the fact that reference is made to one of the *exhibits* (*exhibit* 'M') to such agreement. I shall deal with the nature and effect of this *exhibit*, in more detail, later in my judgment.

The defendant ship sailed on 3.9.78 from Piraeus with destination Tripoli, Lebanon where it arrived on 6.9.78 and where it stayed for 32–33 days for the purpose of unloading. The reason that such a long time was spent for the unloading, was due to the abnormal situation prevailing in the area as a result of incidents of fighting between Christians and Moslems nearly every day. According to the evidence of the master, the ship, whilst at Tripoli, became short of fuel and the master being unable to get enough supplies to enable him to navigate the ship back to Greece, and acting upon instructions received from the owners, he navigated the ship to Limassol port on undertaking of the owners that they would make arrangements to supply the ship with fuel at Limassol. The ship arrived at Limassol on 7.10.1978. Due to the fact that the wages of the crew were due, the crew started complaining to the master asking for payment of their wages. The master of the ship promised to take up the matter with the owners and in fact, a few days after the arrival of the ship in Limassol, he flew to Athens to get in touch with the ship owners for the settlement of the wages due. Upon return of the master to Cyprus and his informing the plaintiffs that their wages could not be settled, the plaintiffs in the present actions, as well as all other members of the crew, instituted proceedings against the defendant ship and continued working on the ship at the request of the master and without their employment having been terminated at any time till the sale of the ship by public auction. Up to the beginning of November, 1978 all members of the crew were accommodated on the ship and all necessary provisions for their maintenance were supplied but after such date, in view of the fact that provisions could not be supplied due to the refusal of any suppliers to provide them on credit, as large sums were already due to the suppliers, and also the fact that there was no drinking water on the ship and no electricity for the operation of the refrigerators and for ligh-

ting the master authorised the crew to make arrangements for accommodation within the town of Limassol and for their maintenance whilst they were still working on the ship. On 20.11.1978, at the request of the plaintiffs, the master issued the Wages Accounts for wages due to them till that day (*exhibits* 12, 13 and 14).

As to the fuel supplied to the ship, the master mentioned in his evidence that when he left Piraeus, the ship was supplied with 70 tons of fuel which was in addition to the fuel already existing on the ship but which was at the bottom of the fuel tanks and could not be pumped into the engines. Whilst at Tripoli, an additional quantity of 19 tons was supplied to the ship.

In cross-examination the master admitted that on the occasion of his visit to Athens with plaintiff in Action No. 453/78 to discuss the claims of the crew, the owners of the defendant ship paid to the plaintiff in Action No. 453/78, a sum of 50,000 Drachmas which, however, he deducted from the wages account of this plaintiff (*exhibit* 14). He further admitted that a further sum of U.S. dollars 200 was paid at a later stage to him for advances to the plaintiffs in Actions Nos. 451/78 and 452/78. In fact, he advanced U.S. dollars 100 to each of the plaintiffs in the said actions but he did not deduct these amounts from the wages accounts prepared by him, intending to do so from the next account for wages accruing due after the 20th November, 1978. The only other evidence adduced by plaintiffs was that of an employee of a Tourist Office, as to the repatriation expenses of the plaintiffs from Cyprus to Athens. Plaintiffs did not give evidence in person, as, in the meantime, they had left Cyprus and were abroad at the date of the hearing.

The facts relied upon in support of the case of the intervener-mortgagee, appear in the evidence of the intervener himself and that of one Ioannis Koutroumbas, an employee of the original defendants 1. This witness referred to the terms of employment of the plaintiffs and identified the three photocopies of contracts (*exhibits* 'L', 'M', & 'N') which had been earlier produced for identification, as true copies of the original contracts signed by the plaintiffs. The terms contained in these contracts are uniform, except a paragraph appearing in *exhibit* 'M' in Action No. 432/78, in which under the heading "Special Terms", the following is reported: "In the salary

mentioned hereinabove, all additional benefits contemplated by the Greek Collective Agreement are included". He also gave details as to the quantity of fuel supplied to the ship. He agreed with the evidence of the master that at Piraeus the ship was supplied with 70 tons of fuel and that a further quantity of 19 tons was supplied to the ship at Tripoli, after the master had asked for such supply. According to his evidence, there was already an additional quantity of fuel on the ship prior to its departure from Piraeus which he estimated at 53–55 tons. After the ship sailed from Piraeus, the master was in constant touch with defendants 1 by communicating with them three to four times daily and informing them as to the progress of the trip and the unloading at Tripoli. It was alleged by this witness that the master of the ship before leaving Tripoli, received instructions to sail to Piraeus, because, as he said, "the certificates of insurance of the ship were expiring and for their renewal it was necessary for the ship to be at Piraeus". He mentioned that the master of the ship and plaintiff in Action No. 453/78 went to Athens a few days after the arrival of the ship to Limassol to discuss with the Company the claims of the crew and that whilst the master was in Athens, a sum of 50,000 Drachmas was paid to plaintiff in Action No. 453/78 and 100,000 Drachmas to the master. On or about the 16th or 17th of October, he received a telephone call from the Company, without mentioning which Company, that the money advanced to the master was not enough to face even minor claims and as a result, he came to Cyprus on the 19th October, in an effort to settle the claims. He visited the ship and invited the crew in the master's cabin and brought to their notice that he brought some money with him for payment against their wages, but the crew told him that they could not discuss the matter further with him, in view of the fact that they had already instituted their actions. Though at the material time he was aware that actions had been brought by the crew and the ship was under arrest and also that the Company by which he was employed and who were allegedly the owners of the ship, according to the evidence of the master, he did not contact plaintiffs' advocate to discuss the claims or any other advocate for defending the actions. The only thing he did, was to leave with the master a sum of U.S. dollars 1,400 for payment against wages, plus an additional sum of U.S. dollars 600 for payment to the suppliers of provisions, and he

left on the following day and ever since he had no personal contact with the ship, or the crew.

The intervener-mortgagee in his evidence expressed his opinion professing to be the opinion of an expert, as to the sufficiency of fuel to enable the ship to sail from Tripoli to Piraeus. After calculations he made, on the evidence given by the master concerning the fuel, he said that he came to the conclusion that there was sufficient fuel enabling the ship to sail from Tripoli to Greece. All his calculations were based on the assumption that the master in his evidence admitted that there was a quantity of 144 tons of fuel; by deducting from such quantity 48 tons which was the quantity required by the engines for sailing from Athens to Tripoli, plus an additional quantity of 1.2 tons per day for the operation of the electrical installations of the ship for 33 days that the ship stayed at Tripoli, he came to the conclusion that there was sufficient fuel to enable the ship to sail back to Piraeus. He went on to say that from his knowledge as owner of a number of ships when a ship's master diverts from his course and takes the ship to another destination for satisfying his private interest and the personal interests of the officers and the crew, this amounts to mutiny. He went on to relate that the terms of employment of the plaintiffs in the present actions were subject to the Greek Collective Agreement and produced a booklet on the Collective Agreements (*exhibit* 19), the production of which was not objected by counsel for the plaintiffs. He further said that the ship was bound to sail straight back from Tripoli to Piraeus because the ship was under arrest by him at Piraeus before her departure and he gave permission for the ship to sail from Piraeus to Tripoli for a single trip only, to unload the cargo she had on it, after he was requested to do so by the Ministry of Commercial Navigation.

The rest of the evidence called by the intervener-mortgagee, is that of Andreas Syrimis, a Goverment employee of the Ministry of Interior, attached to the Emigration Department as to the departures from the island of the plaintiffs in the present actions. According to his evidence, plaintiff in Action No. 451/78 left Cyprus by air for Athens on 4.11.1978. Plaintiff in Action No. 452/78 left Limassol Port by ship for Piraeus on 11.11.1978 and plaintiff in Action No. 453/78 left Cyprus by air on 9.10.1978 for Athens, he came back on 15.10.1978 and embarked on the same day on the ship "AYIA MARINA".

He disembarked and left for Athens on 25.10.1978, he returned to Cyprus on 14.11.1978 and finally left for Athens on 24.11.1978.

Before making my findings on the evidence before me, I shall deal with the booklet produced as *exhibit* 1 which is described in its translation in English as "New Collective Agreement concerning crews serving on board Greek cargo vessels over 4,500 D.W.T.". This booklet is not an official document or authoritative text, but it is purported to have been issued by booksellers in Athens and is described as including the text of the New Collective Agreement, the provisions relating to the Master and the Crew of the ΚΙΝΔ Κώδιξ Ἰδιωτικοῦ Ναυτικοῦ Δικαίου explanatory comments and summary of the most important administrative solutions which were given by YEN during the last decade with relative judicial decisions. It is clear from its introduction and its contents that it is an informatory book issued by a bookshop for providing information to people engaged in navigation. On the face of it, it is mentioned that the collective agreement referred to therein, concerns crews serving on board Greek cargo vessels over 4,500 D.W.T., whereas, the defendant ship is not a Greek cargo vessel but a ship flying the Cyprus flag. Furthermore, such collective agreement, as mentioned on the face of it, is applicable to ships over 4,500 D.W.T. and no evidence has been called as to the D.W.T. of the defendant ship. A photocopy of the certificate of registration which was attached to the application of the intervener-mortgagee when he asked for leave to intervene, describes the gross tonnage of the ship as 4,307.82 and the net tonnage as 2,151.26, but there is no record as to the D.W.T. of the ship. No expert evidence was called as to the application of the Greek Law and particularly what is referred to as ΚΙΝΔ and by virtue of which and subject to the provisions of which the Collective Agreements are made, nor as to the legal effect under the Greek Law, of any collective agreement made under the Greek Marine Law. Furthermore, there is no allegation in the pleadings that the contracts were subject to any collateral collective agreement and in consequence the intervener-mortgagee cannot introduce this evidence and seek to rely on it without amending his pleadings. In the result, I find that *exhibit* 19 cannot be relied upon in the present actions.

Foreign Law has to be pleaded and proved as a fact. This

is a well settled principle reiterated amongst others in *Georghiades & Son* v. *Kaminaras* (1958) 23 C.L.R. 276 where it was held that:

> "Foreign Law should be pleaded and proved as a fact by expert evidence or sometimes by other means. But in the absence of evidence the Court will apply Cyprus Law."

Reference is made in this respect in the above case, to Dicey's Conflict of Laws, 7th Edition. In the present actions there is no allegation in the pleadings of this material fact nor any expert evidence has been called to prove such Law. I, therefore, find that in view of the fact that the ship is a ship flying the Cyprus flag, in the absence of any evidence as to Foreign Law, the Cyprus Law regulating the relations of seamen working on ships under Cypriot flag is the law applicable. In the result, these actions in so far as the legal aspect is concerned, have to be determined on the same principles as already explained in the other actions concerning the same ship (*Karakiozopoulos and others* v. *The ship "AYIA MARINA"*, (1980) 1 C.L.R. 19).

Having disposed of this matter, I am now coming to consider the evidence before me and make my findings on such evidence. A lot has been said in the evidence of the intervener-mortgagee and his witness, as to the sufficiency of fuel to enable the ship to sail from Tripoli to Piraeus. The intervener-mortgagee in making his calculations on which he based his opinion, relied, as he said, on the figures given by the master. The intervener-mortgagee made the calculations on the assumption that the master mentioned in his evidence that the total quantity of fuel on the ship was 144 tons. This assumption is wrong, as the master in his evidence said that the quantity of fuel supplied to the ship was 89 tons (70 tons at Piraeus and 19 tons at Tripoli), plus a quantity of fuel which was at the bottom of the fuel tanks and could not be absorbed by the engine pumps. His witness, D.W.1 mentioned a figure of 53 tons, as already existing in the fuel tanks but the evidence of the master as to the fact that the quantity which was in the tanks could not be absorbed by the pumps, has not been contradicted and D.W.1 has not mentioned anything as to whether the quantity which according to his calculations must have existed on the ship was more than what was alleged by the master as being the quantity that remains in the lower part of the tanks and cannot be absorbed by the

pumps. I accept the evidence of the master that the ship became short of fuel whilst at Tripoli and that the quantity supplied was not sufficient to enable the ship to sail back to Piraeus. If the quantity of fuel was sufficient, as alleged by the intervener-mortgagee and his witness D.W.1, I see no reason why when the master asked to be supplied with fuel at Tripoli he was so supplied with a quantity of 19 tons which could be made available, without any protest on the part of the owners that there was already enough fuel on the ship for her return trip.

Furthermore, concerning the evidence of D.W. 1 as to the instructions given to the master whilst at Tripoli to sail back to Piraeus, there is contradiction between his evidence and that of the intervener-mortgagee. The intervener-mortgagee said in his evidence that he had the ship under arrest at Piraeus and that it was by special request of the Ministry of Navigation that he allowed the ship to sail to Tripoli only for that particular trip, whereas, his witness (D.W.1) said that they gave instructions to the master to sail back because the certificates of insurance were expiring and for their renewal it was necessary for the ship to be back at Piraeus.

As to the allegations of the intervener-mortgagee that there was a conspiracy between the master and the crew to deviate the ship to Cyprus which conduct, in his opinion, amounted to mutiny, I find this allegation entirely unfounded and nothing of this sort has been proved in the present case. This allegation was not put to the master in cross-examination, and no question was asked suggesting foul play between the master and the crew. Furthermore, the owners though they were informed immediately upon the arrival of the ship to Limassol about such arrival, they did not take any steps to safeguard their ship of the consequences of the mutinous acts of the master and the crew by either reporting the matter to the Port Authorities in Cyprus or the Naval Authorities in Greece and have the master and the crew arrested. Not even after the actions were brought and the ship arrested did they appear before the Court to dispute the lawfulness of such arrest or deny the claims of the crew and they let judgment be entered against them in some of the actions and the ship sold by public auction. Furthermore, they never terminated the services of the master and the crew even after the arrest of the ship and till her sale by public auction. The master further said in his evidence that on some occasions the instruc-

tions he received were coming from the Director of defendants 1 who were the owners, namely, Manousos Koutroumbas, and such director was not called to give evidence, though he was given such opportunity by being granted adjournments to make his attendance possible.

In conclusion, I accept the evidence of the master concerning the circumstances of the arrival of the ship to Limassol and all events that followed thereafter, as truthful evidence and I reject the evidence of the intervener-mortgagee and that of his witness (D.W.1) in so far as such evidence is in conflict with the evidence of the master.

I also accept the evidence of D.W.3, Andreas Syrimis, employee of the Migration Office, as to the dates of departure from Cyprus of the plaintiffs, which evidence has not been contested.

In the light of the evidence accepted by me, I come now to consider to what extent plaintiffs have proved their claims and I shall deal separately with the various items claimed by them.

A. Wages and other emoluments:

On the evidence before me I find that plaintiffs continued to be employed on the defendant ship as follows:

Plaintiff in Action No. 451/78 till 4.11.78 when he left Cyprus by air.

Plaintiff in Action No. 452/78 till 11.11.78 when he left Cyprus by ship, and

Plaintiff in Action No. 453/78 till 24.11.78 when he left Cyprus by air.

The above dates of departure were given in evidence by D.W.3 and have not been contested. As to the allegation of the intervener-mortgagee that the plaintiffs ceased to work after the 7th of October, 1978 when the ship arrived in Limassol and that they are not entitled to wages after such date and in any event after the 17th of October, 1978 when they instituted the present actions, I wish to adopt what I said in this respect in Consolidated Actions 402—417/78 and in particular, the following extract from the said judgment:

> "The fact that the plaintiffs instituted proceedings against the defendant ship was not an act of disloyalty amounting

to a repudiation of the contract by them. In the '*Fairport*' (*Voyiatzis and Others* v. *Owners of Steamship Fairport*) [1966] 2 All E.R. 1026 in which the master and chief officers issued a writ in rem claiming wages and other moneys due to them and the ship was arrested and subsequently sold, a preliminary point arose as to whether judgment could be given for payment out of the fund in Court of wages accrued after the date of the issue of the writ, it was held:-

> 'The plaintiffs were entitled out of the fund in Court to wages accruing after (as well as before) the issue of the writ because—
>
> (i) the issue of a writ claiming only wages and other moneys due did not have the effect of putting an end to the contract of service, with the consequence that wages continued to accrue after the issue of the writ, and,
>
> (ii) the rule that claims in an action could be made only in respect of causes of action that had accrued at the commencement of the action was a rule of practice rather than a rule of law, and subject to exceptions; it was well established that claims for viaticum, covering expenses incurred after the date of the writ, could be made in actions in rem against a ship by seamen and the same should apply to claims for wages.'

Cairns, J. in delivering the judgment of the Court at p. 1032 had this to say:

> 'As to the first ground, I fail to see how the institution of a claim for wages can automatically terminate a contract of service. There is nothing inconsistent with the continuance of service in a claim of this kind. Even if it could be said that the making of such a claim was an act of disloyalty to the employer which amounted to a repudiation of the contract (a proposition which I should find it difficult to accept in 1966 even if it could be so regarded in 1875), this would, at the most, entitle the employer to accept the repudiation and dismiss the servant. If he allows him to continue working, I can see no reason for saying that the

contract is at an end and that wages no longer accrue. Alternatively, if it were suggested that the nonpayment of wages was a repudiation of the contract by the employer, I do not consider that the issue of a writ merely claiming the wages is an acceptance of such repudiation. It would be a different matter if the plaintiff by his writ or statement of claim alleged a fundamental breach of contract and claimed damages on the basis that the contract was at an end'.

And at page 1034 of the same judgment:

'In the absence of any authority which binds me to say that the issue of a writ puts an end to the contract of service, and being satisfied in principle that the issue of a writ claiming only wages and other moneys due can have no such effect, I am of the opinion that the wages continue to accrue after proceedings are commenced. And, if wages continue to accrue, I think that it must follow that they are recoverable by action and not merely as part of the costs of an action'."

In the result, I find that plaintiffs are entitled to their wages which accrued due after, as well as before the issue of the writ and till the day of their departure from Cyprus, when they ceased rendering their services to the ship less an amount of 100 U.S. dollars in the case of each plaintiff in Actions Nos. 451/78 and 452/78 paid to them, according to the evidence of the master and not deducted from the wages accounts. As to the amount of 50,000 Drachmas collected by plaintiff in Action No. 453/78 whilst in Athens, such amount has been deducted from the wages account as appearing in *exh.* 14.

As to the allegation of D.W.1 that a sum of 38,000 Drachmas was paid by the defendants 1 to one Theodoros Mastrogeorgopoulos on the instructions of plaintiff in Action No. 452/78, I find it as unfounded. This person was not called to testify that in fact he collected this amount for the account of the plaintiff. Furthermore, this allegation not only is not pleaded, but in paragraph 19 of the answer, it is alleged by the intervener–mortgagee that the total advanced to such plaintiff amounts to 44,200 Drachmas, as against 40,500 Drachmas appearing on the wages account (*exhibit* 13) and such total does not leave

room for a difference of 38,000 Drachmas alleged as having been paid.

Concerning plaintiffs' claim for two-and-a-half days wages per month in respect of leave which they did not get, I find that according to the evidence of the master they were entitled to such leave. This claim, as I have found in Actions Nos 402-417/78 is a claim which may be dealt with under the heading of "other emoluments" in view of the definition of "wages" which includes emoluments. (Vide The "*Arosa Star*" [1959] 2 Ll. L.R. 396 at pp. 402 and 403, per Sir Newman Worley, C.J., the principles of which were adopted in the *Westport* (No. 4) [1968] 2 Ll.L.R. 559 by Karminski, J. at p. 562.).

On the evidence before me I find that plaintiffs in Actions Nos. 451/78 and 452/78 did not take any leave and in consequence they are entitled to be paid in respect thereof. Plaintiff in Action No. 453/78 went to Athens on several occasions and stayed there for some time. It is true that on these occasions he went with the master of the ship to discuss the claims of the crew but the time he stayed there was in any event longer than what was required for such purpose and in consequence I find that he has spent the leave to which he was entitled and in consequence his claim for payment for leave, fails.

B. War Zone Bonus:

Plaintiffs' claim in this respect is based on a promise given to them by the master of the ship. Such promise was made at Tripoli in the course of the unloading of the vessel and as a result of complaints made by members of the crew about the abnormal situation prevailing during that time due to fighting between Christians and Moslems every day. The master in response to their complaints asked them to be patient and promised that he would try to give them a present due to their working under such circumstances and for their psychological condition. I need not repeat in the present case more details concerning the situation under which the promise was made, in view of the fact that the facts and the legal aspect has been dealt with by me extensively in the previous actions which I fully adopt for the purposes of the present actions. I only find necessary to repeat here my findings in this respect in the previous actions and which I consider as applicable in the present actions as well:

"On the evidence before me I am not satisfied that plaintiffs have proved—

(a) that there was any exceptional risk not contemplated by them when sailing to Tripoli.

(b) There is no evidence either as to the general opinion among shipping people or any other evidence to the effect that Tripoli was at the material time, within a war-zone area involving war risks not contemplated by the crew in their original agreement of wages for the voyage when they boarded the ship.

(c) The promise of the master was in a very vague form and does not support the plaintiffs' claim. In any event, I find such promise 'void for absence of consideration as well as from public policy'. (Vide Halsbury's Laws of England, 3rd Ed. Vol. 35, p. 169 *supra*).

In the result, I find that plaintiffs' claim in this respect, fails."

Plaintiffs' claim on this topic, therefore, fails.

C. Accommodation and Provisions:

I need not deal with this claim, in view of the fact that no evidence has been adduced by the plaintiffs as to any expenses incurred by them in this respect. Also, in the course of the hearing their advocate stated that he abandons this claim.

D. Repatriation Expenses:

Plaintiffs claim under this heading their repatriation expenses from Cyprus to Greece where they were employed and boarded the ship and which is also their country of origin. According to the evidence before me, plaintiffs in Actions 451/78 and 453/78 flew from Cyprus to Greece and they incurred expenses for repatriation amounting to £33.900 mils each. There is no evidence before me as to whether plaintiff in Action No. 452/78 incurred any expenses for his repatriation. According to the evidence of D.W.3 he left Cyprus by ship but there is no evidence whether he paid anything for his transport to Greece. Therefore, the claim of this plaintiff in this respect, fails.

As to whether the other two plaintiffs are entitled to their repatriation expenses, I adopt the exposition of the Law as set

out by me in the previous actions under the same topic by which reference is made to section 42 of the English Merchant Shipping Act, 1906 and its application to Cyprus by virtue of the Merchant Shipping (Safety of Seamen) Law, Cap. 292 and section 111 of the Masters and Seamen Law, 1963 (Law No. 46/63), the *Board of Trade* v. *The Sailing Ship Glenpark Ltd.*, [1904] 1 K.B. 682, *Kyrmizoudes* v. *Ship "Philipoupolis* (1978) 1 C.L.R. 526, the *First National Bank, Chicago* v. *Ship "Blockland"* (1977) 1 C.L.R. 209 in which reference is made to *Mogileff and Freight* [1921] 7 Ll.L.R. 130 and *The General Serret* [1925] 23 Ll.L.R. 14.

In the result, I find that the plaintiffs in Actions Nos. 451/78 and 453/78 are entitled to repatriation expenses in the sum of £33.900 mils each.

E. Damages:

The plaintiffs under this heading, claim two months' wages as damages for wrongful dismissal.

As I have already found, the services of the plaintiffs were not terminated by the owners of the defendant ship but they left the ship some time before the sale of the ship by auction when their services would have automatically been considered as terminated under section 13(1)(d) of Law No. 46/63 (*supra*). When the services of a seaman are terminated under section 13(1) he becomes entitled to be paid his wages for a period of two months after such termination, so long as he remains out of work during such period. Section 37(1), however, applies where a seaman remains on the ship till his services are terminated by the sale of the ship, whereas, the plaintiffs left the ship at their own free will before the date of the occurrence of such event. Furthermore, they have not given any evidence to the effect that as from the date they left the ship for Greece, they were out of employment for any period or if employed that their services were less than what they were paid on the defendant ship. Therefore, I find that plaintiffs are not entitled to such claim.

I do find, however, that plaintiffs are entitled to recover an amount equal to ten days double wages (that is, for 20 days) by virtue of section 25(2) of the Merchant Shipping (Masters and Seamen) Law, 1963 (Law No. 46/63), as a result of the unjustified failure of the owners of the defendant ship to settle the wages due within a reasonable time and I award an amount

in respect thereof to the plaintiffs. Section 25(2) provides as follows:

"'Εὰν ὁ πλοίαρχος ἢ ὁ πλοιοκτήτης παραλείψη ἄνευ εὐλόγου αἰτίας νὰ προβῆ εἰς τὴν καταβολὴν τοῦ μισθοῦ κατὰ τὸν προσήκοντα χρόνον, οὗτος θὰ καταβάλη εἰς τὸν ναυτικὸν ποσὸν μὴ ὑπερβαῖνον τὸν μισθὸν δύο ἡμερῶν δι' ἑκάστην ἡμέραν καθ' ἣν οὗτος εὑρίσκεται ἐν ὑπερημερία πληρωμῆς, τὸ πληρωτέον ὅμως ποσὸν δὲν δύναται νὰ ὑπερβαίνη δέκα ἡμερῶν διπλοὺς μισθούς".

("If a master or owner fails, without reasonable cause, to make payment at the appropriate time, he shall pay to the seaman a sum not exceeding the amount of two days' during which payment is delayed beyond that time, but the sum payable shall not exceed ten days' double pay.").

In concluding, I find that plaintiffs are entitled to the following amounts:

Plaintiff in Action No. 451/78.

(a) i. Wages till 4.11.78.

ii. Seven days wages in respect of leave.

iii. 20 days wages under section 25(2). On the wages account produced by the master, the wages are calculated till 20.11.78. Therefore, if 27 days under (a) ii. and iii. are added to the date of departure of this plaintiff, which, under item (a) i. is the 4th November, 1978, plaintiff is entitled to recover wages up to 1.12.1978, that is, 11 days wages in addition to those mentioned in the wages account.

Balance due according to the wages accounts till 20.11.78, 85,400 Dr.

Plus 11 days wages as from 20.11.78 to 1.12.78 by 36,000 Drachmas per month,	13,200 Dr.	98.600 Dr.
(b) Repatriation expenses,	C£33.900	
Out of this amount a sum of U.S. dollars 100 paid to the plaintiff should be deducted.		
Plaintiff in Action No. 452/78.		
(a) i. Wages till 11.11.78.		
ii. Eight days wages in respect of leave,		
iii. 20 days wages under section 25(2).		
The amount shown on the wages account of this plaintiff covers this period in respect of items (a) i. and ii. Such amount is	66.833 Dr.	
Plus wages for 20 days as per (a) iii. by 35,000 Drachmas per month (two–thirds of one month).	23.333 Dr.	90.166 Dr.
Out of this amount a sum of U.S. dollars 100 paid to him should be deducted.		
Plaintiff in Action No. 453/78.		
(a) i. Wages till 24.11.78.		
ii. 20 days wages under section 25(2).		
The balance shown as due till 20.11.78, according to the wages account for this plaintiff is	144.300 Dr.	
Plus 24 days wages (Four days as from 20 to 24.11.78		

and 20 days as per (a) ii. above), by 65.000 drachmas per month, (Four–Fifths of one month)	52.300 Dr.	196.600 Dr.	
(b) Repatriation expenses	C£33.900.		5

In the result, I give judgment in favour of each of the plaintiffs against the defendant ship accordingly.

Concerning the amounts referred to in Drachmas and Dollars the judgment will be in their equivalent in Cyprus Pounds at the rate prevailing on 20.11.78, such date for conversion, having been agreed today by counsel appearing in these actions. 10

Defendants 2 also to pay to plaintiffs the costs of these actions to be assessed by the Registrar.

The action as against defendants 1 stands, as already, dismissed with no order for costs. 15

Judgment against defendants 2 *as above with costs. Action against defendants* 1 *dismissed with no order as to costs.*