1980 February 4

[SAVVIDES, J.]

EVANGELOS KARAKIOZOPOULOS AND OTHERS,
Plaintiffs,

v.

THE SHIP "AYIA MARINA"
Defendant.

(*Consolidated Actions Nos.* 402/78, 407-414/78, 416/78 *and* 417/78).

Admiralty—Shipping—Seamen—Foreign master and crew—Contract of service—Action in rem for wages—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.

Admiralty—Shipping—Master—He is the agent of the owners—Claims by crew for wages and other emoluments—Admitted by the master—Owners liable.

Admiralty—Practice—Action in rem for wages by crew—Mortgagee appearing as intervener-defendant—He can set up no defence except what the owner can set up.

Admiralty—Shipping—Seamen—"Short-hand money"—Claim for additional remuneration due to failure of owners to provide an additional "third mechanic"—Claim part of the agreement of employment—Seamen entitled to such remuneration so long as additional third mechanic was not employed.

Admiralty—Shipping—Seamen—"Wages"—"Emoluments"—Meaning—Leave—Remuneration in respect of leave to which seamen were entitled, under the terms of their employment, and which they did not get.

Admiralty—Shipping—Seamen—Contract of sercie for ordinary voyage—Claim for war zone bonus due to war operations in the port of unloading—Failure of plaintiffs to prove that there was any

exceptional risk not contemplated by them when sailing to said port—No evidence that such port was within a war zone area involving war risks not contemplated by the crew—Promise of master for payment of bonus in vague terms and "void for absence of consideration as well as from public policy"—Claim dismissed.

Admiralty—Shipping—Seamen—Claim for expenses of accommodation and maintenance within the town, but whilst still employed on the ship, incurred with authority of the master—Ship owners liable—Sections 53–55 *of the Merchant Shipping (Masters and Seamen) Laws,* 1963 *to* 1976.

Admiralty—Shipping—Seamen—Foreign seamen—Wrongful dismissal—Damages—Viaticum—Termination of employment by arrest and sale of ship—Unjustified failure to pay their wages—They were seamen in distress—Entitled to their repatriation expenses and to ten days double salary—Merchant Shipping (Safety and Seamen) Law, Cap. 292, *section* 1, *English Merchant Shipping Act* 1906, *section* 42 *and Merchant Shipping Laws,* 1963–1979, *section* 25.

All plaintiffs were engaged by the owners of the defendant ship, under contracts of service to serve in various capacities on board the defendant ship for indefinite periods, at agreed remuneration, according to the services rendered by each one of them. Plaintiff in Action 402/78 was employed on 22.8.1978 as a "Third Mechanic" at the monthly salary of 25,000 drachmas and an extra allowance of 10,000 drachmas per month was agreed to be paid to him for any period during which no additional "Third Mechanic" was to be employed on the ship.

The defendant ship sailed from Piraeus on 3.9.1978 with destination Tripoli of Lebanon where it arrived on 6.9.1978 and started unloading its cargo. The unloading lasted 32–33 days due to the fact that the situation was abnormal because there were incidents between Christians and Moslems nearly every day within the harbour, in the course of which even people engaged in the unloading of the ship were making use of firearms firing at various directions. As a result of this situation the members of the crew were protesting to the master of the ship who advised them to be patient and promised that he would try to give them a present, as a result of their working under such conditions.

After the completion of the unloading the ship was short of

fuel; she was supplied with 19 tons locally and with the approval of the ship owners and acting upon their instructions the master navigated the ship from Tripoli to Limassol, having been assured that the owners would make arrangements to supply the ship with fuel upon her arrival to Limassol.

The ship arrived at Limassol on the 7th October, 1978 but the master found that no arrangements had been made by the ship owners for the supply of fuel. The crew, to whom wages were due and unpaid for a long time, being in need of money, pressed the master for payment of their wages, and in fact, four days after the arrival of the ship, the master left for Athens to get in touch with the ship owners concerning the wages. The ship owners gave him a small amount of money for advances to some of the officers but nothing for the other members of the crew. Upon his return to Cyprus, he informed the crew about the situation and the fact that no money was made available to him for payment of their wages. As a result, the plaintiffs filed the present actions* against the ship and a warrant for her arrest was issued on the 17th October, 1978.

After the arrest of the ship the master remained in charge of the ship and requested the crew to continue their employment on the ship. Plaintiffs continued to be so employed till the day when the ship was sold. Up to the 1st November, 1978, they were being accommodated on the ship and all necessary supplies for their maintenance were made. After the said date, in view of the fact that the suppliers of provisions refused to supply any more provisions on credit, and also because of the fact that there was no drinking water on the ship, the master came into agreement with the crew, by authorising them to make arrangements for accommodation within the town of Limassol and for their maintenance at a restaurant whilst they were still employed on the ship. The plaintiffs remained working on the ship till the 20th December, 1978 when the ship was sold by public auction. As from the date of the arrest of the ship till the date of the sale the master was in constant touch with the ship owners, asking them to make arrangements for the payment of the wages, but notwithstanding their promises to do so, they took no steps for settling such wages.

* See details of their claims at p. 27 *post*.

The claims of the plaintiffs in the above actions were for:

(a) Balance of wages and emoluments till the 14th December, 1978 when the petition was filed.

(b) Wages and emoluments as from the 14th December, 1978 till judgment.

(c) War-zone bonuses.

(d) Costs and expenses incurred by them in respect of their maintenance and/or otherwise, from the 2nd October, 1978 till the 14th December, 1978, within the town of Limassol.

(e) Repatriation expenses, and

(f) Damages for wrongful dismissal and/or otherwise, amounting to two months basic salary.

Moreover plaintiff in Action 402/78 claimed additional remuneration due to the failure of the owners to provide an additional "Third Mechanic".

The action was not defended by the defendant but by an intervener-mortgagee who, on the 14th December, 1978, brought an action against the ship for money due to him under a mortgage and for other incidental expenses and who by leave of the Court became a party to the proceedings as an intervener-defendant.

The main evidence in support of plaintiffs' case came from the master of the ship, which stood uncontradicted and was believed by the Court.

Held, (1) that the master of the ship is the agent of the owners, and the plaintiffs had to obey and comply with his orders as master of the ship; that in this action this Court is not dealing with a dispute between the owners and the master but with claims of members of the crew and the owners, whose liability is admitted by their agent the master; and that the mortgagee (intervener-defendant) stands in the shoes of the owner, and can set up no defence except what the owner can set up.

(2) That 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; that they are, therefore, entitled to their wages which accrued due after as well as before

the issue of the writ and till the day when the ship was sold and their employment, in consequence, terminated under section 13(1)(d) of the Merchant Shipping (Masters and Seamen) Laws, 1963–1976 (see "*Fairport*" (*Vogiatzis and Others* v. *Owners of Steamship Fairport*) [1966] 2 All E.R. 1026).

(3) (*On the claim of plaintiff in Action No.* 402/78 *for additional remuneration due to the failure of the owners to provide an additional "Third Mechanic"*) that such claim for an additional remuneration was part of the agreement of employment of this plaintiff, and, in consequence, he is entitled to such remuneration for so long as an additional "Third Mechanic" was not employed and plaintiff had to perform such additional duties. (As to the right to such claim which may be described as "short hand money", irrespective of the agreement between the parties, see "*The City of Malines*" [1948] 81 Ll.L.R. 96).

(4) (*After dealing with the meaning of the terms "wages" and "emoluments"*—vide pp. 37–39 *post*) that the plaintiffs are entitled to their claim, under the heading "wages and emoluments", for remuneration in respect of two and a half days leave per month to which they were entitled under the terms of their employment and which, leave, they did not get.

(5) (*With regard to the claim for war zone bonus*) that plaintiffs have not proved that there was any exceptional risk not contemplated by them when sailing to Tripoli; that there was 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; that the promise of the master was in a very vague form and does not support the plaintiffs' claim; that, in any event, such promise is "void for absence of consideration as well as from public policy" (see Halsbury's Laws of England, 3rd Ed. Vol. 35, p. 169); and that, accordingly, the plaintiff's claim in this respect must fail.

(6) (*With regard to the claim for accommodation and provisions within the town of Limassol*) that the master is under a duty to provide the crew with provisions, water, and proper accommodation and his failure to discharge such duty renders him liable to criminal proceedings (see sections 53, 54 and 55 of the Merchant

Shipping (Masters and Seamen) Law, 1963 (Law 45/63 as amended); that the plaintiffs in the present case made arrangements for alternative accommodation and supply of provisions, acting upon the instructions and the authority of the master who, in this way, was avoiding criminal responsibility; that such instructions having been acted upon by the crew imply an agreement to that effect and a responsibility is imposed upon the ship owners in this respect, through their agent, the ship's master; and that, accordingly, the plaintiffs are entitled to their claim under this heading.

(7) (*With regard to the claim for repatriation expenses*) that the expenses of relief of distressed seamen can be recovered (see section 42 of the English Merchant Shipping Act, 1906 which is applicable by virtue of section 1 of the Merchant Shipping (Safety and Seamen) Law, Cap. 292); that whether a seaman is "in distress" is a question of fact in each particular case; that in the circumstances of this case the plaintiffs were seamen in distress; that they were not citizens of Cyprus, coming from various foreign countries; they were left penniless in Cyprus and their wages were due to them; that once their employment was terminated in Cyprus by the sale of the ship, they were bound to return to their respective countries; and that, accordingly, the plaintiffs are entitled to their repatriation expenses to their respective countries of origin.

(8) (*With regard to the claim for damages for wrongful dismissal*) that the sale of the ship does not constitute a repudiation of the contract by the owners or wrongful dismissal of the seamen on the occurrence of such event (see section 13(1) of the Merchant Shipping Laws, 1963–1976 (Laws 46/1963 to 24/1976)); that though under section 37(1) of Laws 46/1963 to 24/1976 the plaintiffs were entitled, in respect of each day on which they were in fact unemployed during a period of two months from the date of termination of their service, to receive wages at the rate to which they were entitled at that date, none of the plaintiffs has adduced any evidence to the effect that in fact he was out of employment for any period up to two months after the sale of the ship; that under section 25 of the same Laws a seaman is entitled, on the termination of the contract, to payment of ten days double salaries if the master or the ship owner fails to pay within a reasonable time and without a just cause the wages due to him; and that, therefore, the plaintiffs are entitled to ten days

double salaries under this heading as a result of the unjustified failure of the owners to settle the wages of the plaintiffs on the termination of their employment.

Judgment accordingly.

Cases referred to:

The Chieftain [1863] Brown. & Lush. 104 at p. 111;

Westport (*No.* 4) [1968] 2 Ll.L.R. 559 at pp. 561, 562;

The "Arosa Star" [1959] 2 Ll.L.R. 396 at pp. 401, 402–403;

"Fairport" (*Vogiatzis and Others* v. *Owners of Steamship Fairport*) [1966] 2 All E.R. 1026 at pp. 1032, 1034;

"The City of Malines" [1948] 81 Ll.L.R. 96;

The British Trade [1924] 18 Ll.L.R. 65 at p. 66;

Pugh v. *Henville and Others* [1957] 2 Ll.L.R. 261;

Caine and Others v. *Palace Steam Shipping Company* [1907] 1 K.B. 670;

Robson v. *Sykes* [1938] 2 All E.R. 612;

Palace Shipping Company Limited v. *Caine and Others* [1907] A.C. 386;

Tergeste [1903] P. 26;

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

Kyrmizoudes v. *Ship "Philipoupolis"* (1978) 1 C.L.R. 526 at p. 538;

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

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

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

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.

N. Anastassiades, for the plaintiffs

M. Vassiliou, for the intervener-defendant.

Cur. adv. vult.

SAVVIDES J. read the following judgment. The plaintiffs in these actions were members of the crew of the defendant ship

" AYIA MARINA " and their claim is for balance of wages, war-zone bonuses and other emoluments, repatriation and maintenance expenses and compensation for termination of employment.

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 board the defendant ship for indefinite periods, the commencement of which varied in each respective case, at agreed remunerations, according to the services rendered by each one of them. I shall deal in more detail later in my judgment with the terms of service of each plaintiff.

The defendant ship is registered in Cyprus and is flying the Cyprus flag. Whilst in the port of Limassol she was arrested by a warrant of arrest dated the 17th October, 1978 issued in Admiralty Action No. 402/78, and was finally sold by public auction on the 20th December, 1978. No appearance was entered on behalf of the ship by her owners and at no stage of the proceedings did they appear to dispute plaintiffs' claims. The action was fought by an intervener-mortgagee who, on the 14th December, 1978, brought an action against the ship for money due to him under a mortgage and for other incidental expenses and who, by leave of the Court, granted to him on the 19th December, 1978, became a party to the proceedings as an intervener-defendant. In such capacity he filed his answer to the petition and defended the case for the protection of his interests.

These actions are some of a series of actions brought individually by the Captain, officers and other members of the crew. At an early stage of the proceedings, on the application of the intervener, an order was made for the consolidation of these actions, as well as of all other actions brought against the ship by other members of the crew. When the pleadings were completed, plaintiffs applied to have the evidence of the master of the ship taken preparatory to the hearing and such evidence was taken on the 2nd and completed on the 6th March, 1979, in respect of the present action and other actions brought by the master and other members of the defendant ship. At a later stage, the consolidation order was varied to the extent that the prosent actions remained consolidated and all other actions were left to be heard separately.

The claims in the present actions are drafted in a uniform way subject to modifications concerning amounts for each individual case, and they fall under the following headings, which are in issue before the Court:

(a) Balance of wages and emoluments till the 14th December, 1978 when the petition was filed.

(b) Wages and emoluments as from the 14th December, 1978 till judgment.

(c) War-zone bonuses.

(d) Costs and expenses incurred by plaintiffs in respect of their maintenance and/or otherwise, from the 2nd October, 1978 till the 14th December, 1978.

(e) Repatriation expenses, and

(f) damages for wrongful dismissal and/or otherwise, amounting to two months basic salary.

The intervener-defendant by his answer admits the employment of the plaintiffs, as alleged by them, and any payments made against their wages but disputes that the balance due is as appearing in the statements of claim. He further alleges 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. Another allegation of the intervener-defendant is that there was a conspiracy between the master of the ship and the crew with the object of blackmailing the owners to pay exorbitant claims to the plaintiffs and in furtherance of such objects, they brought the ship to Limassol to arrest same. As a result of such conduct, they forfeited any claim for wages. It is finally alleged 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.

The evidence adduced by the plaintiffs in support of their claims consists of that of the master of the ship, Georghios Voumvlinopoulos, which, as already mentioned, was taken preparatory to the hearing; that of Andreas Kadros, a restaurant keeper who was feeding them, Nicos Anastassiades, counsel for the plaintiffs for identifying the members of the crew who were being fed at the restaurant, Christos Glykis, a hotel keeper in

Limassol at whose hotel plaintiffs were accommodated and Costas Demetriou, a travel agest in respect of the repatriation expenses of the plaintiffs.

Plaintiffs did not give any evidence in person and relied solely on the other evidence adduced by them and this, due to the fact that they had left Cyprus after the sale of the ship and, with the exception of plaintiff in Action No. 402/78 who comes from Greece, all other plaintiffs come from very distant countries, such as Pakistan and Liberia and their travelling expenses for coming to Cyprus to give evidence would have been considerable.

The facts of the case as coming out from the evidence adduced by the plaintiffs, are shortly as follows:

All plaintiffs were employed as members of the crew on S/S " AYIA MARINA ". The dates and the kind of their employment, their remuneration and any payment towards their wages was described by the master of the ship and appears on the wages accounts produced to the Court as *exhibits* 1–16, in view of the fact that the contracts signed by the parties were in the hands of the defendants particulars in respect thereof, are as follows:

Plaintiff in Action No. 402/78 was employed on 22.8.78 as a " Third Mechanic " at the monthly salary of 25,000 Drachmas. According to the evidence of the master and the entry on the wages account for this plaintiff which is *exhibit* 1, an extra allowance of 10,000 Drachmas per month was agreed to be paid to him for any period during which no additional "Third Mechanic" was to be employed on the ship, as the owners were bound to do. Up to 20.11.78 he had to receive a balance of 82,533 Drachmas, after deducting any advances made to him.

Plaintiff in Action No. 407/78 was employed since 18.8.77 on a number of trips on the defendant ship as an "Assistant Cook" at a monthly salary of 20,000 Drachmas till 1.3.78, then reduced to 14,000 Drachmas per month till 1.9.78 and increased to 20,000 Drachmas per month as from 1.9.78. According to the three wages accounts signed by the master dated 28.2.78, 30.8.78 and 2.11.78 (*exhibits* 2 'A', 'B', 'C'), he had to receive a balance of 136,503 Drachmas till 20.11.78.

Plaintiff in Action No. 408/78 was employed on 31.8.78 as a "Sailor" at the monthly salary of 11,000 Drachmas. Accord-

ing to the wages account signed by the master (*exhibit* 3) dated 20.11.78, a balance of 28,220 Drachmas was due to him for wages till that date.

Plaintiff in Action No. 409/78 was employed on 16.8.78 as "Oiler" at the monthly salary of 11,000 Drachmas. According to the wages account signed by the master (*exhibit* 4) dated 20.11.78, a balance of 33,967 Drachmas was due to him for wages till that date.

Plaintiff in Action No. 410/78 was employed on 16.8.78 as a "Mess Boy" at the monthly salary of 9,000 Drachmas. According to the wages account signed by the master (*exhibit* 5), dated 20.11.78, a balance of 27,700 Drachmas was due to him for wages till that date.

Plaintiff in Action No. 411/78 was employed on 16.8.78 as "Oiler" at the monthly salary of 11,000 Drachmas. According to the wages account signed by the master (*exhibit* 6), dated 20.11.78, a balance of 33,964 Drachmas was due to him for wages till that date.

Plaintiff in Action No. 412/78 was employed on 16.8.78 as "Oiler" at the monthly salary of 11,000 Drachmas. According to the wages account signed by the master (*exhibit* 7), dated 20.11.78, a balance of 33,844 Drachmas was due to him for wages till that date.

Plaintiff in Action No. 413/78 was employed on 22.8.78 as "Seaman" at the monthly salary of 11,000 Drachmas. According to the wages account signed by the master (*exhibit* 8) dated 20.11.78, a balance of 31,766 Drachmas was due to him for wages till that date.

Plaintiff in Action No. 414/78 was employed to serve as "A.B." at the monthly salary of 11,000 Drachmas. According to the wages account signed by the master (*exhibit* 9) dated 20.11.78, a balance of 33,664 Drachmas was due to him for wages till that date.

Plaintiff in Action No. 416/78 was employed on 13.7.78 as "Oiler" at the monthly salary of 11,500 Drachmas. According to the wages account signed by the master (*exhibit* 10) dated 20.11.78, a balance of 50,781 Drachmas was due to him for wages till that date.

Plaintiff in Action No. 417/78 was employed as "Mess Boy" on 16.8.78 at the monthly salary of 9,000 Drachmas. According to the wages account signed by the master (*exhibit* 11) dated 20.11.78, a balance of 27,800 Drachmas was due to him for wages till that date.

The ship sailed on 3.9.78 from Piraeus with destination Tripoli of Lebanon where it arrived on 6.9.1978. Upon arrival at Tripoli, it started unloading its cargo. The unloading lasted 32-33 days due to the fact that the situation was abnormal. This abnormality was described by the master of the ship as follows: "There were incidents between Christians and Moslems nearly every day within the harbour. The fighting parties were not firing at the ship but there were on the ship remnants of ammunition. During the unloading, people engaged in the unloading of the ship were making use of firearms firing at various directions and there were empty cartridges on the ship. All the labourers and the receivers of goods in the harbour were armed and with tanks. The labourers who were engaged in the unloading were accompanied by armed policemen and soldiers. Use of the arms was made not by the labourers but by the policemen and soldiers". As a result of this abnormal situation, the members of the crew were protesting to the master of the ship for the situation. The master of the ship to calm them down, advised them to be patient and promised that he would try to give them a present, as a result of their working under such conditions. After the unloading was completed, the vessel was short of fuel. Two days before departure, the ship was supplied with 19 tons, two of which were consumed during the last two days, for the operation of the engines for the supply of electricity to the ship. He informed the company owning the ship that he was short of fuel and he was asked to try and get some more fuel locally.

After fruitless efforts to be supplied with fuel at Tripoli, he communicated again with the ship owners informing them that the fuel left was not sufficient for a trip longer than to Limassol, Cyprus. With the approval of the ship owners and acting upon their instructions, he navigated the ship from Tripoli to Limassol, having been assured that the ship owners would make arrangements to supply the ship with fuel upon her arrival to Limassol.

The ship arrived at Limassol on the 7th October but the

master found that no arrangements had been made by the ship owners for the supply of fuel. The crew to whom wages were due and unpaid for a long time, being in need of money, pressed the master for payment of their wages, and in fact, four days after the arrival of the ship, the master left for Athens to get in touch with the ship owners concerning the wages. The ship owners gave him a small amount of money for advances to some of the officers but nothing for the other members of the crew. Upon his return to Cyprus, he informed the crew about the situation and the fact that no money was made available to him for payment of their wages. As a result, the plaintiffs filed the present actions against the ship and a warrant of arrest was issued on the 17th October, 1978.

After the arrest of the ship the master remained in charge of the ship and requested the crew to continue their employment on the ship. Plaintiffs continued to be so employed till the day when the ship was sold. Up to the 1st November, 1978, they were being accommodated on the ship and all necessary supplies for their maintenance were made. After the said date, in view of the fact that the suppliers of provisions refused to supply any more provisions on credit, and also the fact that there was no drinking water on the ship, the master came into agreement with the crew, by authorising them to make arrangements for accommodation within the town of Limassol and for their maintenance at a restaurant whilst they were still employed on the ship. The plaintiffs continued being employed on the ship during day time till the sale of the ship and arrangements were made to the effect that two members of the crew, by rotation, would remain on the ship as guards. Whilst the ship was idle in the port of Limassol, sea-water started floating in through the propeller and to save the ship from sinking till repairs were carried out to the propeller, water pumps were hired and some members of the crew were engaged in taking the water out and making the ship safe.

On the 20th November, 1978 at the request of the crew, the master issued the wages accounts for wages due to them till that date, and these are the ones which were produced in Court as *exhibits*. The wages accounts concerning the present actions are the ones produced as *exhibits* 1–11.

The plaintiffs remained working on the ship, as explained

above, till the 20th December, 1978 when the ship was sold by public auction. As from the date of the arrest of the ship till the date of the sale the master was in constant touch with the ship owners, asking them to make arrangements for the payment of the wages, but notwithstanding their promises to do so, they took no steps for settling such wages. The master further mentioned in his evidence that each member of the crew was entitled to paid leave of two and a half days per month and they did not get such leave till the day of the sale of the ship.

The plaintiffs for their accommodation at a Limassol hotel had to pay £2.250 mils each, for bed and breakfast per day, according to the evidence of P.W.3 Glykis, the owner of "EXCELSIOR" hotel in Limassol. They had also to pay for their subsistence £1,900 mils for two daily meals by special arrangement with a restaurant keeper in Limassol, P.W.1.

The evidence of the intervener-defendant turned round his personal opinion as to whether the fuel which was on the ship when she left Piraeus, plus the quantity supplied to her in Tripoli, according to the evidence of the master, was sufficient to enable the ship to return to Piraeus. He expressed his opinion that such fuel was sufficient to enable the ship to sail from Tripoli to Piraeus and that it was not necessary for the master of the ship to bring the ship to Cyprus. He further proceeded to give his opinion as to what was the practice concerning the payment of wages to members of the crew. His evidence was to the effect that the crew are entitled to draw against their wages, but normally, the final accounting of their wages is done in Greece every three months. In his evidence he admitted that the lawful agent of the ship owners after the ship sailed from Piraeus was the master of the ship.

The last witness called by the intervener was Andreas Seremis, an employee of the Migration Office in respect of the dates of arrival at and departure from Cyprus, of the plaintiffs. This witness gave some dates in respect of two or three plaintiffs, but he was not in a position to give dates for most of them. He said in his evidence that even for the plaintiffs for whom certain entries appeared in his records, such entries were not conclusive, in view of the fact that members of the crew of ships are allowed to disembark and embark by virtue of special permits granted by the Customs and which are not entered in the records kept

at the Migration Office. This, obviously, is the reason why he could not trace any records for all the plaintiffs. This witness was not in a position to say whether any special permits for disembarking and embarking were granted by the Customs in the case of the plaintiffs in the present actions, and no other evidence was called to contradict the allegations of the master of the ship and the other witnesses that during the material time the plaintiffs were in Cyprus.

Having dealt with the facts of the case, as appearing from the evidence before me, I am now coming to make my findings on such evidence.

The allegation in the statement of defence that there was conspiracy between the master and the members of the crew, has not been substantiated by any evidence called by the intervener-defendant. The master of the ship, when giving evidence, was not asked, in cross-examination, any question suggesting foul play between him and the crew and the intervener-defendant by his evidence did not set out any facts supporting such allegation. On the question as to whether the master came to Cyprus on his own initiative, I have before me the evidence of the master that he did so on the instructions of the owners of the defendant ship and such evidence stands uncontradicted. As to the evidence of the intervener-defendant that there was sufficient fuel to enable the ship to sail from Tripoli to Piraeus, such evidence is based on calculations and not on actual facts which were within the knowledge of the master and who was the only person in position to give evidence on this matter. It is, also, in evidence, coming from the master of the ship, that the owners of the defendant ship were informed that there was no sufficient supply of fuel enabling the ship to sail from Tripoli to Piraeus and that the master acting upon instructions received from them, he sailed the ship to Limassol, having been assured that arrangements would have been made by the owners to supply the ship with the necessary fuel to sail back to Piraeus.

I accept the evidence of the master of the ship which stands uncontradicted concerning the instructions he received and I find that he sailed the ship to Cyprus, due to shortage of fuel, doing so under instructions received by the ship owners, with whom he had communicated and who undertook to supply the ship with the fuel that it required to sail from Cyprus to Piraeus.

If the master was not telling the truth, the defendant-intervener could have called anyone of the owners of the defendant ship to contradict the master. I also accept the evidence of the master concerning living conditions on the ship after 1.11.78 and that as a result of such conditions, arrangements were made by the plaintiffs, on the instructions of the master, for their accommodation and supply of food at Limassol town.

Furthermore, the evidence of the master concerning wages due to the plaintiffs, stands uncontradicted and I accept same. I also accept the other evidence called by the plaintiffs as truthful and reliable evidence. I do not accept the evidence of the intervener-defendant in respect of the matters alleged by him and I consider such evidence as unreliable coming from guesses and not from the real position as explained by the master.

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.*

As I have already found, the evidence of the master concerning the wages accounts produced by him and the continuous employment of the plaintiffs till the sale of the ship, stands uncontradicted. The allegation of the intervener-defendant that the plaintiffs wrongfully deserted the ship on 6.10.78 is entirely unfounded. As to the position of the intervener-defendant vis-a-vis the plaintiff, the intervener-defendant stands in the shoes of ths owners and cannot set up a defence which the owners could not set up against the plaintiffs. The master of the ship is the agent of the owners, and the plaintiffs had to obey and comply with his orders as master of the ship. In these actions, I am not dealing with a dispute between the owners and the master but with claims of members of the crew and the owners, whose liability is admitted by their agent, the master.

As to the position of an intervener-mortgagee, the following appears in a passage in the judgment of Dr. Lushington in *The Chieftain* [1863] Brown. & Lush. 104, at p. 111:

> ".....Now, a mortgagee stands in the shoes of the owner, and can set up no defence in this Court, except what the owner can set up. This has been the practice of the Court

for many years: it allows the mortgagee to come in and defend, but it confines his right of defence to the defences competent to the owner. As it is manifest that the owner would have no defence here to the plaintiff's claim for wages, so neither have the defendants as mortgagees."

This case was referred to with approval in the *Westport* (No. 4) [1968] 2 Ll. L.R. 559.

Furthermore, as to the position of the master acting as agent of the owners, the following passage appears in the decision of Worley, C.J. in *The "Arosa Star"* [1959] 2 Ll.L.R. 396 at p. 401:

"Now, it will be recalled that, in the instant case, the master of the ship gave evidence (which I accepted in the judgment I delivered in these actions on Jan. 24, 1959) that he was instructed by his owners to dismiss the whole of the ship's company and that he did so, not in breach or by way of repudiation of any contract, but in accordance with the terms of each man's contract, by giving him the notice required thereunder. He further gave evidence that the sums claimed as wages were calculated up to the date of expiry of that notice, which was, as I recollect, in the case of seamen, only a few days from their arrival in their home port of Bremerhaven in Germany. In view of this evidence of their agent, I do not see how the owners could be heard to say in this Court that any portion of the sums claimed was not wages due under the contract, and if they cannot do so, then, following Dr. Lushington, neither can the mortgagees. To adopt the language, once again, of the President in *The British Trade*, sup., there was merely a breach of the contract by the employer (by his default in not paying the wages) and the contract subsisted and could be made the subject of a simple claim for wages: there was no repudiation of the contract accepted by the seamen which would have put an end to the contract and given rise to a claim for damages".

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*" (*Vogiatzis 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 was 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 the plaintiffs are entitled to their wages which accrued due after as well as before the issue of the writ and till the day when the ship was sold and their employment; in consequence, terminated under section 13(1)(d) of the Merchant Shipping (Masters and Seamen) Laws, 1963 (Law No. 46 of 1963 to Law No. 24 of 1976).

As to the claim of plaintiff in Action No. 402/78 for additional remuneration due to the failure of the owners to provide an additional "Third Mechanic", I am satisfied from the evidence of the master that such claim for an additional remuneration of 10,000 Drachmas per month, was part of the agreement of employment of such plaintiff, and, in consequence, plaintiff is entitled to such remuneration for so long as an additional "Third Mechanic" was not employed and plaintiff had to perform such additional duties. According to the evidence of the master and the wages account (*exhibit* 1), he was performing such duties for a period of two months and three days. As to the right to such a claim which way be described as "short hand money", irrespective of the agreement between the parties, there is authority in "*The City of Malines*" [1948] 81 Ll.L.R. 96.

I come now to consider whether plaintiffs are entitled to their claim under the heading "other emoluments" of remuneration in respect of two and a half days leave, per month which, according to the evidence of the master, they were entitled under their terms of employment and which, leave, they did not get. In

The "Arosa Star" (*supra*) a Bermuda Supreme Court case, Sir Newham Worley, C.J. had this to say at pp. 402–403:

> " 'Wages' is defined by Sect. 742 of the Merchant Shipping Act, 1894, as including emoluments. Since this is a question of remedy and the lex fori applies, I think that definition must apply even to the case of a foreign ship and foreign seamen (see *The Milford* (1858) Scab. 362, at p. 367; and *The Tagus* sup.). Wages have been held to include a bonus (*The Elmville* (No. 2), [1904] P. 422, and *Shelford* v. *Mosey* [1917] 1 K.B. 154); also a victualling allowance (*The Tergeste*, [1903] P. 26). This case relates to an Italian ship seized in England and sold at the instance of the Italian crew in an action for wages. Mr. Justice Phillimore held that a victualling allowance payable to the crew was equivalent to wages carrying a maritime lien. 'Wages' has also been held to include a master's national insurance contributions, where these have been agreed to be paid by the owner (*The Gee Whiz*, [1951] 1 Lloyd's Rep. 145, referred to in Temperley's Merchant Shipping Acts (5th ed.); at p. 121, n. 5). I would refer once again to the passage in the judgment of Sir Henry Duke in *The* British Trade [1924] P., at pp. 108 and 109; [1924] 18 Ll.L.Rep., at p. 66, in which he referred to
>
> > .....decisions in the Court of Admiralty which extend over a long period, and under which the seaman's lien has been held to include subsistence money, viaticum, and as it seems, whatever he could be fairly said to have earned by his services.
>
> Consistent with this is the language of Sir Francis Jeune, P., in *The Elmville* (No. 2), sup., at p. 428, where he said, referring to a bonus claimed by the master:
>
> > .....If it is not wages, I am satisfied it is an emolument; but I should rather call it wages, because that word is used in the Act in a large sense so as to include, not only what a master gets as a wage, but what he obtains in the course of his service as recompense for the execution of his duty.
>
> I think this is a matter in which the Courts must keep up–

to-date and have regard to the changed and changing conditions of seamen's employment. I suppose that, to-day, few are serving under the old simple mariner's contract for a specified voyage, and that, as a consequence of changed conditions and modern conceptions of welfare, most seamen are engaged on special contracts which provide for notice of termination of service, paid leave, sick-leave, bonuses, and so on, which can be and are properly regarded as additions to wages, additions which the mariner can 'be fairly said to have earned by his servises'."

The above principles were adopted by Karminski, J. in the "*Westport*" (*No.* 4) [1968] 2 Ll.L.R. 559, who had further this to add at p. 562:

"I do not myself find the word 'emoluments' very easy to define; but it really comes to this; that it may generally cover something which is received by a member of a ship's company from which he receives a benefit 'as recompense for the execution of his duty'. That phrase is derived from a judgment of Sir Francis Jeune, P., in *The Elmville* (*No.* 2), [1904] P. 422".

In *The British Trade* [1924] 18 Ll.L.R. 65 at p. 66, Sir Henry Duke in delivering the judgment of the Court drew the distinction between the claim for wages and the claim for damages under a seaman's contract, as follows:

"The distinction between a claim for wages and a claim for damages under a seman's contract which has been broken depends upon purely legal considerations. The best answer, I think, is that if there has been merely a breach of the contract by the employer, the contract subsists and can be made the subject of a simple claim for wages: but, on the other hand, if the employer has repudiated the contract and the seaman has accepted the repudiation, the contract is at an end, and any claim to be made by him in respect of its stipulations is a claim for damages (see *Johnstone* v. *Milling* 16 Q.B.D. 560".

In the light of the above, I find that plaintiffs are entitled to this claim under the heading Wages and Other Emoluments.

B. *War Zone Bonus.*

Plaintiffs base their claim in this respect, on a promise given

to them by the master of the ship. Such promise, as appearing from the evidence of the master, was as follows: In view of the prevailing political conditions at Tripoli in the course of the unloading and as a result of complaints made by the members of the crew as to such situation, the master advised 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. Such promise was in general terms, without having mentioned to them what the nature of this present would have been. The master went on to say that according to information he received, such promise entailed payment of two months wages. Such information of the master is clearly hearsay evidence, having not been communicated to the plaintiffs, and in consequence, is not admissible. Besides the fact that the promise was very general and made in a very vague way, I have no evidence before me to the effect that the circumstances with which the plaintiffs were faced, were beyond their contemplation when they were engaged to sail there, and when the ship in fact arrived there. The voyage was an ordinary commercial voyage, as was contemplated by the agreement and plaintiffs were not asked to proceed to any other port for the purpose of unloading, where circumstances of war zone operations existed. The plaintiffs knew where the ship was sailing and they must have known the existence or not of any abnormal circumstances in Tripoli at the material time. They never objected to sail to such port or raised any claim that the ship was destined to sail to war zone area.

As a general rule, seamen are not entitled to claim any additional wages in respect of services rendered in the course of the period of engagement, even though the master has agreed to pay them, the contract being considered void for absence of consideration, as well as from public policy. (Vide Halsbury's Laws of England, Third Ed. Vol. 35. p. 169). One of the exceptions referred to therein, is stated as follows:

> " The owners may be found by an agreement in reasonable terms made by the master to pay extra remuneration to the crew to bring a vessel home from a foreign port after war has broken out and the crew have refused to sail unless they are paid such extra remuneration in view of the war risks not contemplated by the crew in their original agreement of wages for the voyage".

Reference is made therein under note (p) on the same page, to the case of *Pugh* v. *Henville and others*, [1957] Ll.L.R. Vol. 2 p. 261. In that case seamen engaged on a steamship under articles which covered voyage to Mediterranean Sea refused to prepare the ship for sea, on the allegation that the voyage was dangerous because the port of their destination was considered by them as dangerous as being within a war zone area due to the prevailing circumstances at the material time in Cyprus. As a result of their refusal, informations were preferred against them for such refusal and the Divisional Court of Queen's Bench Division allowed an appeal from the decision of the Justices who tried the informations to acquit them. The Justices found that the respondents honestly and reasonably believed that such risks existed by reason of the activities in the ports at that period when large quantities of war materials were being loaded. Although no exceptional risk to merchantile vessel was known to exist in the Suez or Cyprus areas at the material time, the respondents honestly believed that such risk did exist. It was held by the Divisional Court on appeal that—

> " If there is no risk in fact or the general opinion among shipping people and those who have to deal with these matters is that there is no risk, it cannot be a sufficient justification for a man refusing to obey the lawful orders of his officers to say, 'I think there is a risk'. The fact is that none of these men were called. There was no evidence given except that there was no exceptional risk'."

As to the existence of such exceptional risk due to war zone operations, guidance may be found in *Caine and others* v. *Palace Steam Shipping Company* [1907] 1 K.B. 670 and *Robson* v. *Sykes* [1938] 2 All E.R. 612.

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 was 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.

C. *Accommodation and Provisions.*

Under the Merchant Shipping (Masters and Seamen) Laws 45/63 and 24/76, sections 53, 54, 55 (amended by section 4 of Law 33/65), which come under a general Part IX, under the heading Provisions, Health and Accommodation, wide provision is made imposing a duty upon the master to provide the crew with provisions, water, proper accommodation and the failure of the master to discharge such duty, renders him liable to criminal proceedings. Such provisions, in fact, adopt the provisions contained in the English Merchant Shipping Act, 1894, sections 198 and 199.

In *Palace Shipping Company Limited* v. *Caine and Others*, [1907] A.C. 386, where there was a wrongful discharge of seamen, the House of Lords in dealing with matters touching wages and maintenance after their dismissal, held that the seamen were entitled to their wages until the final settlement and to the costs of maintenance for the same period under the head of damages for wrongful dismissal. Lord Loreburn, L.C. in dealing with the question of maintenance is reported at page 392 to have said:

" The Court of Appeal awarded also a sum for maintenance, apparently regarding that as included in the term 'wages'. I would prefer to treat it as damages for the wrongful discharge. In the result it comes to the same thing, for the men were deprived of their provisions, and that was an item of their loss."

And Lord Macnaghten at page 393—

" There is more difficulty about the question of maintenance. I do not think that the term 'wages', as used in the Merchant Shipping Act of 1894, can include an allowance for maintenance. But I do not think that the judgment of the

Court of Appeal ought to be disturbed, because it seems to me that the claim for maintenance may be sustained under the head of damages for breach of agreement."

Of course a distinction has to be drawn between that case and the present one, in that, in the present case, the claim for maintenance and accommodation, does not arise after the termination of the contract, but during the time the contract was in force, and, as a result of the inability of the master to get the necessary provisions due to the failure of the ship owners to provide him with the financial means, and also due to the living conditions on the ship.

The plaintiffs in the present case made arrangements for such alternative accommodation and supply of provisions, acting upon the instructions and the authority of the master who, in this way, was avoiding criminal responsibility and such instructions having been acted upon by the crew, imply an agreement to that effect and a responsibility is imposed upon the ship owners in this respect, through their agent, the ship's master.

In the *Tergeste* [1903] P. 26, a victualling allowance payable to the crew, was treated as equivalent to wages, and, in consequence, carrying a maritime lien. This case was referred to in the "*Arosa Star*" (*supra*) by Sir Newham Worley, C.J. in the interpretation of the words "wages".

Also, in Halsbury's Laws of England, 3rd Ed., Vol. 35, under note (p) to para. 1208 at p. 785 which is dealing with the lien for wages of the master and seamen which attach to the ship and freight:

" (p) Wages includes subsistence money, viaticum, compensation for wrongful dismissal, money allowance instead of food, a bonus to a master to stand by a ship and bring her home (*The Madonna D'Idra* (1811), 1 Dods. 37, at p. 40; *Phillips* v. *Highland Rail. Co., The Ferret* [1883] 8 App. Cas. 329, P.C.; 5 Asp. M.L.C. 356; *The Tergeste*, [1903] P. 26; 9 Asp. M.L.C. 356; *The British Trade*, [1924] P. 104; 16 Asp. M.L.C. 296) "

In this respect vide also the "*Westport* (*No.* 4)" (*supra*).

In the light of the above I find that the plaintiffs are entitled to their claim under this heading.

In their statements of claim the plaintiffs' claim in this respect is for a period as from 2.10.1978, whereas, according to the evidence both of P.W.3, the hotel keeper, and P.W.1, the restaurant keeper, which I have accepted, they were so provided for a period of 42 days only. The cost of such facilities for each one of them amounts to £4.150 mils per day, (£1,900 mils provisions at the restaurant and £2.250 mils accommodation at the hotel)..

D. *Repatriation Expenses.*

It has been argued by counsel for the intervener-defendant that the plaintiffs are not entitled to any repatriation expenses, in view of the fact that they were members of a ship flying the Cyprus flag and they were at a Cyprus port when the ship was arrested and sold. Counsel contended that the only provision for repatriation expenses contained in the Merchant Shipping Law, 1963, (Law No. 46/63), is under section 65(1) which is applicable only to crew of ships flying the Cyprus flag whose services are terminated at a port outside the Republic.

Section 65(1) to which counsel for the intervener-defendant referred, provides that where the employment of a seaman is terminated without his consent, at a port outside the territorial waters of the Republic, the master is bound to pay his wages and also take all steps for the maintenance and repatriation of the sailor to the port where he boarded the ship or to a port of the country where he belongs or to the port contemplated by their agreement.

It is correct that there is no express provision in Law 46/63 in this respect. Under section 1, however, of the Law, reference is made to the Merchant Shipping (Safety and Seamen) Law, Cap. 292 which should be read in conjunction with the same Law. Under section 1 of the Merchant Shipping (Safety and Seamen) Law, Cap. 292, such Law shall be construed as one with the Merchant Shipping Acts and such Acts are interpreted under section 2 as meaning the English Acts of Parliament cited as Merchant Shipping Acts, 1894–1950, and any other act amending or substituted for the same. In fact, by section 111 of Law 46/63, reference is made to the Merchant Shipping Acts of 1895 and 1906 as follows:

" Αἴρεται ἡ ἐν τῇ Δημοκρατίᾳ ἐφαρμογὴ τοῦ Μέρους ΙΙ τοῦ

περὶ Ἐμπορικῆς Ναυτιλίας Νόμου τοῦ 1895 ἐν ᾧ διαλαμβάνονται τὰ ἄρθρα 92 ἕως 266, ἀμφοτέρων τῶν ἄρθρων τούτων περιλαμβανομένων, ὡς καὶ ἡ ἐφαρμογὴ τῶν ἄρθρων 31, 32, 40 καὶ 45 τοῦ περὶ Ἐμπορικῆς Ναυτιλίας Νόμου τοῦ 1906."

("Part II of the Merchant Shipping Act, 1895, containing sections 92 to 266, both inclusive, and sections 31, 32, 40 and 45 of the Merchant Shipping Act, 1906, shall cease to have effect in the Republic.").

Under section 42 of the English Merchant Shipping Act, 1906, there is provision for recovery of expenses of relief of distressed seaman (either for his maintenance, necessary clothing, conveyance to a proper return port, or in the case of death, for his burial or otherwise (section 42(1)).

The question as to whether a seaman is "in distress" is a question of fact in each particular case. In the *Board of Trade* v. *The Sailing Ship Glenpark Ltd.*, [1904] 1 K.B. 682 it was held that even "receipt of wages by seaman sufficient to maintain him and pay his passage to a return port, does not necessarily show that he was not a distressed seaman."

In the circumstances of the present case, I have no difficulty in finding that the plaintiffs were seamen in distress. They were not citizens of Cyprus, coming from various foreign countries, they were left penniless in Cyprus and their wages were due to them. Once their employment was terminated in Cyprus by the sale of the ship, they were bound to return to their respective countries.

The proper return port is either the port at which the seaman was shipped or a port in the country to which he belongs, or some other port agreed to by the seaman, in the case of a discharged seaman, at the time of his discharge. This can be gathered from the context of section 65(1) of Law 46/63.

Repatriation expenses were allowed in *Kyrmizoudes* v. Ship "*Philipoupolis*" (1978) 1 C.L.R. 526 at p. 538, which was also a ship flying the Cyprus flag which was arrested whilst lying in the port of Limassol. In making an order for appraisement and sale pendente lite of the defendant ship, Triantafyllides P. included the following in the order:

"The crew shall leave the vessel before the sale is com-

menced and the Marshal is hereby authorized to make proper arrangements to pay them their repatriation expenses and to make to each one of them a reasonable, in his opinion, agreed advance on wages that may appear to be lawful to him; in case of failure to reach agreement with any one of them in this respect the Marshal should seek the directions of the Court. Any expenses to be incurred, as above, by the Marshal shall be met, in the first instance, out of the proceeds of the sale of the ship which, as already ordered, are to be paid into Court".

In the *Westport* (*No.* 4) (*supra*), Karminski, J. found that the plaintiff was entitled on termination of employment to his repatriation expenses. At page 561, he reiterated the principle expounded by Worley, C.J. in the *Aroza Star* (*supra*) that when a mariner's contract is under consideration, it is construed on the basis that the mariner is entitled to the benefit of the doubt.

As to repatriation expenses, there is also authority in the *Fairport* (*supra*) where it was held that it was well established that claims for v i a t i c u m could be made in actions in rem against a ship by seamen. ("V i a t i c u m" is defined in the footnote to the said report as travelling money.)

The position of crews of arrested ships regarding provisions, wages and repatriation is dealt with in the British Shipping Laws. No. 1 " Admiralty Practice " at page 120 para. 274 as follows:

" Crews, particularly crews of ships under flags of convenience, often find themselves in difficult circumstances if the shipowner becomes insolvent; credit cannot be obtained and, unless assistance is forthcoming, considerable hardship will be suffered by the seamen when their supplies are exhausted. In such circumstances, the marshal, although he is only the custodian of arrested property, provides for the crew under the authority of the omnibus order.

Expenses of this nature are a drain, ultimately, on the proceeds of sale of the ship, and therefore, if one of the principal creditors thinks fit he may apply to the Court for leave to pay off the crew and stand in their shoes.

Alternatively, the marshal may be ordered to repatriate

a foreign crew and to include the expense of so doing in his charges. It would not be practical to ask for such a direction without including a request that an advance be made in respect of outstanding wages, otherwise the crew would probably refuse to do.

Often the consul for the country to which foreign seamen belong will arrange for their repatriation, and the moneys expended in this way will usually be recovered from the individuals concerned by the consul outside the scope of the action. The amounts are included in the action of the master and crew for wages as part of their claims."

Reference is made in the above to *The Mogileff and Freight* [1921] 7 Ll.L.R., 130, and *The General Serret* [1925] 23 Ll.L.R., 14.

The above cases are also referred to in the *First National Bank, Chicago* v. *Ship "Blockland"* (1977) 1 C.L.R. 209 a ship flying the Cyprus flag where A. Loizou, J. granted an order in respect of several matters sought by an application to the Court, one of which was authorisation to the applicants to dismiss and repatriate the crew members after paying for their repatriation expenses, and for their claims for wages.

In the *General Serret* case (*supra*) Mr. Justice Hill in dealing with a motion on behalf of the master of the vessel for the appraisement and sale of the vessel and also with a summons for particulars, made the following remarks at page 15: "something had to be done with regard to the crew and in the last resort he could direct the Admiralty Marshal to repatriate them and make the cost part of his charges which would be the first claim against the ship and finally he made such order". And His Lordship added that if someone could be found who would pay the crew's wages and stand in their shoes in the claim against the owners, it would be an advantage.

The same Judge in the *Mogileff* case is reported to have said that he would give the plaintiffs power to pay off all claims of the crew supported by maritime lien and to stand in the shoes of the crew with regard to those claims. His Lordship added that somebody must get the crew out of the ship which was to be sold by the Marshal on May 3, and, if necessary, the plaintiffs would have leave to provide viaticum.

In the circumstances of this case I find that the plaintiffs are entitled to their repatriation expenses to their respective countries of origin.

Such expenses according to the evidence before me amount to C£142.500 for each of the plaintiffs in Actions Nos. 407/78, 409/78–414/78 and 417/78 who come from Pakistan C£235.— for plaintiff in Action 408/78 who comes from Liberia, C£40.— for plaintiff in Action 402/78 who comes from Greece and £18.— for plaintiff in Action 416/78 who comes from Syria.

E. *Damages.*

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

As I have already found, the plaintiffs continued to be employed by the defendant ship till 20.12.78, when the ship was sold by public auction and in consequence their services were terminated. The sale of the ship does not constitute a repudiation of the contract by the owners or wrongful dismissal of the seamen on the occurrence of such event. Under section 13(1) of the Merchant Shipping Laws 46/63 to 24/76, an agreement is treated as at an end, on the occurrence of the following things:

"13.–(1) Ἡ σύμβασις μετὰ τοῦ πληρώματος λύεται–

(α) ἐπὶ τῇ παρόδῳ τοῦ χρόνου δι' ἣν συνήφθη ἡ σύμβασις, ἢ τῷ τερματισμῷ τοῦ πλοῦ δι' ὃν συνήφθη ἡ σύμβασις, διὰ τῆς ἀποβιβάσεως τῶν ἐπιβατῶν ἢ τῆς ἐκφορτώσεως τοῦ φορτίου ἢ διὰ τῆς ἀποβιβάσεως τῶν ἐπιβατῶν καὶ τῆς ἐκφορτώσεως τοῦ φορτίου.

(β) ἐπὶ τῇ ἀπωλείᾳ τοῦ πλοίου.

(γ) ἐπὶ τῷ ναυαγίῳ αὐτοῦ ἢ τῇ ἀπωλείᾳ τῆς Κυπριακῆς σημαίας.

(δ) ἐπὶ τῇ πωλήσει τοῦ πλοίου διὰ δημοσίου πλειστηριασμοῦ."

("13.—(1) An agreement with the crew shall be terminated—

(a) on the effluxion of the period for which it has been entered or on the termination of the voyage, by the disembarkation of the passengers or the discharge of the cargo or both, for which it was made;

(b) on the loss of the ship;

(c) on the wreck or loss of the Cyprus flag;

(d) on the sale of the ship by public auction.").

Section 37(1) of the same Laws provides for the payment of wages in the case of termination of employment as a result of events contemplated by section 13(1) as follows:

"37.—(1) Ἐὰν ἡ ὑπηρεσία ναυτικοῦ ὑπηρετοῦντος ἐπὶ Κυπριακοῦ πλοίου τερματισθῆ πρὸ τῆς προβλεπομένης ἐν τῇ συμβάσει ἡμερομηνίας, λόγω ναυαγίου, ἀπωλείας ἢ τῆς διὰ δημοσίου πλειστηριασμοῦ πωλήσεως πλοίου, οὗτος θὰ δικαιοῦται νὰ λαμβάνῃ δι' ἑκάστην ἡμέραν καθ' ἣν οὗτος εἶναι ἐν τῇ πραγματικότητι ἄνευ ἐργασίας διαρκούσης τῆς περιόδου τῶν δύο μηνῶν ἀπὸ τῆς ἡμερομηνίας καθ' ἣν ἐτερματίσθη ἡ ὑπηρεσία αὐτοῦ, τοὺς μισθοὺς εἰς οὓς ἐδικαιοῦτο 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.").

In the present case none of the plaintiffs has adduced any evidence to the effect that in fact he was out of employment for any period up to two months after the sale of the ship. This is a necessary prerequisite under section 37(1) to enable a plaintiff to recover any such amount and in the absence of such evidence, plaintiffs cannot recover what is provided by that section. Under section 25, however, a seaman is entitled, on the termination of the contract, to payment of ten days double salaries if the master or the ship owner fails to pay within a reasonable time and without a just cause, the wages due to him. Section 25(2) reads as follows:

" Ἐὰν ὁ πλοίαρχος ἢ ὁ πλοιοκτήτης παραλείψη ἄνευ εὐλόγου αἰτίας νὰ προβῇ εἰς τὴν καταβολὴν τοῦ μισθοῦ κατὰ τὸν προσήκοντα χρόνον, οὗτος θὰ καταβάλῃ εἰς τὸν ναυτικὸν ποσὸν μὴ ὑπερβαῖνον τὸν μισθὸν δύο ἡμερῶν δι' ἑκάστην ἡμέραν καθ' ἣν οὗτος εὑρίσκεται ἐν ὑπερημερίᾳ 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.").

I, therefore, find that plaintiffs are entitled to ten days double salaries under this heading as a result of the unjustified failure of the owners to settle the wages of the plaintiffs on the termination of their employment. This item is recoverable as wages under the provisions of section 25(3) and I award in this respect to the plaintiffs, be way of additional wages, a sum equivalent to twenty wages (ten days by two).

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

Plaintiff in Action No. 402/78

(a)	wages up to 20.11.78 according to the wages account till that day,	82.533	
	Plus wages for one month as from 20.11.78 to 20.12.78	25.000	
(b)	ten days leave in respect of four months and 20 days as additional wages for arrears of payment of their wages when due, (10 double wages), a total of 30 days,	25.000	132.533 Dr.
(c)	42 days maintenance and accommodation at £4.150 per day,	£174.300	
(d)	Repatriation expenses	£ 40	£214.300

Plaintiff in Action No. 407/78

(a)	wages till 20.11.78, plus wages from 20.11.78 till 20.12.78	136.503 20.000	
(b)	40 days leave (2 1/2 days from		

	18.8.77–20.12.78 and 20 days wages in respect of arrears (total two months by 20,000 Dr.)	40.000	196.603 Dr.
	(c) 42 days maintenance and accommodation at £4.150 per day	£174.300	
	(d) Repatriation expenses	£142.500	£316.800
	Plaintiff in Action No. 408/78		
	(a) wages till 20.11.78, plus	28.220	
	wages from 20.11.78 till 20.12.78	11.000	
	(b) ten days leave in respect of four months and 20 days wages for arrears, a total of another month,	11.000	50.220
	(c) 42 days maintenance and accommodation at £4.150 per day	£174.300	
	(d) Repatriation expenses	£235.000	£409.300
	Plaintiff in Action No. 409/78		
	(a) wages till 20.11.78	33.967	
	plus wages from 20.11.78 till 20.12.78	11.000	
	(b) ten days leave in respect of four months and 20 days wages in respect of arrears, a total of another month,	11.000	55.967 Dr.
	(c) 42 days maintenance and accommodation at £4.150 per day	£174.300	
	(d) Repatriation expenses	£142.500	£316.800
	Plaintiff in Action No. 410/78		
	(a) wages till 20.11.78	27.700	
	plus wages from 20.11.78 till 20.12.78	11.000	

(b) ten days leave in respect of four months and 20 days wages for arrears, a total of one month,	11.000	49.700 Dr.	
(c) 42 days maintenance and accommodation at £4.150 per day,	£174.300		5
(d) Repatriation expenses	£142.500	£316.800	
Plaintiff in Action No. 411/78			
(a) wages till 20.11.78,	33.964		10
plus wages from 20.11.78 till 20.12.78	11.000		
(b) ten days leave in respect of four months and 20 days wages for arrears, a total of one month,	11.000	55.964 Dr.	15
(c) 42 days maintenance and accommodation at £4.150 per day,	£174.300		
(d) Repatriation expenses,	£142.500	£316.800	20
Plaintiff in Action No. 412/78			
(a) wages till 20.11.78,	33.844		
plus wages from 20.11.78 till 20.12.78,	11.000		
(b) ten days leave in respect of four months and 20 days wages for arrears, a total of one month,	11.000	55.844	25
(c) 42 days maintenance and accommodation at £4.150 per day,	£174.300		30
(d) Repatriation expenses,	£142.500	£316.800	
Plaintiff in Action No. 413/78			
(a) wages till 20.11.78	31.766		
plus wages from 20.11.78 till 20.12.78	11.000		35

(b)	ten days leave in respect of four months and 20 days wages for arrears,	11.000	53.766 Dr.
(c)	42 days maintenance and accommodation at £4.150 per day,	£174.300	
(d)	Repatriation expenses,	£142.500	£316.800

Plaintiff in Action No. 414/78

(a)	wages till 20.11.78,	33.664	
	plus wages from 20.11.78 till 20.12.78,	11.000	
(b)	ten days leave in respect of four months and 20 days wages for arrears,	11.000	55,664 Dr.
(c)	42 days maintenance and accommodation at £4.150 per day,	£174.300	
(d)	Repatriation expenses,	£142.500	£316.800

Plaintiff in Action No. 416/78

(a)	wages till 20.11.78,	50.781	
	plus wages from 20.11.78 till 20.12.78,	11.000	
(b)	ten days leave in respect of four months and 20 days wages for arrears,	11.000	72,781 Dr.
(c)	42 days maintenance and accommodation at £4.150 per day,	£174.300	
(d)	Repatriation expenses,	£ 18.000	£192.300

Plaintiff in Action No. 417/78

(a)	wages till 20.11.78,	27.800	
	plus wages from 20.11.78 till 20.12.78,	19.000	

(b)	ten days leave in respect of four months and 20 days wages for arrears,	9.000	45.800 Dr.
(c)	42 days maintenance and accommodation at £4.150 per day,	£174.300	
(d)	Repatriation expenses,	£142.500	£316.800

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, the judgment will be in their equivalent in Cyprus Pounds at the rate prevailing on 20.12.78, such date for conversion having been agreed upon by counsel appearing in these actions. Defendants also to pay to plaintiffs the costs of these actions to be assessed by the Registrar.

Judgment and order for costs as above.