

1983 September 22

[SAVVIDES, J.]

WILLIAMS AND GLYN'S BANK LIMITED,

*Plaintiffs,*

v.

THE SHIP "MARIA" NOW LYING AT THE PORT OF  
LARNACA,

*Defendant.*

(Admiralty Action No. 59/82).

*Admiralty—Sale of ship under arrest pendente lite—Principles applicable—Continuing and mounting expenses of maintaining ship under arrest which progressively diminished the value of the security obtained by plaintiffs through arresting her—Such diminution a particular hardship to them because their claim greatly exceeds value of the ship—Owners of ship not prepared to contribute towards these expenses—Prolonged stay of ship under arrest was causing her deteriorate and that by being kept under arrest was exposed to grave risks due to changing weather conditions—Final determination of the action due to be prolonged—Order for sale of ship pendente lite after appraisalment.*

Upon filing an action for U.S. dollars 7,202,465 under a loan agreement and/or mortgage of the defendant ship the plaintiffs obtained a warrant of arrest and the ship was arrested on the 26.2.1982 and was still under arrest. On the 23rd June, 1982, the plaintiffs applied for the sale pendente lite of the defendant ship and that the proceeds of the sale be paid into Court. Plaintiffs contended that they were paying about £5,000 monthly to the Marshal for the crew and that since the arrest of the ship they have paid for wages and repatriation expenses of crew members, supply of fuel, payment of wages and supplies to the skeleton crew, insurance and other expenses, more than £100,000. They also, contended that the value of the ship which, according to an appraisalment made by an expert appointed by the Marshal on the directions of the Court in Admiralty Action No. 177/82,

was U.S. dollars 1,750,000, was not sufficient to cover the claims against her and if she continued to remain under arrest, the monthly expenses for keeping her under arrest were so huge as to drain continuously the fund available for payment of any debts with the result that the only persons who will suffer in the end will be the plaintiff whose claim ran after the claims of the crew and the Marshal's expenses which have priority over their claim; and that the defendant ship had nothing to lose by the arrest remaining indefinite, as her owners have never contributed anything to the Marshal for maintaining a skeleton crew on the ship or for other necessary expenses for the safe keeping of the ship.

*Held*, that though interlocutory orders for appraisalment and sale pendente lite of a ship under arrest are exceptional, nevertheless, they can be made if such circumstances exist that justify the making of such order; that since if the ship remained under arrest without being sold pending the trial of the action, the value of the security obtained by the plaintiffs through arresting her, would be progressively diminished by the continuing costs of maintaining her arrest and that such diminution would be a particular hardship to the plaintiffs, because their claim greatly exceeds the value of the ship especially having regard to the fact that the applicants since arrest till the hearing of this application, have paid money in the region of £100,000.- for crew claims, insurance, Marshal and other expenses and continue to pay sums exceeding £5,000.- per month; that since the owners of the defendant ship have never been prepared to bear or contribute to those costs, but, on the contrary, their attitude all along, was that the plaintiffs should be burdened till the determination of the action; that since the prolonged stay of the ship under arrest was causing the defendant ship deteriorate and that by being kept under arrest outside the port she was exposed to grave risks due to changing weather conditions; and that since after the conclusion of the hearing of the action there is always the right of appeal which will prolong the final determination of the action for quite a long time in the future this is a proper case for making an order for the sale of the ship pendente lite; accordingly an order for the sale of the ship pendente lite after appraisalment of her value by the Marshal and that the proceeds of the sale be brought into Court will be made.

*Application granted.*

## Cases referred to:

- Williams & Glyn's Bank v. The ship "Maria"* (1983) 1 C.L.R. 124;  
*Almyr Maritime S.A. v. The Cargo on Board the Ship "Almyrta"*  
 (1975) 1 C.L.R. 116 at p. 118;
- 5 *Kyrmizouides v. The Ship "Philipoupolis"* (1978) 1 C.L.R. 526;  
*Westport* [1965] 2 All E.R. 167;  
*Myrto* [1977] 2 Ll. L.R. 243;  
*Scheepswarf Bodewes-Gruno v. The Ship "Algazera"* (1980)  
 1 C.L.R. 404.

10 **Application.**

Application by plaintiffs for the sale pendente lite of the ship "Maria".

- E. Montanios with P. Panayi (Miss)*, for applicants.  
*M. Eliades with A. Skordis*, for the respondent ship.
- 15 *Chr. Christophides*, for the intervener.

*Cur. adv. vult.*

- SAVVIDES J. read the following judgment. This is an application for the sale pendente lite of the defendant ship which is under arrest and that the proceeds of the sale be paid into
- 20 Court.

The application was filed on the 23rd June, 1982, but due to numerous other applications which were filed in this action, and had to be dealt with before this application, the hearing of this application was delayed.

- 25 The defendant ship was arrested on the 26th February, 1982 by a warrant of arrest in this action, the writ of summons in which was issued on the same day. The said order was eventually made absolute, pending the final determination of the action, and the ship is still under arrest, as the owners of the defendant
- 30 ship and/or any persons interested in it, failed to bail the ship out.

- The applicants are the plaintiffs in the above action and their claim is for U.S. Dollars 7,202,465, plus interest due under a loan agreement and/or mortgage of the defendant ship, for her possession under the terms of the mortgage and her appraisal-
- 35 ment and sale.

The facts relied upon in support of the application, are set

out in the affidavit sworn by Persefoni Panayi, an advocate in the law firm of advocates for plaintiffs, and are briefly as follows:

A loan of U.S. Dollars 10,000,000 was made by plaintiffs to Ulysses Shipping Agency secured by mortgage on the defendant ship given by Laertis Shipping Enterprises (Special Shipping) S.A., owners of the defendant ship. Under the terms of the said guarantee and/or mortgage, in the event of default of payment as per terms of the loan agreement, the said loan together with all interest, commission and other sums payable would become repayable upon demand and the applicants would be entitled to take possession of the defendant ship as well as of her management and control. As there was default of payment, the owners of the defendant ship were called to pay the outstanding balance, which they failed to do, and the present action, in rem, was instituted against the defendant ship. An action in personam was also brought against the owners in England and a judgment was obtained against them which has not been satisfied. A photocopy of the said judgment was attached to the affidavit. There were outstanding claims against the defendant ship for about U.S. Dollars 200,000 for wages due to the master, officers and crew of the defendant ship. After the arrest of the ship, the applicants, by leave of the Court, paid off and repatriated ten members of the crew and were subrogated to their rights. In this respect, the applicants paid U.S. Dollars 62,134.32 and about £1,500.- for their repatriation expenses. The remaining members of the crew had instituted actions Nos. 73- 85/82 and obtained judgments on 24.5.82 for a total of Greek Drachmas 9,094,697, together with legal interest and £4,300.- costs, with stay of execution at the request of the owners till 15.6.82. On 8.6.82 the master and nine crew members filed against the defendant ship Admiralty Actions 124 - 133/82, claiming wages and other benefits accruing after 24.5.82. The expenses for the arrest of the ship are borne by the Marshal by money provided by the applicants. It is the allegation contained in the said affidavit that the current value of the defendant ship is U.S. Dollars 3,000,000 and that its value is deteriorating due to the fact that it remains idle and it is exposed to risks of being seriously damaged as it is anchored outside the harbour and changing weather conditions will render its safety more precarious.

5 The application was opposed both on behalf of the ship and also on behalf of the intervener Martin Mosvold and/or his Nominee. By their opposition counsel for the defendant ship dispute the validity of the mortgage and any consideration given in that respect, and allege that the Court has no jurisdiction to hear and give judgment on claims based on the alleged loan and/or guarantee. Furthermore, they allege that the judgments in favour of the crew and all other claims are small, taking into consideration the value of the ship. They further deny that 10 there is any imminent danger for the safety of the ship or that her condition is deteriorating, as proper measures are being taken by the Marshal for her maintenance and that this is not a proper case for the sale of the ship pendente lite as irreparable loss may be caused to the ship.

15 Counsel for the intervener by his opposition, disputes that applicants are entitled to the prayer as per application, and, also, disputes the mortgage upon which the action is based as being ultra vires the Articles of Association of the owning company and contrary to a written agreement dated 12th May, 20 1970. It is alleged, furthermore, that the judgment in England against the owner of the ship constitutes a res judicata in the case and, therefore, the applicants are not entitled to pursue their claim. It is further alleged that by reason of the conduct of the plaintiffs, huge losses have accrued due to loss of earnings 25 during the wrongful detention of the ship and that the ship should be released forthwith and that the continuance of the arrest amounts to wrongful detention on the part of the applicants.

30 At the hearing of this application a preliminary objection was raised by counsel for the ship that the amount which was fixed by the Court for bailing the ship out, was excessive and that a prerequisite for an application for the sale of a ship pendente lite is that the defendant ship is unable to bail herself out. The amount of C£3,253,000 which was fixed by the Court to enable 35 the defendant ship to bail out, was by far in excess of the actual value of the ship which is in the region of U.S. Dollars 1,700,000 to 3,000,000, as it appears from the various affidavits which are in the file of the Court.

After short argument on this issue, counsel for the applicants consented that the bail should be reduced to U.S. Dollars 3,000,000 instead of the original amount fixed by the Court and that if such bail was provided, the ship could be released. As a result, the original order was amended and the amount of U.S. Dollars 3,000,000 was substituted to the original amount and, in order that a chance could be given to the counsel for the defendant ship to consider the possibility of bailing her out, in reserving judgment in this application I pointed out to the parties that I was going to delay the delivery of judgment for four weeks, so that if the amount of the bail, as reduced, was secured in the meantime and the ship was bailed out, no useful purpose would be served by delivering judgment. No such bail has been provided till today, and the ship is still under arrest.

As mentioned earlier, the ship was arrested on the 26th February, 1982. When the order for the arrest of the ship was made, the applicants in addition to a security by way of a bond, were directed to deposit the sum of £300.- for any expenses which might have been incurred by the Marshal in connection with the custody of the ship, subject to the condition that this sum might be increased. Also, they were directed to lodge in Court any further amount that the Registrar of this Court might ask the applicants to do with regard to the arrest, and failure by the applicants to comply within three days from demand, the order of arrest was to be discharged.

On the 6th March, 1982 the Marshal informed the Court by a written application, that the ship had to be supplied with a quantity of at least 10 tons of fuel, so that the engines might be kept in a working condition to face any emergency due to the fact that she was exposed to danger as a result of weather changes. Also, that food supplies had to be provided by him to the 23 members of the crew. When such application came to be dealt with by the Court, counsel for the defendant ship joined the application of the Marshal and stressed the fact that the defendant ship was in urgent need of regular supplies of fuel to face any emergencies and also that the crew of the ship was in need of regular supplies and laundry and contended that the applicants who had applied for the warrant of arrest of the

ship, should provide the Marshal with the necessary funds.

5 The applicants undertook to make available to the Marshal whatever funds were required for the supply of fuel and provisions for the crew and as a result an order was made, adding the following condition to the already existing condition of the warrant of arrest:

10 "The warrant of arrest already issued will be subject to the further condition that plaintiffs will undertake to make available to the Marshal any necessary funds for the regular supply of diesel to the said ship and also for the supply of any necessary provisions and laundry for the crew."

15 By consent, it was also directed that for safety purposes the ship be removed from Larnaca to Limassol port, where she lies ever since. The applicants paid for the supply of the fuel provided by the Marshal and have continued till today paying for the supply of fuel, the value of which is well in the region of thousands of pounds.

20 As the number of the members of the crew was excessive and their wages which had priority over applicants' claim, were draining any assets which might be available for payment of debts, the applicants, with the consent of the Master of the ship and her owners, applied for an order authorising them to pay off  
25 and repatriate 10 members of the crew and be subrogated to all their rights and remedies. Such application was granted and the applicants negotiated and paid the claims and repatriation expenses to 10 out of the 23 members of the crew. What was  
30 paid by plaintiffs, amounted to U.S. Dollars 62,134.32 in respect of wages, leave, overtime and compensation due to them and about £1,500 for their repatriation expenses. Such amounts were claimed by applicants against the defendant ship by Admiralty Action No. 177/82 in which judgment was entered in their  
35 favour for the above sums, plus interest thereon. (See *Williams & Glyn's Bank v. Ship "MARIA"* (1983) 1 C.L.R. 124. An appeal against such judgment is pending before the Full Bench).\*

The remaining members of the crew brought individual

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\* Now reported in (1983) 1 C.L.R. 706.

actions against the ship under Nos. 73-85/82 in which judgments were given in their favour for what was due to them till 24.5.82, amounting to Greek Drachmas 9,094,697 plus £4,300 costs. As nothing was paid to them, either in respect of the judgments or in respect of their wages after 24.5.82, they also filed Actions 124/82 - 133/82, claiming wages and other benefits accruing after 24.5.82, in which they obtained judgments for considerable additional amounts, and proceeded to execute the former judgments in their favour by the issue of writs of movables against the defendant ship, the execution of which is in the process of materialising.

In the meantime, a number of caveats had been entered against the release of the ship by a number of other creditors. Also, leave was granted to a certain Martin Mosvold and/or his Nominee to intervene and defend the action as having an interest in the defendant ship.

After several applications by the Marshal to the Court that additional funds had to be made available for maintaining the ship under arrest, the applicants, in compliance with previous directions, provided the Marshal and still continue to provide him with all necessary funds to face such expenditure.

On the 18th June, 1982 the Marshal informed the Court that, as most of the 13 members of the crew which remained on board had left, he had to provide and maintain a skeleton crew as follows:

- (a) A master at the monthly salary of £900.- as from 1.6.82.
- (b) An assistant master at the monthly salary of £425.- as from 3.6.82.
- (c) The first engineer who continued serving on the ship and whose salary was paid by the plaintiffs directly.
- (d) The cook and four members of the old crew who consented to continue rendering their services, and



(e) an electrician at the monthly salary of £400 per month,

and applied for the approval by the Court of the action taken by him and, also, for the necessary funds to be made available to him to pay their wages. By a separate application of the same day, he applied that necessary funds be provided for the payment of repatriation expenses for those members of the crew which were expatriated by him and which amounted to £652. The applications of the Marshal were dealt with on 27th July, 1982, when counsel for all parties concerned (the ship, the plaintiffs in the action, the intervener Mosvold and the members of the crew concerned) stated that there was no dispute as to what was claimed by the Marshal and they all agreed that the Marshal should employ such skeleton crew and pay their wages as well as the other expenses out of funds to be provided by applicants and such expenses be treated as Marshal's expenses; directions were made by the Court accordingly, to which applicants have complied and provided the necessary funds.

On the 11th October, 1982, after an application by the Marshal and with the consent of the parties, the employment of an additional number of three members to the skeleton crew at a monthly cost of £1,000.- and also the carrying out of certain necessary repairs to the engines of the ship were approved and applicants provided the necessary funds.

A number of similar applications were made at various times, either for necessary repairs or expenses as well as for an amount of £550.- for expenses incurred by him for the appraisalment of the ship by an order of the Court in Admiralty Action No. 177/82, which were granted and for their payment funds were made available by the applicants.

The monthly wages and provisions for the crew which are paid by the Marshal out of money provided by the applicants, exceed the sum of £5,000.- per month. According to a letter of the Marshal to the Registrar of this Court for the month of May they amounted to £5,609.210 mls. The money so provided are in addition to the funds made available by the applicants for payment of other demands as hereinabove explained, and, also,

for the insurance premiums of the ship. The money so provided by applicants since the arrest of the ship till today for wages and repatriation expenses of crew members, supply of fuel, payment of wages and supplies to the skeleton crew, insurance and other expenses, have already exceeded £100,000.- and continue to accumulate by an additional amount of over £5,000.- per month. 5

Counsel for the applicants maintained that the value of the ship which, according to an appraisal made by an expert appointed by the Marshal on the directions of the Court in Admiralty Action No. 177/82, a record about which appears in the file in this action, is U.S. Dollars 1,750,000, is not sufficient to cover the claims against her and if she continues to remain under arrest, the monthly expenses for keeping her under arrest are so huge as to drain continuously the fund available for payment of any debts with the result that the only persons who will suffer in the end will be the applicants whose claim runs after the claims of the crew and the Marshal's expenses which have priority over their claim. On the other hand, the defendant ship has nothing to lose by the arrest remaining indefinite, as her owners have never contributed anything to the Marshal for maintaining a skeleton crew on the ship or for other necessary expenses for the safe keeping of the ship. 10  
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The present application is based on the Admiralty Jurisdiction rules 74 - 77, 203, 204, 207 - 212 and 237 and on the inherent jurisdiction and powers of the Court. Rule 74, reads as follows: 25

"It shall be lawful for the Court or Judge, either before or after final judgment, on the application of any party and either with or without notice to any other party, by its order to appoint the marshal of the Court or any other person or persons to appraise any property under the arrest of the Court, or to sell any such property either with or without appraisal, or to remove or inspect and report on any such property or to discharge any cargo under arrest on board ship." 30

As pointed out by A. Loizou, J. in *Almyr Maritime S.A. v. The Cargo on Board the Ship 'Almyrta'* (1975) 1 C.L.R. 116, 118, our rules 74 - 77 correspond, to, inter alia, the old Order 50, 35

rule 2, now Order 29, rule 4, as well as to the old Order 51, rules 14 - 16, now Order 75, rules 12 - 23 of the Rules of the Supreme Court in England.

5 The question of appraisalment and sale of property pendente lite has been considered by this Court on several occasions and the circumstances under which such an order may be made, have been expounded. In some of these cases the application was made ex-parte and was unopposed and in other cases it was opposed. In *Almyr Maritime S.A.* (supra) A. Loizou, J. in  
10 dealing with an ex-parte application for the sale pendente lite of the cargo under arrest, granted the application and had this to say at pages 119 - 120:

15 "In cases as the present one, the paramount consideration is to preserve the goods or their equivalent in money, for the benefit of the person or persons who are ultimately to be found to be entitled to them, rather than to preserve the goods themselves but completely perished. In my opinion, it will be in the interest of all concerned to make an order for their sale but not without appraisalment, the purpose of  
20 which is to prevent the sale of the res ou too low a price."

In *Kyrmizoudès v. Ship "Philipoupolis"* (1978) 1 C.L.R. 526 in which the application for sale of the ship pendente lite was strongly opposed, Triantafyllides, P. after reviewing the legal principles as exposed in a number of cases including the *Almyr*  
25 *Maritime S.A.* and after expounding on the *Westport* [1965] 2 All E.R., 167 and *The Myrto* [1977] 2 L.L.R. 243 and with the special circumstances of the case in mind, concluded as follows at pages 536, 537:

30 "Having taken into consideration all relevant aspects of this case and, in particular, the situation in which the defendant ship and its cargo are exposed to grave risks, as such situation is described in the report of the Marshal dated September 26, 1978, the fact that it emerges from the material before me that the value of the ship is not sufficient  
35 to satisfy the claims made against her and such value may be diminished considerably if the ship continues to be under arrest in the circumstances described in the said report of the

Marshal, and that the expenses entailed by the ship's continued arrest will continue to amount to the prejudice of all those who have claims against such ship, I have decided that I should grant the application of the plaintiff for an order for the sale of the ship *pendente lite*, because I am of the opinion that such a course is the better one for the protection of the interests not only of the plaintiff, and of all the others who have claims against the defendant ship, but, also, of the owners of the ship, too." 5

Reference to *The Myrto* case is also made in the *Scheepswerf Bodewes-Gruno v. The Ship "Algazera"* (1980) 1 C.L.R. 404. In that case, the application for appraisalment and sale *pendente lite* was also hotly contested and Demetriades J. after considering the legal principles as emanating in *The Myrto* case, concluded as follows at pages 409, 410: 10 15

"About safety, the Marshal told the Court that though the vessel is anchored in the new port of Limassol with both its anchors dropped, it is exposed to weather conditions and to dangers of collision with the jetty and with ships entering or going out of the harbour. Further, this danger, he said, is becoming greater due to lack of fuel and the unreadiness of the engines of the ship. Regarding the condition of the ship, the Marshal said that as a result of lack of maintenance of the hull due to the absence of crew to maintain it, the hull and other parts of the vessel are suffering from corrosion which is becoming worse due to her immobility and electrolisis. The engines and the generators, which have been inactive since January 1980 as a result of lack of bankers as well as spare parts, also deteriorate. 20 25

I shall not enter into the details of the evidence of the Marshal on the above subjects, as I consider it unnecessary, but in my view the above nutshell of his evidence shows that the condition of the ship is most unsatisfactory, is deteriorating and her value diminishes from day to day. 30

The above grounds, coupled with the lack of interest on the part of the owners of the ship to bail her out, their 35

failure to pay the wages of the crew or to keep a skeleton crew to maintain her, are, in my mind, good reasons for the making of the order applied for."

5 In *The Myrto* case (supra) to which reference is made in the last two cases, Brandon J. had this to say at pp. 260, 261 :

10 "The question whether an order for the appraisalment and sale of a ship under arrest in an action in rem should be made pendente lite arises normally only in a case where there is a default of appearance or defence. In such a case  
15 it has been a common practice for the Court to make such an order on the application of the plaintiffs on the ground that, unless such order is made, the security for their claim will be diminished by the continuing costs of maintaining the arrest, to the disadvantage of all those interested in the ship, including, if they have any residual interest, the defendants themselves.

20 Where defendants to an action in rem against a ship appear in the action with the intention of defending it, they almost invariably obtain the release of the ship from arrest by giving bail or providing other security for the claim satisfactory to the plaintiffs. For this reason there appears to be no reported case in which the Court has had to consider in what circumstances it would be right to make an order for appraisalment and sale of a ship pendente lite in a  
25 defended case.

30 It was contended for the bank that the Court should make the order asked for on the ground that, if the ship remained under arrest without being sold pending the trial of the action, the value of the security obtained by the bank through arresting her would be progressively diminished by the continuing costs of maintaining her under arrest. Such diminution would be a particular hardship to the bank in this case because the claim greatly exceeded the value of the ship.

35 As regards the costs of maintaining the arrest it was said that these included the following: berth charges; crews'

wages; supply of oil bunkers; supply of water; supply of food and other necessities; and insurance. The owners were paying for none of these things, and they would have to be paid for either by the Admiralty Marshal, who was entitled to be put in funds or reimbursed by the bank, or by the bank direct

I accept that the Court should not make an order for the appraisal and sale of a ship *pendente lite* except for good reason, and this whether the action is defended or not, I accept further that where the action is defended and the defendants oppose the making of such an order, the Court should examine more critically than it would normally do in a default action the question whether good reason for the making of an order exists or not. I do not accept, however, the contention put forward for the owners, that the circumstance that, unless a sale is ordered, heavy and continuing costs of maintaining the arrest will be incurred over a long period, with consequent substantial diminution in the value of the plaintiffs' security for their claim, cannot, as a matter of law, constitute a good reason for ordering a sale. On the contrary, I am of opinion that it can and often will do so.

This view seems to me to accord with the terms of R.S.C., O. 29, r. 4, which authorizes an interim sale of property not only because it is of a perishable nature, or likely to deteriorate if kept, but for 'any other good reason'.

On the footing that the Court's power to make an order for sale *pendente lite* is, as a matter of principle, exercisable on the ground discussed above, I have no doubt that, on the facts of this case, the Court should exercise its discretion to make such order. It would, in my view, be unreasonable to keep the ship under arrest at great expense for seven months or more, with the result that, if the bank succeeded on their claim, the amount of their recovery would be reduced by the costs incurred. If the owners were prepared to bear or contribute to those costs for the time being in order to prevent a sale, different considerations might

apply. Not surprisingly, however, no offer to do anything of that kind has been made by the owners."

In the *Westport* (supra) though the total claims against the ship were found that they might not exceed the fund when the ship is sold, nevertheless, the order was made and Hewson J. said:

10 "In the circumstances, as the expenses of arrest are continuing, the defendants move the court to order appraisal and sale of their ship in the interests of all parties. I am informed that there are two other claimants against the ship, one for wages and one for a mortgage, who are aware of these proceedings, and also that there are three caveats entered against the release. I have further been told that the total claims against this ship may not exceed 15 the fund when the ship is sold. If that is so, of course, the balance will be held for the defendants. It seems to me that in the circumstances of this case it is proper that the Court, at the instigation of the defendants, should order appraisal and sale and, in those circumstances, I so 20 order."

In Halsbury's Laws of England, 4th Edition, vol. 1 p. 278, para. 434 under the heading, "Appraisal and Sale" it reads:

25 "Where property under the arrest of the Court is deteriorating or for good reason should be sold before judgment, the judge may, on motion, order the property to be forthwith appraised and sold, and the proceeds brought into Court. All claims against the property are thereupon transferred to the fund in Court, which will be paid out only after the claims and their respective priorities have 30 been adjudicated. The order may deal with the same ancillary matters, and the subsequent procedure is the same, as in the case of sale after judgment."

In the Admiralty Practice, Vol. 1 in the British Shipping Laws Series, page 122, paragraph 276, we read:

35 "Typical grounds for an application are that a ship is

costing a disproportionate amount in daily expenses, e.g., of dock dues, shipkeepers, etc., or that she is deteriorating owing to being under arrest for a long period, or that a cargo is perishable."

In Roscoe Admiralty Practice, 5th Edition, at page 351, in a note to Order 50, rule 2, the following appears 5

"Under this rule it is that the Court will order the sale of a vessel which remains under arrest and against which expenses are accumulating, and which is deteriorating, if in the interests of all parties a speedy sale would appear to be desirable: *The Louisa* (1905), Fo. 307; *The Carl Hindric* (1903), Fo. 468; *The Reigate* (1905), Fo. 309." 10

The power of the Court to order property to be sold pendente lite and the proceeds paid into Court to abide the result of the litigation, is derived from its inherent jurisdiction and appears to be supplemented and/or its exercise regulated by the Rules of Court. (See *The Myrto* case (supra)). 15

It is clear from the above authorities that though interlocutory orders for appraisalment and sale pendente lite of a ship under arrest are exceptional, nevertheless, they can be made if such circumstances exist that justify the making of such order. Also, under the English R.S.C., O. 29, r. 4, an interim sale of property may be made not only because property is likely to deteriorate but for "any other good reason". 20

In the present case the applicants like in *The Myrto* case have contended that the Court should make the order asked for, on the ground that, if the ship remained under arrest without being sold pending the trial of the action, the value of the security obtained by them through arresting her, would be progressively diminished by the continuing costs of maintaining her arrest and that such diminution would be a particular hardship to the applicants, because their claim greatly exceeds the value of the ship. I consider such argument very sound, especially having regard to the fact that the applicants since arrest till the hearing of this application, have paid money in the region of £100,000.- for crew claims, insurance, Marshal and other expen- 25 30 35



ses, as already explained for maintaining the ship under arrest and continue to pay sums exceeding £5,000.- per month for such purpose, in addition to insurance premiums and fuel. The owners of the defendant ship have never been prepared to bear or contribute to those costs, but, on the contrary, their attitude all along, was that the applicants should be burdened till the determination of the action.

Furthermore, the prolonged stay of the ship under arrest is causing the defendant ship deteriorate. On appraisalment of the ship carried out by the Marshal six months ago, in another action, her value was fixed at U.S. Dollars 1,750,000, as against her value at the time of her arrest which was given at U.S. Dollars 3,000,000. The ship also being kept under arrest outside the port, is exposed to grave risks due to changing weather conditions. I wish also to mention that the owners had the opportunity of bailing the ship out, especially in view of the fact that the bail was reduced from £3,253,000.- to U.S. Dollars 3,000,000, which they failed to do.

It has been submitted by counsel for the defendant ship that the hearing of the action has been fixed sometime in the near future and, therefore, the expenses of keeping the ship under arrest will not be considerably increased in the meantime. It is correct that the hearing was fixed for five days next November. From indications, however, which I had from counsel on both sides, the hearing is not likely to be concluded in less than ten days which means that the five days allocated for the hearing in November will not be sufficient, and the further hearing will have to be adjourned to a future time. But even after the conclusion of the hearing, there is always the right of appeal, which will prolong the final determination of the action for quite a long time in future. Therefore, if the order for sale is not made, the applicants, whose claim by far exceeds the value of the ship which in addition is burdened with a number of other judgments and claims ranking in priority to the claims of the applicants, will have to bear great expense for providing the Marshal with the necessary funds to keep the ship under arrest till the final determination of this action.

With the above in mind, I have come to the conclusion that besides the fact that the defendant ship is likely to deteriorate,

there are a number of other good reasons, as explained above, why an order for the sale of the ship pendente lite should be made.

As the appraisalment of the ship which has already been carried out in another action was effected more than 6 months ago, I shall direct a new appraisalment of her value by the Marshal in her present condition.

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In the result, I make an order,

- (a) for the sale of the ship pendente lite after appraisalment of her value by the Marshal and
- (b) that the proceeds of the sale be brought into Court.

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Costs of this application against the respondents.

*Application granted with costs.*