1988 November 15

(DEMETRIADES, J.)

VASSILIS FILI,

Plaintiff,

v.

THE YACHT «NIRVANA» NOW LYING AT THE MARINA OF LARNACA,

Defendant.

(Admiralty Action No. 21/84).

Admiralty — Action in rem — Jurisdiction — The English Administration of Justice Act, 1956 section 1(1)(f) — An act, neglect or default «in the management of the ship» — The act, neglect or default must be one that directly affects the ship herself.

Words and phrases: «In the navigation or management of the ship» in section 1(1)(f) of the English Administration of Justice Act, 1956.

The captain of the defendant yacht instructed a member of her crew to take out whatever articles were in her stores in order to prepare her for sail. As a result various articles, including some flares were placed on the quay.

On the following day the plaintiff, who was employed as a dustman at the Larnaca Marina, collected the flares. One of the flares exploded and, as a result, the plaintiff was seriously injured. Hence this action.

The evidence showed that flares are articles, which are necessary, when a ship is in distress, in order to call for assistance.

The issue that was raised for determination is whether the case is within the jurisdiction of this Court in accordance with section 1(1)(f) of the English Administration of Justice Act, 1956. In particular, the question is whether in this case there has been an act, neglect or default «in the navigation or management of the ship»

Held, dismissing the action: (1) In this case we are not concerned with what is meant by navigation, because the yacht was not in the course of sailing.

(2) Although one cannot say that a precise legal meaning of the term «management» is to be found in the authorities and that as it appears from them its application depends on the facts of each case, one thing is certain, that the act, neglect or default must be one that directly affects the vessel herself.

(3) In the present case, although the fares were needed on board the ship in case she found herself in distress, at the time the explosion took place they had nothing to do with the ship, her navigation or management.

Action dismissed with costs against the plaintiff.

Casess referred to:

The Ferro [1893] P. 38;

Rowson v. The Atlantic Transport Co. [1903] 72 L.J.K.B. 811;

The Glenochil [1896] P. 10;

Gosse Millerd Ltd. v. Canadian Government Merchant Marine Ltd. [1929] A.C. 223;

The Tojo Maru [1971] 1 All E.R. 1110.

Admiralty action.

Admiralty action for damages for injuries received by the plaintiff as a result of an accident whilst being employed as a dustman at the Larnaca Marina.

M. Montanios with A. Cleanthous, for the plaintiff.

A. Theophilou, for the defendant.

Cur. adv. vult.

DEMETRIADES J. read the following judgment. On the 13th January, 1984, the plaintiff, who was employed as a dustman at the Larnaca Marina, met with an accident when a flare, which had been placed on the quay by a member of the crew of the defendant yacht, exploded and seriously injured him on the left arm and left eye which had to be extracted.

By an admiralty action in rem the plaintiff claims against the defendant yacht damages for the injuries he received.

During the hearing of the case, the parties informed the Court that the special and general damages to which the plaintiff would be entitled, on a full liability basis, had been agreed at £11,000.-. However, the defence raised issues by which they question the claim of the plaintiff that he is entitled to be compensated for the injuries he suffered.

The issues that were raised by the defence are:

A. Does this Court have jurisdiction to entertain the action at all, and/or, to entertain an action in rem against the ship?

B. Assuming that issue A above fails-

(1) what is the liability of the defendant in the light of the evidence given by plaintiff's witness Shiakallis (P.W.3), the Police Explosives Expert; and

(2) Remoteness of damage.

The plaintiff in giving evidence stated that at about 5.30 hrs on the 13th January, 1984, he started collecting the refuse that was left by the yachts anchored in the Marina on its quays and that when he reached the berth where the defendant yacht was anchored, he took out of a dustbin that was placed near her a bucket in which there was an open plastic bag, in which there were some articles that he was later told that they were flares. 2 or 3 similar articles were in the dustbin outside the bag, loose. He put the loose flares, as well as the bucket with the plastic bag on the cart and proceeded to the place where the refuse is gathered for removal by garbage trucks. After he reached that spot and rested his cart on the ground, the three loose flares fell on the ground. He then heard a hissing («φύσημα») coming out of one of them. He bent down to pick it up but as soon as he grasped it, it exploded in his hand. As a result, he was injured on the left eye and on the left hand. The plaintiff said that the reason he took the flare was because he thought that it was paint in a spray container.

It is the case for the defence that on the day before the accident occurred, the captain of the yacht instructed Anastasis Panteli, a member of her crew, who is the only witness for the defence, to take out whatever articles there were in the stores of the yacht in order to prepare her to sail. Panteli, in giving evidence, said that he

took out of the yacht its rubber boat, the oars, the fenders, the life-jackets and several covers and placed them on the quay next to the yacht and on top of these articles, which he had removed from the yacht, he placed a bag that contained a number of flares that their use had expired

On the following day, this witness told me, the Manager of the Marina, who was accompanied by a policeman, visited him and informed him that an accident had taken place as a result of the explosion of a flare He looked at the spot where he had placed the flares and he noticed that they were missing He then informed the Manager that the flares had been taken without his knowledge and without his consent The reason, he said, that he had removed the flares from the yacht was because their use had expired and the captain of the yacht had to make inquiries with the management of the Marina as to where to dump them The witness insisted that the flares were in a bag which he had secured with a piece of string and that there were no loose flares left on the spot where he had placed them

As it appears from the evidence given by and or on behalf of the plaintiff and of the defendant, flares are articles which are necessary when a ship is in distress, in order to call for assistance

The issue, however, that poses for decision, and which was raised by the defence, is whether the accident occurred in the navigation or management of the ship or else, the defence submitted, an action in rem against the defendant yacht cannot be entertained

Counsel for the defendant argued that for the plaintiff to invoke the jurisdiction of the Admiralty Court in rem, the act, neglect or default that caused the injuries of the plaintiff must be an act, neglect or default in the navigation or management of the ship, that is to say it must be such an act, neglect or default, envisaged by section 1(1)(f) of the Administration of Justice Act 1956, which is applicable by our Admiralty Court in admiralty actions before it This section reads -

«1 Admiralty jurisdiction of the High Court

(1) The Admiralty jurisdiction of the High Court shall be as follows, that is to say, jurisdiction to hear and determine any of the following questions or claims-

. . . .

(f) any claim for loss of life or personal injury sustained in consequence of any defect in a ship or in her apparel or equipment, or of the wrongful act, neglect or default of the owners, charterers or persons in possession or control of a ship or of the master or crew thereof or of any other person for whose wrongful acts, neglects or defaults the owners, charterers or persons in possession or control of a ship are responsible, being an act, neglect or default in the navigation or management of the ship, in the loading, carriage or discharge of goods on, in or from the ship or in the embarkation, carriage or disembarkation of persons on, in or from the ship;»

In the present case I am not concerned with what is meant by the word «navigation» in the relevant provision of the Act as the yacht was not in the course of sailing. What I have to decide is whether the flares, once placed on the quay, had anything to do with the management of the yacht.

English Courts have, in a number of cases, faced and dealt with the issue of what is an act, neglect or default in the «management» of a ship and in this respect reference, amongst others, may be made to the *Ferro,* [1893] P. 38, the *Glenochil* [1896] P. 10, *Rowson v. The Atlantic Transport Co.,* [1903] 72 L.J., K.B 811, *Gosse Millerd Ltd. v. Canadian Government Merchant Marine Ltd.,* [1929] A.C. 223 and the *Tojo Maru,* [1971] 1 All E.R. 1110.

In the *Gosse Millerd Ltd.,* (supra), Lord Hailsham, in delivering his judgment, cited with approval at pp. 231 and 232 what was held in the Glenochil case and had this to say of the meaning of the words «management of the ship»:

«In the case of the Glenochil the same two learned judges, sitting as a Divisional Court, held that the words did protect the shipowner for damage done by pumping water into the ballast tank in order to stiffen the ship without ascertaining that a pipe had become broken, and thereby let the water into the cargo. Gorell Barnes J. says: 'There will be found a strong and marked contrast in the provisions which deal with the care of the cargo and those which deal with the management of the ship herself; and I think that where the act done in the management of the ship is one which is necessarily done in the proper handling of the vessel, though in the particular case the handling is not properly done, but is done for the safety of

the ship herself, and is not primarily done at all in connection with the cargo, that must be a matter which falls within the words 'management of the said vessel'. Sir Francis Jeune says: 'It seems to me clear that the word 'management' goes somewhat beyond - perhaps not much beyond - navigation, but far enough to take in this very class of acts which do not affect the sailing or movement of the vessel, but do affect the vessel herself.' And referring to his own judgment in The Ferro, he says: 'It may be that the illustration I gave in that case, as to the removal of the hatches for the sake of ventilation, was not a very happy one; but the distinction I intended to draw then, and intend to draw now, is one between want of care of cargo and want of care of the vessel indirectly affecting the cargo.'

The principles enunciated in this case have repeatedly been cited since with approval in this country and in America. The same two learned judges applied them in the case of The *Rodney*, and they were accepted by the Court of Appeal in the case of *Rowson v. Atlantic Transport Co.* In that case the Court of Appeal held that carelessness in handling the refrigerating apparatus of the vessel, resulting in damage to the cargo, must be regarded as falling within the expression, on the ground that the refrigerating apparatus was used for the ship' s provisions as well as for the cargo, and therefore that negligence in managing it was negligence in management of the ship.

My Lords, I do not think it necessary or desirable to discuss whether the Court of Appeal was right in their application of the principle in that particular case for reasons which will appear later; I refer to the judgment only because it accepted as the basis of the decision the construction which had been placed upon the words in the case of the Glenochil.»

In the *Glenochil,* (supra), at p. 15 Sir F.H. Jeune, P., said:

«It is sufficient to deal with it as a question of management. It is said, however, that the two things are one and the same, and that management and navigation mean the same thing because the management is only in the navigation; and no doubt upon that a formidable argument arises, for it is put upon a dictum, though only a dictum, of Kay L.J. It is said that that learned judge expressed the view that, 'contrasting the

various clauses of the bill of lading, the expression 'faults or errors of navigation or in the management of the vessel' applies rather to faults or errors in sailing the vessel, or in managing the sailing of the vessel, than to a matter of this kind.' But when one considers what the matter then in question was, namely, that it was something antecedent to the commencement of the voyage, although part of the cargo had been put in, and that it was a fault connected with the construction of the ship, or, at any rate, the seaworthy condition of the ship, one sees, I think, that what the Lord Justice really had in his mind was not a contrast between the management of the vessel while sailing and while lying in harbour, but rather a contrast between the state of the ship, as a matter of seaworthiness, and mismanagement of the ship during the voyage. That, I think, is not an unreasonable view to put upon the Lord Justice' s words; and it seems to me clear that the word 'management' goes somewhat beyond - perhaps not much beyond - navigation, but far enough to take in this very class of acts which do not affect the sailing or movement of the vessel, but do affect the vessel herself. This Court had before it the same sort of question in the case of The *Ferro,* and I adhere to what I said then, that mere stowage is an altogether different matter from the management of the vessel. It may be that the illustration I gave in that case, as to the removal of the hatches for the sake of ventilation, was not a very happy one; but the distinction I intended to draw then, and intend to draw now, is one between want of care of cargo and want of care of vessel indirectly affecting the cargo.

The other argument which was passed upon us was that the terms 'management' and 'navigation' under the provisions of the Harter Act apply only to the period of navigation itself, and that is said to end when the vessel comes into dock. For that the authority of *The Accomac* is relied on. It is quite true that in that case, where the words were 'navigation in the ordinary course of the voyage,' it was held that the navigation ceased when the vessel got into dock. But I do not see that there is anything in that case to limit the period during which the words now in question are to apply. I do not say whether navigation in the strict sense of the term is limited to the period during which the vessel is sailing - that is to say, in motion; but I see no reason for limiting the word 'management' to the period of the vessel being actually at sea. I think it is not

necessary to refer to any of the cases which limit the meaning to be attached to the decision in *The Accomac*. I do not think it is necessary to refer to the case of *The Carron Park*, where the voyage was held by Lord Hannen not to consist merely of the time during which the vessel was proceeding, nor to the dictum of my learned brother in the case of *The Southgate*, because, taking the words of *The Accomac* as they stand, they do not go far enough to place the limitation suggested on the period of management. It appears to me, therefore, that the judgment of the learned judge was correct. I think that here there was a failure in the management of the vessel; but from the effects of that failure of management of the vessel the shipowners are exempted by the words of the bill of lading incorporating the Harter Act.»

Although one cannot say that a precise legal meaning of the term «management» is to be found in the authorities and that as it appears from them its application depends on the facts of each case, one thing is certain in my view, that the act, neglect or default must be one that directly affects the vessel herself.

In the present case, although the flares were needed on board the ship in case she found herself in distress, at the time the explosion took place they had nothing to do with the ship, her navigation or management.

In the result, I find that the plaintiff could not avail himself of the provisions of section 1(1)(f) of the Act and bring an Admiralty Action in rem against the defendants.

The action is, therefore, dismissed with costs. Costs to be assessed by the Registrar.

Action dismissed with costs.