

20/80

No. 19 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

BANKERS TRUST INTERNATIONAL
LIMITED

Appellants
(Interveners in Admiralty
Action in Rem No.150 of
1974)
(Plaintiffs in Admiralty
Action in Rem No.151 of
1974)

- and -

TODD SHIPYARD CORPORATION

Respondents
(Plaintiffs in Admiralty
Action in Rem No.150 of
1974)
(Interveners in Admiralty
Action in Rem No.151 of
1974)

RECORD OF PROCEEDINGS

MESSRS. LINKLATERS AND PAINES,
Barrington House,
59-67 Gresham Street,
London, EC2V 7JA

MESSRS. THOMAS COOPER AND
STIBBARD,
27 Leadenhall Street,
London, EC3A 1AB

Solicitors for the Appellants

Solicitors for the Respondents

No. 19 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

BANKERS TRUST INTERNATIONAL
LIMITED

Appellants
(Interveners in Admiralty
Action in Rem No.150 of
1974)
(Plaintiffs in Admiralty
Action in Rem No.151 of 1974)

- and -

TODD SHIPYARD CORPORATION

Respondents
(Plaintiffs in Admiralty
Action in Rem No.150 of
1974)
(Interveners in Admiralty
Action in Rem No.151 of 1974)

RECORD OF PROCEEDINGS

(This Index combines the Record of Proceedings in Admiralty
Actions in Rem Nos.150 and 151 of 1974 and Civil Appeals
Nos. 6 and 7 of 1977)

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No. 19 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

BANKERS TRUST INTERNATIONAL
LIMITED

Appellants

10

(Interveners in Admiralty
Action in Rem No.150 of
1974)

(Plaintiffs in Admiralty
Action in Rem No.151 of
1974)

- and -

TODD SHIPYARD CORPORATION

Respondents

20

(Plaintiff in Admiralty
Action in Rem 150 of
1974)

(Interveners in Admiralty
Action in Rem No.151 of
1974)

RECORD OF PROCEEDINGS

In the High Court of the Republic of Singapore

No.1

Writ of Summons in Rem No.150 of 1974
24th August 1974

No. 1

WRIT OF SUMMONS IN ACTION
No.150 of 1974 - 24th August 1974

WRIT OF SUMMONS IN ACTION IN REM
0.70, r.2

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem) No. 150 of 1974)	Between	
Admiralty action in) rem against:) the vessel "HALCYON) ISLE")	Todd Shipyards Corporation 10 Plaintiffs And The Owners of and other persons interested in the vessel "HALCYON ISLE" Defendants	

THE HONOURABLE MR. JUSTICE WEE CHONG JIN,
CHIEF JUSTICE OF SINGAPORE, IN THE NAME AND ON
BEHALF OF THE PRESIDENT OF THE REPUBLIC OF
SINGAPORE

20

To: The Owners of and other persons interested
in the vessel "HALCYON ISLE" of the port
of London

We command you that within eight days after
the service of this writ, inclusive of the day
of service, you do cause an appearance to be
entered for you in an action at the suit of
Todd Shipyards Corporation, a Company incorpor-
ated in New York and having their principal
office at One State Street Plaza, New York,
ship repairers.

30

and take notice that in default of you so doing
the plaintiffs may proceed therein, and judgment
may be given in your absence, and if the res
described in this writ is then under arrest of
the Court it may be sold by order of the Court.

WITNESS Mr. Tan Wee Kian Registrar of the Supreme
Court in Singapore the 24th day of August 1974

(Sgd)
Plaintiffs' Solicitors

(Sgd)
Asst. Registrar 40
Supreme Court, Singapore.

This writ may not be served more than twelve calendar months after the above date unless renewed by order of Court.

In the High Court of the Republic of Singapore

The defendants may appear hereto by entering appearances either personally or by Solicitor at the Registry of the Supreme Court.

No.1

Writ of Summons in Rem No.150 of 1974

10 The defendants appearing personally may, if they desire, enter their appearance by post, and the appropriate forms may be obtained by sending a Postal Order for \$5.00 with an addressed envelope to the Registrar, Supreme Court, Singapore, 6.

24th August 1974

(continued)

INDORSEMENT OF CLAIM

The Plaintiffs' claim is for :-

1. \$237,011.00 (being the equivalent of US \$95,569.00 converted at the rate of exchange of S\$2.48 to US \$1/-) with interest thereon for repairs executed materials supplied and services rendered to the vessel "HALCYON ISLE" at Brooklyn during the month of March 1974 at the request and/or to the order of the Defendants, their servants or agents.
2. A declaration that they are entitled to and/or have a maritime lien in respect of their said Claim against the vessel "HALCYON ISLE" within the meaning of Section 4(3) of the High Court (Admiralty Jurisdiction) Act (Chapter 6) of the 1970 Edition.
- 30 3. If necessary a reference to the Registrar to assess the amount due to the Plaintiffs.

This writ is issued by DONALDSON & BURKINSHAW of No.9 Mercantile Bank Chambers, Singapore 1. Solicitors for the said Plaintiffs whose address is One State Street Plaza, New York.

INDORSEMENT AS TO SERVICE

40 This writ was served by me, Raymond Yeo personally upon the vessel "Halcyon Isle", lying at Eastern Anchorage by attaching the writ for a short time to main mast and by leaving a copy of the writ thereto.

In the High
Court of
the Republic
of Singapore

No.1

Writ of
Summons in
Rem No.150
of 1974

24th August
1974

(continued)

on Tuesday the 10th day of September 1974
at 12.25 p.m.
Indorsed the 10th day of September 1974.

(Sgd)

Process Server

No.2

Writ of
Summons in
Action No.
151 of 1974

28th August
1974

No. 2

WRIT OF SUMMONS IN ACTION
No.151 of 1974 - 28th August 1974

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in rem No.151 of 1974

10

Admiralty action in rem against
the vessel "HALCYON ISLE"

Between

BANKERS TRUST INTERNATIONAL
LIMITED

Plaintiffs

And

THE OWNERS OF THE VESSEL
"HALCYON ISLE"

Defendants

THE HONOURABLE MR. JUSTICE WEE CHONG JIN,
CHIEF JUSTICE OF SINGAPORE, IN THE NAME AND ON 20
BEHALF OF THE PRESIDENT OF THE REPUBLIC OF
SINGAPORE

To: The Owners of and all other persons interested
in the vessel "HALCYON ISLE" of the Port of
London.

WE COMMAND YOU that within eight days after
the service of this Writ, inclusive of the day
of service, you do cause an appearance to be
entered for you in an action at the Suit of
BANKERS TRUST INTERNATIONAL LIMITED a Company 30

incorporated in England and having its registered office at 56:60 New Broad Street, London EC2M 1JU; and take notice that in default of your so doing the Plaintiffs may proceed therein, and judgment may be given in your absence, and if the res described in this Writ is then under arrest of the Court it may be sold by order of the Court.

In the High Court of the Republic of Singapore

No.2

Writ of Summons in Action No. 151 of 1974
28th August 1974

(continued)

10 Witness, Mr. Tan Wee Kian, Registrar of the Supreme Court, Singapore this 28th day of August 1974

(Sgd)
Plaintiffs' Solicitors

(Sgd)
Asst. Registrar
Supreme Court,
Singapore.

N.B. This writ may not be served more than twelve calendar months after the above date unless renewed by Order of Court.

20 The Defendant(s) may appear hereto by entering an appearance either personally or by Solicitor at the Registry of the Supreme Court.

The Defendant(s) appearing personally may, if they desire, enter their appearance by post, and the appropriate forms may be obtained by sending a postal order for \$5.00 with an addressed envelope to the Registrar, Supreme Court, Singapore 6.

INDORSEMENT

30 The Plaintiffs under a First Mortgage dated 1st March 1973 registered in London claim against the vessel "HALCYON ISLE" of the Port of London the sum of S\$14,413,000.00 (being the equivalent of US\$5,800,000.00 at the rate of exchange of US\$2 - S\$2,485) being the amount of the Plaintiffs' mortgage thereon.

(Sgd)

Solicitors for the Plaintiffs

In the High Court of the Republic of Singapore

No.2

Writ of Summons in Action No. 151 of 1974

28th August 1974

(continued)

This Writ is issued by Messrs. Allen & Gledhill of 1st Floor, Meyer Chambers, Raffles Place, Singapore, Solicitors for the said Plaintiffs a Company incorporated in England and having its registered office at 56:60 New Broad Street, London EC2M 1JU

The address for service is c/o Messrs. Allen & Gledhill, 1st Floor, Meyer Chambers, Raffles Place, Singapore.

This writ was served by me, Ramly Bin Mohamed personally upon the vessel "Halcyon Isle" lying at Eastern Anchorage by attaching the writ for a short time to the main mast and by leaving a copy of the writ thereto on the 5th day of Sept. 1974 at 11.50 a.m. Indorsed the 5th day of Sept. 1974.

10

No.3
Statement of Claim in Action No. 151 of 1974
19th October 1974

No. 3

STATEMENT OF CLAIM IN ACTION No.151 of 1974
19th October 1974

20

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in rem No. 151 of 1974

Admiralty action in rem against the vessel "HALCYON ISLE"

Between

Bankers Trust International Limited
Plaintiffs

And

The Owners of the vessel "HALCYON ISLE"
Defendants

30

STATEMENT OF CLAIM

1. The Plaintiffs are a company incorporated

under the laws of England whose registered office is at 56/60 New Broad Street, London EC2M 1JU.

In the High Court of the Republic of Singapore

No. 3

Statement of Claim in Action No. 151 of 1974
19th October 1974

(continued)

10 2. The vessel "Halcyon Isle" a motor-tanker is registered at the Port of London (Official number 360728; 397 in 1973) and is owned in all its sixty-four shares by Ocean Bulkers (U.K.) Limited, a company incorporated under the laws of England whose registered office is at 9 Thayer Street, London W1M EAD

The said Ocean Bulkers (U.K.) Limited the owners of the said vessel "Halcyon Isle" are hereinafter referred to as "the Defendants".

20 3. By a Loan Agreement dated the 15th February 1973 the Plaintiffs agreed to loan to the Defendants the sum of US\$5,800,000/- to enable the Defendants to purchase 2 motor-tankers the "Alice" ex "Ionic Queen", now the "Halcyon Isle" and the "Ionic King" now the "Halcyon Cove" subject to the terms and conditions contained in the said Loan Agreement (to which the Plaintiffs will refer at the trial for its full terms and effect) in consideration of which the Defendants agreed to mortgage the said "Halcyon Isle" and the said "Halcyon Cove" to the Plaintiffs as soon as the purchase was completed as security for the repayment of the said US\$5,800,000/- and interest.

30 4. The purchase of the said "Halcyon Isle" and the said "Halcyon Cove" was completed on the 23rd February 1973 and in compliance with the terms and provisions of the said Loan Agreement executed statutory legal mortgages in respect of the said "Halcyon Isle" and the said "Halcyon Cove" and a deed of covenant to accompany the said mortgages. The statutory mortgages of the said "Halcyon Isle" was entered with the Registrar of British Ships, Port of London on the 8th May 1974 and in
40 respect of the said "Halcyon Cove" on the 3rd May 1973. The Plaintiffs will refer to the statutory mortgages and the deed of covenant at the trial for their full terms and effect.

5. The said Loan Agreement inter alia provided that the loan of US\$5,800,000/- was repayment in full on the 31st day of December 1980 and that interest was payable thereon at the rate of 5 per cent per annum quarterly in arrears on the 30th April, 31st July, 31st

In the High Court of the Republic of Singapore

No. 3

Statement of Claim in Action No. 151 of 1974

19th October 1974

(continued)

October and 31st January in each year.

6. The said Loan Agreement inter alia further provided by clauses 13(e) and (f) as follows :-

Clause 13 "Upon the occurrence of any of the following specified Events of Default (each an "Event of Default")

(e) Insolvency. If an order is made or an effective resolution passed for winding up the Borrower (i.e. the Defendants) or Court Line (i.e. Court Line Limited) or any Subsidiary (otherwise than in the course of a reorganization, reconstruction or amalgamation on terms previously approved by the Bank) (i.e. the Plaintiffs); or if an encumbrancer takes possession or a receiver is appointed of the whole or any part of the assets or undertaking of the Borrower or Court Line or any Subsidiary or otherwise than upon or against the Vessels in respect of claims maturing before the Completion Date or if a distress or execution is levied or enforced upon or sued out against any of the chattels or property of the Borrower or Court Line or any Subsidiary and is not discharged within seven days of being levied; or if the Borrower or Court Line or any Subsidiary shall stop or threaten to stop payment or shall cease or threaten to cease to carry on its business or substantially the whole of its business; or if the Borrower or Court Line or any Subsidiary shall for the purposes of Section 223 of the Companies Act, 1948, be deemed to be unable to pay its debts; or

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20

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(f) Security Documents. An Event of Default (as defined in any of the Security Documents) shall have occurred and be continuing or the Borrower shall be in default or breach of any of its obligations under the assignments which are part of the Security Documents

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then, and in any such event, and at any time thereafter, if any Event of Default shall then be continuing either or both of the following actions may be taken but without prejudice to the right of the Bank to enforce its claims against the Borrower: (i) the Bank may by written

10 notice to the Borrower declare the principal of and accrued interest on the Loan and all other obligations of the Borrower hereunder to be due, whereupon the same shall forthwith become due and payable without presentment, demand, protest or other notice of any kind, all of which are hereby waived, or (ii) the Bank may by written notice to the Borrower declare the commitment of the Bank to make the Loan to be terminated whereupon the obligations of the Bank in respect thereof shall terminate immediately."

In the High Court of the Republic of Singapore

No.3
Statement of Claim in Action No. 151 of 1974
19th October 1974

7. The said deed of covenant inter alia provided by clauses 5(b) (g) and (i)

(continued)

Clause 5 "In case of any one or more of the following events (herein termed "events of default") shall happen :

- 20 (b) If the Owner (i.e. the Defendants) shall default in the payment of the principal amount of the Note when and as the same shall become due and payable as in the Note provided or if an Event of Default (as defined in the Loan Agreement) shall have occurred and be continuing; or
- (g) If the Owner or Court Line ceases or threatens to cease carrying on its business or
- 30 (i) If the Owner or Court Line shall (i) apply for or consent to the appointment of a receiver or trustee of the Vessels of all or a substantial part of its assets (ii) be unable or admit in writing its inability to pay its lawful debts as they mature (iii) make a general assignment for the benefit of creditors (iv) be adjudicated a bankrupt or insolvent or (v) file a
- 40 voluntary petition in bankruptcy or a petition or an answer seeking reorganisation (otherwise than in the course of a scheme for the capital reconstruction of the Owner or Court Line carried through with the prior written consent of BTI (i.e. the Plaintiffs) or an arrangement with creditors or take advantage of any insolvency law or an answer admitting the material allegations

In the High Court of the Republic of Singapore
No. 3

Statement of Claim in Action No. 151 of 1974
19th October 1974
(continued)

of a petition filed against the Owner in any bankruptcy reorganisation or insolvency proceedings or take any proceedings under the laws of England analogous to any of the foregoing

then and in every such case BTI shall have the right to

- (1) treat as immediately due and payable all moneys remaining outstanding and unpaid under the Mortgages together with such interest thereon as shall then remain outstanding and thereupon all such moneys shall become and be immediately due and payable without any notice having been given to the Owner; 10
- (2) proceed to protect and enforce its rights by suit in equity or action in law or in admiralty or by other appropriate proceedings whether for specific performance of any covenants or agreements contained herein or in any of the documents referred to herein or in aid of the exercise of any power herein or in any such documents contained or may proceed to enforce the payment of all moneys due as aforesaid or to enforce any other legal or equitable right or proceed to take any action authorised or permitted under the terms of any of the documents referred to herein or of the law applicable thereto." 20 30

8. The following Events of Default have occurred within the meaning of Clause 13(e) and (f) of the said Loan Agreement:

- (1) On the 16th August 1974 the National Westminster Bank Limited appointed a receiver of the assets of Court Line Aviation Limited. The said Court Line Aviation Limited is a subsidiary of the said Court Line Limited. 40
- (2) On the 16th August 1974 the Bank of Scotland appointed a receiver of the assets of Lutair Engineering Limited. The said Lutair Engineering Limited is a subsidiary of the said Court Line Limited.

- (3) On the 15th August 1974 the said Court Line Limited ceased to carry on its business or alternatively by announcing that it was ceasing to carry on its business threatened to cease to do so.
- (4) On the 16th August 1974 the said Court Line stopped payment of all its legitimate dues.
- 10 9. The following Events of Defaults have also occurred within the meaning of Clauses 5(b) (g) and (i) of the said deed of covenant
- (1) On the 16th August 1974 a petition was presented to the Companies Court of the Chancery Division of the High Court of Justice in England for the winding up of the said Court Line Limited by the said Court Line Limited itself on the grounds that it was unable to pay its debts as they fell due.
- 20 (2) On the 16th August 1974 on the application of the said Court Line Limited the said Companies Court appointed the Official Receiver as provisional Liquidator of the said Court Line Limited.
- 30 10. The Plaintiffs in compliance with the provisions of Clause 13 of the said Loan Agreement by a written notice on the 16th August 1974 declared the principal of the said loan and all other obligations of the Defendants to be due. There is due to the Plaintiffs from the Defendants the full amount of the said Loan of US\$5,800,000/- and interest thereon at the rate of 5 per cent per annum from the 23rd February 1973. The Defendants have failed to pay the same or any part thereof.
- 40 11. In the premises of the foregoing paragraphs there is due and owing to the Plaintiffs on the said statutory legal mortgage of the said vessel "Halcyon Isle" the sum of S\$14,413,000/- (being the equivalent of US\$5,800,000/- at the rate of exchange of US\$1/- to S\$2.485) together with interest thereon at the rate of 5 per cent per annum from the 23rd February 1973.

In the High Court of the Republic of Singapore
No.3

Statement of Claim in Action No. 151 of 1974
19th October 1974

(continued)

In the High Court of the Republic of Singapore

No.3

Statement of Claim in Action No. 151 of 1974
19th October 1974

(continued)

And the Plaintiffs claim :-

- (1) A declaration of the validity of the said mortgage
- (2) S\$14,413,000/- together with interest at the rate of 5 per cent per annum from the 23rd February 1973.
- (3) If necessary, a reference to the Registrar to assess the amount due to the Plaintiffs.
- (4) An order for the appraisalment and sale of the said vessel "Halcyon Isle". 10
- (5) Costs.

Dated and Delivered the 19th day of October 1974.

(Sgd)

Solicitors for the Plaintiffs

TO: Messrs. Donaldson & Burkinshaw, the Solicitors for Todd Shipyard Corporation.

Messrs. Rodyk & Davidson, the Solicitors for
(a) Bahrain Slipway Company Ltd. 20
(b) Port of Singapore Authority
(c) Gray Mackenzie
(d) Keppel Shipyard (Private) Ltd.

Messrs. Drew & Napier, the Solicitors for
(a) Daiyu - Kogyo Co.Ltd.
(b) Smit International Ocean Towage & Salvage Co.

Messrs. Chan, Goh & David See, the Solicitors for Ben & Co.Ltd. 30

Messrs. Murphy & Dunbar, the Solicitors for the Liquidator of Court Line Limited.

No. 4

STATEMENT OF CLAIM IN
ACTION NO. 150 of 1974
18th February 1975

In the High
Court of the
Republic of
Singapore

No.4

Statement of
Claim in
Action No.150
of 1974

18th February
1975

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem)
No.150 of 1974)

10 Admiralty action in
rem against the
vessel "HALCYON ISLE"

Between

Todd Shipyards Corporation
Plaintiffs

And

The Owners of and other
persons interested in the
vessel "HALCYON ISLE"
Defendants

STATEMENT OF CLAIM

20 1. The Plaintiffs carry on business as ship
repairers and have their principal office at
One State Street Plaza, New York. They have
ship repair yards at various ports in the United
States of America.

30 2. In the month of March 1974 the Plaintiffs
executed repairs and supplied materials to the
above mentioned vessel "HALCYON ISLE" pursuant
to a contract between the Plaintiffs and the
Defendants contained in or evidenced by a
letter dated 1st March 1974 from the Plaintiffs
to the Defendants. The Plaintiffs will refer
to the said letter at the trial of this action
for its full terms and effect.

3. In the alternative the Plaintiffs say that
the said repairs were executed and the materials
were supplied pursuant to an oral contract
entered into between the Plaintiffs and the
Defendants through their agents on or about the

In the High Court of the Republic of Singapore

No.4

Statement of Claim in Action No.150 of 1974

18th February 1975

(continued)

1st of March 1974.

4. The contract referred to in paragraph 2 or alternatively paragraph 3 above was entered into at New York, United States of America. Further the said repairs were executed and the materials were supplied at the Plaintiffs' repair Yard at Brooklyn, New York, United States of America. In the premises the Plaintiffs contend that the law applicable to the said contract of repair is United States law. 10

5. The Plaintiffs further say that under United States law they are entitled to a maritime lien on the said vessel conferring upon them rights of the same nature and quality as is conferred upon the holder of a maritime lien under the law of Singapore and that in the premises their entitlement falls within Section 4(3) of the High Court (Admiralty Jurisdiction) Act (Cap.6 of the Revised Edition 1970). 20

6. There remains due and owing to the Plaintiffs the sum of US\$95,569.00 in respect of the said repairs.

And the Plaintiffs claim :-

- (i) A declaration that they are entitled to and/or have a maritime lien in respect of their claim against the said vessel within the meaning of Section 4(3) of the High Court (Admiralty Jurisdiction) Act (Cap.6 of the Revised Edition 1970); 30
- (ii) Judgment for the sum of S\$237,011.00, being the equivalent of US\$95,569.00 and interest thereon;
- (iii) If necessary, a reference to the Registrar to assess the amount due to the Plaintiffs;
- (iv) Costs.

Dated and delivered this 18th day of February, 1975.

(Sgd)

40

Solicitors for the Plaintiffs

To the abovenamed Defendants.

No. 5

PLAINTIFFS NOTICE OF MOTION
FOR JUDGMENT IN ACTION No.
151 of 1974 - 26th February 1975

In the High
Court of the
Republic of
Singapore

No.5

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem)
No: 151 of 1974)

Plaintiffs
Notice of
Motion for
Judgment in
Action No.151
of 1974

Admiralty action in rem
against the vessel
"HALCYON ISLE"

26th February
1975

10

Between

Bankers Trust International
Limited Plaintiffs

And

The Owners of the vessel
"Halcyon Isle"

Defendants

NOTICE OF MOTION

20 TAKE NOTICE that this Honourable Court will
be moved on Friday the 28th day of February 1975
at 10.30 a.m. or so soon thereafter as Counsel
can be heard by Mr. Mootatamby Karthigesu of
Counsel for the abovenamed Plaintiffs that
judgment in default of serving a Defence be
given for the Plaintiffs.

(i) A Declaration of the validity of statutory
mortgage dated the 27th April 1973 and
entered with the Registrar of British Ships,
Port of London on the 8th May 1974.

30 (ii) For the sum of S\$14,413,000/- together with
interest at the rate of 5 per cent per annum
from the 28th February 1974 to the date of
the Order herein.

(iii) If necessary, a reference to the Registrar
to assess the amount due to the Plaintiffs.

(iv) For their costs of this action including the

In the High
Court of the
Republic of
Singapore

No.5

Plaintiffs
Notice of
Motion for
Judgment in
Action No.151
of 1974

26th February
1975

(continued)

costs of this Motion and incidental
thereto to be taxed

and for an Order that the payment of the sum
of S\$14,413,000/- together with interest at
the rate of 5 per cent per annum from the
26th February 1974 to the date of the Order
herein and the amount of the costs when taxed
be deferred unto after the determination of
priorities.

Dated the 26th day of February 1975.

10

(Sgd)

Solicitors for the Plaintiffs

To:

- 1) Messrs. Donaldson & Burkinshaw
Solicitors for Todd Shipyard Corporation
(Intervenors)
- 2) Messrs. Rodyk & Davidson,
Solicitors for Bahrain Slipway Company Ltd.
(Intervenors) and Port of Singapore
Authority 20
Gray Mackenzie
Keppel Shipyard (Private) Ltd.
- 3) Messrs. Drew & Napier,
Solicitors for Daiyu-Kogyo Co.Ltd.
Smit International Ocean Towage & Salvage
Co.
- 4) Messrs. Chan, Goh & David See,
Solicitors for Ben & Co. Ltd.
- 5) Messrs. Murphy & Dunbar,
Solicitors for the abovenamed Defendants, 30
Ocean Bulkers (U.K.) Ltd.

No. 6

AFFIDAVIT OF MOOTATAMBY
KARTHIGESU VERIFYING
STATEMENT OF CLAIM IN
ACTION No. 151 of 1975
26th February 1975

In the High
Court of the
Republic of
Singapore

No.6

Affidavit of
Mootatamby
Karthigesu
verifying
Statement of
Claim in
Action No.
151 of 1974
26th February
1975

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem No.:151 of 1974

10

Admiralty action in rem against
the vessel "HALCYON ISLE"

Between

Bankers Trust International
Limited Plaintiffs

And

The Owners of the vessel
"Halcyon Isle" Defendants

AFFIDAVIT VERIFYING STATEMENT OF CLAIM

20

I, Mootatamby Karthigesu, Advocate &
Solicitor, of 1st Floor Meyer Chambers, Raffles
Place, Singapore do sincerely affirm and say
as follows :-

30

1. I am a partner in Messrs. Allen & Gledhill,
the Solicitors for the abovenamed Plaintiffs
and I have the conduct of these proceedings.
I have received my instructions from Messrs.
Linklaters & Paines, who are the London Solicitors
of the abovenamed Plaintiffs. I have also
received certain instructions from the above-
named Plaintiffs direct and I have been in telex
and telephonic communication with one Patrick
Coen, the Assistant Manager of the abovenamed
Plaintiffs. I make this Affidavit based on
those instructions and informations which I
believe to be true. I am duly authorised to make
this affidavit on behalf of the abovenamed
Plaintiffs.

2. The abovenamed vessel was arrested in these
proceedings on the 5th day of September 1974 and

In the High Court of the Republic of Singapore

No.6

Affidavit of Mootatamby Karthigesu verifying Statement of Claim in Action No. 151 of 1974

26th February 1975

(continued)

the writ herein was duly served on the said vessel by attaching the writ for a short time to the main mast and by leaving a copy of the writ thereto. The abovenamed vessel was ordered to be appraised and sold by the Court on the 18th day of October 1974 and for the proceeds of sale to be paid into Court to the credit of these proceedings.

3. I crave leave to the Statement of Claim herein dated and delivered the 19th day of October 1974 and confirm that the facts stated therein are to the best of my knowledge information and belief true. 10

4. I annex hereto xerox copies of the following documents all of which are referred to in the Statement of Claim herein.

(i) Statutory Mortgage of the said vessel "Halcyon Isle" to secure an account current between the abovenamed Plaintiffs and Ocean Bulkers (U.K.) Ltd. the owners of the said vessel "Halcyon Isle" the Defendants herein dated the 27th day of April 1973 and which was entered with the Registrar of British Ships, Port of London on the 8th day of May 1974, marked Exhibit "A". 20

(ii) A Deed of Covenant to accompany the said Statutory Mortgage bearing even date with the said Statutory Mortgage, marked Exhibit "B" 30

(iii) Loan Agreement dated the 15th day of February 1973 which regulated the loan of US\$5,800,000/- to the abovenamed Defendants from the abovenamed Plaintiffs and pursuant to the provisions of which the abovenamed Defendants mortgaged the said vessel to the abovenamed Plaintiffs, marked Exhibit "C". 40

5. I am informed by the said Patrick Coen and I believe the same to be true that on the 1st day of March 1973 pursuant to the said Loan Agreement (Exhibit "C") the sum of US\$5,800,000/- was credited to the abovenamed Defendants' dollar account with the abovenamed Plaintiffs.

6. In paragraph 8 of the Statement of Claim herein "Events of Default" are relied upon as entitling the Plaintiffs to declare the principal of the Loan to be immediately due and payable by the Defendants pursuant to Clause 13 of the Loan Agreement (Exhibit "C") and in paragraph 9, 2 further Events of Default are relied upon pursuant to Clause 5 of the Deed of Covenant (Exhibit "B"). The fact that these Events of Default had occurred were deposed to by the said Patrick Coen in an affidavit he swore on the 8th day of October 1974 in London in the proceedings against the "Halcyon Cove" for filing in the Admiralty Court in the Queen's Bench Division in The High Court of Justice in England. I annex hereto a xerox copy of the said affidavit marked Exhibit "D" together with xerox copies of the exhibits referred to therein which I list below for convenience

In the High Court of the Republic of Singapore

No.6

Affidavit of Mootatamby Karthigesu verifying Statement of Claim in Action No. 151 of 1974
26th February 1975

(continued)

- (i) xerox copy of the certified copy of the Register of Mortgages and Charges of Autair International Airways Limited
- (ii) xerox copy of the certificate of change of name of Autair International Airways Limited to Court Line Aviation Limited
- 30 (iii) xerox copy of the appointment of George William Dunerley as Receiver of Court Line Aviation Limited by National Westminster Bank Limited dated 16th August 1974
- (iv) xerox copy of the certified copy of the Register of Mortgages and Charges of Lutair Engineering Limited
- 40 (v) xerox copy of the appointment of Peter James Oliver as Receiver of Lutair Engineering Limited by Airlease International Management Limited dated 21st August 1974
- (vi) xerox copy of the Petition presented by Court Line Limited in the High Court of Justice, England, Chancery Division, Companies Court praying for

In the High Court of the Republic of Singapore

Court Line Limited to be wound up by the Court under the provisions of the Companies Act 1948. (No:001909 of 1974)

No.6
Affidavit of Mootatamby Karthigesu verifying Statement of Claim in Action No. 151 of 1974
26th February 1975

- (vii) xerox copy of press announcement by the Directors of Court Line Limited
- (viii) xerox copy of the Order of Court in Companies Winding Up Petition No:001909 of 1974 dated 16th August 1974
- (ix) xerox copy of the Order of Court in Companies Winding Up Petition No:001909 of 1974 dated 7th October 1974. 10

(continued)

7. I am informed by the said Patrick Coen and I believe the same to be true that the abovenamed Plaintiffs have served a written notice on the abovenamed Defendants to the effect that the principal of the Loan and all other obligations of the abovenamed Defendants are due. I refer to paragraph 12 of the said Patrick Coen's affidavit referred to in paragraph 6 above (Exhibit "D") and annex hereto a xerox copy of a copy of the said notice dated 16th August 1974 marked Exhibit "E". However under clause 5 of the Deed of Covenant (Exhibit "B") the abovenamed Plaintiffs are not obliged to serve any notice on the abovenamed Defendants in order to make the Loan due and payable by them and to exercise their rights under the mortgage: they have merely to treat the monies as immediately due and payable. The abovenamed Plaintiffs did decide to treat the monies as immediately due and paying by issuing the writ in this action. 20 30

8. The Plaintiffs have converted the sum of US\$5,800,000/- into Singapore Dollars at the rate of exchange US\$1/- to S\$2.485 which was the rate of exchange obtaining on the 28th day of August 1974, the date on which the writ herein was issued out of this Honourable Court. At this rate of exchange the sum of US\$5,800,000/- produces S\$14,413,000/-. 40

9. In the premises I pray for an order in terms of the Notice of Motion in support of which this affidavit is filed.

AFFIRMED at Singapore)
this 26th day of)
February 1975) Sd. M.Karthigesu

In the High
Court of the
Republic of
Singapore

No.6

Before me,
Sd. P.Athiodam
A Commissioner for Oaths

Affidavit of
Mootatamby
Karthigesu
verifying
Statement of
Claim in
Action No.
151 of 1974

This affidavit is filed on behalf
of the Plaintiffs

26th February
1975

(continued)

No. 7

No.7

10

ORDER FOR JUDGMENT IN ACTION
No. 151 of 1974 - 28th February
1975 (same as Exhibit MK2 of
Affidavit of Mootatamby Karthigesu
sworn 18th August 1975 at page
of Record)

Order for
Judgment in
Action No.151
of 1974

28th February
1975

(same as
Exhibit MK2
of Affidavit
of Mootatamby
Karthigesu
sworn 18th
August 1975
at page
of Record)

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem No: 151 of 1974

Admiralty action in rem against
the vessel "HALCYON ISLE"

Between

20

Bankers Trust International
Limited Plaintiffs

And

The Owners of the vessel
"HALCYON ISLE" Defendants

BEFORE THE HONOURABLE MR.JUSTICE TAN AH TAH

IN OPEN COURT

UPON MOTION dated the 26th day of February
1975 preferred unto this Court this day by

In the High Court of the Republic of Singapore

No.7

Order for Judgment in Action No.151 of 1974

28th February 1975

(same as Exhibit MK of Affidavit of Mootatamby Karthigesu sworn 18th August 1975 at page 56 of Record)

(continued)

Counsel for the Plaintiffs AND UPON READING the two affidavits of MOOTATAMBY KARTHIGESU filed herein on the 26th day of February 1975 AND BY CONSENT of Counsel for Todd Shipyard Corporation, Bahrain Slipway Company Ltd. Port of Singapore Authority, Gray Mackenzie, Keppel Shipyard (Private) Ltd., Daiyu-Kogyo Co. Ltd., Smit International Ocean Towage and Salvage Co., Ben & Co.Ltd., and the persons interested in the said vessel "Halcyon Isle" 10
IT IS ORDERED that Judgment be and is hereby entered for the Plaintiffs in the sum of \$14,413,000/- together with interest at the rate of 5 per cent per annum from the 26th day of February 1974 to the date of this Order AND IT IS FURTHER ORDERED that the Plaintiffs' costs of this action including the costs of this Motion and incidental thereto be taxed AND IT IS LASTLY ORDERED that the payment of the sum of \$14,413,000/- together with interest 20 at the rate of 5 per cent per annum from the 26th day of February 1974 to the date of this Order and the amount of the costs when taxed be deferred until after the determination of priorities AND THIS COURT DOTH MAKE no Order on Prayer (i) and (iii) of the application.

Dated the 28th day of February 1975

(Sgd)

ASST. REGISTRAR

No. 8

ORDER ON PRIORITY OF CLAIMS
IN ACTION No. 151 of 1974 -
28th February 1975
(same as Exhibit MK2 to affidavit
of Mootatamby Karthigesu sworn
18th August 1975 at page 56 of
Record)

In the High
Court of the
Republic of
Singapore

No.8

Order on
priority of
claims in
Action No.
151 of 1974

28th February
1975

(same as
Exhibit MK2
to affidavit
of Mootatamby
Karthigesu
sworn 18th
August 1975
at page 56
of Record)

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

10 Admiralty in Rem No: 151 of 1974

Admiralty action in rem against
the vessel "HALCYON ISLE"

Between

Bankers Trust International
Limited Plaintiffs

And

The Owners of the vessel
"HALCYON ISLE" Defendants

BEFORE THE HONOURABLE MR. JUSTICE TAN AH TAH

20

IN OPEN COURT

30

UPON THE ADJOURNED MOTION dated the 4th
day of October 1974 preferred unto Court this
day by Counsel for the Plaintiffs AND BY CONSENT
of Counsel for Todd Shipyard Corporation, Bahrain
Slipway Company Ltd., Port of Singapore Authority,
Gray Mackenzie, Keppel Shipyard (Private) Ltd.,
Daiyu-Kogyo Co.Ltd., Smit International Ocean
Towage and Salvage Co., Ben & Co.Ltd., and the
persons interested in the said vessel "HALCYON
ISLE" IT IS ORDERED that the order of priority
of the claims against the proceeds of sale of
the said vessel "HALCYON ISLE" shall not be
determined until after the expiration of 60 days
beginning with the day on which the proceeds of
sale are paid into Court AND IT IS LASTLY ORDERED
that within 7 days after the date of payment
into Court of the proceeds of sale the Sheriff
shall send for publication in the Gazette a
notice complying with Order 70 rule 21(3) of
the Rules of the Supreme Court, 1970.

40

Dated the 28th February 1975.

(Sgd)

ASST. REGISTRAR

In the High Court of the Republic of Singapore

No.9

Affidavit of Selvadurai Rajkumar in Action No.150 of 1974

17th May 1975

No. 9

AFFIDAVIT OF SELVADURAI RAJKUMAR IN ACTION No.150 of 1974 - 17th May 1975

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem)
No.150 of 1974)

Admiralty action in rem against the vessel "HALCYON ISLE"

10

Between

Todd Shipyards Corporation
Plaintiffs

And

The Owners of and other persons interested in the vessel "HALCYON ISLE"
Defendants

A F F I D A V I T

I, Selvadurai Rajkumar of No.15, First Avenue, Singapore 10, make oath and say as follows :-

20

1. I am a partner in the firm of Donaldson & Burkinshaw, the solicitors for the Plaintiffs, and have the conduct of these proceedings.

2. Now produced shown to me and marked "SR.1" is the Affidavit of Edward P. Degan sworn on the 12th day of March 1975.

3. Also produced shown to me and marked "SR.2" is the Affidavit of George L. Varian sworn on the 21st day of April 1975.

30

SWORN to at Singapore)
this 17th day of May) Sd. Selvadurai Rajkumar
1975)

Before me,

Sd. M.J.Namazie

A Commissioner for Oaths

No. 10

AFFIDAVIT OF EDWARD P. DEGNAN
IN ACTION No.150 of 1974
(Exhibit "SR1" to Affidavit of
Selvadurai Rajkumar at page 24
of Record) - 12th March 1975

In the High
Court of the
Republic of
Singapore

No.10

Affidavit of
Edward P.Degnan
in Action No.
150 of 1974

(Exhibit SR1
to Affidavit of
Selvadurai
Rajkumar at
page 24 of
Record)

12th March 1975

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem)
No.150 of 1974)

10 Admiralty action in rem
against the vessel
"HALCYON ISLE"

Between

Todd Shipyards Corporation
Plaintiffs

And

The Owners of and other
persons interested in the
vessel "HALCYON ISLE"

A F F I D A V I T

20 I, EDWARD P. DEGNAN of 3515 Glenwood Road
Brooklyn, New York make oath and say as follows:

1. I am Assistant Vice-President and Manager
of the Credit Department of TODD SHIPYARDS
CORPORATION and am duly authorized by the
Plaintiff to make this Affidavit on its behalf.
The facts deposed to herein are of my personal
knowledge except where as otherwise stated.

30 2. I refer to the Statement of Claim filed
herein on the 18th day of February 1975. There
is due and owing to the Plaintiffs in respect
of the repairs executed and materials supplied
in connection therewith by the Plaintiffs to
the abovementioned vessel "HALCYON ISLE" the
sum of US\$95,568.00. Now produced, shown to
me marked Exhibit "A" is a bundle containing
true copies of the Plaintiffs' bills dated 16th
July 1974 for the said sum of US\$95,568.00.

40 3. The said repairs were effected at the
Plaintiffs' repair Yard at Brooklyn, New York
pursuant to the contract referred to in the
Statement of Claim. Now produced shown to me

In the High Court of the Republic of Singapore

No.10 Affidavit of Edward P.Degnan in Action No 150 of 1974 (Exhibit SR1 to Affidavit of Selvadurai Rajkumar at page 24 of Record)

12th March 1975 (continued)

COUNTY CLERK NEW YORK

and marked Exhibit "B" is a true copy of the letter referred to in the Statement of Claim dated 1st March 1974. In the premises the Plaintiffs contend that the law applicable to the said contract is United States law.

4. In view of the foregoing I pray for orders in terms of the Motion herein.

SWORN to before me) this 12th day of) March 1975

(Sgd) Francis J.Larkin (Sgd) Edward P. NOTARY PUBLIC Degnan FRANCIS J.LARKIN EDWARD P.DEGNAN Notary Public, State of New York No.30-7432550 Qualified in Nassau County Commission Expires March 20, 1976

State of New York) No. 88507 County of New York,)

I, NORMAN GOODMAN, County Clerk and Clerk of the Supreme Court of the State of New York, in and for the County of New York, a Court of Record, having by law a seal,

DO HEREBY CERTIFY pursuant to the Executive Law of the State of New York, that FRANCIS J LARKIN whose name is subscribed to the annexed affidavit deposition, certificate of acknowledgment or proof was at the time of taking the same a NOTARY PUBLIC in and for the State of New York duly commissioned, sworn and qualified to act as such: that pursuant to law, a commission or a certificate of his official character, with his autograph signature has been filed in my office: that at the time of taking such proof, acknowledgment or oath, he was duly authorized to take the same; that I am well acquainted with the handwriting of such, NOTARY PUBLIC or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and I believe that such signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 13th March 1975

NORMAN GOODMAN

I, Michael Po Chuan Cheok, Charge d'Affaires, a.i. Permanent Mission of Singapore to the United Nations, and in exercise of the powers vested in

A me by virtue of the Diplomatic and Consular
Officers (Oaths and Fees) Act 1968, do
hereby certify that NORMAN GOODMAN, County
Clerk and Clerk of the Supreme Court of the
State of New York, in and for the County of
New York, a Court of Record, having by law
a seal, has set his hand and affixed his
official to the Certificate herewith attached
bearing the number 88507.

B In witness whereof, I have hereunto set my
hand and affixed my official seal this 13th
day of March, 1975.

C (Sgd) Michael P.C. Cheok

(MICHAEL PO CHUAN CHEOK) 12th March 1975

D This is the exhibit marked "SR.1" referred
to in the affidavit of Selvadurai Rajkumar
sworn before me on the 17th day of May 1975
in Adm.Rem No.150 of 1975

Sd. M.J.Namazie

A Commissioner for Oaths.

In the High
Court of the
Republic of
Singapore
No.10
Affidavit of
Edward P. Degnan
in Action No
150 of 1974
(Exhibit SR1
to Affidavit of
Selvadurai
Rajkumar at
page 24 of
Record)

12th March 1975
(continued)

No. 10a

E BUNDLE OF BILLS OF PLAINTIFFS
TO DEFENDANTS (Exhibit "A" to
Affidavit of Edward P. Degnan
sworn 12th March 1975 in
Action No.150 of 1974 at
page 25 of the Record) - 16th
July 1974

In the High
Court of the
Republic of
Singapore
No.10a
Bundle of bills
of Plaintiffs
to Defendants
(Exhibit "A"
to Affidavit of
Edward P. Degnan
sworn 12th March
1975 in Action
No.150 of 1974
at page 25
of the Record)
16th July 1974

G TODD SHIPYARDS CORPORATION

Brooklyn Division: Foot of Dwight Street
Brooklyn, N.Y. 11231 MA 5-6820 (212)

Job No.3955-10

Bill No.16633 Date July 16, 1974

H TO: M/T HALCYON ISLE
OCEAN BULKERS (UK) LTD.
c/o COURT LINE SHIP MANAGEMENT
9 THAYER STREET
LONDON, W1N 6AD

I AND OWNERS

J We contract for vessel repair and drydocking
and other services only upon the basis of
insured limited liabilities as set forth below, arising
in no event shall our liability for any claim
under this contract exceed in the aggregate the
sum of \$300,000.00.

K We are not liable for any loss, damage or delay
resulting from strikes or labour difficulties,
whatsoever and wheresoever occurring, or for
stoppage of work due to causes beyond our control.

In the High
Court of the
Republic of
Singapore

No. 10a

Bundle of bills
of Plaintiffs to
Defendants
(Exhibit "A"
to Affidavit of
Edward P. Degnan
sworn 12th March
1975 in Action
No.150 of 1974
at page 25 of the
Record)

16th July 1974

We are not liable to defective workmanship or material or for damage to any vessel or for any loss sustained by its owners, charterers or underwriters, or parties in interest, directly or indirectly, in contract, tort or otherwise unless the same is caused solely by the negligence of our own employees, which negligence shall not be presumed but must be affirmatively established. Our liability, if any, is strictly limited to the cost of repair, correction or replacement thereof and in no event shall we be liable for any consequential damage whatsoever including but without limitation, delay, demurrage towage and pilotage.

A

B

We shall be discharged from all liability for defective workmanship or material or for loss or damage, unless the same is discovered prior to and claim in writing made to us within six months and litigation is commenced within one year after our work has ceased for whatever reason or has been completed, or the vessel has been redelivered, whichever first occurs.

C

D

We shall not be liable for any personal injury, including death, or for damage to property of third parties, unless the same is the result of the sole negligence of our own employees. The vessel, its owners, and all parties in interest, shall indemnify and hold us harmless from all liability arising under any air or water quality statute or regulation unless the same shall be caused by the sole negligence of our own employees.

E

F

In no event shall we be liable for the cost of defense, including attorneys' fees, of any act whether commenced by our employees sub-contractors' employees, or others against the vessel, its owners, agents, charterers or underwriters.

G

The foregoing is in lieu of all warranties and liabilities expressed or implied and any document which unilaterally purports to alter or increase our liability beyond that stated herein is not acceptable to us and does not form a part of this contract.

H

Different or more extensive liabilities will be accepted if an agreement in writing stating the nature and extent thereof is entered into before the vessel enters our yard or work is commenced, whichever first occurs, and an adjustment is made in the price which shall include the cost of appropriate additional insurance.

I

J

Nothing herein shall be deemed to constitute a waiver of our maritime lien, Invalidity of any one or more provisions of this contract shall not affect or impair the remaining provisions. This contract may not be changed orally.

K

M/T "HALCYON ISLE"

DAMAGE ACCT.

WORK STARTED : 03/01/74) OVERALL
WORK COMPLETED : 03/19/74)

In the High Court of the Republic of Singapore

A DECK STEAM MANIFOLD

Supplied the service of work boat to transport from Baybridge Anchorage manifold for deck steam line and transport to shop. Temporary patches and repairs to be removed, unit to be thoroughly cleaned, blanks made up and tested. The broken off section rebrazed inside and outside. Pipe manifold tested to 175# and found porous. Blanks removed and water drained. The 7" section and reducer end was completely covered with silver solder on inside to stop leaks. Pipe manifold retested to 175# and sent to ship. Also fabricated one 13-1/4" O.D. x 1" thick blank with twelve 7/8" holes and faced of one side. This blank was sent to vessel immediately so deck winch could be used. Manifold was returned to vessel on a no-delay basis.

No.10a
Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)
16th July 1974

\$ 830.00

(Continued)

E New Deck Steam Manifold

Picked up sizes for new manifold and fabricated target. Fabricated new manifold using extra heavy pipe. Manifold was a 7" to 5" unit with two 5" spuds, one 2 1/2" spud and two 2" spuds. Machined seven flanges for same. Manifold was fabricated with a 7" x 5" reducer using a 1500# 7" flange. Entire assembly was welded, removed from target, tested to 175# and delivered to vessel.

1,930.00

VENT LINE FOR # 2 STED. & # 2 CENTER TANKS

H Removed two broken and twisted sections of 5" and 7" pipe and one broken 5" gate valve. Pipe and valve to be sent to shop. The tee piece pipe to be set to target. New pipe to be fabricated using 7" pipe, 7" x 5" reducer and 5" pipe, with one 5" branch. The 7" flange to be removed and machined, 5" flanges to be renewed. Pipe to be fabricated by welding, 5' of 7" pipe and 5' of 5" pipe, with 12" of 5" branch. This pipe returned to vessel and installed. A
J template was made of balance of pipe fabricated using 20'-3" of 5" black pipe with two 5" weld flanges. Supplied a new 5" gate valve, flanged steel, and deliver the valve and pipe to ship and

In the High Court of the Republic of Singapore

No.10a
Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)
16th July 1974
(continued)

installed with new bolts and gaskets. \$3,344.00

Fwd. Deck Steam Winch:

Removed from winch two 1-1/2" sections of copper pipe and two 2" sections of copper pipe. Pipe was broken and twisted, pipe was transported to yard and removed mm flanges. Same were machined. Lifted templates of pipe and packed with sand for hot bends. All flanges were faced and bored out for brazing. A 1/2" coupling removed from old pipe. A new gauge cock supplied. Pipe was bent and shaped and flanges installed by brazing. Pipe tested to 175# and proved satisfactory. The two sections of pipe returned to vessel and installed.

10

Exhaust Pipe:

Five flanges were faced and bored out. New pipe was picked and hot bent. After bending flanges were installed by brazing. New 1/2" coupling and gauge cock was supplied and installed by brazing. Pipe tested to 175# returned to vessel and installed. Removed broken boiler cock from steam cylinder and supplied and installed a new 1/2" cock with 1/2" tubing 24" long, brazed into old tailpipe.

20

2,131.00

FORE MAST AIR WHISTLE

30

Disconnected and removed water collector for air whistle. Remove leaking spuds and fit and install two (2) new 1" spuds with flanges. Unit to be returned to vessel and reinstalled.

590.00

DOMESTIC HEATING MIDSHIP

Removed one 10' section of 2" copper pipe from under catwalk. Send to shop and put to target. Fabricate new section of 2" pipe. Pipe to be fabricated as distorted pipe. Flanges removed from old pipe, machine same, and fitted and brazed same to new pipe. While pipe was removed a temporary hose connection was made to maintain heat in midships.

40

1,350.00

FWD. DEEP TANK

Furnished necessary labor, material, and equipment to accomplish the following:

In the High Court of the Republic of Singapore

No.10a

Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)

10 Supply the services of chemist to examine fwd. dry cargo hold and issue certificate. Broken studs to be removed in way of butterworth openings and new studs supplied and installed. Cover to be put down sufficiently to make same watertight. \$ 750.00

16th July 1974
(continued)

OVERTIME AND STAND-BY

Necessary overtime, standby time and Premium time worked as authorized 6,120.00

GENERAL EXPENSES

SERVICES

20 Hooked up and supplied vessel with 220 V.D.C., 500 amp. shore power. Hooked up Bell Telephone. Hook up and supply fresh water. Fire lines to be drapped and ships gangway to be used. 550.00

LINE HANDLERS

Supplied line handlers to tie up vessel at Pier #1, Stern in. Ship originally due 12:00 Noon Sunday, 03/10/74, and was delayed until 0500 hrs. Monday, 03/11/74. Line handlers stood-by awaiting arrival. 800.00

GARBAGE

30 Supplied buckets on deck. After ships staff cleaned up deck, removed same and place empty buckets on deck. 250.00

WATER TRANSPORTATION

Supply water transportation to and from vessel while same at Bay Ridge Anchorage. 5,269.00

TOTAL: \$23,914.00

In the High
Court of the
Republic of
Singapore

TODD SHIPYARDS CORPORATION

Brooklyn Division: Foot of Dwight Street
Brooklyn, N.Y. 11231 MA 5-6820 (212)

No.10a

Bundle of bills
of Plaintiffs
to Defendants
(Exhibit "A"
to Affidavit of
Edward P.Degnan
sworn 12th
March 1975 in
Action No.150
of 1974 at
page 25 of
the Record)
16th July 1974
(continued)

Job No. 3955-10
Bill No. 16632 Date July 16, 1974

TO: M/T "HALCYON ISLE" AND OWNERS
OCEAN BULKERS (UK) LTD.
c/o COURT LINE SHIP MANAGEMENT
9 THAYER STREET
LONDON, W1N 6 AD

10

We contract for vessel repair and dry-docking and other services only upon the basis of insured limited liabilities as set forth below in no event shall our liability for any claim arising under this contract exceed in the aggregate the sum of \$300,000.00.

We are not liable for any loss, damage or delay resulting from strikes or labor difficulties, whatsoever and wheresoever occurring, or for stoppage of work due to causes beyond our control.

20

We are not liable for defective workmanship or material or for damage to any vessel or for any loss sustained by its owners, charterers or underwriters, or parties in interest, directly or indirectly, in contract, tort or otherwise, unless the same is caused solely by the negligence of our own employees, which negligence shall not be presumed but must be affirmatively established. Our liability, if any, is strictly limited to the cost of repair, correction or replacement thereof and in no event shall we be liable for any consequential damage whatsoever including but without limitation, delay, detention, demurrage, towage and pilotage.

30

We shall be discharged from all liability for defective workmanship or material or for loss or damage, unless the same is discovered prior to and claim in writing made to us within six months and litigation is commenced within one year after our work has ceased for whatever reason or has been completed, or the vessel has been redelivered, whichever first occurs.

40

We shall not be liable for any personal injury, including death, or for damage to property of third parties, unless the same is the result of the sole negligence of our own

employees. The vessel, its owners, and all parties in interest, shall indemnify and hold us harmless from all liability arising under any air or water quality statute or regulation unless the same shall be caused by the sole negligence of our own employees.

In the High Court of the Republic of Singapore

No.10a

10 In no event shall we be liable for the cost of defense, including attorneys' fees, of any action whether commenced by our employees, sub-contractors' employees, or others against the vessel, its owners, agents, charterers or underwriters.

Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degnan

The foregoing is in lieu of all warranties and liabilities expressed or implied and any document which unilaterally purports to alter or increase our liability beyond that stated herein is not acceptable to us and does not form a part of this contract.

sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)

20 Different or more extensive liabilities will be accepted if an agreement in writing stating the nature and extent thereof is entered into before the vessel enters our yard or work is commenced, whichever first occurs, and an adjustment is made in the price which shall include the cost of appropriate additional insurance.

16th July 1974 (continued)

30 Nothing herein shall be deemed to constitute a waiver of our maritime lien. Invalidity of any one or more provisions of this contract shall not affect or impair the remaining provisions. This contract may not be changed orally.

M/T "HALCYON ISLE"

OTHERS ACCOUNT WORK STARTED : 03/01/74 } OVERALL
WORK COMPLETED : 03/19/74 }

SUPPLIES

Furnished and delivered to Ch.Engr. the following materials:

40 Compression Fittings:

- Six of 1 1/4" x 1/4"
- Six of 1/4" x 1/4"
- Six of 1/4" x 1/4"
- Six of 1/4" x 1/4"
- Six of 1/4" x 1/4"

Also supply six compression type unions of each of the following sizes, 1/4", 3/8", 1/2", 5/8" and 3/4", for a total of 30 compression type unions.

₹ 91.00

In the High Court of the Republic of Singapore

No.10a

Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)
16th July 1974
(continued)

BUNKER TANK STBD.

Removed one section of 4" pipe and sent to shop. Pipe set to target and fabricated new section using the following:

8' of 4" black pipe, 2 90° short radius ells, and two 90° long radius ells. Two 4" welded flanges. Pipe fabricated by welding, tested to 100# returned to vessel and reinstalled using new bolts, nuts and gaskets.

\$ 1,944.00

10

BOILER FORCED DRAFT FAN ENGINE

Lifted templates for 1" steam and 2" exhaust pipe for engine. Flanges removed from old pipe, same machined and bored out. Supply 1" extra heavy S.S. pipe, 12" long and bent same as per template. Flanges were fitted and welded on board ship. Pipe installed using new bolts, nuts and gaskets. Transported the 2" copper exhaust pipe to shop, same was annealed and cleaned. Flanges were removed and machined. The pipe was bent as per template and flanges installed on same by brazing. The exhaust valve B.C. was not the same as matching flange. The bolt circle holes were slotted to fit new flange. Vale installed and made up against modified copper pipe.

1,825.00

20

30

Extra heavy pipe was cut and fitted to hold liner in place using strong back supplied by vessel, and secured with cylinder head nuts. Upon vessel arrival in yard securement to be removed, piston rod released from crosshead, piston rigged clear of engine, lubricators removed from liner and liner pulled and rigged from engine and transported to machine shop. Liner to be placed in lathe and machined to standard diameter in way of landing. Returned to vessel, re-rigged to position, replaced in engine and all removals replaced. Piston replaced, rod connected to crosshead, and cover reinstalled. Supply vessel with

40

50

special cutting tool for reseating machine aboard vessel. Exhaust valve seat to be reseated and lapped in. \$21,757.00

In the High Court of the Republic of Singapore

No.10a

FEED WATER PIPE

10 Picked up from vessel one (1) spool piece, 3' long 2" pipe. Transported to shop. Same set to target and fabricated new section using 3' of 2" extra heavy pipe and two (2) 2" 150# slip on flanges. Tested pipe to 150# and returned same to vessel and delivered to Chief Engineer. 340.00

Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)

16th July 1974

(continued)

EMERGENCY SERVICES

20 Disconnected drain line on aux. air tank and hooker up $\frac{1}{2}$ " high pressure hose to tank. Filled up tank with nitrogen and CO2.
Two (2) bottles nitrogen
Three (3) bottles CO2
Three (3) $\frac{3}{4}$ " unions
Two (2) $\frac{5}{8}$ " x $\frac{1}{2}$ " reducer couplings
One (1) $\frac{1}{2}$ " x $\frac{3}{8}$ " reducer coupling
Two (2) $\frac{1}{8}$ " nipples
Two (2) $\frac{1}{2}$ " nipples
Four (4) $\frac{3}{4}$ " nipples made emergency nitrogen connector
Five (5) bottles CO2
30 Two (2) bottles nitrogen rigged aboard launch into engine room. Empties returned to yard storage area. 2,847.00

DIESEL GENERATOR ENGINE, PORT

40 Furnished labor, material and equipment to accomplish the following:
Two bearings from the port generator to be picked up from vessel at Tremelely Point, N.J., P.M.03/10/74, Sunday, and deliver to Machine Shop. Old metal to be removed, bearings to be cleaned and tinned and new metal supplied and installed by spinning method. Bearings to be returned to vessel on a no-delay basis. Upon arrival in yard three additional bearings were picked from vessel and

In the High Court of the Republic of Singapore

No.10a

Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record) 16th July 1974 (continued)

delivered to shop. These were also dealt with as other two, on a no-delay basis. Pick up two additional bearings from vessel. These bearings were re-metaled and machined and were delivered to vessel as spares. The ten (10) crankcase doors were removed from engine room, transported to shop and faired. On each door two pieces of flat bar were welded for stiffening of door.

\$5,550.00

10

DIESEL GENERATOR ENGINE, STBD.

Removed # 2 and # 5 cylinder covers, removed crankcase doors, and removed liners. Both liners to be checked and in way of # 5 liner landing to be ground true. Supply grinding jig to accomplish same. Other three liners to have bearings removed and send to shop. A total of five (5) bearings to be dealt with. These bearings to have old metal removed, new metal supplied and installed. Bearings machined, returned to vessel, fitted and adjusted to proper clearances. Two (2) liners to be installed with new rubber rings. The ten (10) crankcase doors to be sent to shop, faired and flat bar stiffeners welded to same. Doors to be returned to vessel and reinstalled.

18,350.00

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FAN ENGINE HOLDING DOWN BOLTS

Furnished labor, material and equipment to make as per a sample four bolts and nuts. Four 1½" hex bolts, 6" long, body 22mm dia. 030 oversize for machining by crew. Four ¾" nuts, 12 threads. Per order of Chief Engineer via telephone. Rig old fan engine from ship to shop and boxed same. (Owner arranged transportation).

1,105.00

40

BILGE SUCTION MODIFICATION

Furnished labor, material and equipment to perform the following: Removed from bilges of engine room

(3) 3" sections of pipe. One (1) section had to be hack sawed in two(2) placed to be removed from bilges. One (1) 7" section, engine room and bilges dirty with oil. This required all burning, welding, tacking and fitting had to be accomplished in boiler room and no hot work in engine room and bilges. The sections of pipes had to be removed first to cut in spud pieces and then replaced in bilges and blanked off, and at next shift blanks removed and new pipes templated, tacked together in boiler room, then put back in bilges for fits. Removed again to boiler room and welded up and then installed permanently in bilges. All floor plates removed and reinstalled. One(1) oil drum (collecting tank) was removed with funnel and pipes leading to it disconnected and replaced, also one (1) 10' section of 1½" cooling water removed and reinstalled in order to get 7" section out from bilges. All hangers on old and new pipe removed and installed. Two (2) gauge lines removed and reinstalled at end of shifts. Bilges left in operating order. This work was held up when vessel lost generators and bilge lines could not be left out of service over night. After power was restored bilge line fish mouth was welded and bilges left in order.

Discharge Side of Bilge Pump which was fabricated using 3" pipe had discharge pipe removed and a fish mouth fitted and installed in same. This pipe was also cut and a pair of new flanges installed. A section, approximately 8' long was removed and a spud welded in same. The following materials used:

Six (6) 3" slip on flanges, 150#
Three (3) 3" 90° ells
One (1) 3" 125# flange globe valve
14' of 3" standard black pipe with all new bolts, nuts and gaskets.

In the High Court of the Republic of Singapore

No.10a

Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)

16th July 1974

(continued)

In the High Court of the Republic of Singapore

No.10a

Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)

16th July 1974
(continued)

On suction side of bilge pump pipe was removed and new 3" spuds fitted and welded into same. One (1) spud had 3" flange welded on same, this was blanked. Other spud had gate valve installed on same and approx. 10' of 3" standard black pipe fitted between it and 7" pipe.

The following materials used:

12' of 3" standard black pipe	10
Seven (7) 3" 150# slip on flanges	
One (1) 3" 150# screw flange	
One (1) 3" C.I. plug	
One (1) 3" 125# flanged globe valve	
Five (5) 3" 45° weld ells	
One (1) 3" 90° weld ell	

The following material left on board:

Three (3) 3" 90° ells	
Four (4) 3" 45° ells	
One (1) 3" screw flange	20
One (1) 3" plug	\$13,539.00

MAIN ENGINE CYLINDER LINER

Furnished necessary labor, materials and equipment to accomplish the following :

Make all removals on # 5 main engine unit

Make all removals in crank case.

Release cover and rig same clear.

Piston to be removed and hung off and main engine liner removed. 30

Spare liner to be cleaned, new rubber rings fitted and liner installed.

Piston installed after unit had new rings fitted.

Bottom end to be made up.

After liner was installed an was made to place cover on same and it was found that cover was standard but liner was found 2mm larger in dia. in way of landing. 40

MAIN ENGINE - DIESEL GENERATOR FRESH WATER COOLING

Removed from engine room one section of 3" pipe, 14' long, and send to shop. Pipe set to target. Also remove from vessel one section of partially fabricated 3" pipe, with flanges, and

10 loose branches. All ends cut in shop and pipe fabricated to target, new flanges installed on same, new returned to vessel and installed. Removed from engine one section of 3" pipe, 11' long and send to shop. Pipe set to target. Also remove from vessel one section of partially fabricated 3" pipe, with flanges, and loose branches. All ends cut in shop and pipe fabricated to target, new flanges installed on same, new pipe returned to vessel and installed. \$1,680.00

SERVICES

Removed from after deck two winch cylinders and place on fore deck as directed. 160.00

"V" BELTS

20 Supply vessel with two (2) "V" belts, as per pattern. 33.00

AIR WHISTLE

30 Remove one section of pipe with 90° bend to shop. Pipe to be set to target and new section fabricated using old flanges. Pipe returned to vessel and reinstalled. Supply vessel with 20' of 2" standard black pipe with two 2" slip on flanges with bolts, nuts and gaskets. 612.00

AFTER WINCH

Remove broken packing gland from after port winch and transport to machine shop. Gland to be repaired, returned to vessel and delivered to Chief Engineer. 480.00

SUPPLIES

40 Supply and place aboard vessel 80 gallons NAVEE #42 cleaning liquid. 313.00

STEAM GENERATOR

Machine using good grades cast iron four (4) piston rings for piston valve (H.P.) for steam generator. 88.00

In the High Court of the Republic of Singapore

No.10a

Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)

16th July 1974

(continued)

In the High Court of the Republic of Singapore

No.10a

Bundle of bills of Plaintiffs to Defendants (Exhibit "A" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)

16th July 1974
(continued)

DIESEL GENERATOR LINERS

Picked up from vessel three (3) liners and deliver to shop. The lubricator quill holes are to be drilled and new fine thread plugs to be machined and fitted. Holes to be redrilled to fit new lubricators. One liner flange landing to be machined.

\$ 940.00

TOTAL:

\$ 71,654.00

10

No.10b

Letter Plaintiffs to Defendants (Exhibit "B" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)

1st March 1974

No. 10(b)

LETTER PLAINTIFFS TO DEFENDANTS (Exhibit "B" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record) 1st March 1974

TODD SHIPYARDS CORPORATION

Brooklyn Division: Foot of Dwight Street
Brooklyn N.Y. 11231 625-6820(212)
TWX 710-581-6138

20

M/T "HALCYON ISLE" AND OWNERS March 1, 1974
c/o SSY-TTT Ship Agencies
52 Broadway,
New York, N.Y. 10006

Gentlemen:

We contract for vessel repair and dry-docking and other services only upon the basis of insured limited liabilities as set forth below, in no event shall our liability for any claim arising under this contract exceed in the aggregate the sum of \$300,000.00.

30

We are not liable for any loss, damage or

delay resulting from strikes or labor difficulties, whatsoever and wheresoever occurring, or for stoppage of work due to causes beyond our control.

In the High Court of the Republic of Singapore

No.10(b)

Letter Plaintiffs to Defendants (Exhibit "B" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)

1st March 1974

(continued)

10 We are not liable for defective workmanship or material or for damage to any vessel or for any loss sustained by its owners, charterers or underwriters, or parties in interest, directly or indirectly, in contract, tort or otherwise, unless the same is caused solely by the negligence of our own employees, which negligence shall not be presumed but must be affirmatively established. Our liability, if any, is strictly limited to the cost of repair, correction or replacement thereof and in no event shall we be liable for any consequential damage whatsoever including but without limitation, delay, detention, demurrage, towage and pilotage.

20 We shall be discharged from all liability for defective workmanship or material or for loss or damage, unless the same is discovered prior to and claim in writing made to us within six months and litigation is commenced within one year after our work has ceased for whatever reason or has been completed, or the vessel has been redelivered, whichever first occurs.

30 We shall not be liable for any personal injury, including death, or for damage to property or third parties, unless the same is the result of the sole negligence of our own employees. The vessel, its owners, and all parties in interest, shall indemnify and hold us harmless from all liability arising under any air or water quality statute or regulation unless the same shall be caused by the sole negligence of our own employees.

40 In no event shall we be liable for the cost of defense, including attorneys' fees, of any action whether commenced by our employees, sub-contractors' employees, or others against the vessel, its owners, agents, charterers or underwriters.

50 The foregoing is in lieu of all warranties and liabilities expressed or implied and any document which unilaterally purports to alter or increase our liability beyond that stated herein is not acceptable to us and does not

In the High Court of the Republic of Singapore

No.10(b)

Letter Plaintiffs to Defendants (Exhibit "B" to Affidavit of Edward P. Degnan sworn 12th March 1975 in Action No.150 of 1974 at page 25 of the Record)

1st March 1974

(continued)

form a part of this contract.

Different or more extensive liabilities will be accepted if an agreement in writing stating the nature and extent thereof is entered into before the vessel enters our yard or work is commenced, whichever first occurs, and an adjustment is made in the price which shall include the cost of appropriate additional insurance.

Nothing herein shall be deemed to constitute a waiver of our maritime lien. Invalidity of any one or more provisions of this contract shall not affect or impair the remaining provisions. This contract may not be changed orally.

Subject to all the provisions contained herein, which apply to every order for work, whether written or verbal, we acknowledge the advices and instructions on this date of Mr. J. Nochella, your authorized representative, to perform work as ordered or to be ordered by him on your above-mentioned vessel.

We thank you for awarding these work requirements to us.

Very truly yours,

TODD SHIPYARDS CORPORATION
(BROOKLYN DIVISION)

J.A. KOCHANZYK
GENERAL MANAGER

JOB NO. 3955

10

20

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No. 11

AFFIDAVIT OF GEORGE L.
VARIAN IN ACTION No.150
of 1974 sworn 21st April
1975 (Exhibit "SR2" to
Affidavit of Selvadurai
Rajkumar at page 24 of
the Record)

In the High
Court of the
Republic of
Singapore

No.11

Affidavit of
George L. Varian
in Action No.
150 of 1974
sworn 21st April
1975
(Exhibit "SR2"
to Affidavit of
Selvadurai
Rajkumar at
page 24 of
the Record)

IN THE HIGH COURT OF SINGAPORE

10 Admiralty In Rem
No.150 of 1974
Admiralty action in rem
against: the vessel
"HALCYON ISLE"

Between

TODD SHIPYARDS CORPORATION
Plaintiff

and

20 The Owners of and other
persons interested in the
vessel "HALCYON ISLE"
Defendants

This is the exhibit marked "SR.2" referred
to in the affidavit of Selvadurai Rajkumar
sworn before me on the 17th day of May 1975
in Adm. in Rem No.150 of 1974

Sd. M.J.Namazie
A Commissioner for Oaths

A F F I D A V I T

30 STATE OF NEW YORK)
COUNTY OF NEW YORK) ss.:

I, GEORGE L. VARIAN, an attorney at law
and Proctor in Admiralty residing at Linden
Lane, Upper Brookville, Long Island, New York,
one of the States of the United States of
America, being duly sworn depose and state
as follows :

1. I am a member and senior partner of the

In the High Court of the Republic of Singapore

No.11
Affidavit of George L. Varian in Action No. 150 of 1974 sworn 21st April 1975 (Exhibit "SR2" to Affidavit of Selvadurai Rajkumar at page 24 of the Record)
(continued)

admiralty law firm of Crowell, Rouse & Varian, 111 Broadway, City and State of New York 10006.

2. I am admitted to practice before the United States Supreme Court and various United States Courts of Appeal and United States District Courts as well as the Court of Appeals of the State of New York. Since 1929 I have been continuously engaged in the practice of Admiralty and Maritime Law and in such connection I have studied the statutory and decisional law of the United States of America and of substantially all of the so-called maritime nations of the world with respect to the preparation, recording and enforcement of ship mortgages, including but not limited to England, Canada (and those nations which apply principles of English law), Liberia, Greece, Panama, The Netherlands, Germany, The Scandinavian nations, Italy and France (and those nations following principles of French law). I am also a member of the faculty of the Admiralty Law Institute of Tulane University (New Orleans, La.) where I have lectured on the subject of validity, ranking and priority of maritime liens and ship mortgages.

10

20

3. I am making this affidavit with respect to the claim of plaintiff, TODD SHIPYARDS CORPORATION, (herein TODD) to a maritime lien by reason of repairs performed by said plaintiff on the vessel "HALCYON ISLE" at its ship repair yard at Brooklyn, New York, U.S.A. in March 1974.

30

4. Under the substantive law of the United States of America, both statutory and case law, and particularly 46 United States Code, Section 971, which in my view apply herein, one furnishing repairs, supplies or other necessities to a vessel acquires a maritime lien against the vessel. Section 971 reads as follows :

40

"S 971. Persons entitled to lien

Any person furnishing repairs; supplies towage, use of dry dock or marine railway, or other necessities, to any vessel, whether foreign or domestic, upon the order of the owner

of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel."

In the High Court of the Republic of Singapore

No.11

Affidavit of George L. Varian In Action No. 150 of 1974 sworn 21st April 1975 (Exhibit "SR2" to Affidavit of Selvadurai Rajkumar at page 24 of the Record)

(continued)

10 5. In the case of TODD SHIPYARDS CORPORATION vs. ALTEMA COMPANIA MARITIMA, S.A., 32 D.L.R. (3d) 571 (Can. 1972), with which I have been closely associated, the Supreme Court of Canada recognized and enforced as a matter of substantive law the maritime lien granted under United States law. I am equally familiar with the dissenting view expressed by the Bermuda Court in the "CHRISTINE ISLE" decision (Bermuda 1972).

20 6. I have examined TODD's records relating to the services and repairs it performed on the "HALCYON ISLE" and it is my considered opinion that under the substantive United States Maritime law the rendition of such services and repairs gives rise to a valid maritime lien in favor of TODD against the said vessel which confers upon TODD rights of the same nature and quality as are conferred upon the holder of a maritime lien under English law.

30 (Sgd) George L. Varian
GEORGE L. VARIAN

Sworn to before me
this 21st day of April
1975

(Sgd) Francis J. Larkin
Notary Public

40 FRANCIS J. LARKIN
Notary Public State of
New York No. 30-7432650
Qualified in Nassau County
Commission expires March 30, 1976

COUNTY State of New York)
CLERK County of New York,) No. 93131
New York I, NORMAN GOODMAN, County Clerk and Clerk
NEW YORK of the Supreme Court of the State of New York, in
COUNTY and for the County of New York, a Court of Record
having by law a seal.

DO HEREBY CERTIFY pursuant to the Executive

In the High Court of the Republic of Singapore No.11

Affidavit of George L. Varian In Action No. 150 of 1974 sworn 21st April 1975 (Exhibit "SR2" to Affidavit of Selvadurai Rajkumar at page 24 of the Record) (continued)

Law of the State of New York, that FRANCIS J. LARKIN whose name is subscribed to the annexed affidavit, deposition, certificate of acknowledgment or proof, was at the time of taking the same a NOTARY PUBLIC in and for the State of New York duly commissioned, sworn and qualified to act as such; that pursuant to law a commission or a certificate of his official character, with his autograph signature has been filed in my office: that at the time of taking such proof, acknowledgment or oath, he was duly authorized to take the same; that I am well acquainted with the handwriting of such NOTARY PUBLIC or have compared the signature on the annexed instrument with his autograph signature deposited in my office, and I believe that such signature is genuine.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 21st April 1975

NORMAN GOODMAN
County Clerk and Clerk of the Supreme Court
New York County

I, Michael Po Chuan Cheok, Charge d'Affaires, a.i. Permanent Mission of Singapore to the United Nations, and in exercise of the powers vested in me by virtue of the Diplomatic and Consular Officers (Oaths and Fees) Act, 1968, do hereby certify that NORMAN GOODMAN, County Clerk and Clerk of the Supreme Court of the State of New York, in and for the County of New York, a Court of Record, having by law a seal,

In Witness whereof, I have hereunto set my hand and affixed my official seal this 21st day of April, 1975.

(Sgd) Michael P.C. Cheok
(MICHAEL PO CHUAN CHEOK)

No. 12
Notice of Motion for Judgment for the Plaintiffs in Action No. 150 of 1974
23rd May 1975

No. 12
NOTICE OF MOTION FOR JUDGMENT FOR THE PLAINTIFFS IN ACTION No. 150 of 1974
23rd May 1975

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem)
No. 150 of 1974)

Admiralty action in rem against the vessel "HALCYON ISLE"

Between
Todd Shipyards Corporation
Plaintiffs

In the High
Court of the
Republic of
Singapore

and

The Owners of and other
persons interested in the
vessel "HALCYON ISLE"
Defendants

No.12
Notice of
Motion for
Judgment for
the Plaintiffs
in Action No.
150 of 1974
23rd May 1975
(continued)

NOTICE OF MOTION

Take Notice that the Court will be moved on Friday the 27th day of June 1975 at 10.30 a.m. or so soon thereafter as Counsel can be heard by Mr. Selvadurai Rajkumar of Counsel for the abovenamed Plaintiffs for the following orders:-

1. A declaration that the Plaintiffs are entitled to and/or have a maritime lien in respect of their claim against the "HALCYON ISLE" within the meaning of Section 4(3) of the High Court (Admiralty Jurisdiction) Act (Cap.6 of the Revised Edition 1970);
2. That judgment be entered for the Plaintiffs in the sum of \$237,011.00 being the equivalent of US\$95,569.00 together with interest thereon at the rate of 8% per annum from the 1st of August 1974 to date of judgment or at such other rate and for such other period as to this Honourable Court seems just;
3. That the Plaintiffs' costs of this action including the costs of this Motion be taxed as between party and party;
4. That the above mentioned sum of S\$237,011.00 together with interest thereon and the Plaintiffs' costs when taxed be paid out of the proceeds when the said vessel "HALCYON ISLE" is sold.

Dated the 23rd day of May, 1975.

(Sgd)

Solicitors for the Plaintiffs

In the High
Court of the
Republic of
Singapore

No.13

Appearance on
behalf of the
Intervenors
Bankers Trust
International
Limited in
Action No.150
of 1974
2nd July 1975

No. 13

APPEARANCE ON BEHALF OF
THE INTERVENORS BANKERS
TRUST INTERNATIONAL LIMITED
IN ACTION No. 150 of 1974
2nd July 1975

IN THE HIGH COURT OF THE REPUBLIC OF
SINGAPORE

Admiralty in Rem }
No. 150 of 1974 }

10

Admiralty action in
rem against the vessel
"HALCYON ISLE"

Between

Todd Shipyards Corporation
Plaintiffs

And

The Owners of and other
persons interested in the
vessel "HALCYON ISLE"
Defendants

20

To the Registrar,

Enter appearance for Bankers Trust
International Limited the Intervenors in
this action pursuant to Order of Court
dated the 2nd day of July, 1975.

Dated the 2nd day of July, 1975

(Sgd)

Solicitors for the Intervenors

The place of business of Messrs. Allen &
Gledhill is 1st Floor, Meyer Chambers,
Raffles Place, Singapore 1.

30

Their address for service is 1st Floor,
Meyer Chambers, Raffles Place, Singapore 1.

The said Intervenors require a Statement of
Claim to be filed and delivered.

To The Plaintiffs and their Solicitors
Messrs. Donaldson & Burkinshaw
Mercantile Bank Chambers
Singapore.

In the High
Court of the
Republic of
Singapore

Received and entered in the
Book on this 2nd day of July 1975

No.13

Appearance on
behalf of the
Intervenors
Bankers Trust
International
Limited in
Action No.150
of 1974

2nd July 1975
(continued)

No. 14

ORDER FOR JUDGMENT FOR
THE PLAINTIFFS IN ACTION
No. 150 of 1974 - 4th
July 1975

No.14
Order for
judgment for
the Plaintiffs
in Action No.
150 of 1974
4th July 1975

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IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem)
No.150 of 1974)

Admiralty action in rem
against the vessel
"HALCYON ISLE"

Between

Todd Shipyards Corporation
Plaintiffs

20

And

The Owners of and other
persons interested in the
vessel "HALCYON ISLE"
Defendants

BEFORE THE HONOURABLE THE CHIEF JUSTICE
MR. JUSTICE WEE CHONG JIN IN OPEN COURT

Upon the adjourned Motion dated the 23rd

In the High Court of the Republic of Singapore

No.14

Order for judgment for the Plaintiffs in Action No. 150 of 1974

4th July 1975

(continued)

day of May 1975 preferred unto Court this day by Counsel for the Plaintiffs and upon reading the affidavit of Selvadurai Rajkumar filed herein on the 23rd day of May 1975 and the exhibits therein referred to and upon hearing Counsel aforesaid and Counsel for the Interveners Bankers Trust International Limited IT IS ORDERED that judgment be entered for the Plaintiffs in the sum of \$237,011.00 being the equivalent of US\$95,569.00 together with interest thereon at the rate of 8% per annum from the 1st day of August 1974 to date of judgment AND IT IS FURTHER ORDERED that prayers 1, 3 and 4 of the Motion herein be adjourned sine die.

10

Dated the 4th day of July, 1975

Sd. Colin Chai

ASSISTANT REGISTRAR.

No.15

Notice of Motion for determination of priority of payments to several claimants in Action No.151 of 1974

18th August 1975

No. 15

NOTICE OF MOTION FOR DETERMINATION OF PRIORITY OF PAYMENTS TO SEVERAL CLAIMANTS IN ACTION No.151 of 1974 - 18th August 1975

20

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in rem No.151 of 1974

Admiralty action in rem against the vessel "HALCYON ISLE"

Between

BANKERS TRUST INTERNATIONAL LIMITED Plaintiffs

30

And

THE OWNERS OF THE VESSEL "HALCYON ISLE" Defendants

NOTICE OF MOTION

TAKE NOTICE that this Honourable Court will

be moved on Friday the 29th day of April 1975, at 10.30 o'clock in the forenoon, or so soon thereafter as Counsel can be heard by Mr. Mootatamby Karthigesu of Counsel for the abovenamed Plaintiffs for an order for determination of priority of payments to the several Claimants against the funds in Court and for payment out of the amounts found due to the various Claimants.

10

Dated the 18th day of August 1975

(Sgd)

Solicitors for the abovenamed
Plaintiffs

In the High
Court of the
Republic of
Singapore

No.15

Notice of
Motion for
determination
of priority
of payments
to several
claimants in
Action No.151
of 1974

18th August 1975
(continued)

- To: 1) Messrs. Donaldson & Burkinshaw
Solicitors for Todd Shipyard
Corporation
- 2) Messrs. Rodyk & Davidson,
Solicitors for Bahrain Slipway Company
Ltd. and Port of Singapore Authority
Gray Mackenzie
Keppel Shipyard (Private) Ltd.
- 3) Messrs. Drew & Napier,
The Owners, Master and Crew of
the ship "MISSISSIPPI"
The Tanker Co.Ltd.
The Merchant Navy and Airline
Officers' Association of London
who represent the Master and
Officers aboard the ship or
vessel "HALCYON ISLE"
- 4) Messrs. Chan, Goh & David See,
Solicitors for Ben & Co.Ltd.
- 5) Messrs. Murphy & Dunbar,
Solicitors for the abovenamed Defendants
Ocean Bulkers (U.K.) Ltd.

20

30

In the High
Court of the
Republic of
Singapore

No.16

Affidavit of
Mootatamby
Karthigesu in
Action No.151
of 1974

18th August 1975

No. 16

AFFIDAVIT OF MOOTATAMBY
KARTHIGESU IN ACTION
No.151 of 1974 - 18th
August 1975

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in rem No. 151 of 1974

Admiralty action in rem against
the vessel "HALCYON ISLE"

Between

10

BANKERS TRUST INTERNATIONAL
LIMITED Plaintiffs

And

THE OWNERS OF THE VESSEL
"HALCYON ISLE" Defendants

A F F I D A V I T

I, MOOTATAMBY KARTHIGESU, Advocate &
Solicitor of 1st Floor, Meyer Chambers,
Raffles Place, Singapore, do sincerely affirm
and say as follows :-

20

1. I am a Partner in the firm of Messrs.
Allen & Gledhill, the Solicitors for the
abovenamed Plaintiffs and I have the conduct
of these proceedings. I am duly authorised
by the abovenamed Plaintiffs to make this
affidavit on their behalf.

2. On the 28th day of August 1974, the
abovenamed Plaintiffs commenced legal
proceedings herein against the abovenamed
vessel for a claim in the sum of S\$14,413,000.00 30
(being the equivalent of US\$5,800,000.00 at
the rate of exchange of US\$1.00 = S\$2.485)
being the amount of the Plaintiffs' mortgage
on the said vessel.

3. The vessel "HALCYON ISLE" was arrested
in these proceedings on the 5th day of
September 1974. By an Order of Court dated
the 14th day of February 1975, the said vessel

was sold on or about the 6th day of March 1975 by the Sheriff by private treaty to the Port of Singapore Authority for the sum of S\$1,380,000.00.

In the High Court of the Republic of Singapore

No.16

4. The proceeds of the sale of the above-named vessel was paid into Court on or about the 8th day of March, 1975.

Affidavit of Mootatamby Karthigesu in Action No.151 of 1974

18th August 1975

(continued)

10 5. On the 28th day of February 1975, Judgment in these proceedings was entered for the abovenamed Plaintiffs in the sum of S\$14,413,000.00 together with interest at the rate of 5 per cent per annum from the 26th day of February 1974 to the 28th day of February 1975. A copy of the Order of Court dated 28th day of February 1975 is annexed hereto and marked "MK 1".

20 6. To the best of my knowledge information and belief, the other claimants against the abovenamed vessel who are interested in the proceeds of sale of the said vessel are as follows :-

- (1) The Sheriff of the Supreme Court of Singapore
- (2) The Master officers and crew of the vessel "HALCYON ISLE"
- (3) The Owners, Master and crew of the ship "MISSISSIPPI"
- (4) Todd Shipyard Corporation
- (5) Bahrain Slipway Company Ltd.
- 30 (6) Smit International Ocean Towage and Salvage Co.
- (7) Daiyu-Kogyo Co.Ltd.
- (8) Ben & Co.Ltd.
- (9) Keppel Shipyard (Private) Ltd.
- (10) Port of Singapore Authority
- (11) Gray Mackenzie

In the High Court of the Republic of Singapore

No.16

Affidavit of Mootatamby Karthigesu in Action No.151 of 1974

18th August 1975
(continued)

7. By an Order of Court dated the 4th February 1975, it was ordered that the order of priority of the claims against the proceeds of sale of the vessel "HALCYON ISLE" should not be determined until after the expiration of 60 days beginning with the day on which the proceeds of sale were paid into Court and it was further ordered that within 7 days after the date of payment into Court of the proceeds of sale the Sheriff should send for publication in the Gazette a Notice complying with Order 70 Rule 21(3) of the Rules of the Supreme Court, 1970. The sixty days period expired on the 7th day of May 1975. A Notice was published in the Gazette on 14th May 1975. A copy of the said Order of Court dated the 28th February 1975 and a copy of the notice published in the Gazette on Friday, 18th April 1975 are annexed hereto and marked "MK 2" and "MK 3".

10

20

8. On the 2nd day of May, 1975 the Owners Master and crew of the ship "MISSISSIPPI" obtained an Order of Court for the period of 60 days mentioned in the Order of Court dated 28th February 1975 referred to in paragraph 7 hereof to be extended for a further period of 60 days. This second period of sixty days expired on 6th day of July 1975.

9. By an Order of Court dated 11th day of July 1975 the second period of sixty days referred to in paragraph 8 hereof, was further extended upon the application of Merchant Navy and Airline Officers' Association representing the officers of the "HALCYON ISLE" for a further period of 30 days. This period of 30 days expired on 6th day of August 1975.

30

10. To the best of my knowledge, information and belief, there is no further application for extension of time.

11. In view of the foregoing and as the provisions of Order 70 Rule 21 have been complied with I pray for an Order in terms of the Motion herein.

40

AFFIRMED at Singapore this }
18th day of August, 1975) Sd. M.Karthigesu

Before me,
Sd. Mohd. Yatim Dohon
A Commissioners for Oaths.

This Affidavit is filed on behalf of the abovenamed Plaintiffs.

No. 16(a)

EXHIBIT M.K.1

Not printed - Order for judgment
in Action No.151 of 1974 printed
at page 21 of Record
(Exhibit to Affidavit of Mootatamby
Karthigesu 18th August 1975)

In the High
Court of the
Republic of
Singapore

No. 16(a)

Exhibit "MK 1"

Not printed -
Order for
Judgment in
Action No.151
of 1974 printed
at page 21 of
Record
(Exhibit to
Affidavit of
Mootatamby
Karthigesu
18th August 1975)

In the High
Court of the
Republic of
Singapore

No.16(b)

Exhibit "MK 2"
Not printed -
Order on priority
of claims in
Action No.151 of
1974 printed at
page 23 of
Record
(Exhibit to
Affidavit of
Mootatamby
Karthigesu - 18th
August 1975)

No. 16(b)

EXHIBIT "MK 2"

Not printed - Order on priority
of claims in Action No.151 of 1974
printed at page 23 of Record
(Exhibit to Affidavit of Mootatamby
Karthigesu - 18th August 1975)

No. 16(c)
EXHIBIT "MK 3"

Notice published in the Singapore Gazette in Action No.151 of 1974 on Friday April 18, 1975 (Exhibit MK3 to Affidavit of Mootatamby Karthigesu - 18th August 1975)

In the High Court of the Republic of Singapore

No.16(c)

Exhibit "MK 3"
Notice published in the Singapore Gazette on Friday April 18 1975 (Exhibit MK3 to Affidavit of Mootatamby Karthigesu - 18th August 1975)

ADVERTISEMENTS

10 Notice:- All notices and advertisements are published in the "Republic of Singapore Government Gazette" at the risk of the advertiser.

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

Admiralty in Rem) ADMIRALTY ACTION IN REM
No.151 of 1974) AGAINST THE VESSEL
Warrant of Arrest) HALCYON ISLE
No.326 of 1974)

BETWEEN

20 BANKERS TRUST INTERNATIONAL LIMITED (Plaintiffs)

AND

THE OWNERS OF THE VESSEL HALCYON ISLE (Defendants)

30 Take notice that the abovenamed vessel was sold by Order of the High Court of Singapore in the above action in rem on the 6th day of March, 1975. The proceeds of the said sale amounting to \$1,380,000.00 have been paid into Court.

The order of priority of the claims against the proceeds of sale shall not be determined until after the 5th day of May, 1975.

Any person having a claim against the ship or the proceeds of sale thereof on which he intends to proceed to judgment should accordingly do so before the expiration of that date.

In the High
Court of the
Republic of
Singapore

No.16(c)

Exhibit "MK 3"
Notice published
in the Singapore
Gazette on
Friday April 18
1975
(Exhibit MK3
to Affidavit of
Mootatamby
Karthigesu -
18th August 1975)
(continued)

Dated the 1st day of April 1975

TAN WEE KIAN
Registrar

This is the exhibit marked "MK 3" referred
to in the affidavit of Mootatamby Karthigesu
affirmed on this 18th day of August 1975

Before me
Sd. Mohd Yatim Ocken
A Commissioner for Oaths

No.17
Grounds of
Judgment in
Action No.150
of 1974 and
No.151 of
1974
19th January
1977

No. 17

10
GROUNDS OF JUDGMENT IN
ACTIONS No.150 of 1974
and No.151 of 1974 -
19th January 1977

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

M O T I O N S in

Admiralty in Rem }
No.150 of 1974 }

Admiralty action in rem
against the vessel
"HALCYON ISLE"

20

Between

Todd Ship yards Corporation
Plaintiffs

And

The Owners of and other
persons interested in the
vessel "HALCYON ISLE"
Defendants

Admiralty in Rem)
No. 151 of 1974)

In the High
Court of the
Republic of
Singapore

Admiralty action in rem
against the vessel
"HALCYON ISLE"

Between

Bankers Trust International
Limited Plaintiffs

And

The Owners of the vessel
"HALCYON ISLE"
Defendants

No.17
Grounds of
Judgment in
Action No.150
of 1974 and
No.151 of
1974

19th January
1977

(continued)

10

Coram: Kulasekaram, J.

Mr. Richard Stone, Q.C. with
Mr. Raj Kumar for Pltfs.

Mr. Michael Thomas, Q.C. with
Mr. Loh Boon Huat for Defts.

GROUNDS FOR JUDGMENT

20

The ship "The Halcyon Isle" was arrested
in Admiralty Suit 151/74 by Bankers Trust
International Ltd., who are the mortgagees of
this vessel hereinafter referred to her as
the "BTI mortgagees" on 5/9/74 in Singapore.

30

The ship was subsequently sold on 5/3/75
and the proceeds have been paid into court.
Various necessary payments over which there
were no disputes have been made under orders
of court. Time for claims to come in expired
on 6/8/75 and the claims that are before this
court on the balance of the proceeds of sale
are as set out in the list Exhibit 'C'. There
are in all 13 claims.

40

There is now before me a BTI Mortgagee's
Motion in Admiralty Suit No. 151/74 for the
determination of the priority of payments to
the several claimants against the fund now
in court in these proceedings. There is no
dispute over claims Nos.1-4 in the list 'C'
as all parties agree that these claims can
be paid before other claims. It is conceded
by all parties that claims Nos.6-11 on the
list have no priority over claim 12. As the

In the High Court of the Republic of Singapore

No.17

Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

fund in court is insufficient to meet claim 12 in full claims Nos.6-11 require no consideration. We also are not concerned with claim 13 which is a further claim of BTI Mortgagee.

The only contest as to priority of payment before BTI Mortgagee's claim No.12 comes from Messrs. Todd Shipyards Corporation, hereinafter referred to here as "Todds", who are the claimants in claim No.5 on the list 'C'.

10

Todds' claim is for \$237,011/- with interest thereon for repairs executed, materials supplied and services rendered to the vessel "Halcyon Isle" at their repair yard at Brooklyn, New York during March 1974 pursuant to a contract with the owners of the vessel and evidenced by their letter dated 1st March 1974 to the owners of the vessel. Todds say that their claim for repairs done to this vessel under the laws of the United States of America carried a maritime lien on the vessel and hence over the fund now in court and therefore they are entitled to priority of payment on their claim over BTI Mortgagee's claim which is merely that of a mortgagee of the vessel. BTI Mortgagee's claim is for \$14,413,000/- secured by a statutory mortgage on vessel "Halcyon Isle" registered on 8th May 1974.

20

30

It is not in dispute that Todds' claim for repairs of the vessel under the laws of the United States of America conferred a maritime lien on the vessel. The only dispute is whether Todds' claim for repairs to the vessel carries maritime lien under our laws.

Todds in their motion dated 23.5.1975 in Admiralty Suit in Rem No.150/74 seek a declaration that they are entitled to and/or have in respect of their claim a maritime lien on the vessel "Halcyon Isle" within the meaning of section 4(3) of the High Court (Admiralty Jurisdiction) Act of Singapore.

40

Both these motions were heard together and the evidence in one motion was by consent to be treated as the evidence in the other motion.

Mr. George L. Varian gave expert evidence in his affidavit sworn on 21/4/75 on the law of the United States of America on the existence of a maritime lien on the vessel for Todds' claim and connected matters.

In the High Court of the Republic of Singapore

No.17

He referred to 46 United States Code, Section 971 which reads as follows :

Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

10

"Section 971. Persons entitled to lien

Any person furnishing repairs, supplies towage, use of dry dock or marine railway, or other necessaries, to any vessel, whether foreign or domestic, upon the order of the owner of such vessel, or of a person authorized by the owner, shall have a maritime lien on the vessel, which may be enforced by suit in rem, and it shall not be necessary to allege or prove that credit was given to the vessel. "

19th January 1977

(continued)

20

He said under United States Maritime law Todds' claim here for repairs performed on the vessel "Halcyon Isle" gave rise to a valid maritime lien which conferred upon Todds rights of the same nature and quality as are conferred upon the holder of a maritime lien under English law.

There is no serious dispute on Mr. George L. Varian's evidence.

30

What is in issue here is whether Todds on their claim are entitled to maritime lien under our laws.

It is also not in dispute that the substantive rights of Todds' contract like any other contract is to be decided by the proper law of the contract which here is United States law. It is also not in dispute here that rights concerning the remedies under a contract and procedure are governed by the lex fori and so here it will be our laws.

40

So the main question that has to be answered is whether a maritime lien is on the one hand a substantive right of Todds contract or on the other hand a remedial or procedural right.

To answer this question it would be helpful

In the High Court of the Republic of Singapore

No.17

Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

to have a quick look at the early English Admiralty procedure as our Admiralty law is almost the same as its English counterpart.

In the 17th and 18th centuries the ordinary mode of commencing a suit in the Admiralty Court was by the arrest of the person of the defendant or his goods. It would appear that under this early practice the distinction between actions in personam and actions in rem depended on whether the defendant or the property of the defendant was arrested in the first instance. If the defendant appeared the procedure and effect of the action in rem became those of an action in personam. Courts of Common Law began cutting down on the jurisdiction of the Admiralty Court by frequently issuing prohibitions against it. Several changes in law or practice took place. Actions beginning with arrest of the person became obsolete in practice by the end of the 18th century and arrest of the property of the defendant merely to enforce his appearance became rare or obsolete. Gradually arrest of property over which a lien could be enforced became more common as the idea of a pre-existing maritime lien developed, and the arrest of property in order to assert, for the creditor, that legal nexus over the proprietary interest of his debtor, as from the date of attachment, grew up. The result was that arrest became the distinctive feature of the action in rem such arrest having primarily for its object the satisfaction of the creditor's claim out of the property seized limited to the amount of the rem. Of course if the debtor appeared then the action from then onwards proceeded like an action in personam and the debtor became liable for the full amount of the judgment even though it may be more than the rem.

This is broadly how Sir Francis Jeune traced the development of Admiralty proceedings in the 17th and 18th centuries 'In the Dictator' (1892) P.304.

The concept of maritime lien so far as English law is concerned seems to have had its

origin in the early procedure of the Admiralty Court of the arrest of the debtor's property to secure the appearance of the debtor.

In the High Court of the Republic of Singapore

No.17

Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

10 A maritime lien though it is over a thing must always begin with the personal liability of its owner. Lord Watson in "The Castlegate", (1893) AC.38 at 52, stated this same idea thus "inasmuch as every proceeding in rem is in substance a proceeding against the owner of the ship, a proper maritime lien must have its root in his personal liability." As soon as the cause action giving rise to the claim occurs and liability arises the maritime lien automatically attaches to the property.

20 In "The Bold Bucclough", (1851) 7 Moo P.C. 267, the definition of a maritime lien as recognised by the law maritime given by Lord Tenterden was adopted - "It is a privileged claim upon a thing in respect of services done to or injury caused by it, to be carried into effect by legal process." It was further stated in that case that "This claim or privilege travels with the thing into whosoever possession it may come. It is inchoate from the moment the claim or privilege attaches and when carried into effect by legal process, by a proceeding in rem, relates back to the period when it first attached."

30 A maritime lien which was conferred on a creditor for his claim for services rendered to or damage caused by the res against its owner, gave him the right to take proceedings in rem to have the res seized and sold by the court and its proceeds applied subject to certain priorities towards satisfying his claim.

40 In order to give the 'privileged' creditor adequate protection and to see his rights are not defeated by the debtor parting with the ownership of the res the law also conferred that once the lien attached to the res it remained binding on the res and followed the res even into the hands of an innocent purchaser until it was discharged either by being satisfied or from the laches of the owner or in any other way by which by law it might be discharged. This latter attribute of a maritime lien is not based on any principle of law but rather on commercial expediency to protect such a creditor.

50

In the High Court of the Republic of Singapore

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Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

A right which originated as a remedy would appear now with this engrafted attribute to have been elevated to a substantive right under a contract. In my opinion in reality this is not so and a maritime lien remains essentially as a remedy though it appears to have some attributes of a substantive right. Our law like English law recognises maritime lien for claims for salvage, seamen's wages, master's wages disbursements and liabilities and damage. The list is almost complete except for any created by statute.

10

The views of the judges of the Court of Appeal in U.K. in the case of "The Tarvast" 1922 P.259 and in particular that of Atkin, L.J. are most helpful and indicate that it is essentially a remedial right. "The Tarvast", a ship owned by the Belgian Government came into collision with an English ship "The Lynntown" on the "high seas" and "The Lynntown" sustained damage. Subsequently "The Tarvast" was sold to private owners and thereafter when it came into English territorial waters at Barry Docks it was arrested by the owners of "The Lynntown" in an action in rem. On a motion to set aside the arrest the respondents contended that a maritime lien attached to "The Tarvast" as a result of the collision, had remained dormant and ineffective while it was owned by the Belgian Government but became effective when under private ownership it came into English territorial waters and enforceable against the ship and its present owners. The President adopted this argument and dismissed the motion. In appeal the Court of Appeal unanimously reversed this decision. Atkin, L.J. said :

20

30

" But in my judgment upon a true analysis of what is meant by a maritime lien the right to such a lien is not such as can be created at all by the act of a sovereign. It is not a right to take possession or to hold possession of the ship. It is confined to a right to take proceedings in a Court of Law to have the ship seized, and, if necessary, sold.

40

.....But whether it be directly or indirectly, the owner who is a foreign sovereign cannot be impleaded at all.

10 The result appears to me to be that the maritime lien against a foreign sovereign cannot exist at all. A right which can only be expressed as a right to take proceedings seems to me to be denied where the right to take proceedings is denied. No independent liability of sovereign such as a liability for debt or damage remains pendent protected only by an immunity from legal proceedings. The right of maritime lien appears, therefore, to be essentially different from a right of property hypothec or pledge created by the voluntary act of the sovereign. "

In the High Court of the Republic of Singapore
No.17
Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974
19th January 1977
(continued)

20 Here Atkin, L.J. shows up in relief the essentially remedial character of a maritime lien. It does not by itself confer any proprietary rights in the res on the person who has such a lien but it merely confers a right to proper legal process to enable him to acquire some proprietary rights in the res.

Bankes, L.J. said :

30 "Whether a maritime lien is properly to be regarded as a step in the process of enforcing a claim against the owners of a ship, or as a remedy or partial remedy in itself, or as a means of securing a priority of claim, it cannot, in my opinion, consistently with the rule of immunity laid down by the law of nations, be attached to a vessel belonging to a sovereign power and being used for public purposes."

40 Bankes, L.J. went on to refer to the decision in *Eususurus Bey v Gadban* (1894) 2 Q.B.352, where it was held that the issue of a writ against an ambassador in order to prevent the running of the Statute of Limitation, and though followed by no further step of serving or attempting to serve him was void ab initio, and then said:

" It seems to me impossible consistently with the law as there expressed to hold that it is permissible to recognize a maritime lien as attaching to the property of a sovereign or a sovereign state. I see no distinction in principle between the act of the individual issuing the writ

In the High Court of the Republic of Singapore

No.17

Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

and the act of the law attaching the lien. Each equally offends the rule affording immunity."

Scrutton, L.J. said:

" In my view it is now established that procedure in rem is not based upon wrongdoing of the ship personified as an offender, but is a means of bringing the owner of the ship to meet his personal liability by seizing his property. The so-called maritime lien has nothing to do with possession, but is a priority in claim over the proceeds of sale of the ship in preference to other claimants.

10

. . . At the time of the collision, if it happened in English waters, would it have been possible to arrest the Tarvasts and claim maritime lien? The well-known decision of The Parlement Belge, 5 P.D. 197, compels the answer in the negative. Neither the Belgian Government could have been sued in personam, nor could their ship have been arrested in rem. If this is so, I do not understand how there could then be any maritime lien on the ship."

20

Both these passages from the other 2 judges also show the procedural character of this right. These passages stress that as one cannot pursue his claim by legal process in a Court against a foreign sovereign such a claim will not give rise to a maritime lien over the res of the foreign sovereign. This exemplifies that whatever right of property would be conferred by a maritime lien would not be complete in itself and would be dependent on legal process to have it perfected.

30

In "The Acrux" (1965) P.391, the issue before the English Court was whether a claim for certain insurance contributions on social insurance benefits to seamen employed in an Italian Registered ship "The Acrux" due from the owners of the ship could be enforced by an action in rem when such a claim under Italian law was secured by a maritime lien.

40

Hewson, J. in his judgment referred the judgment of Scott, L.J. in "The Tolten" (1946) P.135, where he quoted from Dicey's Conflict of

Laws, 5th Ed. P.25 as follows :

In the High Court of the Republic of Singapore

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Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

10 " A judgment in rem is obtained against a ship in a foreign court of Admiralty where the plaintiff in the foreign action is entitled to recover £25,000. The judgment not having been satisfied, the ship comes into an English port. A. the plaintiff in the foreign action, brings an action in rem against the ship in respect of the foreign judgment. The court has jurisdiction to entertain the action. This claim (it is submitted) may be put in a more general form, and it may be laid down that the court has jurisdiction to entertain an action in rem for the enforcement of any maritime lien if the case is one in which, according to English law, maritime lien exists."

20 After his quotation from Dicey's, Scott, L.J. said :

30 " I regard it as an accurate statement of English law about maritime liens intentionally expressed by the author in general terms. He was a great master of the whole subject of Conflict of Laws, and discusses the Mocambique case, (1893) A.C.602, at length in the book. He was far too careful and prudent a writer to omit any relevant qualification when enunciating an absolutely general principle of law, such as the above paragraph."

40 Hewson, J. found that this claim for unpaid insurance contributions is not one which is recognised by the English Court and having regard to Scott, L.J.'s approval of the views expressed by Dicey in the passage quoted he refused jurisdiction to entertain that claim.

Using the same reasoning in the case before us though Todds' claim for the costs of repairs performed to the vessel "Halcyon Isle" at its repair yard in New York in March 1974 carried a maritime lien under the laws of the United States of America yet our courts will not recognise or confer on such a claim for ship repairs a maritime lien as our law

In the High Court of the Republic of Singapore

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Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

does not recognise nor confer a maritime lien for this class of claim as ship repairs.

Though our courts will not recognise Todds' claim for a maritime lien as it is not considered as a substantive right of the contract covering such repairs, however this court will recognise their claim for repairs executed on the ship as this court has jurisdiction to entertain such an action in rem and in fact Todds' claim has been accepted and Todds have obtained judgment on their claim in their Admiralty Suit.

10

Now I turn to consider a few of the main cases referred to in the arguments before me.

The first case I would like to consider is "The Colorado", 1923 P.102.

In this case on a motion to determine priorities between 2 claimants, one an English firm of ship repairers on a judgment for necessaries against the ship and the other a French Bank on a judgment against the ship on a registered French Deed of mortgage, called a 'Hypothèque' on the ship Hill, J. after having heard evidence from a French lawyer on French Law regarding what a 'Hypothèque' was and what rights it conferred on the holder held that the holder of the French registered mortgage had priority over the necessaries men. He found on the evidence that the mortgagee here had a right to proceed by legal process against the ship and that the right also travels with the res into whosoever hands it may come so that the right could be enforced whether the ship at the time of enforcement belonged to the debtor or to someone else. He thought the right here was a limited right of property. In substance he thought that the right of property under the 'Hypothèque' to be not very different from the right of property of an English mortgagee. As against this right the necessaries men had only a right given by statute to proceed against the ship. The evidence also showed that under French law the French mortgagee ranked below necessaries men.

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Hill, J. however applied the English law of priorities, the lex fori, and held that the French mortgagee ranked above the necessaries men claimant.

The English necessities men appealed against this judgment of Hill, J. and the Court of Appeal unanimously dismissed this appeal. Bankes, L.J. in the course of his judgment said :

In the High Court of the Republic of Singapore

No.17

Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

10 " I do not think that the evidence left the question entirely free from doubt, but, in my opinion, the learned judge was quite justified upon the evidence in taking the view he did, namely, that the right created by the mortgage deed was a higher right than the mere right to proceed in rem, and though not capable of exact description in terms applicable to well-recognised English right, it yet had attributes which entitled it to rank on a question of priorities in the same class as maritime lien or the right created by an English mortgage. For these reasons 20 the appeal, in my opinion, fails, and must be dismissed with costs."

Scrutton, L.J. in the course of his judgment said :

30 " Now the English court has a claim from an English necessities man who has no possessory lien, but merely in England a right to arrest the ship in rem to satisfy its claim against the owner of the ship. It has also a claim by a person who has a 'hypothec', and may legitimately consult the foreign law as to what a Hypotheque is. It is proved to be, not a right of property in the ship, but a right to arrest the ship in the hands of subsequent owners to satisfy a claim against a previous owner. But such a right is the same as a maritime lien as described by Dr. Lushington in the case of The Two Ellens (sup.); by Gorell Barnes, J. (as he then was) in The Ripon City (8 Asp. Mar. Law cas. 304; 77 L.T. Rep. 98; (1897) P.226); and by this court in the case of The Tervastte (16 Asp.Mar. Law Cas.48; 128 L.T. Rep 176; (1922) P.259). And the English courts administering their own law would give a claim secured by a maritime lien priority over the claim of a necessities man, who cannot arrest the ship against a subsequent owner. 50

In the High Court of the Republic of Singapore

No.17

Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

The fallacy of the appellants' argument appears to be when they argue that because the French courts would give a French necessaries man, or a necessaries man suing in the court of France, priority over the claimant under a 'hypothec' therefore an English court should give an English necessaries man similar priority. The answer is that their client is not asking for French remedies, but English remedies; and the English law postpones him to a person who has what is equivalent to maritime lien.

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For these reasons I think the judge below came to a right conclusion in postponing the English necessaries man to the hypothecaire, and that the appeal should be dismissed."

Atkin, L.J. in the course of his judgment said:

" I think myself that the question is one of fact, viz., the nature of a "hypothec" on a ship as created by French law. One has to deal with such questions remembering the presumption that unless there is proof to the contrary foreign law will be presumed to be the same as English. I do not think that the French law on the subject was very clearly elicited, and I am not prepared to differ from the finding of the learned judge who, I think, came to the conclusion that the only right given was the right to have the ship seized, and the proceeds applied to payment of the hypothec, notwithstanding a change of ownership - a right closely resembling a maritime lien - and that the right of priorities was a provision as to the remedy that would be given by French law, and therefore would not be followed in an English court.

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It is plain that the appellant can only succeed by showing that the Respondent has no right to which the English Court could award a prior remedy, and on the judge's finding he fails."

I cannot agree with the proposition that "The Colorado" case decided that the French

mortgagee, the holder of a 'Hypothèque' on a ship under French law had a maritime lien on that ship which the English court recognised and applied the English law of priorities and gave the French mortgagee priority over the English necessaries men.

In the High Court of the Republic of Singapore

No.17

Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

10 French law was admitted to understand the nature of the French mortgagee's claim under a 'Hypothèque' which was unknown to English law and what rights such a 'Hypothèque' conferred on the holder.

20 From the passage I have quoted from Bankes, L.J.'s judgment it appears clear that he did not find that the 'Hypothèque' gave rise to a maritime lien on the ship which the English Court accepted and thereafter applied the English law to decide the question of priorities. That was not the basis of his decision. So also from the judgment of Atkin, L.J. it cannot be said he made any such finding that the rights under a 'Hypothèque' gave rise to a maritime lien which the English Court recognised and on that basis applying the English law on priorities gave priority to a 'Hypothèque' holder over the necessaries man.

30 Atkin, L.J. in an earlier portion of his judgment to the passage I have quoted above said ".....in determining whether there exists a maritime lien, the court will apply the lex fori, and will give effect to the lien as it exists by English law: (see the case of The Wilford, sup:; The Tagus, sup.)"

40 This shows that Atkin, L.J. had in mind that the maritime lien was a right concerning remedy under the contract and not a substantive right of the contract and therefore to be decided by the lex fori and not by French law which was the proper law of the contract.

It is difficult to conceive that Atkin, L.J. after having so directed himself would have made a finding that the French registered mortgage or 'Hypothèque' conferred a maritime lien which the English Court would enforce when there was no such right or remedy in

In the High Court of the Republic of Singapore

No.17

Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

English law for such a claim.

Scrutton, L.J. however appears to have held that the French registered mortgage conferred a maritime lien which he recognised and proceeded to apply the English order of priority. From the passage quoted it would appear that he was more concerned then with deciding the question as to what law should be applied on matters concerning priority of payment among claimants. He went on to decide that the *lex fori* and not the French law should govern this matter.

10

The decision in 'The Colorado' appears to be that the 'Hypothèque' or French mortgage in question conferred on its holder some sort of a proprietary right on the ship which entitled him under English law to rank higher than the necessaries men who had a mere right to sue in rem. There was no finding that the French mortgagee under the 'Hypothèque' had acquired a maritime lien, which the English Court recognised.

20

I do not agree that the decision in the 'Colorado' went so far as to be authority for the proposition that a maritime lien is a substantive right and if a claim under a foreign contract gives rise to a maritime lien under the proper law of that contract, which is French law here, then the English Court would recognise that maritime lien, enforce it, and ordain the holder of such a maritime lien the priority that English law normally accords to holders of maritime liens.

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The next one is a Canadian case. In "The Standhill" case, 1926 SCR 680, Hodder Co. carrying on business in Boston in the United States of America sought by an action in rem in the Exchequer Court of Canada in Admiralty to recover the price of necessaries furnished to the ship in an American port under an American contract and such a claim by the law of United States of America carried a maritime lien. The owner of the ship at the time of the contract was domiciled and resident in the United States. The ship then known as "The Lincolnland" was registered there. Later and before this action the ship was sold, her name changed and she became of British registry.

40

Canadian Admiralty law which is similar to the English law and our law conferred no maritime lien on necessaries men. The only question at issue was whether the Canadian Court had jurisdiction to entertain this claim against the ship. The Canadian Supreme Court held that as the maritime lien was a right acquired under the American Contract according to the lex loci contractus the Canadian Court will recognise and enforce that right notwithstanding that it was or may have been acquired under the law of a foreign country as it was not opposed to any rule of domestic policy or procedure. The court was making this order only on the question of jurisdiction and Newcombe, J. who delivered the judgment of the Court qualified it by saying "if it should appear at the trial that subsequent interests have intervened and that conflicting priorities are to be adjudged other consideration may arise which have not been decided and as to which I am careful to say that I do not express any opinion."

In the High Court of the Republic of Singapore
No.17
Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974
19th January 1977
(continued)

The almost entire American connections of the whole incident until the subsequent sale of the ship probably had moved the sympathy of the Canadian Court in arriving at this decision. However with respect I find this decision difficult to justify on principles.

In the case of the "Astoria", (1927) 4 DLR 1022, another Canadian case, again, the question at issue was one of jurisdiction. The plaintiff a company carrying on business in New York supplied necessaries to "The Astoria" whose port of registration was New York. There goods were ordered and received by the "Astoria" while she was lying at the port of Mystic, Connecticut. Needless to add that this contract too under United States law acquired a maritime lien. Subsequently in the court of Exchequer of Canada in Admiralty the plaintiff company brought an action against the "Astoria" for the price of necessaries supplied. Two questions came up for decision, first, whether the goods were supplied in New York or in Mystic, Connecticut and secondly whether the Court of Exchequer of Canada had jurisdiction over

In the High Court of the Republic of Singapore

No.17

Grounds of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

such a claim. The answers were that the goods were supplied at Mystic, Connecticut which is not the port to which the ship belonged and therefore the Court of Exchequer of Canada had jurisdiction over such a claim.

In appeal MacLean, P. affirmed the decision of the court of first instance on its findings on both the questions and in addition indicated that irrespective of in which port the goods were supplied following the decision in "The Standhill" case the Court of Exchequer of Canada had jurisdiction over the claim on the basis of its maritime lien.

10

MacLean, P.'s remarks on jurisdiction being founded on the existence of a maritime lien should be considered as obiter as it was not necessary for the decision in this case in view of his earlier findings.

Finally there is the case of the "Ioannis Daskalelis", (1974) 1 Lloyd's Rep. 174, which is yet another Canadian Case but the issue here was one of priority of payment and not of jurisdiction. An American necessities man had a claim for repairs done to the said ship in their yard in the United States. It was contended that his claim carried a maritime lien acquired under United States law and that such a maritime lien should be recognised by the Canadian Court and accorded the priority that Canadian law as the lex fori gave such a lien holder over the other competing claimant on a registered mortgage.

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The Supreme Court of Canada agreed with his contention and held that the American necessities man had priority over the opposing registered mortgagee. The Supreme Court based their decision for recognising the maritime lien acquired under United States law on the decision in "Standhill" case and it claimed that it also followed the decision of the "Colorado" case both for recognising the maritime lien in question and for applying the Canadian law for deciding the order of priorities.

40

As I have already dealt with both these cases it is not necessary for me to comment much except to say that the "Standhill" is no

authority for cases where questions of priority are at issue. While I do not agree with respect with the decision in this case I would like to observe that the very peculiar facts and circumstances of this case are such as could justify and support such a decision merely on them.

In the High Court of the Republic of Singapore

No.17

Ground of Judgment in Action No.150 of 1974 and No.151 of 1974

19th January 1977

(continued)

10 For all these reasons I hold that the BTI Mortgagee's claim shall have priority over Todds' claim. Consequently Todds' motion for a declaratory order also fails.

Todds shall pay the costs and I also certify this is a proper matter for two counsel's fees.

(Sgd) T. Kulasekaram

(T. KULASEKARAM)

J U D G E

19/1/77

Certified true copy

(Sgd)

20 Private Secretary to Judge
Court No.7

19/1/77

No.18
 Exhibit "C"
 List of Claimants referred to in Judgment of Kulasekaram J. at page 58 of Record Undated

No. 18
 EXHIBIT "C"
 List of Claimants referred to in Judgment of Kulasekaram J. at page 58 of Record - Undated

<u>Names of Claimants</u>	<u>Suit No.</u>	<u>Amount of Claim</u>	<u>Nature of Claim</u>	<u>Date Judgment entered</u>	<u>Solicitors for Claimants</u>
1. The Sheriff		₹58,468.00	Sheriff's expenses		
2. Capt. Williams & 14 officers and 36 crew members	Adm.in rem 422/73	₹115,829.35	Wages of 36 Indian crew members and costs of maintenance and repatriation of Master, 14 officers & crew members		Allen & Gledhill
3. Capt. Williams and 35 officers	Adm.in rem 312/75	₹142,477.71	Wages and other sums of money due or earned as officers on board the "HALCYON ISLE"		Drew & Napier
4. The Owners, Master & crew of the ship or vessel "MISSISSIPPI"	Adm.in rem 178/74	₹59,850.00 ₹14,942.42 (taxed costs)	Salvage services rendered to vessel "HALCYON ISLE" her cargo and freight.		Drew & Napier
5. Todd Shipyards Corporation	Adm.in rem 150/74	₹237,011.00	Material supplied and repairs carried out on "HALCYON ISLE"		Donaldson & Burkinshaw
6. Keppel Shipyard Private Limited	Adm.in rem 17/75	₹153,923.04	Materials supplied and repairs executed to the "HALCYON COVE"		Rodyk & Davidson

<u>Names of Claimants</u>	<u>Suit No.</u>	<u>Amount of Claim</u>	<u>Nature of Claims</u>	<u>Date Judgment entered</u>	<u>Solicitors for Claimants</u>	<u>No.18 Exhibit "C" List of Claimants referred to in Judgment of Kulasekaram J. at page 58 of Record Undated (continued)</u>
7. The Port of Singapore Authority	Adm. in rem 70/75		Pilotage, Garbage removal and Port dues incurred by "HALCYON ISLE"		Rodyk & Davidson	
8. Ben and Company Limited	Adm. in rem 154/74	86,816.93	Necessaries supplied to the owners of "HALCYON ISLE"		Chan, Goh & Co.	
9. Gray Mackenzie Co.Ltd.	Adm. in rem 35/75	73,567.81	Provisions and water supplied to the vessel "HALCYON COVE"		Rodyk & Davidson	
10. Bahrain Slipway Co.Ltd.	Adm. in rem 180/74	43,107.96	Repairs and other expenses carried out to the vessel "HALCYON ISLE"		Rodyk & Davidson	
11. Daiyu-Kogyo Co.Ltd.	Adm. in rem 174/74	96,575.50	Repairs executed to the "HALCYON COVE"		Drew & Napier	
12. Bankers Trust International Limited	Adm. in rem 151/74	14,413,000.00	Claim under a mortgage		Allen & Gledhill	
13. Bankers Trust International Limited	Adm. in rem 290/75	122,620.92	Premiums paid in respect insurance cover		Allen & Gledhill	

In the High
Court of the
Republic of
Singapore

No.19

Order of Court
of Kulasekaram
J. in Action
No.150 of 1974

19th January
1977

No. 19

ORDER OF COURT OF
KULASEKARAM J. IN
ACTION No.150 of 1974
- 19th January 1977

IN THE HIGH COURT OF THE REPLUBIC OF SINGAPORE

Admiralty in Rem)
No.150 of 1974) Admiralty action in rem
against the vessel
"HALCYON ISLE" 10

Between

Todd Shipyards Corporation
Plaintiffs

And

The Owners of and other
persons interested in the
vessel "HALCYON ISLE"
Defendants

ORDER OF COURT

BEFORE THE HONOURABLE MR.JUSTICE KULASEKARAM 20

IN OPEN COURT

Upon the adjourned Motion dated the 23rd day of May 1975 preferred unto Court this day by Counsel for the Plaintiffs and Upon Reading the affidavit of Selvadurai Rajkumar filed herein on the 23rd day of May 1975 and the exhibits therein referred to and the affidavit of Mootatamby Karthigesu filed in Admiralty in rem No.151 of 1974 on the 18th August 1975 and the exhibits therein referred to and Upon Hearing arguments by Counsel for the Plaintiffs and Counsel for the Interveners Bankers Trust International Limited in respect of Prayer 1 of the said Motion dated the 23rd day of May 1975 IT IS ORDERED that the Plaintiffs' application for an order in the terms of Prayer 1 of the said Motion dated the 23rd day of May 1975 be and is hereby dismissed and IT IS FURTHER ORDERED that costs be paid by the Plaintiffs to the Interveners Bankers Trust International Limited. 30 40

Dated the 19th day of January 1977

(Sgd)

ASST. REGISTRAR

No. 20

PETITION OF APPEAL IN
ACTION No.150 - 13th May 1977

In the Court
of Appeal of
the Republic
of Singapore

No.20

IN THE COURT OF APPEAL IN SINGAPORE
CIVIL APPEAL NO. 6 OF 1977

Petition of
Appeal in
Action 150

13th May 1977

Between

Todd Shipyards Corporation

Appellants

And

10 The Owners of and other persons
interested in the vessel
"HALCYON ISLE"

Respondents

And

Bankers Trust International Limited Respondents

(In the Matter of Admiralty in Rem No.150 of 1974)

Between

Todd Shipyards Corporation

Plaintiffs

And

20 The Owners of and other persons
interested in the vessel
"HALCYON ISLE"

Defendants

And

Bankers Trust International
Limited

Interveners

PETITION OF APPEAL

To the Honourable the Judges of the Court of Appeal.

The Petition of the abovenamed Appellants
showeth as follows :-

30 1. This Appeal arises from prayer 1 of a
Motion taken out by the Appellants/Plaintiffs for
the following orders :-

In the Court
of Appeal of
the Republic
of Singapore

No.20

Petition of
Appeal in
Action 150

13th May 1977

(continued)

- (1) A declaration that the Plaintiffs are entitled to and/or have a maritime lien in respect of their claim against the "HALCYON ISLE" within the meaning of section 4(3) of the High Court (Admiralty Jurisdiction) Act (Cap. 6 of the Revised Edition 1970);
- (2) That judgment be entered for the Plaintiffs in the sum of \$237,011.00 being the equivalent of US\$95,569.00 together with interest thereon at the rate of 8% per annum from the 1st of August 1974 to date of judgment or at such other rate and for such other period as to this Honourable Court seems just; 10
- (3) That the Plaintiffs' costs of this action including the costs of this Motion be taxed as between party and party;
- (4) That the above mentioned sum of \$237,011.00 together with interest thereon and the Plaintiffs' costs when taxed be paid out of the proceeds when the said vessel "HALCYON ISLE" is sold. 20

2. By Order dated the 19th day of January 1977 Judgment was given for the Respondents/Intervenors when the said prayer was disallowed with costs.

3. Your Petitioners are dissatisfied with the said Judgment on the following grounds:-

- (i) The Learned Judge in deciding the order of priority for payment out of the proceeds of sale of the vessel "HALCYON ISLE" between the mortgage claim of Bankers Trust International Limited and the ship repair claim of Todd Shipyards Corporation (Todd) was in error in preferring the mortgage claim when the accepted order of priorities classes a maritime lien before a mortgage and the proper law of the repair contract (the law of the United States of America) gave Todd a maritime lien on the vessel; 30 40
- (ii) The Learned Judge was in error in holding that a maritime lien was by

its nature remedial and a matter of procedure. He ought to have found that it was a matter of substantive right, the existence and nature of which is governed by the proper law of the contract giving rise to the maritime lien;

In the Court
of Appeal of
the Republic
of Singapore

No.20

Petition of
Appeal in
Action 150

13th May 1977

(continued)

10

(iii) The Learned Judge was in error in failing to recognise and give effect to the maritime lien created by the proper law of Todd's contract and failing to make the declaratory order prayed for;

(iv) The Learned Judge was in error in failing to follow the decision of the Supreme Court of Canada in the "Ioannis Daskalelis" (1974) 1 Lloyd's Reports 174.

20

4. Your Petitioners pray that such judgment may be reversed or set aside and that prayer 1 be decided in their favour.

Dated the 13th day of May 1977

(Sgd)

Solicitors for the Appellants

To: The Registrar,
Supreme Court,
Singapore 6.

And to:
The Interveners/Respondents
and their Solicitors,
Messrs. Allen & Gledhill,
Singapore 1.

30

The address for service of the Appellants is at the office of Messrs. Donaldson & Burkinshaw No.9 Mercantile Bank Chambers, Singapore 1.

In the Court
of Appeal of
the Republic
of Singapore

No 21

Judgment of
the Court of
Appeal in
Civil Appeals
Nos.6 and 7 of
1977

8th December 1977

No. 21

JUDGMENT OF THE COURT OF
APPEAL IN CIVIL APPEALS
Nos. 6 and 7 of 1977
8th December 1977.

IN THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

CIVIL APPEALS Nos. 6 and 7 OF 1977

CIVIL APPEAL No.6 OF 1977

Between

10

Todd Shipyards Corporation Appellants

And

The Owners of and other persons
interested in the vessel
"Halcyon Isle" Respondents

And

Bankers Trust International
Limited Respondents

(In the Matter of Admiralty in Rem No.150 of 1974)

Between

20

Todd Shipyards Corporation Plaintiffs

And

The Owners of and other persons
interested in the vessel
"Halcyon Isle" Defendants

CIVIL APPEAL No. 7 OF 1977

Between

Todd Shipyards Corporation Appellants

And

The Owners of and other persons
interested in the vessel
"Halcyon Isle" Respondents

	And		In the Court of Appeal of the Republic of Singapore
	Bankers Trust International Limited	Respondents	No.21
	(In the Matter of Admiralty	in Rem No.151 of 1974)	Judgment of the Court of Appeal in Civil Appeals Nos. 6 and 7 of 1977
	Between		8th December 1977
	Bankers Trust International Limited	Plaintiffs	(continued)
10	The Owners of the vessel "Halcyon Isle"	Defendants	
	And		
	Todd Shipyards Corporation	Interveners	
	Coram: Wee Chong Jin, C.J. F.A. Chua, J. A.P. Rajah, J.		

JUDGMENT

20 Todd Shipyards Corporation, an American corporation, pursuant to a contract entered into in New York executed repairs and supplied materials at their repair yard at Brooklyn, New York, U.S.A. in March 1974 to the ship "Halcyon Isle", a British ship. They sued the owners of the ship in the High Court in Admiralty in Rem No.150 of 1974 issued on 24th August 1974 claiming \$237,011.00 as remaining due and owing to them in respect of the said repairs. They contend that under American law they are entitled to a maritime lien on the ship in respect of their claim for repairs. They contend

30 that their maritime lien on the ship confers upon them rights of the same nature and quality as is conferred upon the holder of a maritime lien under the law of Singapore and that they are entitled to and/or have a maritime lien in respect of their claim within the meaning of Section 4(3) of the High Court (Admiralty Jurisdiction) Act.

40 Bankers Trust International Limited, a English company, had a first mortgage dated 1st March 1973 registered in London on 8th May 1974 in respect of the ship. They sued the

In the Court
of Appeal of
the Republic
of Singapore

No.21

Judgment of
the Court of
Appeal in
Civil Appeals
Nos. 6 and 7
of 1977

8th December 1977

(continued)

owners of the ship in the High Court in Admiralty in Rem No.151 of 1974 issued on 28th August 1974 claiming \$14,413,000.00 as due and owing on the said mortgage. In September 1974 the ship while in Singapore waters was arrested by the mortgagees and pursuant to an order of the High Court was eventually sold for \$1,380,000.00 in February 1975 and the proceeds of sale were paid into court. The mortgagees obtained judgment on their claim for \$14,413,000.00 also in February 1975.

10

In July 1974 Todd Shipyards Corporation (hereinafter referred to as "the ship repairers") moved the High Court for, inter alia, the following orders :-

1. A declaration that the Plaintiffs are entitled to and/or have a maritime lien in respect of their claim against the "Halcyon Isle" within the meaning of Section 4(3) of the High Court (Admiralty Jurisdiction) Act (Cap. 6 of the Revised Edition (1970))
2. That judgment be entered for the Plaintiffs in the sum of \$237,011.00 being the equivalent of US\$95,569.00 together with interest thereon at the rate of 8% per annum from the 1st of August 1974 to date of judgment or at such other rate and for such other period as to this Honourable Court seems just.

20

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The mortgagees intervened in that application and the prayer for a declaration was adjourned but the court gave judgment in favour of the ship repairers for \$237,011.00. Subsequently the mortgagees moved the High Court to determine the priority of payments to the several claimants against the proceeds of sale of the ship. The only claimant claiming priority as against the mortgagees was the ship repairers who contend they have a maritime lien on the ship.

40

The High Court heard the mortgagees' motion and the adjourned motion of the ship repairers for a declaration at the same time and dismissed the ship repairers' claim for

the declaration they sought and held that the mortgagees were entitled to rank before the ship repairers to payment of the proceeds of sale.

In the Court of Appeal of the Republic of Singapore

No.21

Judgment of the Court of Appeal in Civil Appeals Nos.6 and 7 of 1977

8th December 1977

(continued)

10 The ship repairers now appeal and the sole question in the two appeals is whether or not in a Singapore court the claim of the ship repairers for repairs executed in New York has priority as against the proceeds of sale of the ship over the claim of the mortgagees of the ship. It is not in dispute that under the law of Singapore the claim of a mortgagee has priority as against the proceeds of sale of a ship over the claim of a ship repairer for repairs executed in Singapore and that under the law of Singapore ship repairers do not have a maritime lien on a ship for repairs executed in Singapore. It is also not in dispute that a claimant who has a maritime lien under the law of Singapore has priority over a mortgagee claimant.

20

The foundation of the ship repairers' claim that they are entitled to priority over the mortgagees is that by American law they have acquired a maritime lien on the ship and that the law of Singapore will recognise and enforce their maritime lien in determining the priority of payments of competing claimants. Their argument is that a maritime lien is a substantive right in a ship attaching at the time the cause of action arose and not defeated by a subsequent bona fide purchaser without notice. It being a substantive right in the ship the law of Singapore recognises that right and enforces it when determining the priorities of competing claimants to the proceeds of sale of the ship.

30

The mortgagees accept that the ship repairers under American law have a maritime lien but contend that by the law of Singapore a maritime lien is not a substantive right in a ship but is merely a remedial right entitling certain creditors to seize a ship with the aid of the Admiralty court process and compel its sale regardless of ownership. They say foreign law will be admitted only when the nature of the claim asserted is not known to the court in order to enable the court to identify the nature of the claim

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In the Court of Appeal of the Republic of Singapore

No.21

Judgment of the Court of Appeal in Civil Appeals Nos. 6 and 7 of 1977

8th December 1977
(continued)

to decide whether or not to accept jurisdiction, what remedy is appropriate and how to fit the claim into the order of priorities. They say that the nature of the ship repairers' claim in the present case is a claim for repairs carried out to a ship which is a claim well known to the court and that the ship repairers in electing to invoke the jurisdiction of a Singapore court are only entitled to avail themselves of the remedies given by the lex fori. They say that the nature of the claim being a claim for repairs carried out to a ship the court has jurisdiction to hear and determine such a claim and in fact has given judgment in favour of the ship repairers on their claim for repairs but in determining priorities the court will apply the lex fori only and will disregard the position under American law. 10

The nature of a maritime lien is dealt with exhaustively by Scott L.J. in *The Tolten* (1946) P.135. At page 144 he said :- 20

" The maritime lien is one of the first principles of the law of the sea, and very far-reaching in its effects. In the *Bold Buccleugh*, Sir John Jervis delivering the judgment of the Privy Council, said this: 'Having its origin in this rule of the civil law, a maritime lien is well defined by Lord Tenterden, to mean a claim or privilege upon a thing to be carried into effect by legal process; and Mr. Justice Story (*I Sumner*, 78) explains that process to be a proceeding in rem, and adds, that wherever a lien or claim is given upon the thing, then the Admiralty enforces it by a proceeding in rem, and indeed is the only court competent to enforce it. A maritime lien is the foundation of the proceeding in rem, a process to make perfect a right inchoate from the moment the lien attaches.' The learned judge in that judgment added an obiter dictum which was subsequently disapproved; but that error does not touch the passage I have quoted. In the *Sara*, Lord Macnaghten said: 'A 'maritime lien', as was observed in the *Two Ellens* must be something which adheres to the ship from the time that the facts 30 40 50

happened which gave the maritime lien, and then continues binding on the ship until it is discharged....It commences and there it continues binding on the ship until it comes to an end.' In the Ripon City, Gorell Barnes J. reviewed the history of the maritime lien in our law in a long judgment from which, so far as I know, there has been no subsequent dissent. The following extracts describe the essential characteristics. He said: 'The definition of a maritime lien as recognized by the law maritime given by Lord Tenterden has thus been adopted. It is a privileged claim upon a thing in respect of service done to it or injury caused by it, to be carried effect by legal process.' Later on he continued: into 'The result of my examination of these principles and authorities is as follows: The law now recognizes maritime liens in certain classes of claims, the principal being bottomry, salvage, wages, masters' wages, disbursements and liabilities, and damage. According to the definition above given, such a lien is a privileged claim upon a vessel in respect of service done to it, or injury caused by it, to be carried into effect by legal process. It is a right acquired by one over a thing belonging to another - a jus in re aliena. It is, so to speak, a subtraction from the absolute property of the owner in the thing'."

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8th December 1977

(continued)

Later on, at page 145, Scott L.J. said :-

"The positive principle of the automatic attachment to the ship of the creditor's lien on it is, at least, as indubitably a rule of substantive law in admiralty, as the negative principle, on which the Mocambique rule rests, is at common law, and, I think, more so. I can see no prime facie reason why the admiralty principle should give way to the common law rule. That the creditor secured by his lien will be deprived of a vested right of property, if the court is prevented by the Mocambique rule from enforcing his lien, is obvious."

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(continued)

Again, at page 150, Scott L.J. said :-

"The essence of the 'privilege' was and still is, whether in Continental or in English law, that it comes into existence automatically without any antecedent formality, and simultaneously with the cause of action, and confers a true charge on the ship and freight of a proprietary kind in favour of the 'privileged' creditor. The charge goes with the ship everywhere, even in the hands of a purchaser for value without notice, and has a certain ranking with other maritime liens, all of which take precedence of mortgages."

10

It seems to us from the above passages that Scott L.J. was of the view that a maritime lien is a privileged claim and that the essence of the privilege is that it confers a true charge on the ship of a proprietary kind in favour of the "privileged" creditor.

20

In an earlier case, *The Tervaete* (1922) P.259 the nature of a maritime lien was also considered by the English Court of Appeal. Bankes L.J. spoke of a maritime lien as creating a *jus in re aliena*, a subtraction from the property in the following passage at pages 266-267 :-

" In spite of the fact that so far I have accepted the arguments of the respondents in support of the judgment of the President, I am unable to agree with his final conclusion, and I do so upon a point to which his attention does not appear to have been specially directed. The point is founded partly upon the effect upon the property of the sovereign state if a maritime lien attached to the *Tervaete* as alleged, and partly upon a consideration of the nature of a maritime lien itself. If the judgment of the President is right, and the maritime lien attached to the *Tervaete*, the value of the vessel to the Belgian Government must necessarily have been affected; how seriously of course depends upon the amount of the respondents' claim. A vessel to which a

30

40

10 maritime lien extends for any
substantial amount must necessarily
be worth less in the market than if
she was free from any lien. In *The Bold*
Buckleugh Sir John Jervis when dealing
with the question of a maritime lien
adopts Lord Tenterden's definition of
it, as a claim or privilege to be carried
into effect by legal process; and he then
goes on to say that a maritime lien is
20 the foundation of the proceedings in rem,
a process to make perfect a right inchoate
from the moment the lien attaches. In
Currie v. M'Knight Lord Watson speaks
of a maritime lien as a remedy against
the corpus of the offending ship. Whether
a maritime lien is properly to be regarded
as a step in the process of enforcing
a claim against the owners of a ship, or
30 as a remedy or partial remedy in itself,
or as a means of securing a priority of
claim, it cannot, in my opinion, consis-
tently with the rule of immunity laid
down by the law of nations, be attached
to a vessel belonging to a sovereign power
and being used for public purposes. To
allow such a lien to attach would be, to
use Gorell Barnes J.'s language in *The*
Ripon City, to create a jus in re aliena,
a subtraction from the absolute property
of the sovereign state."

Scrutton L.J. spoke of it as "a priority
in claim over the proceeds of sale of the ship
in preference to other claimants" in the
following passage at page 270 :-

40 "The so-called maritime lien has nothing
to do with possession, but is a priority
in claim over the proceeds of sale of
the ship in preference to other claimants.
It does not appear eo nomine in cases of
collision in the reports till *The Bold*
Buckleugh was heard in 1851, where it
is defined as a claim or privilege upon
a thing to be carried into effect by
legal process; and it is stated, errone-
ously as is now admitted, that wherever
an action in rem lies there a maritime
lien exists. The report proceeds: 'This
claim or privilege travels with the thing,
50 into whosoever possession it may come.
It is inchoate from the moment the claim

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or privilege attaches, and when carried into effect by legal process, by a proceeding in rem, relates back to the period when it first attached'."

Atkin L.J. spoke of it as "confined to a right to take proceedings in a Court of law to have the ship seized, and, if necessary, sold" (see page 274).

A year later in *The Colorado* (1923) P.102, Scrutton L.J. spoke of a French hypothèque as not a right of property in the ship but a right to arrest the ship in the hands of subsequent owners to satisfy a claim against a previous owner and proceeded to say that "such a right is the same as a maritime lien as described by Mellish L.J. in *The Two Ellens*, by Gorell Barnes J. in *The Ripon City* and by this Court in *The Tervaete*" (see page 109). Atkin L.J. spoke of a hypothèque as a right to have the ship seized and the proceeds applied to payment of the hypothèque, notwithstanding a change of ownership and proceeded to say that it is "a right closely resembling a maritime lien" (see page 111). 10 20

In our opinion, having regard to the authorities which were referred to in the judgment of Scott L.J. in *The Tolten*, a maritime lien is a substantive right in the ship which attaches at the time the cause of action arose and which is not defeated by a subsequent bona fide purchase of the ship without notice of the lien. It is in the words of Scott L.J. "a vested right of property" and "confers a true charge on the ship and freight of a proprietary kind in favour of the 'privileged' creditor." 30

Having come to the conclusion that a maritime lien is in its nature a substantive right the decisive question is, as regards priorities, whether a Singapore Court will give effect to the ship repairers' maritime lien acquired under foreign law. Unquestionably, as between competing creditors of the owners of the res, the priority of claims against the res is governed by the law of Singapore, the *lex fori*. 40

Apart from authority, we are of the opinion that in principle the courts of this country

ought to recognise the substantive right acquired under foreign law as a valid right and to give effect to that recognition when determining the question of priorities between the ship repairers and the mortgagees of the res.

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10 In Canada, the Supreme Court of Canada so decided in the case of the "Ioannis Daskalelis" (1974) 1 L.L.R. 174 where the court, in a unanimous decision, held that a ship repairer who had under American law acquired a valid maritime lien for necessary repairs to a ship took precedence over the mortgagee of the res. Ritchie J. who delivered the judgment of the Court cited a passage in Cheshire's Private International Law (9th Ed. at page 696) as correctly summarising the law in England in this regard. The passage reads as follows :-

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20 "Priorities. It has consistently been held that the order in which property in the possession of the court is distributable among creditors must be governed by English law. The priority of creditors in such a case is a procedural matter that is determinable by the lex fori. It forms no part of the transaction under which a creditor has acquired his right. It is extrinsic, and comprises in effect a privilege dependent upon the law of the country where the remedy is sought. Thus 30 priorities of creditors claiming in bankruptcy or in the administration of a deceased insolvent's estate are governed exclusively by the lex fori. It is the same in the case of liens. Where, for instance, two or more persons prosecute claims against a ship that 40 has been arrested in England, the order in which they are entitled to be paid is governed exclusively by English law.

50 In the case of a right in rem such as a lien, however, this principle must not be allowed to obscure the rule that the substantive right of the creditor depends upon its proper law. The validity and nature of the right must be distinguished from the order in which it ranks in relation to other claims.

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Before it can determine the order of payment, the court must examine the proper law of the transaction upon which the claimant relies in order to verify the validity of the right and to establish its precise nature. When the nature of the right is thus ascertained the principle of procedure then comes into play and ordains that the order of payment prescribed by English law for a right of that particular kind shall govern."

10

Ritchie J. at page 178 also considered the English case of "The Colorado" (supra) decided by the Court of Appeal "as authority for the contention that where a right in the nature of a maritime lien exists under a foreign law which is the proper law of the contract, the English courts will recognise it and will accord it the priority which a right of that nature would be given under English procedure."

20

A decision of the Supreme Court of Canada, particularly a unanimous decision, is of the highest persuasive authority on questions of admiralty jurisdiction, maritime law and priorities. This is so because historically our two countries have inherited the law on these matters from the law of England and the law of our two countries has developed in conformity with and to preserve uniformity with the law of England on these matters.

30

It is contended on behalf of the mortgagees that the Supreme Court of Canada misinterpreted the true ratio decidendi of "The Colorado" and contrary to the interpretation adopted by the English courts in "The Zigurds" (1932) P.113 and "The Acrux" (1965) P.391.

In "The Zigurds", Langton J. at page 125 said :-

40

" Mr. Atkin for the mortgagee claims The Colorado as an authority in his favour. It certainly is so to this extent, that it is only one more of the long line of authorities which have established that the English Courts will look to English law and English law only for the purpose of ranking competing

claims against a ship or its proceeds. Because in The Colorado case the Court, in special circumstances, first turned aside to look at a foreign law, in order to obtain light concerning the legal character of a foreign instrument, I do not think that the case can be claimed as an authority for the introduction of any foreign law which any party chooses to adduce in order to qualify and alter the English rules of ranking. Indeed it is noteworthy that both Hill J. and the Court of Appeal declined to take any note of the French law in the matter outside of the instruction which they derived from the evidence as to the nature of a French 'hypothèque'. Once they were clear as to what it was, they returned at once to the English law to decide the order of its ranking."

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In "The Acrux", Hewson J. at page 404 said:-

" I have been referred in this connection to The Tagus, The Colorado, and The Zigurds. Those were cases dealing with priorities after jurisdiction has been either accepted or established, but under the authority of those cases, especially The Colorado, which went to the Court of Appeal, I must look at the foreign law to see what kind of a claim is being made, to identify it, and then see if this court has jurisdiction and, if so, what remedy to give.

In The Colorado Atkin L.J. said:
'Where parties are litigating in this country in respect of rights created elsewhere, to ascertain their rights we may look, in appropriate cases, to the law of their country where the contract was made ... A claimant claims as possessing a maritime lien. This might appear to be an intermediate case, as a maritime lien gives a right against the ship, which continues notwithstanding a change of ownership. Nevertheless, in determining whether there exists a maritime lien the court will apply the lex fori, and will give effect to the lien as it exists by English law'."

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We must therefore examine the judgments in "The Colorado" (supra). Bankes L.J. at page 106 said :-

"The judgment (of Hill J. in the Court below) is expressed to be without prejudice to other claims against the vessel, and all questions or priorities are reserved. This, in my opinion, leaves the question quite open as to what the rights created by the so-called mortgage deed are. This question must be determined according to French law, as the contract was made in France, though the question of priority must be decided by English law." 10

Then at page 107, Bankes L.J. continued :-

"in my opinion the learned judge was quite right in taking the view he did - namely, that the right created by the mortgage deed was a higher right than a mere right to proceed in rem, and though not capable of exact description in terms applicable to well recognised English rights, it yet had attributes which entitled it to rank on a question of priorities in the same class as a maritime lien or the right created by an English mortgage." 20

Scrutton L.J. at page 108 said :- 30

" It is clear law in England, as stated by Lord Brougham in Don v. Lippmann, that 'whatever relates to the remedy to be enforced, must be determined by the lex fori, the law of the country to the tribunals of which the appeal is made'. The nature of the right may have to be determined by some other law, but the nature of the remedy which enforces the right is a matter for the law of the tribunal which is asked to enforce the right." 40

Scrutton L.J. continued at page 109 :-

"Now (the English court) has also a claim by a person who has a hypothèque It is proved to be, not a right

10 of property in the ship, but a right to arrest the ship in the hands of a subsequent owner. But such a right is the same as a maritime lien as described by Mellish L.J. in *The Two Ellens*, by Gorell Barnes J. in *The Ripon City*, and by this Court in *The Tervaete*. And the English Courts administering their own law would give a claim secured by a maritime lien priority over the claim of a necessaries man... ."

The relevant passage in the judgment of Atkin L.J. is contained in the passage of the judgment of Hewson J. we have just quoted.

The judgment of Hill J. in the court below is reported in *Aspinall's Maritime Law Cases* at pages 147 and 148. Hill J. said at page 148 :-

20 "The French mortgagee by French law has what has been described as a jus in rem a right to proceed by legal process for seizure and sale of the ship. But that is a right which travels with the res into whosoever hands it may come"

30 That right... is a right which can be enforced whether the ship at the time of enforcement belongs to the debtor or to someone else, it is in the nature of a right of property ... not very different from the right of property under an English mortgage. ... I therefore think that I am bound in this case to apply to that right the English law of priorities, and applying it, I am bound to say that the holder of the French registered mortgage has priority over the necessaries man."

40 In our opinion the interpretation put by the Supreme Court of Canada on the decision in *"The Colorado"* is the correct one. In our opinion all the three appellate judges, in affirming the decision of Hill J. in the court below, were of the view that having ascertained that under French law the right created by a hypothec is a right equivalent to a maritime lien, an English court, applying English remedies, would rank a claimant under

In the Court of Appeal of the Republic of Singapore

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(continued)

a hypothèque above an English necessities
man.

Similarly, having ascertained that
under American law a person who furnishes
in America repairs to a ship acquires a
valid maritime lien on the ship, a Singapore
court, applying Singapore remedies, would
rank a claimant who has a valid maritime
lien, which is in its nature a substantive
right in the ship, above a claimant who has
a mortgage over the ship.

10

For all these reasons we would allow
both appeals with costs here and in the court
below. We certify for two Counsel.

WEE CHONG JIN
CHIEF JUSTICE
SINGAPORE.

Sd. F.A. Chua
(F.A. CHUA)
Judge

20

Sd. A.P. Rajah
(A.P. RAJAH)
Judge

SINGAPORE, 8th December, 1977

Certified true copy
Sd.

Private Secretary to
the Hon. the Chief
Justice
Supreme Court,
Singapore 6.

30

No. 22

ORDER OF THE COURT OF
APPEAL IN APPEAL No.6 OF
1977 - 9th March 1978

In the Court
of Appeal of
the Republic
of Singapore

No.22

Order of the
Court of Appeal
in Appeal No.6
of 1977

9th March 1978

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 6 OF 1977

Between

Todd Shipyards Corporation Appellants

And

10 The Owners of and other persons
 interested in the vessel
 "HALCYON ISLE" Respondents

And

Bankers Trust International
Limited Respondents

(In the matter of Admiralty in Rem No.150 of 1974

Between

Todd Shipyards Corporation Plaintiffs

And

20 The Owners of and other persons
 interested in the vessel
 "HALCYON ISLE" Defendants

And

Bankers Trust International
Limited Interveners)

CORAM: THE HONOURABLE MR. JUSTICE WEE CHONG JIN
 CHIEF JUSTICE OF SINGAPORE
 THE HONOURABLE MR. JUSTICE F.A.CHUA
 THE HONOURABLE MR. JUSTICE A.P.RAJAH

30

IN OPEN COURT

The 8th day of December 1977

In the Court
of Appeal of
the Republic
of Singapore

No.22

Order of the
Court of Appeal
in Appeal No.6
of 1977

9th March 1978

(continued)

O R D E R

THIS APPEAL coming on for hearing on the 2nd 3rd and 4th days of August 1977 in the presence of Mr. Richard Stone, Q.C. with Mr Selvadurai Rajkamar of Counsel for the abovenamed Appellants and Mr Michael Thomas, Q.C. with Mr. Loh Boon Huat of Counsel for the abovenamed Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that the Appeal do stand adjourned for judgment and upon the same coming on for judgment this day in the presence of Mr Denis Murphy of Counsel for the Appellants and Miss Lai Siu Chiu of Counsel for the Respondents THIS COURT DOTH ORDER that :

10

1. the Appeal herein be and is hereby allowed;
2. the Respondents do pay the Appellants the costs of this Appeal and in the Court below to be taxed on the basis of two counsel;
3. the sum of \$500/- lodged in Court as security for the costs of this Appeal be paid out by the Accountant-General to Messrs. Donaldson & Burkinshaw, the Solicitors for the Appellants;

20

THIS COURT DOTH LASTLY ORDER that there be a certificate in favour of the Appellants for two Counsel.

30

GIVEN under my hand and the seal of the Court this 9th day of March 1978.

Sgd. Alfonso Ang
ASSISTANT REGISTRAR

No. 23

ORDER OF THE COURT OF APPEAL
IN APPEAL No.7 of 1977 -
9th March 1978

In the Court
of Appeal of
the Republic
of Singapore

No.23

Order of the
Court of
Appeal in
Appeal No.7
of 1977

9th March 1978

IN THE COURT OF APPEAL IN SINGAPORE

CIVIL APPEAL NO. 7 OF 1977

Between

Todd Shipyards Corporation

Appellants

And

10 Bankers Trust International
Limited

Respondents

And

The Owners of the vessel
"HALCYON ISLE"

Respondents

(In the Matter of Admiralty in Rem No.151 of
1974)

Between

Bankers Trust International
Limited

Plaintiffs

20

And

The Owners of the vessel
"HALCYON ISLE"

Defendants

And

Todd Shipyards Corporation

Interveners)

CORAM: THE HONOURABLE MR. JUSTICE WEE CHONG JIN
CHIEF JUSTICE OF SINGAPORE
THE HONOURABLE MR. JUSTICE F.A. CHUA
THE HONOURABLE MR. JUSTICE A.P. RAJAH

IN OPEN COURT

30

The 8th day of December, 1977

In the Court
of Appeal of
the Republic
of Singapore

No.23

Order of
the Court of
Appeal in
Appeal No.7
of 1977

9th March 1978

(continued)

O R D E R

THIS APPEAL coming on for hearing on the 2nd 3rd and 4th days of August 1977 in the presence of Mr Richard Stone, Q.C. with Mr. Selvadurai Rajkamar of Counsel for the abovenamed Appellants and Mr. Michael Thomas Q.C. with Mr. Loh Boon Huat of Counsel for the abovenamed Respondents AND UPON READING the Record of Appeal filed herein AND UPON HEARING Counsel as aforesaid IT WAS ORDERED that the Appeal do stand adjourned for judgment and upon the same coming on for judgment this day in the presence of Mr. Denis Murphy of Counsel for the Appellants and Miss Lai Siu Chiu of Counsel for the Respondents THIS COURT DOTH ORDER that :

10

1. the Appeal herein be and is hereby allowed;
2. the Respondents do pay the Appellants the costs of this Appeal and in the Court below to be taxed on the basis of two counsel;
3. the sum of \$500/- lodged in Court as security for the costs of this Appeal be paid out by the Accountant-General to Messrs. Donaldson & Burkinshaw, the Solicitors for the Appellants

20

THIS COURT DOTH LASTLY ORDER that there be a certificate in favour of the Appellants for two counsel.

30

GIVEN under my hand and the seal of the Court this 9th day of March, 1978.

Sgd. Alfonso Ang

ASSISTANT REGISTRAR

No. 24

ORDER GRANTING RESPONDENTS
LEAVE TO APPEAL TO THE
JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL IN APPEAL No.6
of 1977 - 22nd MARCH 1978

In the Court
of Appeal in
the Republic
of Singapore

No.24

Order granting
Respondents
leave to appeal
to the Judicial
Committee of the
Privy Council in
Appeal No.6 of
1977
22nd March 1978

IN THE COURT OF APPEAL OF THE REPUBLIC OF
SINGAPORE

CIVIL APPEAL NO. 6 of 1977

Between

10 Todd Shipyards Corporation Appellants

And

The Owners of and other persons
interested in the vessel
"Halcyon Isle" Respondents

And

Bankers Trust International
Limited Respondents

(In the Matter of Admiralty in Rem No.150 of
1974)

20 Between

Todd Shipyards Corporation Plaintiffs

And

The Owners of and other persons
interested in the vessel
"Halcyon Isle" Defendants

O R D E R

BEFORE THE HONOURABLE MR. JUSTICE F.A.CHUA

MR. JUSTICE CHOOR SINGH

MR. JUSTICE A.P. RAJAH

IN OPEN COURT

30

22nd March, 1978

UPON READING the Notice of Motion filed
herein on the 7th day of March, 1978 on behalf

In the Court
of Appeal of
the Republic
of Singapore

No.24

Order granting
Respondents
leave to appeal
to the Judicial
Committee of the
Privy Council in
Appeal No.6 of
1977
22nd March 1978
(continued)

of the abovenamed Respondents, Bankers
Trust International Limited, AND UPON
READING the affidavit of Miss Lai Siu Chiu
filed on the 7th day of March 1978
AND UPON hearing Counsel for the Respondents
and the Appellants AND BY CONSENT IT IS
ORDERED that :

The abovenamed Respondents be granted
leave to appeal to the Judicial Committee
of Her Britannic Majesty's Privy Council
under Section 3(1)(a)(i), (ii) and (iii)
of the Judicial Committee Act (Cap.8).

10

Dated the 22nd day of March, 1978

(Sgd)

ASST. REGISTRAR

No. 25

ORDER GRANTING RESPONDENTS
LEAVE TO APPEAL TO THE
JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL IN APPEAL No.7
of 1977 - 22nd MARCH 1978

In the Court
of Appeal of
the Republic
of Singapore
No.25

IN THE COURT OF APPEAL OF THE REPUBLIC OF SINGAPORE

CIVIL APPEAL NO. 7 OF 1977

Order granting
Respondents
leave to appeal
to the Judicial
Committee of the
Privy Council in
Appeal No.7 of
1977
22nd March 1978

Between

TODD SHIPYARDS CORPORATION

Appellants

And

THE OWNERS OF AND OTHER PERSONS
INTERESTED IN THE VESSEL
"HALCYON ISLE"

Respondents

And

BANKERS TRUST INTERNATIONAL
LIMITED

Respondents

(In the Matter of Admiralty in Rem No.151 of 1974)

Between

BANKERS TRUST INTERNATIONAL
LIMITED

Plaintiffs

And

THE OWNERS OF THE VESSEL
"HALCYON ISLE"

Defendants

And

TODD SHIPYARDS CORPORATION

Interveners

O R D E R

BEFORE THE HONOURABLE MR. JUSTICE F.A. CHUA

MR. JUSTICE CHOOR SINGH

MR. JUSTICE A.P. RAJAH

IN OPEN COURT

22nd March, 1978

10

20

30

In the Court
of Appeal of
the Republic
of Singapore

No.25

Order granting
Respondents
leave to appeal
to the Judicial
Committee of the
Privy Council in
Appeal No.7 of
1977
22nd March 1978
(continued)

UPON READING the Notice of Motion filed
herein on the 7th day of March, 1978 on
behalf of the abovenamed Respondents,
Bankers Trust International Limited,
AND UPON READING the affidavit of Miss Lai
Siu Chiu filed on the 7th day of March 1978
AND UPON hearing Counsel for the Respondents
and the Appellants AND BY CONSENT
IT IS ORDERED that :

The abovenamed Respondents be granted
leave to appeal to the Judicial Committee
of Her Britannic Majesty's Privy Council
under Section 3(1)(a)(i) (ii) and (iii)
of the Judicial Committee Act (Cap.8)

10

Dated the 22nd day of March, 1978

(Sgd)

ASST. REGISTRAR

No. 19 of 1978

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL IN SINGAPORE

B E T W E E N :

BANKERS TRUST INTERNATIONAL
LIMITED

Appellants
(Interveners in Admiralty
Action in Rem No.150 of
1974)
(Plaintiffs in Admiralty
Action in Rem No.151 of
1974)

- and -

TODD SHIPYARD CORPORATION

Respondents
(Plaintiffs in Admiralty
Action in Rem No.150 of
1974)
(Interveners in Admiralty
Action in Rem No.151 of
1974)

RECORD OF PROCEEDINGS

MESSRS. LINKLATERS AND PAINES,
Barrington House,
59-67 Gresham Street,
London, EC2V 7JA

MESSRS. THOMAS COOPER AND
STIBBARD,
27 Leadenhall Street,
London, EC3A 1AB

Solicitors for the Appellants

Solicitors for the Respondents