Judicial Sales: Case Summaries

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1 The "*Acrux*"

On 16 December 1960, in a suit commenced by a French company for necessaries, the Italian steamship *Acrux* owned by an Italian company was arrested in the United Kingdom of Great Britain and Northern Ireland. Later on, appraisement and sale of the ship was ordered by the Court in order to satisfy the judgment given by the Court in respect of the claim. The order for sale was suspended at the application of the shipowner's liquidator from Italy, but was restored as a result of the intervention of an Italian bank, being the mortgagees of the ship. The ship was sold on 27 April 1961 by the Admiralty Marshal. The proceeds of the sale were less than the sum claimed by the mortgagees. The Court was later informed by the Admiralty Marshal that the purchaser of the *Acrux* was unable to secure permanent registration of the ship in his desired country, because he was unable to obtain a certificate of deletion from the Italian Register of Ships, evidencing that the order for sale of the Admiralty Court was not recognized in Italy and that according to Italian law, the mortgagees could start an executive procedure on the ship not only in Italy but even in other countries. For this reason, an undertaking was required from the mortgagees by the Court not to commence proceedings *in rem* or any similar proceedings abroad against the *Acrux* in respect of the claims pursued by the mortgagees in the motion before the Court.

The undertaking was given by the mortgagees as required by the Court, but no report was made as to whether the purchaser obtained the necessary certificate of deletion from the Italian Register of Ships and secured the permanent registration of the ship in his desired country.

In this case, Mr. Justice Hewson stated:

> *"It would be intolerable, inequitable and an affront to the Court if any party who invoked the process of this Court and received its aid and, by implication, consented to the sale to an innocent purchaser, would thereafter proceed or was able to proceed elsewhere against the ship under her new and innocent ownership. This Court recognises proper sales by competent Courts of Admiralty, or prize, abroad — it is part of the comity of nations as well as a contribution to the general well-being of international maritime trade".*

2 The "*Norsland*"

In a motion filed with the Federal Court of Canada — Trial Division (the "Court") by a company called Vrac Mar Inc. (the "Suppliant") being the successful bidder for the ship MN *Norsland* in a court sale dated 18 August 1971, under an order made by the Court on 18 August 1971, extended by a further order on 13 September 1971, the Suppliant asked the Court to make an order to allow subrogation of rights in its favour for the sum of $3,943.95 paid to the Government of Panama holding an alleged maritime lien on the ship for arrears of certain taxes incurred in 1969, 1970 and 1971.

The order for sale of the ship *Norsland* made by the Court provided that sale of the ship should be as follows:

> *"That the basis of the sale of the ship Norsland shall be as is, where is, as she now lies afloat at Longue Pointe, particulars not guaranteed, free and clear of all liens, charges, mortgages, encumbrances and claims and with a clean bill of sale."*

The Suppliant contended that when it paid a price of $111,000 for the ship, it was guaranteed that it would receive ownership of the latter and the said ship would be free of any encumbrance or maritime or other lien. It stated, however, that unfortunately the said ship was not free of any encumbrance, since in order to have the ship registered with the Canadian Ministry of Transport, it had to carry out certain formalities called "Proof surrender Panama documentation" and furnish proof that the *Norsland's* register was closed. Whereas, the Government of Panama refused to close the *Norsland's* register as long as the abovementioned arrears of taxes were unpaid. The Suppliant stated that it was accordingly obliged to incur considerable expenses and pay certain sums of money in order to have the ship registered in Canada. The said $3,943.95 paid to the Republic of Panama through the legal firm Lette, Marcotte, Biron and Sutto was one of the sums paid by the Suppliant.

The Court allowed subrogation of rights in the Suppliant's favour for the amount of money paid to the Republic of Panama, but subject to the apportionment and priority of these amounts, as well as entitlement, being determined in court at the final decision on claims and their priority.

In the order, the court stated:

> *"... the Republic of Panama, after filing a caveat for $2, 585.15, refuses to comply with the proceedings for sale of this ship, and observe the order of this Court giving the purchaser a clear title. I do not for the moment wish to characterize this action by that country, I would say nevertheless that the refusal to comply with a judgment of this Court after filing a claim, in addition to being an affront to a Canadian court, represents a refusal by that country to abide by the decisions of a court in another country, and an exception to a rule honored by every nation in the world. Indeed, if other countries, or other debtors, decided to follow this bad example, it would create confusion in an area which can be effectively controlled only with the good faith of all seafaring nations."*

3 The "*Paz*"

A Nigerian company applied for arrest of the ship *Paz,* which was registered in Panama and presumably owned by a Panamanian company. The applicant's claim against the ship related to loss of or damage to cargo conveyed from Antwerp to Lagos almost five years previously. Litigation over the claim was pending in Hong Kong, China, where an action *in rem* had been instituted in the High Court. Because the ship was due to call at Durban in order to refuel, the applicant applied as a matter of urgency for an order to be issued by a court in South Africa for the arrest of the ship so as to provide it with security for the judgment which it hoped it would one day be awarded in Hong Kong, China.

Mr. Justice Didcott of the Natal Provincial Division, a single judge hearing the matter in the first instance, considered that the arrest of the ship raised an important question of judicial policy, namely whether or not that Court should, as he put it, allow itself to be "transformed into some sort of judicial Liberia or Panama", to be "turned into a Court of convenience for the wandering litigants of the world".

On 23 March 1984, a judgment was issued by the Court and the application for arrest was dismissed.

It was recognized by Mr. Justice Didcott that:

> *"It is a serious business to attach a ship. To stop or delay its departure from one of our ports, to interrupt its voyage for longer than the period it was due to remain, can have*

and usually has consequences which are commercially damaging to its owner or charterer, not to mention those who are relying upon its arrival at other ports to load or discharge cargo."

4 The "*Galaxias*"

In September 1986, the Greek registered ship, the *Galaxias* was arrested in Canada, and several claims were made on the ship, including a "somewhat novel" claim for a maritime lien purportedly legislated by the Greek government in favour of the Greek Seamen's Union. Subsequently, a Sheriff of British Columbia was appointed as a Deputy Marshal to carry out the commission of sale of the *Galaxias.* The ship was sold according to the order of the court "as is, where is" and "free and clear of all encumbrances". Whereafter, the purchaser soon became uneasy with respect to the attitude taken by the Minister of Merchant Marine in Greece regarding the transfer of title of the *Galaxias* clear of all encumbrances in the Greek Shipping Registry in Piraeus. The Minister objected to the issuance of the necessary Deletion Certificate and made it contingent on the satisfaction of the claims raised against the *Galaxias* by the Greek Seamen's Union.

The Sheriff commenced an action against the purchaser seeking a declaration that he had fulfilled his duty with respect to the order of sale or commission of sale, and that the bill of sale did convey title in the *Galaxias* to the purchaser "free and clear of all encumbrances." On the other hand, the purchaser filed a defence and counterclaimed with respect to the costs and damages which it claimed were brought about by the failure of the Deputy Marshal to convey the ship "free and clear of all encumbrances", and as it presently stood, unregistrable in the Greek Shipping Registry.

It was held by the court, inter alia, that on one hand the Sheriff was entitled to the declaration sought by him, on the other hand, the purchaser would take free and clear of all encumbrances according to the laws of Canada.

Mr. Justice Rouleau held as follows:

> *"The purchaser will take free and clear of all encumbrances according to the laws of Canada and although it is clear that Canadian Courts desire and expect that the Courts and Governments of other nations will respect its orders and judgments, particularly in the area of maritime law, this is not an area over which the Federal Court exercises control, nor is it appropriate that it attempt to do so".*

In addition, Mr. Justice Rouleau made the following pertinent comment regarding the need for international intervention:

> *"I would like to add ... that in order to promote the free flow of maritime traffic, countries have, generally speaking, agreed to apply a uniform set of admiralty rules and laws. This does not, however, prevent any country from legally completely ignoring or setting aside any normally accepted practice or any law which is universally recognised in admiralty matters or even a rule of law which that country might previously have adopted by treaty. This is precisely what territorial jurisdiction means, and, until there exists some world authority with a superior globally enforceable overriding jurisdiction this is what we all must live with".*

In commenting on judicial orders for the sales of ships that did not ensure the passing of "clean" title, the Judge stated:

"However, admiralty lawyers and all lay people in the shipping world, involved in any way in the purchase and sale of ships, will invariably feel that this would greatly reduce the amounts which can be obtained from court sales of vessels and render some ships completely unsalable. The legitimate claims of many Canadian and foreign creditors would thus be defeated by the resulting ridiculously low payments into Court of purchase prices".

5 The *"Great Eagle"*

In July 1991, a Cypriot company (the "Claimant") instituted an action *in rem* against a Panamanian company (the "Respondent"), which was commenced by the arrest of the m.v. *Great Eagle* at Saldanha Bay, South Africa. The main claim was for *a declarator* that the Claimant was owner of the ship and entitled to its possession, although the ship had been sold by a court in Qingdao, China. The Claimant was therefore challenging the validity of the judicial sale in China. The alternative claim, on the premise that the Claimant was not the owner and that the owner was liable to the Claimant *in personam,* was for the recovery of damages in the amount of $4.4 million arising from the concerted fraudulent actions of a number of parties which resulted in the Claimant being dispossessed of the ship at Qingdao, China, and the Respondent becoming its current registered owner.

It was accepted by the Respondent that up to 30 May 1991 the Claimant was the owner and under his ownership the ship was named *Mnimsyni.* However, on that date the ship was auctioned by the Qingdao Maritime Court, China, and, as the purchaser of the ship under the judicial sale, the Respondent became the owner of the ship. The Respondent filed an application for the release of the ship and argued on three grounds, namely (1) as a matter of statutory interpretation, the Act does not empower an action *in rem* where the action and the arrest are directed at the Claimant's own ship, as is the case in a vindicatory claim; (2) the Claimant had no *prima facie* case justifying the action and the accompanying arrest; and (3) the Court was not the appropriate forum for the matter to be heard and jurisdiction should be declined in terms of the Act.

It was concluded by the Court that (1) where a claimant seeks to vindicate a ship to which it claims ownership, the Act empowers him to arrest and take proceedings against it *in rem.* It followed that the Respondent's first ground failed; and (2) the Claimant had failed to make out *a prima facie* case in respect of the cause of the action, which meant the second ground on which the Respondent had based his application was successful. Being so, the court found it unnecessary to deal with the third ground, namely the *forum non conveniens* point. It was ordered by the Court inter alia that the ship be released from arrest and that the Claimant's action was dismissed with costs.

It might be interesting to mention that in another action following the second arrest of the ship for the same matter commenced by the abovementioned Claimant, views in respect of the *forum non conveniens* point were expressed by the Court that if the Claimant was advised that it has *a prima facie* case against the Respondent, i.e. the purchaser at the judicial sale, the appropriate forum to have such case established is the relevant Chinese Court, and not a South African one.

6 The "*Katerina*"

In 2004, Eta Petrol Akaryakit Ve Nakliyati A.S., a Turkish company (the "ETA"), effected conservatory arrest by the Court of Amsterdam of the ship *Katerina* on the ground that, although in 2003 this ship, then named *Hidir Selek,* had been judicially sold in China at the application of a bank holding a mortgage on the ship, the judicial sale did not proceed normally and honestly. Therefore, the ownership of the ship never passed to any other person, thus ETA was still the owner of the ship. On the other hand, Esquire Management Co. ("Esquire"), the registered owner of the ship *Katerina* at the time of the arrest applied to the court to lift the arrest effected by ETA.

The Court issued a judgment holding that the arrest effected by ETA should be lifted, and the judgment was issued on the basis of the following facts:

a. On 5 January 1996, ETA and the Hamburgische LandesBank (presently: HSH NordBank A.G., the "Bank") entered into a loan agreement for $13,500,000 for the purchase by ETA of the ship *Hidir Selek.* Clause 5 of the loan agreement provided that ETA shall register the ship in the ship's register of Istanbul, Turkey. In clause 12 it was provided that German law is the applicable law and that the submission to a certain jurisdiction shall not (and shall not be constructed so as to) limit the right of the Bank to take proceedings against the borrower in whatever jurisdiction shall the Bank deemed fit.

b. On 26 March 1996, ETA and the Bank concluded a mortgage agreement in connection with the abovementioned loan. Clause 17 (a) provided that this mortgage shall be construed and enforceable in accordance with the laws of the Republic of Turkey.

c. After obtaining an order for arrest on 7 June 2003 from the maritime court in Tjianjin, China, on 8 June 2003 the Bank effected an arrest of the ship *Hidir Selek* for arrears in the repayment of the loan. On 29 July 2003, the court in Tianjin ordered the judicial sale of the ship. On 21 August 2003 the Tianjin court published a notice with regard to the judicial sale of the ship.

d. In Lloyd's List of 6 October 2003, ETA published a statement with the following contents:

   "WARNING
   To the shipping world and to the public about the illegitimate auction of *MN Hidir Selek."*

e. On 9 October 2003, the judicial sale at Tianjin took place, whereby sixteen bidders were present. The ship was purchased for $6,840,000 by First Shipping Limited. Subsequently, First Shipping Limited sold the ship on for the same amount to Esquire. On 22 October 2003, the Tianjin court issued three documents with regard to the judicial sale of the ship, i.e. a certificate of transference of ownership of Turkish-registered *MN Hidir Selek, a* civil ruling ((2003) HSCZ no. 343-12) ordering the release of the vessel and an "order of release of ship" (HFSCZ no. 343-13). On 23 October 2003, the ship was transferred to Esquire.

f. On 24 October 2003, the ship, renamed *Katerina,* was entered into the ship's register of the Marshall Islands in the name of *Esquire.* The ship *Katerina* was burdened with two ship mortgages in favour of the Bank.

g. In February 2004, ETA arrested the ship *Katerina* in Singapore. In this matter summary proceedings took place. In a judgment dated 16 March 2004 the Singapore court issued

an "Order of Court", to the effect that the arrest be lifted, and that the Plaintiffs [ETA] do pay the Defendants damages for wrongful arrest of the vessel *Katerina,* to be assessed by the Registar and that ETA shall pay the legal costs in the amount of $5,000 to Esquire.

h. On 19 April 2004, ETA obtained an order from the injunction judge of the court of Amsterdam for effecting the conservatory arrest of the ship *Katerina,* but it had done nothing with this order for arrest.

i. On 26 April 2004, ETA requested and obtained an Einstweilige Verfügung' (provisional measure) from the Amtsgericht Brake, Germany. The court bailiff handed down the court measure on board the ship. However, the ship *Katerina* left the German port.

j. After obtaining the order for arrest from the injunction judge at Amsterdam, on 27 April 2004 ETA effected a conservatory arrest of the ship *Katerina* to the detriment of Esquire.

k. On 5 May 2004, the Turkish court issued an "injunction order", whereby (amongst other things) it was provided that the ship was under arrest and that no changes can be effected onto its registration.

In the judgment, it is held by the court, inter alia, that:

> *"…*
> *The above leads to the conclusion that the auction has taken place in China according to Chinese law, the consequences of this auction with regard to the ownership of the ship are governed by Chinese law. The parties agree that according to Chinese law ownership has passed to First Shipping Limited and that this company has resold and delivered the ship to Esquire. Esquire has therefore acquired the ownership of the ship, and therefore the conservatory arrest applied for by ETA was effected wrongfully. This arrest must therefore be lifted. This is not effected by the fact that Esquire having ignored an Einstweilige Verfiigung' (provisional measure) of the German court has let the ship leave the port of Brake, since this is a matter between the German judicial authorities and Esquire and does not affect the ownership of the ship."*

7 The "*Union*"

On 24 June 2005, the ship, *Union,* which was registered in Belize was arrested by Tianjin Maritime Court of the People's Republic of China at the application of a French bank based in Paris, for enforcement of a mortgage on the ship *Phoenix,* which was the former name of the ship then registered with the name of *Union.* The mortgage was effected on the ship *Phoenix* for the purpose of securing a loan in the sum of 5 million US dollars, and registered on 4 November 1999 in Saint Vincent and the Grenadines, and was further registered in the Russian Federation later in November 1999 when the ship was bareboat chartered to a Russian company. In order to recover from the borrower the outstanding balance of the loan which was in the sum of $2 million, a judgment had been obtained in the mortgagee's favour from the Commercial Court of Paris in September 2003. However, the judgment was not performed or satisfied by the borrower. In the lawsuit filed with the Chinese Maritime Court by the French bank, it was claimed that the duly registered mortgage on the ship *Phoenix* (whose current name was *Union),* should be recognized by the Court and enforceable on the ship irrespective of the change of her name and registration. In opposition, the current registered owner of the ship filed a defence and counterclaimed with respect to the costs and damages which were allegedly brought about by the wrongful arrest of the ship by the French bank.

It was contended by the current shipowner that the ship, *Phoenix,* was arrested in May 2003 and auctioned in November 2004 by the Court of Rason, the Democratic People's Republic of Korea (hereinafter referred to as the "DPRK Court") on the applications of a number of claimants for unpaid crew wages and port charges, and for repayment of outstanding loans. The purchaser of the ship was a local company, who after the sale registered the ship on a temporary basis with the local maritime administration under its name, with a new ship's name of *Rason.* In June 2005, the purchaser sold the ship to the current shipowner who in turn registered the ship in Belize on 7 July 2005 under its name, with the current ship's name, i.e. *Union.* Apart from the above, it was ascertained by the Maritime Court that after the sale of the ship by the DPRK Court the registration of the ship and the mortgage in Saint Vincent and the Grenadines was not deleted.

Due to the fact that neither of the parties had sought to apply or provided any material to prove the contents of the applicable foreign laws (including the laws of Saint Vincent and the Grenadines, the DPRK and Belize), the Chinese Maritime Court applied the Chinese laws to all the issues disputed in this case.

One of the issues in this case was whether or not the order of sale made by the DPRK Court should be recognized as an effective court order, thus accepting the judicial sale as valid and the prior mortgage extinguished.

It was held by the Maritime Court, inter alia, that (1) after the sale of the ship by the DPRK Court, all charges and encumbrances, including the French bank's mortgage on the ship were all extinguished given the fact that the registration of the ship and the mortgage in Saint Vincent and the Grenadines was not deleted; (2) to ascertain the fact that the ship had once been sold by the DPRK Court is just a matter of fact being investigated by this court, that does not involve any recognition or enforcement by this court of any judgment or order of the DPRK Court; and (3) it is not within the jurisdiction of this court to examine and judge whether or not the ship sold by the DPRK Court was in accordance with the DPRK law, including whether or not a proper notice has been sent to the French bank and/or the ship's register in Saint Vincent and the Grenadines. Based on these grounds, the claims of the mortgagee were dismissed by the Maritime Court.

Perhaps, it is worth mentioning that the appeal by the mortgagee was also rejected by the High Court of Tianjin.

8 The "*Ahmet Bey"*

In early 2003, Odin Denizcilik, A.S. (the "Odin"), a company incorporated in Turkey, was the owner of the ship *Ahmet Bey* (the "Ship") flying a Turkish flag, HSH Nordbank AG (the "Nordbank") held a first mortgage on the ship. Odin defaulted on the mortgage, Nordbank had the ship arrested in the Port of Philadelphia, and the Marshal sold the ship to Goldfish Shipping, S.A. (the "Goldfish") in a judicial mortgage foreclosure sale.

After the foreclosure sale, Odin had the ship arrested in Barcelona, Spain and Ravena, Italy, claiming continued ownership of the ship.

On August 24 2007, Goldfish commenced the instant action before the U.S. District Court against Nordbank seeking damages associated with Odin's two seizures of the ship. The crux of the First Amended Complaint filed by Goldfish was that Nordbank had failed to deliver the ship to Goldfish "free and clear" of Odin's claims to the ship. Goldfish asserted that Odin remained the registered owner of the ship on the Turkish Registry of Shipping, and that Nordbank should therefore be liable for the damages that Goldfish suffered on account of Odin's arrests of the ship in Barcelona and Ravina.

It was held by the Court that all of Goldfish's claims failed because they rested on the premise that the ship had not been sold "free and clear of all liens, claims and encumbrances." The Court explained that Goldfish's reliance on this premise was fatal to its claims because the ship had been sold pursuant to the Ship Mortgage Act, which, by its terms, mandates that the ship had been "sold free of all ... claims."

As regards the argument put forward by Goldfish that Nordbank violated some other duty, either in contract or in tort, to either delete the ship from the Turkish Registry or unconditionally consent to the ship's deletion from the registry in order to extinguish that "indicia of ownership", the Court found, inter alia, as a matter of law that the Marshal was the seller of the ship, that title to the ship was transferred directly from Odin to Goldfish, and that no duties attached to Nordbank on account of its alleged status as the "seller". Goldfish had also provided no authority that supported its assertion that Nordbank's status as "beneficiary of or" initiator of the foreclosure sale gave rise to a legally enforceable duty to delete, or to consent to the deletion of, the ship from the Turkish Registry.

Perhaps, it is interesting to note that in another action also in relation to this ship, the court concluded:

> *"...We have been involved in litigation with these parties since 2003, when Nordbank first sought to have the vessel arrested. We entertained Odin's challenge to the arrest, both ordered and confirmed the Marshal's sale of the vessel in order to satisfy Nordbank's lien, ordered that the Marshal deliver title to the vessel to Goldfish 'free and clear of all claims, liens, or encumbrances,' and oversaw the distribution of the proceeds. We also entertained and resolved an action that Goldfish filed against Odin for damages it suffered on account of Odin's improper arrest of the vessel in Barcelona, and Goldfish subsequently received compensation for those damages from the proceeds of the re-sale."*

9 The "*Sam Dragon"*

The plaintiff in this case was SPV Sam Dragon Inc., a company incorporated under the laws of Panama and the owner of the vessel *Sam Dragon,* formerly named the *Pretty Flourish* ("Vessel"), which was the subject of a judicial sale in Belgium. The defendant was GE Transportation Finance (Ireland) Limited, a company incorporated in Ireland, which provided a loan facility to a company of the Republic of Korea called Samsun Logix Corporation ("Samsun"), the shipowner of the vessel prior to the judicial sale. The defendant held a mortgage on the vessel as security for the loan facility to Samsun.

The plaintiff's claim in the Irish Courts in this action was brought as the purchaser of the vessel in the judicial sale, for damages and expenses incurred by it in registering the vessel on the Shipping Register of Hong Kong, China. The plaintiff claimed that additional charges and expenses arose as a result of the failure of the defendant to comply with the plaintiff's request to remove the entry of the mortgage from the Ship's Register in the Republic of Korea. It had always been the intention of the plaintiff to register the vessel in the Ship Registry of Hong Kong, China. However, full registration on the Shipping Register of Hong Kong, China can only be secured upon production of a Deletion Certificate from the vessel's former registry. The plaintiff also claimed that it was required to seek registration of the vessel under a flag of convenience and that it had registered the vessel in Panama on a temporary basis and could not register the vessel in Hong Kong, China on a permanent basis until the entry in the Register of the Republic of Korea was finally deleted.

In order to determine whether the defendant had a legal liability, the court had to decide whether there was a legal duty on the mortgagee of a vessel to take affirmative steps to delete the entry of the mortgage on the ship's register in the circumstances where there has been a judicial sale in a country other than the country of the registration.

As the case involved parties from a number of countries and legal issues arising in several jurisdictions, this raised a question as to what law should apply. Does one law apply to the arrest proceedings in Belgium and another law apply to the questions surrounding the issue of removal of the entry of the mortgage from the ship's register in the Republic of Korea?

By the time the case concluded, it was agreed between the parties that Belgium law applied to the first issue. The remaining question was whether Belgium law or the law of the Republic of Korea applied to the second alleged wrongful act?

As to that issue the judge held that

> *"Having considered the evidence, it seems to me that the country most connected with the alleged wrong arising out of the failure by the defendant to delete the entry of the mortgage from the Korean Register is [the Republic of] Korea, and that the consequences in other jurisdictions were 'indirect consequences' within the meaning of Article 4(1) of the Rome II Regulation. Accordingly, I hold that Korean law applies to this issue."*

After hearing evidence given by a number of expert witnesses from different jurisdictions, the judge further held that

> *"I am satisfied that the defendant was not obliged to voluntarily delete the mortgage either before they received payment out of the proceeds of sale of the Vessel or otherwise." "Accordingly, the plaintiff's claim fails."*

10 The "*Emre II*"

A Turkish finance company sued for the recovery of £1,700,000 secured on the vessel "*Emre II*" which was arrested in the UK. Both parties were Turkish. There were two applications before the court. One by the owner of the vessel for a stay on forum non conveniens grounds and the other by the plaintiff for a sale of the ship pendente lite.

A stay was ordered subject to the ship being detained pending the resolution of the proceedings in Turkey. The order for sale was also made but not to be put into effect for 21 days to enable the defendants solicitors to give a personal undertaking to the Marshal to meet the costs of arrest.

Sheen J in his Judgment said:

> "There is one other matter to which I must refer. During the course of the hearing I was told by the defendants that if the ship is sold by order of this Court the Turkish authorities may not delete the name of the ship from the register in Istanbul. When a ship is sold by order of this Court the purchaser gets a clean title. **As a matter of comity between nations it is important that the Courts of one nation should recognize the validity of the orders of another nation. If it be correct that the Turkish authorities will not delete from their register a ship which is sold by order of this Court the effect is to diminish the value of the ship. When the ship is advertised for sale it will have to be made clear to any potential purchaser that there may be some difficulty in having the name of the ship deleted from the**

> **Turkish register**. That would be unfortunate for the parties in this litigation and would adversely affect all other Turkish shipowners. In this country effect will be given to the order of a Turkish Court. If it becomes necessary for the Admiralty Marshal to sell "Emre II" the solicitors for the defendants should obtain clear instructions from the relevant authority in Turkey as to whether that authority will recognize and act upon a sale by order of this Court. Those instructions should be communicated to the Marshal so that he may advertise the ship appropriately."

11 The "*Cerro Colorado*"

Den Norske Bank A/S sought $26,014,308.89 due under a mortgage on the tanker "*Cerro Colorado*". It obtained judgment and an order for sale. A "Note verbale" was received from the Spanish Embassy in London which suggested that a purchaser of the ship might find itself subject to substantial claims by the crew for arrears of pay and severance pay. An application was brought by the Admiralty Marshal by reason of publications in Lloyds of both an advertisement and an article suggesting that any purchaser from the sale would face substantial claims by the crew. A further "Note verbale" was sent by the Spanish Embassy to the Foreign and Commonwealth Office.

Sheen J, after quoting from Dr Lushington in the "Tremont" and Hewson J in the "Acrux" then said:

> "I can only express the hope that the Spanish court will, as a matter of comity, recognise the decrees made by this Court, which endeavour to give effect to the International Arrest Convention. From time to time every shipowner wants to borrow money from his bank and give as security a mortgage over his ship. The value of the security would be drastically reduced if when it came to be sold by the Court there was any doubt as to whether a purchaser from the Court would get a title free of encumbrances and debts."

He then turned to the Contempt of Court Act 1981 dealing with interference with the course of justice concerning the advertisement and article and said:

> "It is in the interest of all parties that the sale of the "*Cerro Colorado*" by the Admiralty Marshal should achieve the full market price. The publications to which I have referred have already caused some concern to be felt by some prospective purchasers who had seen the advertisement…".

His Lordship then encouraged the Master and crew to file a claim with expedition. The plaintiff's counsel put the court on notice that in light of all the delay and additional costs that the plaintiff had been put it reserved its right to assert that the usual priorities should not apply so that the plaintiff took in priority to a wages claim by the crew.

12 The "*Turtle Bay*"

The shipowner in this case had gone into liquidation in Germany. The registered mortgagee had arrested the vessel in Singapore, and then sought default judgment and the sale of the ship. In doing so it also sought the court's approval of a private sale on the basis of a private sale agreement it had entered into with a buyer. In other words it was

seeking judicial approval of a private sale pendente lite (although that did not apply after default judgment had been entered).

Her Honour Belinda Ang Saw Ean, in the Singapore High Court, identified the differences between a private sale and a judicial sale, and stressed, most importantly, that "an admiralty Judicial sale gives the purchaser a clean title to the vessel that is free from all liens and encumbrances" enabling "the Sheriff to sell an arrested vessel at the market price of the vessel rather than at a "forced sale" price".

She also said:

> "Dr Lushington's statements in the *"Tremont"* are fundamental to admiralty Judicial sales. Indeed many Judicial statements continue to give effect to admiralty Judicial sales of foreign courts as a matter of comity. This recognition of the legal consequences of an admiralty Judicial sale is important to a purchaser who intends to register the vessel in a different jurisdiction".