

**THE PANOCEAN:**  
**Manoloudis and others v**  
**Owners of the M.T. Panocean**

Supreme Court  
Unsworth, C.J.  
31 October 1968

*Admiralty — priorities as between necessities man and mortgagee.*

*Admiralty — priorities — necessities man paying crew's wages.*

*Admiralty — priorities — medical expenses.*

*Lien — maritime lien — whether payment of crew's wages by necessities man creates maritime lien.*

*Estoppel by conduct — whether mortgage of ship in excess of value capable of raising.*

Twelve actions in rem against the owners of the M.T. Panocean were consolidated to determine the priorities.

**Held:** (i) The fact that the amount of the mortgage exceeded the value of the ship was not enough to raise any estoppel in favour of necessities men.

(ii) A necessities man who has paid the crew's wages does not obtain the seamen's maritime lien.

(iii) The leave of the court should be obtained before a necessities man pays the wages of the crew.

(iv) The court has discretion to give priority for such payments over a mortgagee even though leave was not obtained.

(v) Medical expenses do not form part of a seaman's wages, except possibly where there was an express contract.

**Cases referred to in the judgment.**

*The Pickaninny*, [1960] 1 Lloyd's Rep. 533.

*The Zigurds*, [1932] P. 113.

*The Petone*, [1917] P. 198.

*The Kammerhevie Rosenkrants*, (1882) 1 Hag. Adm. 62.

- The Neptune* (1835) 3 Knapp 94.  
*The Janet Wilson* (1857) 1 Sw. 261.  
*The William F. Safford* (1860) Lush. 69.  
*The Cornelia Henrietta* (1886) L.R. 1 A. & E. 51.  
*The St. Lawrence* (1880) 5 P.D. 250.  
*The Henrich Björn* (1886) 11 App. Cas. 270.  
*The Lyons* (1887) 6 Asp. M.L.C. 199.  
*The Leoborg* (No. 2) [1964] 1 Lloyd's Rep. 380.

### Application

This was an application to determine priorities, as between claims for expenses of arrest, seamen's wages, the master's wages and disbursements, seamen's wages paid by a necessities man, the Greek Seamen's Pension Fund, mortgage moneys and necessities.

J.J. Triay and A.J. Vasquez for the applicant.

P.J. Isola for M.H. Bland & Co. Ltd.

A.V. Stagnetto for Lambert Brothers (Gibraltar) Ltd.

Sir Joshua Hassan, Q.C., for Bailey (Malta) Ltd.

### 22 November 1968: The following judgment was read—

The parties in these cases are in agreement as to the general principles in relation to priorities which are set out in paragraph 1574 of the British Shipping Laws Vol. 1 Admiralty Practice (McGuffie). The following questions have, however, arisen in connection with the application of those principles:—

(1) Is this a case in which the necessities men should be given priority over the mortgagee on the principle of *The Pickaninny*<sup>1</sup>?

(2) Is there a subrogation so as to entitle necessities men who have paid wages (which term includes the cost of repatriation) to claim the seamen's priority over the mortgagee?

(3) Do wages include medical expenses?

I have not been able to read the full report of the *Pickaninny* case as Lloyd's reports are not available here but the principle is stated in the footnote to McGuffie in this way:—

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<sup>1</sup> [1960] 1 Lloyd's Rep. 533.

"On equitable principles a necessities claimant might be preferred to a mortgagee if that mortgagee stood by, knowing that the claimant was carrying out work or supplying materials directly benefitting the mortgagee's interest."

The principle is an application of the equitable doctrine of estoppel by conduct. Did the mortgagee stand by and allow necessities men to act to their prejudice in circumstances that would create an estoppel? The conduct relied on is that in 1964 the mortgagee took a mortgage for £257,500 (reduced at the time of the action to £161,397. 6s. 7d.) on a vessel which, it is suggested, he must have known was worth less than this as its value today is estimated at under £100,000. I do not think that the value today on a forced sale is sufficient to establish the value in 1964 but, in any event, I do not consider that the creation of a mortgage for more than the value of a vessel is in itself sufficient to establish an estoppel because as was said by Langdon J. in *The Zigurds*<sup>1</sup>.

"People who deal in shipping affairs and with ships must be taken to do so with their eyes open to the ordinary risks and liabilities incident to these affairs. No one who was conversant with maritime affairs could pretend to surprise on learning that a ship was sailing the seas under the burden of a mortgage."

I do not think that the facts of this case are sufficient to establish an estoppel. For the reasons which I have given I hold that the necessities men do not take priority over the mortgagee subject to consideration of the next question which relates to disbursements in respect of seamen's wages.

The next question which I have to decide is whether the necessities men who have made disbursements in respect of the seamen's wages should obtain the seamen's priority. I have carefully considered all the cases referred to by learned counsel and also those mentioned in *The Petone*<sup>2</sup> and refer here to the following cases which appear to me to be of particular relevance.

In *The Kammerhevie Rosenkrantz*<sup>3</sup> the court gave leave to the holders of a bottomry bond to pay the wages of the crew prior to the satisfaction of any other claims.

In *The Neptune*<sup>4</sup> it was held that necessities men, or materials men as they were there called, had no lien for seamen's wages on the proceeds of a ship which had been sold under a decree of the court.

In *The Janet Wilson*<sup>5</sup>, a ship-owner paid certain wages after a bottomry bond had been given on the ship and he was not given priority over the holders of the bottomry bond as the leave of the court to make the payment had not been given. It appears, however, from the judgment that the court was not laying down any "specific doctrine with regard to the payment of wages in preference to the payment of a bottomry bond".

<sup>1</sup> [1932] P. 113 at p. 132.

<sup>2</sup> [1917] P. 198.

<sup>3</sup> (1822) 1 Hag. Adm. 62.

<sup>4</sup> (1835) 3 Knapp 94.

<sup>5</sup> (1857) 1 Sw. 261.

In *The William F. Safford*<sup>1</sup> it was held that a claim by a person who has paid wages to the ships crew at the request of the master was in the nature of a wages claim and entitled to the same priority.

In *The Cornelia Henrietta*<sup>2</sup> the holders of a bottomry bond advanced the wages of the seamen and the court sanctioned the repayment of the advance out of the proceeds of the ship. The headnote to this case is misleading as it implies that the application for a refund was refused. In fact the application was granted though the court said that leave ought to have been obtained before the advance was made.

In *The St. Lawrence*<sup>3</sup> a necessities man who had paid the wages of the seamen was, by the agreement of the parties, allowed priority over the claims of the holders of a bottomry bond.

In *The Henrich Björn*<sup>4</sup> it was held that a necessities man who had made advances in respect of necessities had no maritime lien and could not maintain an action in rem against the vessel.

In *The Lyons*<sup>5</sup> the court refused to grant priority over the mortgagees to necessities men who had paid wages to the crew at the request of the master. It appears, however, from comments made by the judge that priority might have been given if the necessities men had applied for the leave of the court before the payments were made.

In *The Petone* it was held that persons in the position of volunteers who had made payments in discharge of seamen's wages did not thereby acquire the seamen's lien so as to enable them to bring an action in rem.

In *The Leoborg (No. 2)*<sup>6</sup> a necessities man was not given a priority over the mortgagees in respect of disbursements made to the crew for wages and repatriation expenses. I have not been able to read the full report as the Lloyds Reports are not available here but it appears from the reference to the case in McGuffie that the reasons for the court's decision not to grant priority was that the necessities man had acted improperly in failing to give all the relevant facts and information.

The conclusions that I have reached from a consideration of the cases are these:—

(1) A necessities man who has made disbursements in respect of the wages of the crew does not thereby obtain the seamen's maritime lien (*The Neptune, The Henrich Björn* and *The Petone*).

(2) In so far as priorities are concerned, a necessities man may (even though he does not have the maritime lien) be given priority over the mortgagee in respect of disbursements for seamen's wages (*The William F. Safford, The Cornelia Henrietta* and *The St. Lawrence*).

<sup>1</sup> (1860) Lush. 69.

<sup>2</sup> [1886] L.R. 1 A. & E. 51.

<sup>3</sup> (1880) 5 P.D. 250.

<sup>4</sup> (1886) 11 App. Cas. 270.

<sup>5</sup> (1887) 6 Asp. M.L.C. 199.

<sup>6</sup> [1964] 1 Lloyd's Rep. 380.

(3) The leave of the court should be obtained before disbursements of this kind are made (*The Cornelia Henrietta*, *The Kammerhevie* and *The Lyons*) but the court has a discretion to allow the priority even though leave has not been obtained (*The William F. Safford*, *The Cornelia Henrietta* and *The St. Lawrence*).

I have carefully considered the facts of this case and consider that it is one in which priority should be given to the necessities men who have made disbursements in respect of the repatriation of the crew. It is a case in which I would have given leave if an application had been made and the failure to obtain leave can to some extent be excused in this case because, so far as I am aware, it is the first time in recent years that this point has come up for decision before the court in Gibraltar.

The last point for consideration is whether medical expenses form part of the crew's wages. It is possible that cases could arise in which the terms of a contract of employment showed that medical expenses form part of a person's emoluments but there is nothing in the present cases that would lead me to that conclusion. I accordingly hold that the medical expenses do not form part of the claim for seamen's wages.

There was also some dispute as to whether the cost of arrest was an unnecessary expense. In my view a claimant is justified in protecting his interest by way of arrest notwithstanding that proceedings have been taken under the Ports Ordinance.

I direct that the order of priorities, after payment of the claim and expenses under the Ports Ordinance, shall be as follows:—

- (1) The cost of the arrest.
- (2) The claim by the crew for wages.
- (3) The claim by the master for wages and disbursements.
- (4) The claim by the Greek Seamen's Pension Fund.
- (5) The claims by the necessities men in so far as they relate to disbursements in respect of wages, that is, the repatriation of the master and crew.
- (6) The claim by the mortgagee.
- (7) The claims for necessities in so far as they do not come under (5).