

[1980–87 Gib LR 72]

H.M.S. “HAMPDEN” v. “SAMARKAND” (OWNERS)

SUPREME COURT (Davis, C.J.): November 28th, 1981

Shipping—salvage—remuneration—under Merchant Shipping (Salvage) Act 1940, s.1(1), Crown entitled to claim remuneration for salvage services rendered by Royal Navy ship—1940 Act remains applicable to Gibraltar in original form although repealed in English law

The applicants sought to set aside a writ issued against them for the payment of salvage remuneration and for the release from arrest of their yacht *Samarkand*.

H.M.S. *Hampden* rendered salvage services to the yacht *Samarkand* and the Crown issued a writ against the applicants for the payment of salvage remuneration.

The applicants applied to the court for an order that the writ be set aside and the *Samarkand* be released from arrest. They submitted that the Crown had no right to claim salvage remuneration as s.1(1) of the Merchant Shipping (Salvage) Act 1940 no longer applied to Gibraltar; it had been repealed by the Crown Proceedings Act 1947, Schedule 2 and replaced by s.8(2) of that Act, which had never been applied to Gibraltar.

The Crown submitted that (a) under s.1(1) of the Merchant Shipping (Salvage) Act 1940, incorporated into Gibraltar law by virtue of s.221 of the Merchant Shipping Ordinance (*cap.* 106), it was entitled to claim remuneration in respect of salvage services rendered; and (b) alternatively, the defendant was bound to pay remuneration by the salvage agreement into which it had entered following the salvage of the yacht.

Held, dismissing the application:

The Crown was entitled to claim remuneration in respect of salvage services rendered by one of Her Majesty’s ships. The Merchant Shipping (Salvage) Act 1940, s.1(1), which entitled the Crown to claim remuneration in respect of salvage services, still applied to Gibraltar in its original form, by virtue of s.221(1) of the Merchant Shipping Ordinance (*cap.* 106). It was irrelevant that s.1(1) of the Merchant Shipping (Salvage) Act 1940 had been repealed by the Crown Proceedings Act 1947, Schedule 2 and replaced by s.8(2) of that Act, since the 1947 Act had never been applied to Gibraltar and Gibraltar had enacted its own Crown Proceedings Ordinance (*cap.* 38) which contained no provision corresponding to s.8(2). Similarly, the power conferred on the legislature of Gibraltar by the Merchant Shipping Act 1894, s.735, to repeal the Merchant Shipping

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(Salvage) Act 1940 had never been exercised. The Crown therefore retained its original right to claim remuneration for salvage services in Gibraltar (paras. 7–10).

Case cited:

(1) *Admiralty Commrs. v. Valverda (Owners)*, [1938] A.C. 173; (1937), 59 Ll. L. Rep. 231, considered.

Legislation construed:

Merchant Shipping Ordinance (Laws of Gibraltar, *cap.* 106), s.221(1):
The relevant terms of this sub-section are set out at para. 3.

Crown Proceedings Act 1947 (10 & 11 Geo. VI., c.44), s.8(2):

“Where after the commencement of this Act salvage services are rendered by or on behalf of His Majesty, whether in right of His Government in the United Kingdom or otherwise, His Majesty shall be entitled to claim salvage in respect of those services to the same extent as any other salvor, and shall have the same rights and remedies in respect of those services as any other salvor.”

Merchant Shipping (Salvage) Act 1940 (3 & 4 Geo. VI., c.43), s.1(1): The relevant terms of this sub-section are set out at para. 5.

D. Faria for the applicants;

P.J. Isola for the Crown.

1 **DAVIS, C.J.:** By writ dated November 12th, 1981, the Crown claimed (a) a declaration that the parties are bound by a salvage agreement entered into on October 13th, 1980 following the salvage of the yacht *Samarkand* by H.M.S. *Hampden*, or alternatively, (b) salvage remuneration in respect of salvage services rendered by it to the yacht *Samarkand* on October 13th, 1980. It appears that *Hampden* is one of Her Majesty’s ships.

2 The applicants now apply, by notice of motion, made under O.12, r.8 and O.75, r.13 of the Rules of the Supreme Court 1965, as applied to Gibraltar by the Supreme Court (Admiralty Practice) Rules 1978, for an order to set aside the writ issued against them by the Crown and for the release from arrest of the yacht *Samarkand* on the grounds that, under the laws of Gibraltar, Her Majesty’s ships cannot claim salvage.

3 Mr. Faria for the applicants has drawn my attention to the Merchant Shipping Ordinance (*cap.* 106), s.221(1), which insofar as relevant, provides as follows:

“It is hereby declared that in addition to the provisions of the Merchant Shipping Acts which expressly or by necessary implication apply to Gibraltar, all the provisions of the said Acts, in so far as the same may be applicable, shall apply to Gibraltar, *mutatis mutandis*,

in all matters relating to shipping and seamen not expressly provided for by this Ordinance . . .”

4 Parts of the Merchant Shipping Acts have been applied to Gibraltar; parts of the Acts have been re-enacted in the Merchant Shipping Ordinance (*cap.* 106). Part VIII of the Ordinance incorporates much of Part IX of the Merchant Shipping Act of 1894 relating to wreck and salvage, but omits s.554 and ss. 557–564 of the Act relating to salvage by one of Her Majesty’s ships. It appears to me, however, that in spite of this omission, these provisions apply to Gibraltar by virtue of s.221(1) of the Ordinance.

5 Section 1(1) of the Merchant Shipping (Salvage) Act 1940 provided as follows:

“Where salvage services are rendered by or with the aid of any ship, aircraft or other property whatsoever belonging to His Majesty, His Majesty shall be entitled to claim salvage for those services, and shall have the same rights and remedies in respect of those services as any other salvor would have had if the ship, aircraft or property had belonged to him.”

6 By s.4(3) of this Act, s.557(1) of the Merchant Shipping Act 1984 (which, as construed by the Privy Council in *Admiralty Commrs. v. Valverda (Owner)* (1), precluded salvage claims by Her Majesty’s ships) was substantially amended so as in effect to repeal the prohibition against salvage claims by the Crown.

7 Section 8(2) of the Crown Proceedings Act 1947 replaced the provisions of the Merchant Shipping (Salvage) Act 1940 which was consequentially repealed. In England, therefore, the Crown’s right to claim salvage is contained in s.8(2) of the Crown Proceedings Act 1947.

8 The Crown Proceedings Act 1947, however, does not apply to Gibraltar and the Government of Gibraltar has enacted its own Crown Proceedings Ordinance (*cap.* 38) which follows the English Act of 1947. The local Ordinance contains no provisions relating to salvage corresponding to s.8(2) of the Crown Proceedings Act 1947.

9 Mr. Faria submits that by virtue of the repeal by the Crown Proceedings Act 1947 of the Merchant Shipping (Salvage) Act 1940, the provisions of the latter Act no longer apply to Gibraltar. He, and Mr. Isola for the respondent, made other submissions, but I do not consider that I need deal with these as, in my view, the Merchant Shipping (Salvage) Act 1940 still applies to Gibraltar. It would only cease to apply, in my view, if the Crown Proceedings Act 1947 had been applied to Gibraltar, at least to the extent of its repealing s.39(1) and Schedule 2, or if, in exercise of the power conferred on the legislature of Gibraltar by s.735 of the Merchant Shipping Act 1894, the Gibraltar legislature had itself repealed the

provisions of the Merchant Shipping (Salvage) Act 1940, but neither of these eventualities has occurred.

10 Accordingly, I find that by virtue of s.1(1) of the Merchant Shipping (Salvage) Act 1940, as applied to Gibraltar by s.221(1) of the Merchant Shipping Ordinance (*cap.* 106), the Crown is entitled to claim for salvage services rendered by one of Her Majesty's ships, and the present application is therefore dismissed with costs.

Application dismissed.

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**IN THE MATTER OF THE LAND (TITLES) ORDER and A
DEED OF AGREEMENT DATED NOVEMBER 30TH, 1978**

SUPREME COURT (Davis, C.J.): December 18th, 1981

Land Law—title—registration of deed affecting Gibraltar land—extension of time for registration under Land (Titles) Order, s.3(4) only if “good and sufficient reason” shown for failure to register in time—breakdown in contract for acquiring land and contemplation of legal proceedings not “good and sufficient reason”—inefficiency of solicitor similarly not enough

The applicant applied to the court for late registration of a deed after failure to register it within the six-month period specified by the Land (Titles) Order, s.3(1).

The parties (Oliver Heath & Co. Ltd. and International Properties (Gib.) Ltd.) had made an agreement which provided that Oliver Heath & Co. Ltd. (the applicant) would tender for the purchase of property in Gibraltar, on the basis that a mortgage for the full amount of the purchase price would be granted by the vendor. The parties planned that if the tender were successful, they would jointly subscribe to the formation of a new company and both would convey property to it; the applicant conveying the property for which it had earlier successfully tendered. Subsequently, however, negotiations between the parties broke down, allegedly because International Properties failed to perform its part of the agreement.

The applicant had, however, failed to register the agreement (a deed affecting land in Gibraltar) with the Supreme Court within six months of its execution, as required by s.3(2) of the Land (Titles) Order (*cap.* 82) and