**[1980–87 Gib LR 328]**

## UNIPETROL NIGERIA LIMITED v. PRIMA TANKERS LIMITED ("THE PRIMA JEMIMA")

SUPREME COURT (Alcantara, A.J.): November 25th, 1985

*Shipping—forced sale of cargo—sale pendente lite—application for sale pendente lite not to be ordered in first week of arrest unless strong reasons—applicant to establish value and quality of cargo would be substantially affected if arrest continues—market price of cargo under arrest irrelevant*

The plaintiff sought an order for the appraisement and sale of bunker oil under arrest on board the *Prima Jemima*, pending trial.

A writ was served on the *Prima Jemima* claiming the return of a quantity of bunker oil or its equivalent value in money and damages for its unlawful detention. Five days later, having received neither the oil nor the financial compensation, the plaintiff sought an order for its sale *pendente lite*.

The plaintiff submitted that (a) it was the rightful owner of the bunker oil onboard the *Prima Jemima*; (b) unless sale of the oil were ordered, it would suffer heavy and continuing costs of maintaining the arrest which would result in a substantial diminution in the value of the security for its claim; (c) the bunker oil would deteriorate in quality if its sale were not promptly ordered; and (d) the market in Gibraltar for the sale of the oil was, at present, good.

The defendant appeared, but neither supported nor opposed the order sought, although it went on to submit that (a) the plaintiff did not own the bunker oil onboard the *Prima Jemima*; and (b) the plaintiff did not have *locus standi* to make the application.

**Held,** granting the order but post-dating it for one week:

The application for the sale of the oil pending trial was premature. It had been made only five days after the ship had been arrested and although the order would be granted it would be post-dated for one week. This would give the parties time to negotiate and also to prevent the plaintiff having to make a new application for sale should the situation remain the same. Unless there were very strong reasons, an order for the sale of goods should not be granted so expeditiously. In the present case, the order could not be granted immediately as the plaintiff had failed to establish, as it was required to for a sale to be ordered, that the expense of maintaining the arrest for a further week would result in a substantial

diminution in the value of the security for its claim or that the bunker oil would deteriorate in quality if it remained under arrest. It was also totally irrelevant that the market for the sale of bunker oil was, at present, good (para. 6; paras. 13–14).

**Cases cited:**
(1) *Gulf Venture*, *The*, [1985] 1 Lloyd's Rep. 131, considered.
(2) *Kleinwort Benson Ltd.* v. *Sakht* (*The Myrto*), [1977] 2 Lloyd's Rep. 243, considered.
(3) *Practice Direction* (*Admiralty Directions*), [1973] 1 W.L.R. 1146; [1973] 3 All E.R. 446; [1973] 2 Lloyd's Rep. 235, distinguished.

**Legislation construed:**
Rules of the Supreme Court, O.29, r.4: The relevant terms of this order are set out at para. 4.

*H.K. Budhrani* for the plaintiffs;
*P.R. Caruana* for the defendants.

1 **ALCANTARA, A.J.:** This is an admiralty action *in rem* against the property, that is to say 3,770 metric tonnes of bunker fuel loaded on to the defendant's motor tanker, *Prima Jemima*, at Okrika, Nigeria on or about October 16th, 1985.

2 The court is being moved to make an order for the appraisement and sale of 3,770 metric tonnes of bunker oil under arrest on board the motor tanker, *Prima Jemima*. The property was arrested on November 12th, 1985. The motion for appraisement and sale was issued on November 15th, 1985 and came before me for hearing on November 20th, 1985.

3 The motion purports to be made pursuant to O.75, r.12(3) of the Rules of the Supreme Court. I have referred myself to the *Practice Direction (Admiralty Directions)* (3) and it appears to me that that rule, in the circumstances of this case, is not really applicable.

4 I think that the relevant order is O.29, r.4, which reads (see 1 *The Supreme Court Practice 1985*, para. 29/4, at 470):

> "The Court may, on the application of any party to a cause or matter, make an order for the sale by such person, in such manner and on such terms (if any) as may be specified in the order of any property (other than land) which is the subject-matter of the cause or matter or as to which any question arises therein and which is of a perishable nature or likely to deteriorate if kept or which for any good reason it is desirable to sell forthwith."

5 At the hearing, I expressed doubts as to whether the facts in this application justified an order for sale *pendente lite*, saying that it is only made in rare cases and not as a matter of course. These were the facts

before me: on November 12th, a writ was served on board the *Prima Jemima* claiming the return of bunker oil or its value, *i.e.*, US$580,000 and damages for its detention.

6 The plaintiffs are claiming that they are the owners of the oil and that the defendants, who are the owners of the vessel, are unlawfully detaining the oil. From November 6th to November 14th, 1985 the *Prima Jemima* had been under arrest in some other action but had been released on November 14th, 1985. As I understand it, shipkeepers went on board for the first time on November 14th, 1985. The following day, this notice of motion was issued, supported by an affidavit. The plaintiff puts forward three grounds in support of an order for sale *pendente lite*:

(a) *Expenses of arrest*. At the time of swearing the affidavit, only two days' wages in respect of shipkeepers had been incurred; at the time of hearing only five days' expenses. There was also the possibility of having to insure the oil.

(b) *Deterioration of the subject-matter*. There is no evidence from an expert that this is so. Oil is not of perishable nature.

(c) The market is ripe to sell the oil locally. That is hardly a consideration to order sale *pendente lite* by itself.

7 The defendants appeared by counsel and although they did not oppose the order sought, they did not consent to it. Counsel made it quite plain that the defendant does not accept that the plaintiff is the owner of the oil nor that it has *locus standi* to make this application. Further, counsel is not prepared to concede any of the facts deposed to in the affidavit in support.

8 I adjourned my decision to the following morning. Before giving my decision, counsel for the plaintiff brought to my attention two cases dealing with the circumstances in which an order for appraisement and sale *pendente lite* will be made. They are *The Myrto* (2), in which Brandon, J. had this to say ([1977] 2 Lloyd's Rep. at 260):

> "The question whether an order for the appraisement and sale of a ship under arrest in an action *in rem* should be made *pendente lite* arises normally only in a case where there is default of appearance or defence. In such a case it has been a common practice for the Court to make such an order on the application of the plaintiffs on the ground that, unless such order is made, the security for their claim will be diminished by the continuing costs of maintaining the arrest, to the disadvantage of all those interested in the ship, including, if they have any residual interest, the defendants themselves.
>
> Where defendants to an action *in rem* against a ship appear in the action with the intention of defending it, they almost invariably obtain the release of the ship from arrest by giving bail or providing

> other security for the claim satisfactory to the plaintiffs. For this reason there appears to be no reported case in which the Court has had to consider in what circumstances it would be right to make an order for appraisement and sale of a ship *pendente lite* in a defended case."

9 I accept that the court should not make an order for the appraisement and sale of a ship *pendente lite* except for good reason, and this is so whether the action is defended or not, I accept further that, where the action is defended and the defendants oppose the making of such an order, the court should examine more critically than it would normally do in a default action, whether good reason for the making of an order exists or not. I do not accept, however, the contention put forward for the owner that the circumstance in which, unless a sale is ordered, heavy and continuing costs of maintaining the arrest will be incurred over a long period, with the consequent substantial diminution in the value of the plaintiff's security for their claim, cannot, as a matter of law, constitute a good reason for ordering a sale. On the contrary, I am of the opinion that it can and often will do.

10 Brandon, J. continued (*ibid*., at 261):

> "I have no doubt that, on the facts of this case, the Court should exercise its discretion to make such order. It would, in my view, be unreasonable to keep the ship under arrest at great expense for seven months or more, with the result that, if the bank succeeded in their claim, the amount of their recovery would be reduced by the costs incurred."

11 An order for sale *pendente lite* was made in *The Myrto* (2), but that vessel was arrested on December 10th, 1976, and then by the bank on January 31st, 1977, and the order was not made until March 4th, 1977. In the application before me, the plaintiff wanted the order five days after arrest.

12 The next case is *The Gulf Venture* (1), in which Sheen, J. followed *The Myrto* (2) in relation to the appraisement and sale *pendente lite*. The costs of arrest in that case were not greatly dissimilar to the costs in the present case. Once more the arrest was on July 4th, 1984, and the order for sale *pendente lite* was made on October 17th, 1984, on the ground that if no order was made and the trial did not take place for some time the security of the plaintiffs would be reduced.

13 I agree with those two decisions, but I have come to the conclusion that the application in this case is premature. There might still be an application by the defendants to discharge the cargo, there might be a settlement or there might be an early hearing of the action.

14 Rather than dismiss the application, and because the defendants, although not agreeing, are not opposing at the same time, I will make the order prayed but I will post-date it for one week. I take this course of action to give more time to the parties and avoid the need for the plaintiffs, if it arises, to make a new application in the future. But unless there are very strong reasons, an application for appraisement and sale should not be so expeditiously made after arrest.

*Order accordingly.*

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**[1980–87 Gib LR 332]**

## IN THE MATTER OF X

SUPREME COURT (Davis, C.J.): December 2nd, 1985

*Family Law—marriage—age of marriage—by Marriage Ordinance (cap. 99), s.14(1A), Supreme Court may permit marriage of girl under 16 if "exceptional circumstances"—unmarried pregnancy at age of 15 sufficiently "exceptional" in Gibraltar to allow court to grant permission—court to be satisfied no pressure to marry imposed on couple, circumstances conducive to marriage and family support available*

A 15-year-old girl applied to the Supreme Court for permission to marry.

The applicant sought permission to marry her fiancé under s.14(1A) of the Marriage Ordinance (*cap*. 99).

She submitted that she should be allowed to marry at the age of 15 as (a) she was pregnant and expected her baby to be born before her 16th birthday; (b) neither she nor her fiancé had been subjected to pressure to get married by either her own or his family; (c) her fiancé was 19 and earned his own living; and (d) their families would support them in their marriage.

**Held,** granting the application:

The applicant and her fiancé would be allowed to marry, as unmarried pregnancy under the age of 16 was sufficiently "exceptional," within the meaning of s.14(1A) of the Marriage Ordinance (*cap*. 99), to justify allowing them to do so. The court was satisfied that they had chosen to marry of their own free will without being subject to any external pressure and it appeared that the circumstances of the applicant, her fiancé and their respective families were conducive to the marriage. This was