

**BLUEYED NAVIGATION INCORPORATED v. OWNERS
OF THE “BLUEYED LADY”**

SUPREME COURT (Kneller, C.J.): August 25th, 1994

Conflict of Laws—parallel foreign proceedings—stay of Gibraltar proceedings—arbitration—Gibraltar action in rem struck out if based on breach of charterparty subject to foreign arbitration—abuse of process for same parties to litigate same issues in two forms

Shipping—arrest of ship—release from arrest—conduct and purpose of proceedings for arrest relevant to discretion to order release—action in rem stayed if commenced to preserve security for arbitration award but not pursued, unless award unlikely to be satisfied

The plaintiff applied for an order for the appraisal and sale of the defendants' ship *pendente lite*.

The defendants chartered their ship to the plaintiff under a charterparty agreement containing an arbitration clause. The defendants' parent company guaranteed the performance of their obligations. The defendants terminated the charterparty, alleging that the plaintiff was in breach of its terms.

The parties commenced arbitration proceedings in London, in which the plaintiff sought damages against the defendants and their parent company for repudiation of the charterparty and the defendants counter-claimed for fraud by the plaintiff. The plaintiff also obtained the arrest of the ship (without disclosing that the arbitration was in train) and brought proceedings in the Supreme Court claiming damages for loss suffered due to the defendants' repudiation of the charterparty. It applied for the ship to be appraised and sold by the Admiralty Marshal *pendente lite*.

The defendants applied for orders either dismissing or staying the plaintiff's action and for the release of the ship. They alleged that the plaintiff had already obtained security for the claim under the charter guarantee by arresting vessels belonging to the defendants' parent company in other jurisdictions.

The defendants submitted that (a) arrest of the ship was an abuse of process, since its purpose was to provide security for a possible arbitration award in the plaintiff's favour in England; (b) although the Civil Jurisdiction and Judgments Ordinance 1993, s.19 would in future allow the plaintiff to maintain an action in Gibraltar, without pursuing it, in order to preserve such security, it was not yet in force; and (c) the plaintiff had failed to disclose the existence of the arbitration when seeking the arrest.

The plaintiff submitted in reply that (a) it had been entitled to issue a warrant of arrest as of right, having complied with the affidavit requirements of O.75, r.5 of the Rules of the Supreme Court; (b) it required the proceeds of the sale of the ship to meet its arbitration award, as it had been unable to obtain effective security in other jurisdictions, but the obtaining of security was not the sole purpose of the claim; it also had a valid claim *in rem* against the ship; (c) the English arbitration should be distinguished, as an action *in personam* by the applicant, from the Gibraltar action *in rem* against the ship; (d) the indorsement on the writ in the action *in rem* fell within the scope of s.20(2)(h) of the Supreme Court Act 1981 and should not be struck out; and (e) it was entitled to maintain security for the English arbitration award, as was permitted in England under s.26 of the Civil Jurisdiction and Judgments Act 1982.

Held, striking out the writ and ordering the release of the ship:

(1) The Admiralty Court, which had the power to arrest a ship in Gibraltar, had a discretion as to whether to exercise it. Furthermore, it had a discretion to order the release of a ship from arrest and was entitled to consider the manner in and purpose for which the plaintiff had proceeded (page 355, lines 13–21).

(2) The Admiralty jurisdiction should not be used to obtain security for the arbitration award itself, and that had clearly been the aim of the plaintiff's original application for arrest. Although the action *in rem* could be maintained if the plaintiff showed that the defendants were unlikely to be able to meet an arbitration award in its favour, so that security would remain available if it were forced to pursue the action *in rem* later, the contention that the award might not be met had only recently been raised (page 355, lines 22–40; page 356, lines 4–8).

(3) The plaintiff would not be permitted to proceed with the arbitration in England and at the same time maintain the Gibraltar action but not pursue it. Although that would be allowed in England under s.26 of the Civil Jurisdiction and Judgments Act 1982 (and, in future, in Gibraltar when Civil Jurisdiction and Judgments Ordinance 1993, s.19 was brought into force), at present it was not permissible here (page 355, lines 1–12; page 355, line 45 – page 356, line 3).

(4) In reality the proceedings in Gibraltar were proceedings *in personam* against the defendants in the English arbitration, since the defendants were obliged to acknowledge service here if they wished to avoid judgment in default and contest the merits of the plaintiff's claim. Once they had entered an appearance, the proceedings would have to continue both as an action *in rem* and as an action *in personam* against them. In the unlikely event that the respondent did take further steps in the action here, it would be litigating the same subject-matter in two jurisdictions. Accordingly, the indorsement on the writ would be struck

out and the action dismissed as an abuse of process, notwithstanding that it fell within s.20(2)(h) of the Supreme Court Act 1981. The ship would be released (page 354, lines 25–45; page 356, lines 8–19).

Cases cited:

- (1) *Andria, The*, [1984] Q.B. 477; [1984] 1 All E.R. 1126, followed.
- (2) *August 8, The*, [1983] 2 A.C. 450; [1983] 1 Lloyd's Rep. 351, followed.
- (3) *Bazias 3, The*, [1993] Q.B. 673; [1993] 2 All E.R. 964.
- (4) *Cap Bon, The*, [1967] 1 Lloyd's Rep. 543.
- (5) *Deichland, The*, [1990] 1 Q.B. 361; [1989] 2 All E.R. 1066.
- (6) *Rena K, The*, [1979] Q.B. 377; [1979] 1 All E.R. 397, followed.
- (7) *Tuyuti, The*, [1984] Q.B. 838; [1984] 2 All E.R. 545.
- (8) *Varna, The*, [1993] 2 Lloyd's Rep. 253; [1993] T.L.R. 227.

Legislation construed:

Civil Jurisdiction and Judgments Ordinance, 1993 (No. 29 of 1993), s.19(1):

“Where in Gibraltar a court stays or dismisses Admiralty proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of an overseas country, the court may, if in those proceedings property has been arrested ...—

- (a) order that the property arrested be retained as security for the satisfaction of any award or judgment which—
 - (i) is given in respect of the dispute in the arbitration or legal proceedings in favour of which those proceedings are stayed or dismissed; and
 - (ii) is enforceable in Gibraltar...

Rules of the Supreme Court, O.75, r.5(1):

“In an action in rem the plaintiff ... may after the issue of the writ in the action and subject to the provisions of this rule issue a warrant ... for the arrest of the property against which the action or any counterclaim is brought.”

r.5(8): “Issue of a warrant of arrest takes place upon its being sealed by an officer of the registry or district registry.”

r.13(4): “A release may be issued at the instance of any party to the action in which the warrant of arrest was issued if the Court so orders...”

Supreme Court Act 1981 (c.54), s.20(1):

“The Admiralty jurisdiction of the High Court shall be as follows, that is to say—

- (a) jurisdiction to hear and determine any of the questions and claims mentioned in subsection (2)...

s.20(2) The questions and claims referred to in subsection (1)(a) are—

- ...
 - (h) any claim arising out of any agreement relating to the carriage of goods in a ship or to the use or hire of a ship...

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s.21(4): "In the case of any such claim as is mentioned in section 20(2)(e) to (r), where—
(a) the claim arises in connection with a ship; and
(b) the person who would be liable on the claim in an action in personam ('the relevant person') was, when the cause of action arose, the owner or charterer of, or in possession or in control of, the ship,
an action in rem may (whether or not the claim gives rise to a maritime lien on that ship) be brought in the High Court..."

L.W.G.J. Culatto for the plaintiff;
A.J.S. Glennie, Q.C. and *L.E.C. Baglietto* for the defendants.

15 **KNELLER, C.J.:** On June 8th this year the indorsement on the writ issued by Blueyed Navigation Inc. ("the plaintiff") was struck out and its action dismissed, the owners of the *M.V. Blueyed Lady* ("the defendants") obtained the release from arrest of the *Blueyed Lady* and the plaintiff was ordered to pay the costs of the action, including the costs of the defendants' application, to be taxed if not agreed. The *Blueyed Lady* remains under arrest at the instance of another plaintiff.

20 The indorsement on the writ of summons in the action *in rem* issued from the Supreme Court Registry here at the end of March this year was this:

25 "The plaintiff, as the charterer of the defendants' ship *Blueyed Lady* under a bareboat charterparty dated September 14th, 1992, claims damages for the loss suffered by it by reason of the defendants' renunciation and/or repudiation of the said charterparty."

30 The writ was served the same day by a port officer here as the Admiralty Marshal's substitute. Mr. Culatto's affidavit of the same date leading to the arrest disclosed that the plaintiff is a Liberian company with a registered office at 80 Broad Street, Monrovia. It is owned, I think, by an American company. Its claim was for the sum of US\$34,880,725, though it would accept US\$19,840,000 to reflect accelerated payment of its claim, but the defendants refused to pay any sum.

35 The *Blueyed Lady* is a crude-oil tanker registered in the port of Nassau in The Bahamas. She is the ship against which the action was brought and the plaintiff's claim arose in connection with her.

40 Mr. Culatto believed that Oltenia Shipping Corp. ("Oltenia") would be liable on the claim in an action *in personam* because it owned the *Blueyed Lady* when the cause of action arose and when the writ of summons was issued. The *Lloyd's Register of Shipping 1993-1994* reflected this. Oltenia was the beneficial owner of all the shares in her. The action was brought by the plaintiff pursuant to s.20(2)(h) and s.21(4) of the Supreme Court Act 1981. He did not reveal that earlier the parties had proceeded to arbitration in London in accordance with the provisions of a clause in the
45 charterparty.

The defendants' solicitors in Gibraltar acknowledged service of the writ of summons on April 8th. They followed it up on April 19th with a motion on notice for the following:

1. An order pursuant to O.19 of the Rules of the Supreme Court and the inherent jurisdiction of the court that the indorsement on the writ be struck out and this action dismissed on the grounds that the said indorsement is frivolous or vexatious and/or is otherwise an abuse of the process of the court. 5

2. Alternatively, an order that all further proceedings in this action be stayed pursuant to s.8 of the Arbitration Ordinance, the plaintiff and the defendants having by an agreement in writing dated September 14th, 1992 agreed to refer to arbitration the matters in respect of which this action is brought, and arbitration proceedings being already on foot in London between the parties in respect of such matters. 10

3. Alternatively, an order staying all further proceedings in this action under the inherent jurisdiction of the court on the grounds that (a) the arbitration proceedings are pending in London; and (b) it is more appropriate and convenient for the dispute between the plaintiff and defendants to be decided in the arbitration. 15

4. An order under O.75, r.13 of the Rules of the Supreme Court for the release of the defendants' ship *Blueyed Lady* in consequence of the dismissal or stay of this action or in any event on the grounds that the arrest of the ship is an abuse of process and/or on the grounds that the court's jurisdiction to arrest a ship should not be exercised for the purpose of providing security for a possible award in arbitration proceedings. 20 25

5. An order that the plaintiff pay the defendants' costs of the action including the costs of this application, all to be taxed.

Further background facts to this motion were related in an affidavit of Mr. Dunford of the defendants' solicitors in England, dated June 2nd. They include the information that Oltenia is owned by the Compania de Navigatie Maritima Petromin S.A. ("Petromin"), a Romanian state-owned company of Incinta, Port Street, Constantza. 30

Oltenia let the *Blueyed Lady* to the plaintiff for nine years at the rate of US\$2,800 a day under a bareboat charterparty dated September 14th, 1992. Clause 24 provided: 35

"This charter shall be governed by English law and any dispute arising out of this charter shall be referred to arbitration in London, one arbitrator being appointed by each party in accordance with the Arbitration Acts 1950 and 1979." 40

On November 10th, 1993 the defendants' solicitors in England told the plaintiff and its American attorneys, Lord Day & Lord, Barrett Smith, that the plaintiff had breached the charter and the *Blueyed Lady* was withdrawn from the charterparty under cl. 32, so possession and control of it went back to Oltenia. 45

Arbitration began in London in accordance with cl. 24 and Mr. Martin Moore-Bick, Q.C. was appointed as one arbitrator by Oltenia and Mr. Michael Baker-Harper as the other by the plaintiff, and together they selected Mr. Michael Wilford as the umpire.

5 They tackled first of all the quantum of the plaintiff's counterclaim and the award was ready for collection one day before the defendants filed their motion on notice. The fees of the arbitrators together amounted to £59,850 and the award could not be collected until they were paid, with the consequence that it had not been "picked up" by the time the motion was heard here.

10 The defendants claim that it was for the plaintiff to obtain it because it related to the quantum of its counterclaim but, nevertheless, asked Oltenia and/or Petromin for funds to pay the fees, which would probably take a week or two to arrive because they would have to comply with exchange control regulations.

15 The substantive part of the arbitration relates to liability, and the hearing begins in London on September 26th and is due to last three weeks. The defendants have made very serious allegations of fraud against the plaintiff, and those and other issues between them raised in the pleadings are serious and complex.

20 Den Norske Bank A.S. ("DNB"), a company incorporated under the laws of Norway, had advanced moneys by way of a loan to the plaintiff to repair and upgrade the *Blueyed Lady*. The defendants guaranteed to DNB the plaintiff's obligations under the loan agreement and secured it with a mortgage over the *Blueyed Lady* in favour of DNB.

25 When the defendants terminated the charterparty, DNB called this "an event of default" under the provisions of the loan agreement and claimed against the defendants US\$8m., which is the entire sum it advanced to the plaintiff and, when it was not paid, arrested the *Blueyed Lady* here in Gibraltar. The value of the *Blueyed Lady* decreases each day she remains under arrest, and DNB's claim increases daily because interest is added.

30 At the end of the evidence before the arbitrators the plaintiff's expert, Mr. Morecroft, valued the *Blueyed Lady* at something between US\$12m. and US\$20m.

35 On September 14th, 1992 Petromin, under a deed of release and guarantee, guaranteed to the plaintiff due and punctual performance of Oltenia's liabilities under the charterparty, which meant that if the defendants are found liable to the plaintiff under the charterparty, Petromin will be liable to the plaintiff to the same extent under the charter guarantee.

40 Petromin and Oltenia allege that the plaintiff has sought to obtain security for its claim under the charter guarantee by arresting vessels it says belong to Petromin in other jurisdictions. One was the *Borzesti*, and it was released from arrest when Petromin provided US\$8.5m. security. The defendants state that that sum is security for the plaintiff's claim against Oltenia by counterclaim in the arbitration.

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DNB made an application to the Supreme Court in Gibraltar for appraisal and sale *pendente lite* of the *Blueyed Lady* which was granted by Harwood, A.J. but the Court of Appeal reversed this (see 1993–94 Gib LR 285), holding that DNB’s security—the *res*: the *Blueyed Lady* under arrest—was sufficient without converting her into money, and Oltenia agreed to cover all her costs and maintain her in reasonable condition while under arrest. DNB was given leave to re-apply upon any change of circumstances and, I think, has done so. 5

Undaunted, the plaintiff, by motions on notice in April and June, applied for an order that the *res* in this action—the *Blueyed Lady*—be appraised and sold by the Admiralty Marshal *pendente lite* pursuant to O.29, r.4 and the inherent jurisdiction of the court, thus provoking the defendants’ motion on notice which was heard first and was successful, rendering the plaintiff’s motion otiose. 10

Additionally, Petromin and Oltenia have challenged DNB’s right to security over the vessel and their application under O.14 or O.14A was to be heard in the High Court in London on June 7th and 8th. 15

Meanwhile, Petromin and Oltenia are vigorously pursuing their claims in the arbitration and action in London against the plaintiff and DNB. The rights of Petromin and Oltenia over the *Blueyed Lady* should not be interfered with here in Gibraltar for that would be unfair and oppressive. 20

Petromin and Oltenia submitted that this court had no jurisdiction to order the arrest of the *Blueyed Lady* because the purpose of that arrest was merely to provide the plaintiff with security for an award which might be made in its favour in the arbitration in England. They did not want the *Blueyed Lady* to be sold but to crew her with their seamen, carry out essential repairs and maintenance on her, enhance her value and increase the security she provided. They have been negotiating with the Admiralty Marshal about this. A sale of the *Blueyed Lady* by the Admiralty Marshal would realize much less than if she were sold on the open market. 25 30

The plaintiff’s view of the background facts is found in the affidavits of Mr. Grimmer, an attorney associated with Lord Day & Lord, Barrett Smith of New York. The plaintiff, he explained, accepted the repudiation and/or renunciation of the charterparty by Oltenia with its wrongful withdrawal of the *Blueyed Lady* so it agreed to terminate it and to claim damages. They have been to arbitration and the plaintiff is entitled to security for the award it will receive because the dispute is governed by the International Convention for the Recognition of Foreign Arbitral Awards. The United Kingdom, the United States, Gibraltar and Romania are parties to the Convention. 35 40

Then he went on to confirm that the plaintiff has tried to obtain security for its arbitration award in New Orleans, Louisiana and Panama with the result that Oltenia has deposited US\$500,000 and US\$8m. as security in those jurisdictions, but those sums can be withdrawn if appeals 45

succeed, so sufficient rock-firm security has not been gained. The plaintiff depends on the proceeds of a sale of the *Blueyed Lady* to meet its arbitration award.

5 There are now several claims against the *Blueyed Lady* and their total greatly exceeds her value and here she is deteriorating in the harbour. Oltenia has not paid any security into court to underpin its undertaking to the Court of Appeal to cover the expenses of her lengthy lay-up and, Mr. Grimmer added, she is Oltenia's only asset. Nor has Petromin. Worse still, Petromin has demised four or more of its other vessels on bareboat charters to other companies, including Cosena S.r.l., with which he is unimpressed since it owned only tugboats when this occurred. Was this a pointer to Petromin's willingness or ability to honour its guarantee or the undertakings of Oltenia? Petromin briskly removed one of its fleet from Panamanian waters to avoid an arrest warrant which had been issued but not served, and her master and Petromin's officers have been found to be in contempt of court. Mr. Grimmer, unlike Mr. Dunford, doubts that the arbitration in London on the issue of liability will be concluded before the end of 1994.

20 Other affidavits from Mr. Culatto set out some of the history of the litigation seething around the *Blueyed Lady* this year, beginning with the plaintiff's caveat of January 19th, right up to the plaintiff's applications in April and June, with his meticulous calculations of the claims against her, ending with the assertion that she will be insufficient security for any successful claimant, unless sold in early June. The London arbitration proceedings were revealed to Harwood, A.J. in DNB's first application for appraisal and sale *pendente lite*, and there was no call to set it out again when the plaintiff applied for the same relief. Those proceedings would not be over before 1995. September 26th is the date for dealing with other preliminary issues.

30 On behalf of the plaintiff, he emphatically denies that the sole purpose of its claim was to provide security for the arbitration award—that was a side effect. It was a valid claim *in rem* against the *Blueyed Lady* in accordance with the jurisdiction vested in this court by the Supreme Court Act 1981 as applied to Gibraltar.

35 It was Oltenia, he continued, which asked the arbitrators and umpire to deal with the issue of quantum before that of liability, so Oltenia should pay the fees for the result. The plaintiff, he conceded, has hustled around other jurisdictions with proceedings against what it alleges is Petromin's tonnage, but the proceeds were meagre—whether they were *in rem* or *in personam* actions—and the consequence was neither, as he puts it, effective nor guaranteed. He adumbrates Mr. Grimmer's complaints about Petromin's *Bobilna* sailing off from Panamanian waters before the warrant for her arrest could be effected but, he adds, this was an "unrelated arrest." He suggested the plaintiff may have other claims in 45 other jurisdictions *in rem* or *in personam* against Oltenia and/or Petromin.

My orders of June 8th cannot, in my opinion, take any account of the result of the arbitrators' award on the issue of the quantum of damages or the (inevitable) appeal from it or the defendants' application for summary judgment against DNB, or DNB's second application for appraisal and sale *pendente lite* of the *Blueyed Lady*, or two more caveats lodged in the Admiralty Registry on June 24th so that the alleged claims are over and beyond the value of the *Blueyed Lady* by the time these reasons are handed down. 5

Mr. Culatto, for the plaintiff, was anxious to make this distinction: the arbitration proceedings in London by Oltenia, as claimants, against the plaintiff were *in personam* because they owned the *Blueyed Lady*, whereas the plaintiff's action in this court in Gibraltar was an action against the *Blueyed Lady*—an action *in rem*. 10

The issue of a warrant of arrest is not a discretionary remedy but one that the plaintiff is entitled to as of right if he has issued a writ *in rem* and if he has complied with all the affidavit requirements of O.75, r.5 of the Rules of the Supreme Court. The power to issue the warrant of arrest is expressly bestowed on the plaintiff, so he does not have to apply for it and the court does not issue it. It does not take effect until it is stamped under O.75, r.5(8), which it should not be if the stamping officer finds the requirements of O.75, r.5(9) have not been satisfied. Since there is no application for a discretionary remedy, there is no call for full and frank disclosure. So there was no scope for chiding Mr. Culatto for non-disclosure in his affidavit leading to arrest: see *The Varna* (8). 15 20

Where the action is *in rem* alone there are no defendants, despite the wording of the writ: see *The Deichland* (5) ([1990] 1 Q.B. at 369). An action *in rem* is an action against the *res*—the ship—and the owners may incur some liability only if they enter an appearance, and if they do the action will continue as an action *in rem* and as an action *in personam*: see *The August 8th* (2). 25 30

Oltenia is liable to be affected adversely by the result of the *in rem* proceedings, and it wishes to contest the merits of the plaintiff's claim as it has done in the arbitration proceedings. If it does not acknowledge service in the action *in rem* here there will be a judgment in default against the *Blueyed Lady*. If it does, then the action becomes an action *in personam* as well. The reality is therefore that these are proceedings *in personam* against Oltenia in England in the arbitration proceedings and in Gibraltar. To litigate the same issues in two forms is vexatious and an abuse of the process of the court. The court, in the exercise of its inherent power, may require the plaintiff to elect: see *The Cap Bon* (4). 35 40

It is correct to say that the indorsement on the writ is within s.20(2)(h) of the Supreme Court Act 1981, but that does not mean that to issue it when there is an arbitration agreement and the arbitration is proceeding with due diligence is not vexatious and an abuse. 45

5 The plaintiff wishes to keep the arbitration moving along in England and at the same time keep this action alive but not pursue it, which it has the duty to do, so it can keep the *Blueyed Lady* or its sale proceeds as security for the arbitration award, for that is the sole purpose of the plaintiff's action here as revealed in the affidavits of Mr. Culatto and Mr. Grimmer. It is important to remember that the arbitration under the charterparty began in England before the plaintiff issued its writ here.

10 All that is permissible in England and expressly provided for in s.26 of the Civil Jurisdiction and Judgments Act 1982, which is in force. It is provided for in s.19 of the Civil Jurisdiction and Judgments Ordinance, 1993, but the Ordinance has not been brought into force and the plaintiff cannot pray it in aid.

15 Here, in Gibraltar now, whilst the Admiralty Court has the power to arrest and the purpose of the plaintiff in invoking this Admiralty jurisdiction cannot affect the existence of the jurisdiction, the exercise of the power is not mandatory and the court may for sufficient reason decline to exercise it: see O.75, r.5(1) of the Rules of the Supreme Court. Furthermore, under O.75, r.13(4) the court has a discretionary power to order the release of the property under arrest. The court's discretion whether to exercise either of those powers may be affected by the manner in which or the purpose for which the plaintiff has proceeded.

25 If the plaintiff shows that an arbitration award in his favour is unlikely to be satisfied by the defendants, the security already available in the action *in rem* may be ordered to stand so that the plaintiff may have thereafter to pursue the action *in rem*, possibly using an unsatisfied arbitration award for the purpose of an issue estoppel, and the security will remain available in the action *in rem*: see *The Rena K* (6) ([1979] 1 All E.R. at 417, *per* Brandon, J.) and *The Tuyuti* (7) ([1984] Q.B. at 846–847).

30 The *Rena K* principle does not justify obtaining security for an arbitration award as such. The security is provided not for the arbitration award but for the judgment in the action *in rem* after failure by the defendants to satisfy the arbitration award.

35 The Admiralty Court's jurisdiction to arrest a ship in an action *in rem* should not be exercised for the purpose of providing security for an award which may be made in arbitration proceedings or a foreign court. Put simply again, the purpose of the jurisdiction is to provide security in respect of the action *in rem* or a settlement in it and not to provide security in some collateral proceeding such as an arbitration or foreign proceeding: see *The Andria* (1).

40 Lloyd, L.J. in *The Bazias* 3 (3) ([1993] Q.B. at 681–682) described the *Rena K* principle as a compromise, ingenious and over-cumbersome. It was out of line with arbitration proceedings in foreign courts and it took much time to work out, on affidavit evidence, whether an award was likely to be met. Parliament, in s.26 of the Civil Jurisdiction and

Judgments Act, did away with the rule that security afforded by *in rem* proceedings was not available to enforce an award in arbitration proceedings. This has not happened yet in Gibraltar.

In this case before the court, it was clear that the plaintiff's purpose in having the *Blueyed Lady* arrested was to provide security to cover the arbitration award. It was not part of its original application that Oltenia would not be able to meet all of it so that the action *in rem* would have to be pursued. The arbitration began in London four months before the plaintiff issued its writ in the action *in rem* in Gibraltar, and it was likely that the plaintiff would not take any further steps in the action here. If it did, it would be litigating the same subject-matter in two different countries which would be vexatious and an abuse of process. The Admiralty jurisdiction of the court in Gibraltar should not be exercised for the purpose of providing security for a possible award for the plaintiff in arbitration proceedings. The upshot was that in the exercise of my discretion, I struck out the indorsement on the writ and dismissed the action.

The court went on, in the exercise of its discretion, to order the release of the *Blueyed Lady* because it had dismissed the plaintiff's action.

It followed that the plaintiff was ordered to pay the costs of the defendants in the action and the costs incurred in and occasioned by this application, all to be taxed.

Order accordingly.
