

MORTGAGE OR A CHARGE

By a mortgage the mortgagee acquires a right to the ownership of a vessel in a certain event, namely, on default of payment of principal and interest, since it is a transfer of all the mortgagor's interest by way of security for the payment of a loan. Mortgagee by reason of his mortgage shall not be deemed to be the owner of the ship, the mortgagor remains the dominus of the ship with regard to everything connected with its employment until the moment arrives when the mortgagee takes possession. The mortgagor therefore does not cease to be the owner of such mortgaged ship except so far as may be necessary for making it available as a security for the mortgage debt. From this it necessarily follows that a mortgagee cannot bring an action of restraint as if he were a co-owner.

The mortgagee under a mortgage of a ship becomes entitled to have as part of his security all the articles necessary to the navigation of the vessel, such as sails, lights, whether on board at the date of the mortgage, or placed on board subsequently and he becomes entitled to the freight due when he takes actual or constructive possession of his security, he cannot, therefore, recover from the mortgagor any freight which he has allowed him to receive since the date of the loan, and before he take possession. Nor can the charterers take from the freight payable by them any sum in respect of advances which the master has agreed shall be deducted from such freight, for the sum which it is agreed by the charterparty shall be advanced and taken from the freight is the only amount by which the freight may be reduced. Nor can suppliers of fuel obtain a deduction of the price thereof from freight, even though the fuel was consumed in earning it, where the fuel was sold to and was the property of the mortgagees.

Section 4 (1) (c) of the Admiralty Act (2017) deals with the above subject maritime claims.

Any claim in respect of any mortgage duly registered according to the provisions of the (Indian) Merchant Shipping Act, 1958, whether the ship or the proceeds thereof be under arrest of the Court or not."

Section 51 of the Merchant Shipping Act 1958, regarding the rights of a registered mortgagee of a ship, which is as follows:

"(1) A registered mortgagee of a ship or share shall be entitled to recover the amount due under the mortgage in the High Court, and when passing a decree or thereafter the High Court may direct that the mortgaged ship or share be sold in execution of the decree.

(2) Subject to the provisions of Sub-s. (1), no such mortgagee shall merely by virtue of the mortgage be entitled to sell or otherwise dispose of the mortgaged ship or share."

The "High Court" referred to in the section by definition in the Act means the High Court within the limits of whose appellate jurisdiction (a) the port or registry of the ship is situate; or (b) the ship is for the time being; or (c) the cause of action wholly or in part arises. The High Court need not be one having Admiralty jurisdiction and the sale of the ship which the High Court directs to be sold will not extinguish all the claims to or liens on the ship so as to give the purchaser a free and clear title to the ship.