

PROPERTY (SHIP) UNDER ARREST AND ITS EFFECT

The effect of arrest is that it constitutes the ship or other property as security in the hands of the court for the claim in the action and this security cannot be defeated by the subsequent insolvency of the owner of the arrested property. The arrest enables the Court to keep the property as security to answer the judgment, and unaffected by chance events which may happen between the arrest and the judgment.

Once the warrant for arrest has been executed, the property is arrested and is in the custody of the Sheriff or the Marshall or other officer on behalf of the court. Interference by any party with the arrest process such as removing the property to be arrested with knowledge that an arrest has been issued is a contempt of court, this includes any interference with the custody of the property after arrest such as moving the property within the jurisdiction without authority, or removing it from the jurisdiction, as was held in *The "Jarlinn"* [1965] 1 W.L.R. 1098 and also in *The "Abodi Mendi"* [1939] 178.

The arrest of a ship is a defining moment in its life. Immediately upon arrest the ship becomes security in the custody of the court to abide the result of the proceedings giving rise to the arrest. Once arrested, the ship remains in the custody of the court until released upon the provision of alternative security or sale by the court. As Sheen J explained in *The Falcon*:

A ship is usually arrested in order to provide security for the plaintiff's claim. The extent of that security is measured by the net proceeds of the sale of the vessel. The amount of the net proceeds of sale is arrived at by deducting from the gross proceeds of sale the expenses of that sale and other expenses incurred by the Sheriff or the Marshall or the other officer and the necessary costs of the plaintiff in whose action the ship was arrested up to the moment

of arrest and all subsequent expenses of maintaining the arrest up to and including the completion of the sale of the ship.

A warrant of arrest on a ship covers everything belonging to it as part of its equipment, even items which are physically detached from it, but not items which do not belong to the ship owner such as the personal property of the master and crew or the luggage of a passenger.

A ship may be arrested but the cargo on board her is not under arrest, or cargo is arrested but the ship in which it is laden is not. If a ship is to be arrested while she is in the course of discharging her cargo, the Sheriff or the Marshal or the other officer will not stop the discharge operations unless the arrest is in respect of the cargo. When cargo is arrested the ship owners can request the Sheriff or the Marshal or the other officer to take the appropriate steps to enable the ship to be discharged.

When arrest of a ship in a port causes considerable and continuing disruption to the operation of the port and the port authority had to turn away other ships so harming its reputation and causing its financial loss in such circumstances the court has inherent jurisdiction to allow a party to intervene if the effect of an arrest is to cause that party serious hardship or difficulty or danger. The court may pass directions to remove the ship to a safe berth in such other place as he shall think appropriate.

A ship is arrested by the Sheriff or the Marshal or the other officer acting as an officer of the court. The ship comes into the custody, but not the possession, of the Sheriff or the Marshal or the other officer. The position was described by Lord Atkin in *Government of the Republic of Spain v SS "Arantzazu Mendi"*.

The ship arrested does not by the mere fact of arrest pass from the possession of its then possessors to a new possession of the Sheriff or the Marshal or the other officer. His right is not possession but custody. Any interference with

his custody will be properly punished as a contempt of the Court which ordered arrest, but, subject to his complete control of the custody, all the possessory rights which previously existed continue to exist, including all remedies which are based on possession.

Once arrested, a ship cannot be moved from the place of arrest without the authority of the Sheriff or the Marshal or the other officer. To move the ship without such authority, whether to another place within the jurisdiction or to flee the jurisdiction, constitutes contempt of court. Similarly, any interference with the ship while under arrest, whether or not it involves any movement or attempted movement of the ship, will constitute contempt.

The duty of the Sheriff or the Marshal or the other officer is to ensure the safe custody and preservation of the ship.

The Sheriff or the Marshal or the other officer shall, unless the court otherwise orders, take all appropriate steps to retain safe custody of, and to preserve, the ship or property, including removing from the ship, or storing, cargo that is under arrest; removing cargo from a ship that is under arrest and storing it; removing, storing or disposing of perishable goods that are under arrest or are in a ship that is under arrest; and moving the ship that is under arrest.

The Sheriff or the Marshal or the other officer owes no duty to the crew on board as such.