

ENFORCED SALE OF THE SHIP

Under the Admiralty Rules of the three High courts, the sale of ship whether *pendente lite* or after adjudication on the plaintiff's suit, has to be carried out by the marshal/sheriff, just like a sale of movable property in an ordinary civil suit. There is no provision for a reserve price and there is no provision for appraisement as in English Admiralty practice. Nevertheless, the courts, in order to prevent the ship being sold at a price a great deal less than its real value, from recent times have invariably ordered that the ship be appraised at its real value by a ship's valuer and sold at not less than the appraised value thereof unless the court, on the Marshal's or the Sheriff's application, orders it to be sold for a lesser price when the bidding does not reach up to the appraised value.

The sale is normally by public auction after publication of the notice of sale in such newspapers as the court may direct. There have been no known instances of sales by private treaty, though there is nothing in the Rules preventing such a sale.

In any action a court has power to order the sale of property which is perishable, likely to deteriorate or in relation to which there is good reason for sale. Such a sale of itself would be subject to encumbrances existing prior to the sale. The sale of a ship includes all property on board other than that owned by someone other than the ship owner.

A sale is confined to property that must be under arrest. A court may order the discharge and sale of cargo not under arrest where a ship in which the cargo is loaded is under arrest and an order for sale is made in respect of it. The Admiralty Court may order the appraisement and sale of property under arrest on the application of a party to the action or by an application of the

Marshal or the Sheriff. A sale pending suit is normally ordered on the grounds that retention of the property will cause the plaintiff's security to diminish if for no other reason than the mounting costs of arrest. Application must be served on any person who has obtained judgment against the ship and all caveators.

The Sheriff or the Marshal may sell the property in foreign currency. The proceeds will be paid into court and will be invested only on application. The effect of sale of property under arrest in an action in rem is to give a title free of encumbrances to the purchaser.

A judicial sale of ship is effected for the enforcement of a judgment or an arbitral award prescribing certain payment obligations to be performed by the ship owner; while in some other cases it is effected for the purpose of enforcing a court order, such as an order for the appraisal and sale of a ship under arrest which is applied for by a maritime claimant before a judgment is issued on the merits of the claims giving rise to the arrest.